

WSR 10-09-099
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services)

[Filed April 21, 2010, 9:07 a.m., effective April 21, 2010]

Effective Date of Rule: April 21, 2010.

Purpose: This emergency rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver as of May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008. This emergency supersedes the emergency filed as WSR 09-18-059.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100, 388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 194, Laws of 2009; and section 205 (1)(i), chapter 329, Laws of 2008.

Other Authority: Title 71A RCW.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This emergency rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008. This emergency filing supersedes the emergency filed as WSR 09-18-059. The department has filed a CR-102 and is waiting for the public hearing to receive any additional comments from stakeholders.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 18, Amended 38, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 38, Repealed 0.

Date Adopted: April 14, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CARE" means the comprehensive assessment and reporting evaluation.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

"Department" means the department of social and health services.

"EPSDT" means early and periodic screening, diagnosis, and treatment, Medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one.

"Employment/day program services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically-supported treatment (EST).

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse(±) or registered domestic partner; natural, adoptive or step parent((s)); grandparent((s)); ~~((brother; sister; stepbrother; stepsister))~~ child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means ~~((you#))~~ present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

~~("Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs until the DDD assessment is administered and the individual support plan is developed.)~~

"Providers" means an individual or agency who meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, Children's Intensive In-Home Behavioral Support, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means ~~((state supplementary payment, a benefit administered by the department intended to augment an individual's SSI))~~ a state-paid cash assistance program for certain clients of the division of developmental disabilities.

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)? DDD provides services through ~~((four))~~ five HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) ~~((CORE))~~ Core waiver; ~~((and))~~
- (4) Community Protection waiver; and
- (5) Children's Intensive In-Home Behavioral Support waiver (CIIBS).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0020 When were ~~((these four))~~ the HCBS waivers effective? ~~((The four DDD HCBS))~~ Basic, Basic Plus, Core and Community Protection waivers were effective April 1, 2004. Children's Intensive In-Home Behavioral Support waiver was effective May 1, 2009.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

(1) You have been determined eligible for DDD services per RCW 71A.10.020(3).

(2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(3) You meet disability criteria established in the Social Security Act.

(4) You meet financial eligibility requirements as defined in WAC 388-515-1510.

(5) You choose to receive services in the community rather than in an ICF/MR facility.

(6) You have a need for waiver services as identified in your plan of care or individual support plan.

(7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

(8) Additionally, for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver-funded services:

(a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0041 What is DDD's responsibility to provide my services under the DDD HCBS waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your ~~((plan of care or the))~~ individual support plan, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people from the statewide data base in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC ((388-845-0060(9))) 388-845-0060 (1)(i).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0050 How do I request to be enrolled in a waiver? (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ICF/MR level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

(3) For the Children's Intensive In-Home Behavioral Support (CIIBS) waiver only, if you are assessed as meeting both ICF/MR level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide database.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0055 How do I remain eligible for the waiver? Once you are enrolled in a DDD HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030((-)), and:

(1) (~~DDD~~) You complete((s)) a reassessment with DDD at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b), or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) (~~Your~~) You complete an in-person DDD assessment/reassessment interview ((must be)) administered ((# person and)) in your home((-See)) per WAC 388-828-1520.

(4) In addition, for the Children's Intensive In-Home Behavioral Supports waiver, you must:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver? If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded DDD services is based upon availability of funding and program eligibility for a particular service.

(3) If you are terminated from the CIIBS waiver due to turning age twenty-one, DDD will assist with transition planning at least twelve months prior to your twenty-first birthday.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0100 What determines which waiver I am assigned to? If there is capacity, DDD will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDD assessment as described in chapter 388-828 WAC and the following criteria:

(1) For the Basic waiver:

(a) You must live with your family or in your own home;

(b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and

(c) You do not need out-of-home residential services.

(2) For the Basic Plus waiver, your health and welfare needs exceed the amount allowed in the Basic waiver or require a service that is not contained in the Basic waiver; and

(a) You are at high risk of out-of-home placement or loss of your current living situation; or

(b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility.

(3) For the Core waiver:

(a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

(4) For the Community Protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

(5) For the Children's Intensive In-Home Behavioral Support waiver, you:

(a) Are age eight or older and under age eighteen;

(b) Live with your family;

(c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and

(d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0111 Are there limitations regarding who can provide services? The following limitations apply to providers for waiver services:

(1) Your spouse (~~(cannot)~~) must not be your paid provider for any waiver service.

(2) If you are under age eighteen, your natural, step, or adoptive parent (~~(cannot)~~) must not be your paid provider for any waiver service.

(3) If you are age eighteen or older, your natural, step, or adoptive parent (~~(cannot)~~) must not be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation to and from a waiver service;

(c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

(d) Respite care if you and the parent who provides the respite care live in separate homes.

(4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:

(i) Personal care;

(ii) Transportation to and from a waiver service; and

(iii) Respite per WAC 388-845-1605 through 388-845-1620.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver? Your participation in one of the (~~(new)~~) DDD HCBS waivers does not affect your continued receipt of state supplemental payment from DDD.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0200 What waiver services are available to me? Each of the (~~(four)~~) DDD HCBS waivers has a different scope of service and your (~~(plan of care or)~~) individual support plan defines the waiver services available to you.

NEW SECTION

WAC 388-845-0225 Children's Intensive In-Home Behavioral Support (CIIBS) waiver services.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> • Behavior management and consultation • Staff/family consultation and training • Environmental accessibility adaptations • Occupational therapy • Physical therapy • Sexual deviancy evaluation • Nurse delegation • Specialized medical equipment / supplies • Specialized psychiatric services • Speech, hearing and language services • Transportation • Assistive technology • Therapeutic equipment and supplies • Specialized nutrition and clothing • Vehicle modifications 	<p>Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.</p>
	<p>Personal care</p>	<p>Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.</p>

CIIBS Waiver	Services	Yearly Limit
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

NEW SECTION

WAC 388-845-0415 What is assistive technology?

Assistive technology consists of items, equipment, or product systems used to increase, maintain, or improve functional capabilities of waiver participants, as well as services to directly assist the participant and caregivers to select, acquire, and use the technology. Assistive technology is available in the CIIBS waiver, and includes the following:

- (1) The evaluation of the needs of the waiver participant, including a functional evaluation of the child in the child's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for the participant and/or if appropriate, the child's family; and
- (6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

NEW SECTION

WAC 388-845-0420 Who is a qualified provider of assistive technology? The provider of assistive technology must be an assistive technology vendor contracted with DDD or one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Occupational therapist;
- (2) Physical therapist;
- (3) Speech and language pathologist;
- (4) Certified music therapist;
- (5) Certified recreation therapist; or
- (6) Audiologist.

NEW SECTION

WAC 388-845-0425 Are there limits to the assistive technology I can receive? (1) Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

(2) Vendors of assistive technology must maintain a business license required by law and be contracted with DDD to provide this service.

(3) Assistive technology may be authorized as a waiver service only after you have accessed what is available to you under medicaid, including EPSDT, and any other private health insurance plan.

(4) The department does not pay for technology determined by DSHS to be experimental.

(5) The department and the treating professional determine the need for the technology.

(6) The department reserves the right to require a second opinion from a department-selected provider.

(7) The department will require evidence that you have accessed your full benefits through medicaid and private insurance before authorizing this waiver service.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0500 What is behavior management and consultation? (1) Behavior management and consultation may be provided to persons on any of the ~~((four))~~ DDD HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

- (a) Strategies for effectively relating to caregivers and other people in the waiver participant's life; and
- (b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, development and implementation of a positive behavior support plan).

(2) Behavior management and consultation may also be provided as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-0501 What is included in behavior management and consultation for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver? (1) In addition to the definition in WAC 388-845-0500, behavior management and consultation in the CIIBS waiver must include the following characteristics:

- (a) Treatment must be evidence based, driven by individual outcome data, and consistent with DDD's positive behavior support guidelines as outlined in contract;
- (b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:
 - (i) Functional behavioral assessment; and

(ii) Positive behavior support plan based on functional behavioral assessment.

(c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and

(d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Behavior management and consultation in the CIIBS waiver may also include the following components:

(a) Positive behavior support plans may be implemented by a behavioral technician as defined in WAC 388-845-0506 and include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by a music and/or recreation therapist, as defined in WAC 388-845-0506.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0505 Who is a qualified provider of behavior management and consultation? Under the Basic, Basic Plus, Core, and Community Protection waivers, the provider of behavior management and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) ~~((Registered counselor))~~ Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; or
- (11) Polygrapher.

NEW SECTION

WAC 388-845-0506 Who is a qualified provider of behavior management and consultation for the Children's Intensive In-Home Behavioral Supports (CIIBS) waiver? Under the CIIBS waiver, providers of behavior management and consultation must be contracted with DDD to provide CIIBS intensive services as one of the following four provider types:

- (1) Behavior specialist;
- (2) Behavior technician;
- (3) Certified music therapist; and/or
- (4) Certified recreation therapist.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the DDD HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care or individual support plan needed to:

(a) Ensure the health, welfare and safety of the individual; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) For the CIIBS waiver only, adaptations include repairs to the home necessary due to property destruction caused by the participant's behavior.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0910 What limitations apply to environmental accessibility adaptations? The following service limitations apply to environmental accessibility adaptations:

(1) Environmental accessibility adaptations require prior approval by the DDD regional administrator or designee.

(2) With the exception of damage repairs under the CIIBS waiver, environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(3) Environmental accessibility adaptations cannot add to the total square footage of the home.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(5) Damage repairs under the CIIBS waiver are subject to the following restrictions:

(a) Limited to the cost of restoration to the original condition.

(b) Repairs to personal property and normal wear and tear is excluded.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1000 What are extended state plan services? Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state medicaid plan. These services are available under all ~~((for))~~ DDD HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1015 Are there limits to the extended state plan services I can receive? (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

(2) The department does not pay for treatment determined by DSHS to be experimental;

(3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department reserves the right to require a second opinion from a department-selected provider.

(b) The department will require evidence that you have accessed your full benefits through medicaid, including early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of twenty-one, and private insurance before authorizing this waiver service.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1110 What are the limits of mental health crisis diversion bed services? (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core, and Community Protection waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1150 What are mental health stabilization services? Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in ~~((all four))~~ the Basic, Basic Plus, Core, and Community Protection waivers to adults determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

(1) Behavior management and consultation;

(2) ~~((Skilled nursing services;~~

~~((3)))~~ Specialized psychiatric services; or

~~((4)))~~ (3) Mental health crisis diversion bed services.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-845-1170 What is nurse delegation: (1) Nurse delegation services (chapter 388-101 WAC) are services provided by a registered nurse or a nursing agency to provide training and nursing management for providers who perform delegated nursing tasks. Delegated tasks include administration of noninjectable medications, blood glucose testing, and tube feedings.

(2) Services include the initial visit, additional instruction and supervisory visits.

(3) Clients who receive nurse delegation services must be considered "stable and predictable" by the delegating nurse.

(4) Nurse delegation is available in the CIIBS waiver. This service is available through skilled nursing services (WAC 388-845-1700) in the Basic Plus, Core and Community Protection waivers.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-845-1175 Who is a qualified provider of nurse delegation? Providers of nurse delegation are registered nurses contracted with DDD to provide this service or employed by a nursing agency contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-1180 Are there limitations to the nurse delegation services that I receive? The following limitations apply to receipt of nurse delegation services:

(1) The department and the treating professional determine the need for and amount of service.

(2) The department reserves the right to require a second opinion by a department selected provider.

(3) The following tasks must not be delegated:

(a) Injections, other than insulin;

(b) Central lines;

(c) Sterile procedures; and

(d) Tasks that require nursing judgment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1200 What are "person-to-person" services? (1) "Person-to-person" services are intended to assist you to achieve the outcome of gainful employment in an integrated setting through a combination of services, which may include:

(a) Development and implementation of self-directed employment services;

(b) Development of a person centered employment plan;

(c) Preparation of an individualized budget; and

(d) Support to work and volunteer in the community, and/or access the generic community resources needed to achieve integration and employment.

(2) These services may be provided in addition to community access, prevocational services, or supported employment.

(3) These services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1300 What are personal care services? Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks. These services are available in the Basic, Basic Plus, CIIBS and ~~((CORE))~~ Core waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1400 What are prevocational services? (1) Prevocational services occur in a segregated setting and are designed to prepare you for gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1600 What is respite care? Respite care is short-term intermittent relief for persons normally providing care for waiver individuals. This service is available in the Basic, Basic Plus, CIIBS, and ~~((CORE))~~ Core waivers.

AMENDATORY SECTION (Amending WSR 08-03-109, filed 1/22/08, effective 2/22/08)

WAC 388-845-1605 Who is eligible to receive respite care? You are eligible to receive respite care if you are in the Basic, Basic Plus, CIIBS or ~~((CORE))~~ Core waiver and:

(1) You live in a private home and no one living with you is paid to ~~((be your caregiver))~~ provide personal care services to you;

(2) You are age eighteen or older and live with a paid ~~((caregiver))~~ personal care provider who is your natural, step or adoptive parent; or

(3) You are under the age of eighteen and live with your natural, step or adoptive parent and your paid personal care provider also lives with you; or

(4) You live with a caregiver who is paid by DDD to provide ~~((care to you and is))~~ supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) Prior approval by the DDD regional administrator or designee is required:

(a) To exceed fourteen days of respite care per month; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).

(3) Respite cannot replace:

(a) Daycare while your parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(5) Your caregiver ~~((will not be paid to))~~ may not provide DDD services for you or other persons ~~((at the same time you receive respite services))~~ during your respite care hours.

(6) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.

(7) DDD ~~((cannot))~~ may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1650 What are sexual deviancy evaluations? (1) Sexual deviancy evaluations:

(a) Are professional evaluations that assess the person's needs and the person's level of risk of sexual offending or sexual recidivism;

(b) Determine the need for psychological, medical or therapeutic services; and

(c) Provide treatment recommendations to mitigate any assessed risk.

(2) Sexual deviancy evaluations are available in all ~~((four))~~ DDD HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1700 What is skilled nursing? (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, ~~((CORE))~~ Core, and Community Protection waivers.

(2) Services include nurse delegation services, per WAC 388-845-1170, provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

~~((3) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.))~~

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable and nondurable medical equipment are defined in WAC 388-543-1000 and 388-543-2800 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all ~~((four))~~ DDD HCBS waivers.

NEW SECTION

WAC 388-845-1840 What is specialized nutrition and specialized clothing? (1) Specialized nutrition is available to you in the CIIBS waiver and is defined as:

(a) Assessment, intervention, and monitoring services from a certified dietitian; and/or

(b) Specially prepared food, or purchase of particular types of food, needed to sustain you in the family home. Specialized nutrition is in addition to meals a parent would provide and specific to your medical condition or diagnosis.

(2) Specialized clothing is available to you in the CIIBS waiver and defined as nonrestrictive clothing adapted to the participant's individual needs and related to his/her disability. Specialized clothing can include weighted clothing, clothing designed for tactile defensiveness, specialized footwear, or reinforced clothing.

NEW SECTION

WAC 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing? (1) Providers of specialized nutrition are:

(a) Certified dietitians contracted with DDD to provide this service or employed by an agency contracted with DDD to provide this service; and

(b) Specialized nutrition vendors contracted with DDD to provide this service.

(2) Providers of specialized clothing are specialized clothing vendors contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?

(1) The following limitations apply to your receipt of specialized nutrition services:

(a) Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT, and any private health insurance plan;

(b) Services must be evidence based;

(c) Services must be ordered by a physician licensed to practice in the state of Washington;

(d) Specialized diets must be periodically monitored by a certified dietitian;

(e) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(f) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(g) DDD reserves the right to require a second opinion by a department selected provider; and

(h) Prior approval by regional administrator or designee is required.

(2) The following limitations apply to your receipt of specialized clothing:

(a) Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT, and any private health insurance plan;

(b) Specialized clothing must be recommended by an appropriate health professional, such as an OT, behavior therapist, or podiatrist;

(c) DDD reserves the right to require a second opinion by a department-selected provider; and

(d) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1900 What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all ~~((four))~~ DDD HCBS waivers.

(2) Service may be any of the following:

(a) Psychiatric evaluation,

- (b) Medication evaluation and monitoring,
- (c) Psychiatric consultation.

(3) These services are also available as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all ~~((four))~~ DDD HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care or individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support; ~~((and))~~
- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental consultation; and
- (j) For the CIIBS waiver only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) ~~((Registered counselor))~~ Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (15) Certified dietician; ~~((or))~~
- (16) Recreation therapist certified by the National Council for Therapeutic Recreation; or
- (17) Providers listed in WAC 388-845-0506 and contracted with DDD to provide CIIBS intensive services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-2100 What are supported employment services? Supported employment services provide you with intensive ongoing support if you need individualized assistance to gain and/or maintain employment. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

(1) Individual supported employment services include activities needed to sustain minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

- (a) Creation of work opportunities through job development;
- (b) On-the-job training;
- (c) Training for your supervisor and/or peer workers to enable them to serve as natural supports to you on the job;
- (d) Modification of your work site tasks;
- (e) Employment retention and follow along support; and
- (f) Development of career and promotional opportunities.

(2) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

- (a) The activities outlined in individual supported employment services;
- (b) Daily supervision by a qualified employment provider; and
- (c) Groupings of no more than eight workers with disabilities.

NEW SECTION

WAC 388-845-2160 What is therapeutic equipment and supplies? (1) Therapeutic equipment and supplies are only available in the CIIBS waiver.

(2) Therapeutic equipment and supplies are equipment and supplies that are incorporated in a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the child to a constructive activity, or a vestibular swing.

NEW SECTION

WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies? Providers of therapeutic equipment and supplies are therapeutic equipment and supply vendors contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies? The fol-

lowing limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS waiver:

(1) Therapeutic equipment and supplies may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT, and any private health insurance plan. The department will require evidence that you have accessed your full benefits through medicaid, EPSDT, and private insurance before authorizing this waiver service.

(2) The department does not pay for equipment and supplies determined by DSHS to be experimental.

(3) The department and the treating professional determine the need for the equipment and supplies.

(4) The department reserves the right to require a second opinion from a department selected provider.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care or individual support plan. This service is available in all (~~four~~) DDD HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your plan of care or individual support plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

NEW SECTION

WAC 388-845-2260 What are vehicle modifications? This service is only available in the CIIBS waiver. Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the individual, enable full integration into the community, and ensure the health, welfare, and safety of the individual and/or family members.

NEW SECTION

WAC 388-845-2265 Who are providers of vehicle modifications? Providers of vehicle modifications are:

(1) Vehicle service providers contracted with DDD to provide this service; or

(2) Vehicle adaptive equipment vendors contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services? The following limitations apply to your receipt of vehicle modifications under the CIIBS waiver:

(1) Prior approval by the regional administrator or designee is required.

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the individual.

(3) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDD.

(4) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the family.

(5) The department reserves the right to require a second opinion from a department selected provider.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/MR level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic, Basic Plus, CIIBS, or (~~CORE~~) Core waiver, the DDD assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care or individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3085 What if my needs exceed what can be provided under the CIIBS, (~~CORE~~) Core or Community Protection waiver? (1) If you are on the CIIBS, (~~CORE~~) Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the CIIBS, (~~CORE~~) Core or Community Protection waiver other than natural supports;

(c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;

(d) Offer you placement in an ICF/MR.

(2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base (~~because~~) due to the following:

(a) You do not need ICF/MR level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060; or

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:

(a) DDD's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; or

(b) DDD's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(3) If DDD determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDD determines there is not capacity to enroll you on a different waiver.

WSR 10-10-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-88—Filed April 21, 2010, 2:10 p.m., effective April 21, 2010,
2:10 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000A; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No.

2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The select areas harvest has been the highest recorded during this time frame and there has been a greater than anticipated proportion of stray upriver spring chinook in the catch. The fisheries are closed until further notice to keep within the preseason guidelines under the *United States v. Oregon* Management Agreement and commission guidance. Rule is consistent with Columbia River compact action of April 20, 2010. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 1; Federal Rules or Standards: New 0, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 21, 2010.

Lori Preuss
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000A Columbia River seasons
below Bonneville. (10-73)

WSR 10-10-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-89—Filed April 21, 2010, 2:22 p.m., effective April 24, 2010]

Effective Date of Rule: April 24, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered

under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900W; amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *United States v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

The fisheries below Bonneville Dam are close to the pre-season guidelines for spring chinook prior to a run size update. Fisheries are being managed conservatively so as not to exceed the pre-season guidelines. Regulation is consistent

with guidance from Washington fish and wildlife commission and director, and compact/joint state action of April 20, 2010. The fishery is consistent with the *United States v. Oregon* Management Agreement and the associated biological opinion. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 21, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Deep River (Wahkiakum Co.):** Effective April 24, through June 15, 2010: closed to fishing for salmon and steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed, effective June 16, 2010:

WAC 232-28-61900W Exceptions to statewide rules—Columbia River.

WSR 10-10-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-86—Filed April 21, 2010, 3:26 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000T; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 21, 2010.

Lori Preuss
Philip Anderson
Director

NEW SECTION

WAC 220-24-04000T All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open: May 1 through June 30, 2010.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(7) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running north-east/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 2, 2010:

WAC 220-24-04000T All-citizen commercial
salmon troll.

WSR 10-10-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-87—Filed April 22, 2010, 9:31 a.m., effective April 27, 2010,
12:01 a.m.]

Effective Date of Rule: April 27, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-36000G; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 22, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000G Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. April 27, 2010, through 11:59 a.m. May 2, 2010, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. April 30, 2010, through 11:59 a.m. May 2, 2010, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor

North Jetty and the southern boundary of the Quinault Indian Nation Reservation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

3. Effective 12:01 a.m. May 1, 2010, through 11:59 a.m. May 2, 2010, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach, or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 2, 2010:

WAC 220-56-36000G Razor clams—Areas and seasons.

WSR 10-10-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-84—Filed April 22, 2010, 10:00 a.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900K; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Washington department of fish and wildlife predicts that 700+ hatchery spring chinook will return to the Ringold Springs Rearing Facility. The season is being extended through June 30 to allow anglers more time to catch as many hatchery chinook as possible. The anti-snagging rule is being removed for this bank fishery to allow anglers to use up to two single point hooks. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 22, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Columbia River (Ringold) Notwithstanding the provisions of WAC 232-28-619, effective May 1, through June 30, 2010, a person may fish for salmon in those waters of the Columbia River adjacent to Ringold Springs Rearing Facility (in Franklin County), from the Washington Department of Fish and Wildlife markers 1/4 mile downstream of the Ringold irrigation wasteway outlet, to the markers 1/2 mile upstream of Ringold Springs Creek. The daily limit is two hatchery salmon; minimum size is 12 inches in length. Fishing only from the hatchery side (east bank), and only from the bank. Night closure in effect, but the anti-snagging rule is rescinded. Anglers may use up to two single-point hooks (barbed or barbless).

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2010:

WAC 232-28-61900K Exceptions to statewide rules—Columbia River (Ringold).

**WSR 10-10-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-85—Filed April 22, 2010, 1:23 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Yakama Nation (YN) and Washington department of fish and wildlife fishery managers

are forecasting a large return of 16,570 adult spring chinook to the Yakima River in 2010, of which 72% (11,900) are predicted to be hatchery salmon from the Yakima/Klickitat Fisheries Project research hatchery at Cle Elum operated by the YN. The comanagers estimate that only 7% will be wild Naches River chinook. Twenty-one percent of the run is expected to be naturally produced upper Yakima River fish needed for Cle Elum Hatchery broodstock and natural spawning above Roza Dam. The abundant hatchery component can support increased harvest, while all wild or natural origin chinook need to be protected. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 22, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 1 through May 31, 2010, a person may fish for salmon in waters of the Yakima River from the Interstate 182 bridge in Richland (river mile 4.5) to 400 feet downstream of Horn Rapids (Wanawish) Dam (river mile 18.0). Daily limit of two hatchery Chinook, minimum size 12 inches in length. Terminal gear is restricted to one, single point barbless hook with a hook gap from point to shank of 3/4 inch or less when fishing for salmon. Use of bait is allowed.

(2) Effective May 1 through June 30, 2010, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap (river mile 107.1) to the BNRR bridge approximately 500 feet downstream of Roza Dam (river mile 127.8). Daily limit of two hatchery Chinook, minimum size 12 inches in length. Only one, single point barbless hook with a hook gap from point to shank of 3/4 inch or less is permitted. Use of bait is allowed. Selective Gear Rules requirement prohibiting use of bait is temporarily suspended during the salmon fishery for all species. Night closure in effect.

(a) The upper "closed water" boundary line for Area 2 is moved upstream to the railroad bridge downstream of Roza Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2010:

WAC 232-28-61900L Exceptions to statewide rules—Yakima River.

**WSR 10-10-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-91—Filed April 22, 2010, 1:36 p.m., effective May 1, 2010, 3:00 p.m.]

Effective Date of Rule: May 1, 2010, 3:00 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The closures of these marine areas are necessary because the recreational harvest shares of spot shrimp will have been harvested. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 22, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-32500R Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective 3:00 p.m., May 1, 2010 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 11.

2) Effective 3:00 p.m., May 5, 2010 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 8-1, 8-2, 9, 10 and the Discovery Bay Shrimp District.

3) Effective 10:00 p.m., May 8, 2010 until 4:00 a.m. May 21, 2010, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7.

4) Effective 1:00 p.m., May 12, 2010 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 12.

**WSR 10-10-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-90—Filed April 23, 2010, 1:41 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900X; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The United States Geological Survey river flow gage towers and cableway that currently comprise the downstream sturgeon spawning sanctuary boundary line are in the process of being dismantled and removed. A new boundary line is required to implement the sturgeon spawning sanctuary this year. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 23, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619, effective May 1 through July 31, 2010, it is unlawful to fish for sturgeon from the boundary marker on the river bank 400 feet downstream of the Priest Rapids Hatchery outlet channel (Jackson Creek), to Priest Rapids Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2010:

WAC 232-28-61900X Exceptions to statewide rules—Columbia River sturgeon.

**WSR 10-10-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-93—Filed April 23, 2010, 4:15 p.m., effective April 27, 2010, 7:45 p.m.]

Effective Date of Rule: April 27, 2010, 7:45 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100B.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2009-2010 sea cucumber harvest management target quota non-Indian share amount will be reached by the effective date of this emergency rule. There is insufficient time to adopt a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 23, 2010.

Lori Preuss
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:45 p.m. on Tuesday, April 27, 2010:

WAC 220-52-07100B Sea cucumbers. (10-20)

**WSR 10-10-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-92—Filed April 26, 2010, 3:18 p.m., effective April 26, 2010, 3:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100B; and amending WAC 220-52-051, 220-52-075, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and North Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule: (1) Opens the pot fishery season for nonspot shrimp; (2) changes the phone number for shrimp daily catch reporting and purchase reporting by original receivers in Shrimp Management Areas 3, 4 and 6, so all Puget Sound shrimp pot catch phone reports go to one number; and (3) changes the shrimp accounting week, and allows text messaging of daily catch report hails. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 26, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100C Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 are open to the harvest of all shrimp species from 7:00 a.m. May 1, 2010, until further notice.

(b) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 outside the Discovery Bay Shrimp District are open to the harvest of all non-spot shrimp species from 7:00 a.m. May 1, 2010, until further notice, except as provided for in this section:

i) In Marine Fish/Shellfish Management and Catch Reporting Area 22A, closed through June 15, 2010, in waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island.

ii) All waters of Catch Areas 23A-E, 23A-W, and 23A-C are closed.

(c) The shrimp accounting week is Tuesday through Monday.

(d) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area the pots are being moved to.

(e) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting

Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(d) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122° 47' W longitude and west of a line projected 122° 43' W longitude in Rosario Strait will open at 7:00 a.m. May 1, 2010, until further notice.

(c) That portion of Catch Area 22A within SMA 1B is open effective 7:00 a.m. May 16, 2010, until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-52-07500I Shellfish harvest logs. Notwithstanding the provisions of WAC 220-52-075, effective immediately until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by telephone before leaving the last catch site fished each day, in the following manner:

(1) For harvest in Shrimp Management Areas 3, 4 or 6, reports must be made to the voice recorder at the La Conner district office: 360-446-4345, ext. 245.

(2) A text message of the daily catch may be sent in lieu of voice mail hailing. Text message hails can be sent to shrimpreport@dfw.wa.gov. Reports must include fisher name, catch area fished, pounds of shrimp in possession by species, and the port where the catch will be landed or sold.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-69-24000T Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Tuesday. For harvest in Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4 or 6, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, plus the total number of

pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(2) Puget Sound shrimp - Trawl gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. For harvest in Shrimp Management Areas 1B, 1C or 3, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100B Puget Sound shrimp beam trawl fishery—Season. (10-78)

**WSR 10-10-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-95—Filed April 26, 2010, 3:18 p.m., effective May 1, 2010, 8:00 a.m.]

Effective Date of Rule: May 1, 2010, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600R; and amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.70.430.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Special management area openings are in line with management measures provided for in state-tribal harvest management plans for the 2009-2010 season. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 26, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600V Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) It is permissible to pull crab gear in the area between Klipsan Beach and Destruction Island and Grays Harbor.

(4) It is permissible to pull crab gear in the area between Destruction Island and the U.S./Canada Border.

(5) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further noticed. This SSMA is described by the following coordinates:

- Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.
- Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.
- Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.
- Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(6) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2010. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruc-

tion Island and Cape Johnson according to the following points:

- Northeast Corner (Cape Johnson) 47°58.00' N. Lat. 124°40.40' W. Lon.
- Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(7) It is unlawful for a vessel to use more than 100 pots in the Quileuete SMA from 8:00 A.M. May 1, 2010 through 8:00 A.M. June 1, 2010. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- Email to Carol Henry at: Carol.Henry@dfw.wa.gov or
- Telephone call to: Carol Henry at 360-249-1296

(8) All other provisions of the permanent rule remain in effect.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. May 1, 2010:

WAC 220-52-04600R Coastal crab seasons (10-30)

WSR 10-10-034 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-96—Filed April 26, 2010, 4:13 p.m., effective April 26, 2010, 4:13 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939,

603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Sets the first weekly commercial period for spring chinook treaty Indian fisheries. Fisheries are consistent with the 2008-2017 management agreement. Allows sales of fish caught in platform and hook and line fisheries above and below Bonneville Dam. Allows sale of fish caught in Yakama Nation tributary fisheries by Yakama Nation members. Impact limits to ESA-listed chinook are available for treaty Indian fisheries. Rule is consistent with action of the Columbia River compact on April 26, 2010. Conforms state rules with tribal rules.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 26, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100D Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 AM April 27, 2010 through 6:00 PM April 29, 2010

b) AREA: SMCRA 1F, 1G, 1H (Zone 6)

c) GEAR: No mesh restriction on gillnets.

2. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 AM April 27, 2010 until further notice.

b) AREA: SMCRA 1F, 1G, 1H (Zone 6)

c) GEAR: Hoop nets, dip nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

a) SEASON: 6:00 AM April 27, 2010 until further notice and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b) AREA: Drano Lake, White Salmon, and Klickitat and Wind rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

4. Mainstem Columbia River below Bonneville Dam

a) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: 6:00 AM April 27, 2010 until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU area.

c) AREA: SMCRA 1E, Yakama Nation MOA: on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1. Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creel out to the center of the Columbia river during the period from August 16, 2010, until further notice.

2. Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3. From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of riprap and from the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream.

4. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

5. **SANCTUARIES:** Standard river mouth and dam sanctuaries are applicable to these gear types, except that the Spring Creek Hatchery sanctuary is not in effect.

6. **ALLOWABLE SALES:** Chinook, coho, sockeye, steelhead, walleye, shad, carp, yellow perch, catfish and bass. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale. **Sturgeon below Bonneville Dam may NOT be retained and may NOT be sold.**

7. **ADDITIONAL REGULATIONS:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 10-10-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-98—Filed April 28, 2010, 4:35 p.m., effective April 29, 2010, 12:01 a.m.]

Effective Date of Rule: April 29, 2010, 12:01 a.m.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900T; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Washington and Oregon fish managers estimate that one thousand seven hundred white sturgeon, or thirty-five percent of the four thousand eight hundred thirty-five guideline for above Wauna, will have been caught by the end of April. Most of this catch has come from a large aggregation of white sturgeon holding in the shallow slough east of Rooster Rock State Park between Sand Island and the Oregon shore. Approximately fifty percent of the guideline (two thousand four hundred fish) is typically needed for the October-December timeframe, which leaves approximately seven hundred fish for May-July. This rule should not displace nonsturgeon anglers as the slough receives little effort for other species. Rule is consistent with Washington department of fish and wildlife's compact hearing action of April 26, 2010. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 28, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 29 through July 31, 2010, all angling is prohibited from a line between the upstream end of Sand Island, located east of Rooster Rock State Park on the Columbia River, to a marker on the Oregon shore, downstream to a line between the lower end of Sand Island and a marker on the Oregon shore.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2010:

WAC 232-28-61900T Exceptions to statewide
rules—Columbia River.

WSR 10-10-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-99—Filed April 29, 2010, 8:40 a.m., effective April 29, 2010, 8:40 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Columbia River recreational salmon and steelhead pilot program endorsement was authorized by SB 5421 during the 2009 legislature. This rule is interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 29, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-55-23000B Columbia River endorsement.

Effective immediately, anglers fifteen years of age or older must be in possession of a valid Columbia River endorsement to fish for salmon or steelhead in the following waters:

Mainstem Columbia River from the Rocky Point/Tongue Point line to Chief Joseph Dam

Deep River (Wahkiakum County)

Grays River (Wahkiakum County) mouth to mouth of South Fork

Grays River, West Fork - mouth to hatchery intake foot-bridge.

Grays River, East Fork

Skamokawa Creek (Wahkiakum County) - mouth (Hwy 4 Bridge) to forks below Oatfield and Middle Valley Rd.

Elochoman River (Wahkiakum County) mouth to mouth of West Fork

Mill Creek (Cowlitz/Wahkiakum County)

Abernathy Creek (Cowlitz County) - mouth to Abernathy Falls

Germany Creek (Cowlitz County) - mouth to end of Germany Creek Rd.

Coal Creek (Cowlitz County) - mouth to 400 ft below falls.

Cowlitz River (Cowlitz County) - mouth to mouth of Ohanepecosh and Muddy forks.

Blue Creek - mouth to Spencer Rd.

Lacamas Creek (Lewis County)

Mill Creek (Lewis County) - mouth to hatchery road crossing culvert.

Olequa Creek

Tilton River - mouth to West Fork

Tilton River, East Fork

Tilton River, North Fork

Tilton River, South Fork

Tilton River, West Fork

Mayfield Lake

Lake Scanewa

Cispus River (Lewis County) - mouth to North Fork

Coweeman River (Cowlitz County)

Toutle River (Cowlitz County) - mouth to forks.

Toutle River, North Fork

Toutle River, South Fork

Green River (Cowlitz County) - mouth to Miner's Creek.

Kalama River (Cowlitz County) - mouth to Kalama Falls.

Gobar Creek

Lewis River (Clark/Cowlitz counties) - mouth to mouth of East Fork

Lewis River, North Fork - mouth to Merwin Dam

Lewis River, East Fork

Cedar Creek (Clark County)

Salmon Creek (Clark County) - mouth to 72nd Ave NE

Washougal River (Clark County)

Washougal River West, North Fork

Little Washougal

Camas Slough (Clark County) (waters outside the mouth of the Washougal River, north of Lady island, and downstream of the Hwy 14 Bridge at the upstream end of Lady Island).

Drano Lake (Skamania County) - (Little White Salmon River downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Hwy 14 Bridge).

Hamilton Creek (Skamania County)

Rock Creek (Skamania County)

Wind River (Skamania County)

White Salmon River (Klickitat/Skamania counties) - mouth to Northwestern (Condit) Dam.

Klickitat River (Klickitat County)

Walla Walla River (Walla Walla County) and tributaries.

Mill Creek (Walla Walla County)

Touchet River (Columbia/Walla Walla counties) mouth to confluence of North Fork and South Fork.

Touchet River, North Fork

Touchet River, South Fork

Touchet River, Wolf Fork

Grande Ronde River (Asotin County)

Snake River mainstem

Palouse River (Whitman County) - mouth to the base of Palouse Falls

Tucannon River (Columbia/Garfield counties)

Yakima River (Benton/Yakima/Kittitas counties) - mouth to 400' below Prosser Dam and Sunnyside (Parker) Dam - Roza Dam

Wenatchee River - mouth to Lake Wenatchee (including Lake Jolanda)

Chelan River (Chelan County) mouth (Railroad Bridge) to Chelan PUD safety barrier below the powerhouse.

Icicle River (Chelan County) - mouth to Leland Creek

Lake Wenatchee (Chelan County)

Entiat River (Chelan County) - mouth to Entiat Falls

Methow River (Okanogan County) - mouth to Foghorn Dam

Okanogan River (Okanogan County)

Lake Osoyoos (Okanogan County)

Similkameen River (Okanogan County) - mouth to Enloe Dam

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-55-23000A Columbia River endorsement. (10-69)

WSR 10-10-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-101—Filed April 29, 2010, 1:20 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900S and 232-28-61900F; and
 amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and
 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The predicted 470,000 upriver spring chinook return allows for expanded fishing opportunities in the Snake River within Washington. Expectations are for nearly 200,000 hatchery chinook to return to the Snake River. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 29, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately through June 30, 2010, a person may fish for and possess salmon in waters of the Snake River from the South Bound Highway 12 Bridge, upstream about 7 miles to the fishing restriction boundary approximately 400 ft. below Ice Harbor Dam. Daily limit of two adult hatchery Chinook, plus four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect.

(2) Effective immediately through June 30, 2010, a person may fish for and possess salmon in the following waters of the Snake River:

(a) From the Railroad Bridge, about 0.5 miles downstream of the Tucannon River mouth, up about 9 miles to the Army Corps of Engineers boat launch (approximately 1 mile upstream of Little Goose Dam along the south shore). This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the Wall" in front of the juvenile collection facility).

(b) From Casey Creek, upstream about 6 miles to the fishery restriction area below Lower Granite Dam.

(c) From Blyton Landing Boat Launch along the Snake River Road in Whitman County (about 12 miles upstream of Lower Granite Dam), upstream about 19 miles to the boat dock behind the Quality Inn in Clarkston (boundary line is from the white sign for Hells Canyon Tours approximately 100 ft upstream of the boat dock that has the small green roofed shed on the south shore) across to the culvert with tanks and trailers on the north shore.

(i) Daily limit of two adult hatchery Chinook and four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(ii) However, when fishing along the "wall" and walkway area upstream of the juvenile fish bypass return pipe below Little Goose Dam, the daily limit is one adult hatchery Chinook and one jack salmon. May continue to fish until the daily adult limit is retained. Minimum size for Chinook is 12 inches in length.

(iii) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(iv) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(v) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(vi) Night closure is in effect.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative code is repealed effective May 1, 2010:

WAC 232-28-61900S	Exceptions to statewide rules—Snake River. (10-75)
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The following section of the Washington Administrative code is repealed effective July 1, 2010:

WAC 232-28-61900F	Exceptions to statewide rules—Snake River.
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WSR 10-10-056
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 29, 2010, 3:04 p.m., effective April 29, 2010, 3:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending chapter 388-71 WAC, Home and community services and programs and chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health (ADH) changes required by federal directive, which requires the program to be offered under a different federal statutory authority - 1915(i) of the Social Security Act. The 1915(i) option has different financial eligibility requirement than the current program. ADH transportation will no longer be provided by the medicaid transportation broker. Transportation will be the responsibility of the ADH center to provide or arrange.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-0734; and amending WAC 388-71-0720, 388-71-0724, 388-71-0726, and 388-106-0815.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Section 1915(i) of the Social Security Act.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Federal funds for this program ended December 31, 2009, due to a federal directive requiring ADH services to be removed from the rehabilitative services section of the medicaid state plan. In order to continue ADH services, the aging and disability services administration (ADSA) will provide ADH services under Section 1915(i) of the Social Security Act. The 1915(i) option has different financial eligibility rules that require nonexcluded income to be at or below one hundred fifty percent of the federal poverty level (FPL). ADSA will no longer pay for transportation to ADH by the medicaid transportation broker. ADSA will increase the ADH rate and ADH providers can provide transportation directly or through an arrangement with a third party. This emergency rule superseded emergency rules previously filed as WSR 09-20-037 on September 30, 2009, and WSR 10-02-044 filed on December 30, 2009. A CR-101 was also filed on May 27, 2009, under WSR 09-12-042. The department is awaiting federal direction in order to align this rule amendment with the Patient Protection and Affordable Care Act, Section 2402.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 4, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 1.

Date Adopted: April 29, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0720 Adult day health—Assessment and service plan. (1) The department or an authorized case manager must perform a CARE assessment to determine a client's need for a referral to adult day health, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day health services or whether the client's needs can be met in other ways.

(2) If the client **has** a department or area agency on aging case manager, the adult day health center or other referral source must notify the case manager of the client's potential adult day health service need. The case manager must ~~((assess))~~ determine the client's need for a referral to ADH skilled nursing or skilled rehabilitative therapy within the department's normal time frames for client reassessments.

(3) If the client does not have a department or area agency on aging case manager, the adult day health center or other referral source must notify the department of the referral and the client's potential adult day health service need, or refer the client to the department for intake. The department's assigned case manager must assess the client's need for a referral to adult day health services within the department's normal time frames for initial client eligibility assessments.

(4) The case manager may consult with the client's practitioner, department or area agency on aging nursing services staff, or other pertinent collateral contacts, concerning the client's need for a referral to ADH skilled nursing or rehabilitative therapy.

(5) If the department or area agency on aging case manager determines ~~((and documents a potential unmet))~~ a need for ~~((day health services))~~ a referral to skilled nursing or skilled rehabilitative therapy, the case manager works with the client and/or the client's representative to develop a service plan that documents the potential unmet needs and ~~((the anticipated number of days per week that the services are needed))~~ whether the client wants a referral to ADH or another service provider.

(6) The case manager refers the client to a department contracted day health center for evaluation and the development of a preliminary negotiated plan of care.

~~((6))~~ (7) The department or area agency on aging case manager must reassess adult day health clients at least annually. Clients must also be reassessed if they have a break in service of more than thirty days. The adult day center must inform the case manager of the break in service so payment authorization can be discontinued.

~~((7))~~ (8) Recipients of adult day health services must be assessed by the department or an authorized case manager for continued or initial eligibility as follows:

- (a) Annual reassessment for department clients;
- (b) Adult day health quarterly review for current nondepartmental clients as resources allow; and
- (c) New referrals for adult day health services are to be forwarded to local department offices for intake and assessment for eligibility.

~~((8))~~ (9) The department or area agency on aging case manager must review a client's continued eligibility for adult day health services every ninety days, coinciding with the quarterly review completed by the adult day health program. At the case manager's discretion, additional information will be gathered through face to face, collateral or other contact methods to determine continued eligibility. Services will be continued, adjusted, or terminated based upon the case manager's determination during the eligibility review.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0724 Adult day services—Contracting and rates. (1) The department, or an area agency on aging (or other department designee) as authorized by the department, must determine that the adult day care or day health center meets the applicable adult day care or day health requirements and any additional requirements for contracting with the area agency on aging through a COPEs contract or with the department through a medicaid provider contract. If a center is contracting for both day care and day health, requirements of both adult day services must be met.

(a) A prospective provider desiring to provide adult day services shall be provided an application form from the department or the area agency on aging.

(b) The prospective provider will provide the area agency on aging with evidence of compliance with, or administrative procedures to comply with, the adult day service rules under this chapter.

(c) The area agency on aging will conduct a site inspection of the adult day center and review of the requirements for contracting.

(d) Within thirty days of completing the site visit, the area agency on aging will advise the prospective provider in writing of any deficiencies in meeting contracting requirements.

(e) The area agency on aging will verify correction of any deficiencies within thirty days of receiving notice from the prospective provider that deficiencies have been corrected, before contracting can take place.

(f) The area agency on aging will provide the department with a written recommendation as to whether or not the center meets contracting requirements.

(2) Minimum application information required to apply for contract with the department, or an area agency on aging includes:

- (a) Mission statement, articles of incorporation, and bylaws, as applicable;
- (b) Names and addresses of the center's owners, officers, and directors as applicable;

- (c) Organizational chart;
- (d) Total program operating budget including all anticipated revenue sources and any fees generated;
- (e) Program policies and operating procedure manual;
- (f) Personnel policies and job descriptions of each paid staff position and volunteer position functioning as staff;
- (g) Policies and procedures meeting the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and local law enforcement for other participants;
- (h) Audited financial statement;
- (i) Floor plan of the facility;
- (j) Local building inspection, fire department, and health department reports;
- (k) Updated TB test for each staff member according to local public health requirements;
- (l) Sample client case file including all forms that will be used; and
- (m) Activities calendar for the month prior to application, or a sample calendar if the day service provider is new.

(3) The area agency on aging or other department designee monitors the adult day center at least annually to determine continued compliance with adult day care and/or adult day health requirements and the requirements for contracting with the department or the area agency on aging.

(a) The area agency on aging will send a written notice to the provider indicating either compliance with contracting requirements or any deficiencies based on the annual monitoring visit and request a corrective action plan. The area agency on aging will determine the date by which the corrective action must be completed

(b) The area agency on aging will notify the department of the adult day center's compliance with contracting requirements or corrected deficiencies and approval of the corrective action plan for continued contracting.

(4) Adult day care services are reimbursed on an hourly basis up to four hours per day. Service provided four or more hours per day will be reimbursed at the daily rate.

(5) ~~((Payment rates are established on an hourly and daily basis for adult day care centers as may be adopted in rule.))~~ Rate adjustments are determined by the state legislature. ~~((Providers seeking current reimbursement rates can refer to SSPS billing instructions))~~ Information on current reimbursement rates is available at <http://www.adsa.dshs.wa.gov/professional/> under the "office of rates management" section.

(6) ~~((Rates as of July 1, 2002, are as follows:))~~

((Counties	COPEs Adult Day Care	
	Daily Rate	Hourly Rate
King	\$36.48	\$9.10
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$32.45	\$8.11
All other counties	\$30.75	\$7.69))

~~((7))~~ Payment rates are established on a daily basis for adult day health centers ~~((as may be adopted in rule))~~. Rate adjustments are determined by the state legislature. ~~((Provid-~~

ers seeking)) Information on current reimbursement rates ((can refer to MAA billing instructions or <http://maa.dshs.wa.gov>) is available at <http://www.ada.dshs.wa.gov/professional/> under the "office of rates management" section.

~~((8)) (7) ((Rates as of July 1, 2002, are as follows:))~~

((Counties	Day Health Daily
King	\$47.48
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$43.06
All other counties	\$40.68))

A one-time only initial intake evaluation provided by an adult day health center, including development of a negotiated care plan, is reimbursed at an established rate ((as may be adopted in rule)). ((The rate as of July 1, 2002 is eighty-nine dollars and thirty-eight cents)) Information on current reimbursement rates is available at <http://www.ada.dshs.wa.gov/professional/> under the "office of rates management" section. Rate adjustments are determined by the state legislature. Separate reimbursement is not available for subsequent evaluations.

~~((9)) (8) Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation providers or informal resources.~~

~~((10)) (9) ((Transportation to and from the program site is not reimbursed under the adult day health rate. Transportation arrangements for eligible medicaid clients are made with local medicaid transportation brokers, informal providers, or other available resources per chapter 388-546 WAC)) Adult day health providers must arrange or provide transportation within the daily rate.~~

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0726 Adult day health transportation. ((The following rules apply if medicaid transportation services are requested:

~~(1) The day health center must refer the client to a local medicaid transportation broker. The broker may consult with the client, the client's physician, family, case manager, or day health center as needed in making any transportation arrangements.~~

~~(2) In referring the client to a day health center, the case manager may consider: The frailty and endurance of the client, the client's skilled nursing or rehabilitative therapy needs, and a reasonable round-trip travel time that may not exceed two hours, unless there is no closer center that can meet the client's skilled care needs. Documentation of language barriers may be considered on an exception to rule basis by the case manager.~~

~~(3) All brokered transportation under this subsection is subject to the requirements of chapter 388-546 WAC or its successors. In the case of any conflicts, the provisions of chapter 388-546 WAC take precedence)) (1) Adult day health providers must coordinate or provide transportation as necessary to assure client access to service.~~

(2) Adult day health providers must arrange or provide transportation within the daily rate.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0815 Am I eligible for adult day health? (1) You are eligible for adult day health services if you meet all of the following criteria. You are:

- (a) Age eighteen years or older.
- (b) Enrolled in ~~((one of the following))~~ a categorically needy (CNP) medical assistance ~~((programs:~~
 - ~~(i) Categorically needy (CNP);~~
 - ~~(ii) Categorically needy qualified medicaid beneficiaries (CNP-QMB);~~
 - ~~(iii) General assistance—Expedited medicaid disability (GA-X); or~~
 - ~~(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA))~~ program as defined in WAC 388-500-0005.
- (c) Your nonexcluded income does not exceed one hundred fifty percent of the federal poverty level (FPL).

(d) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714(=) and:

- (i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering; and
- (ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and
- (iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

~~((4)) (e) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.~~

(2) You are not eligible for adult day health if you:

- (a) Can independently perform or obtain the services provided at an adult day health center;
- (b) Have referred care needs that:
 - (i) Exceed the scope of authorized services that the adult day health center is able to provide;
 - (ii) Do not need to be provided or supervised by a licensed nurse or therapist;
 - (iii) Can be met in a less structured care setting; or
 - (iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.
- (c) Live in a nursing home or other institutional facility; or
- (d) Are not capable of participating safely in a group care setting.

NEW SECTION

WAC 388-106-0820 Is there a wait list for adult day health? The department will maintain a wait list when the number of participants reaches federally approved capacity. Wait list clients will gain access in the following priority:

(1) Residents of nursing homes, or ICFs/MR, or hospital patients who are waiting for discharge will be ranked first on the wait list by date of application for services.

(2) All other applicants, in order of date and time the referral request is received by aging and disability services administration.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-71-0734 Limiting expenditures.

WSR 10-10-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-100—Filed April 29, 2010, 3:33 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-240.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Enactment of a fifteen fish daily limit for shiner perch will provide a basis for orderly recreational fisheries while providing increased conservation benefits for this species compared to earlier years. The department intends to develop proposals for a permanent rule change. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 29, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-24000F Daily limits forage fish and other food fish not otherwise provided for. Notwithstanding the provisions of WAC 220-56-240, effective May 1, 2010 until further notice, in those waters of Catch Record Areas 1 through 11 and Catch Record Area 13, the daily limit for shiner perch is 15.

WSR 10-10-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-104—Filed April 29, 2010, 4:43 p.m., effective April 29, 2010, 4:43 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-32-05100D; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Extends the commercial fishing period due to safety concerns. Strong winds in the Columbia River gorge are causing boats to capsize. Delaying the closure would allow the nets to be collected during the morning hours, when winds are typically calmer. Fisheries are consistent with the 2008-2017 management agreement. Allows sales of fish caught in platform and hook-and-line fisheries above and below Bonneville Dam. Allows sale of fish caught in Yakama Nation tributary fisheries by Yakama Nation members. Impact limits to ESA-listed chinook are available for treaty Indian fisheries. Rule is consistent with action of the Columbia River compact on April 26, 2010. Conforms state rules with tribal rules.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that

the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 29, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

- a) SEASON: Immediately through noon April 30, 2010
- b) AREA: SMCRA 1F, 1G, 1H (Zone 6)
- c) GEAR: No mesh restriction on gillnets.

2. Mainstem Columbia River above Bonneville Dam

- a) SEASON: Immediately until further notice.
- b) AREA: SMCRA 1F, 1G, 1H (Zone 6)
- c) GEAR: Hoop nets, dip nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

a) SEASON: Immediately until further notice and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b) AREA: Drano Lake, White Salmon, and Klickitat and Wind rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

4. Mainstem Columbia River below Bonneville Dam

a) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: 6:00 AM April 27, 2010 until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU area.

c) AREA: SMCRA 1E, Yakama Nation MOA: on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line thorough the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1. Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creel out to the center of the Columbia river during the period from August 16, 2010, until further notice.

2. Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3. From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of riprap and from the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream.

4. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

5. **SANCTUARIES:** Standard river mouth and dam sanctuaries are applicable to these gear types, except that the Spring Creek Hatchery sanctuary is not in effect.

6. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, carp, yellow perch, catfish and bass. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale. **Sturgeon below Bonneville Dam may NOT be retained and may NOT be sold.**

7. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100D Columbia River above Bonneville (10-96)

WSR 10-10-062 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-97—Filed April 30, 2010, 9:39 a.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900W, 232-28-61900Y and 232-28-61900C; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

The fisheries below Bonneville Dam are close[d] to the preseason guidelines for spring Chinook prior to a run size update. Fisheries are being managed conservatively so as not to exceed the preseason guidelines. Regulation is consistent with guidance from Washington fish and wildlife commission and director, and compact/joint state action of April 20, 2010. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated [no further information supplied by the agency].

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 3; Federal Rules or Standards: New 1, Amended 0, Repealed 3; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.
Date Adopted: April 30, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River:

i. From Tower Island power lines in Bonneville Pool upstream to McNary Dam, plus Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations): Effective immediately through May 31, 2010, daily salmonid limit 6 fish, (hatchery Chinook or hatchery steelhead), of which no more than 2 can be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook.

ii. Effective through June 15, 2010: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to McNary Dam, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

2. Deep River (Wahkiakum Co.): Effective immediately, through June 15, 2010: closed to fishing for salmon and steelhead.

REPEALER

The following sections of the Washington Administrative Code are repealed effective May 1, 2010:

- WAC 232-28-61900Y Exceptions to statewide rules—Columbia River. (10-42)
- WAC 232-28-61900W Exceptions to statewide rules—Columbia River. (10-89)

The following section of the Washington Administrative Code is repealed effective June 16, 2010:

- WAC 232-28-61900C Exceptions to statewide rules—Columbia River.

**WSR 10-10-067
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 30, 2010, 1:47 p.m., effective April 30, 2010, 1:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: These rules develop reimbursement rules and define the requirements that must be met for a reimbursable skilled nursing visit when services are rendered without a face-to-face visit and are assisted by telemedicine.

Citation of Existing Rules Affected by this Order: Amending WAC 388-551-2000, 388-551-2010, 388-551-2020, 388-551-2030, 388-551-2100, 388-551-2110, 388-551-2120, 388-551-2130, 388-551-2200, 388-551-2210, and 388-551-2220.

Statutory Authority for Adoption: RCW 74.08.090, chapter 74.09 RCW, and chapter 326, Laws of 2009 (SHB 1529).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Amendments to these sections are required to implement chapter 326, Laws of 2009 (SHB 1529) which authorizes delivery of home health care services through telemedicine. This emergency filing is necessary to continue the emergency rules filed as WSR 10-02-041 on December 30, 2009. The permanent rules have been submitted for final adoption.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 11, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 11, Repealed 0.

Date Adopted: April 30, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-11 issue of the Register.

WSR 10-10-070

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-95—Filed April 30, 2010, 2:22 p.m., effective May 3, 2010, 12:01 a.m.]

Effective Date of Rule: May 3, 2010, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000F; and amending WAC 220-52-030.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.70.430.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Based on historical catches and on-site inspection, the abundance of clams is adequate to support an eight week season. Biotxin levels currently fall below the regulatory threshold. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 30, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-03000F Commercial razor clams Notwithstanding the provisions of WAC 220-52-030, effective 12:01 a.m. May 3, 2010, through 11:59 p.m. July 3, 2010, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 1, lying south of the Willapa Bay Ship Channel, west of Ellen Sands and north of the tip of Leadbetter point; and in those waters and attached beaches north of the line of boundary markers consisting of four fluorescent orange posts near the northern tip of Leadbetter Point; all other areas remain closed.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 4, 2010:

WAC 220-52-03000F Commercial razor clams.

WSR 10-10-072

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 10-76—Filed May 2, 2010, 2:48 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Designation of selective gear rules was omitted from the permanent rule that takes effect May 1, 2010. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 1, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Cougar Lake (Okanogan Co.) Notwithstanding the provisions of WAC 232-28-619, effective May 1 through August 28, 2010, in waters of Cougar Lake, catch and release only, selective gear rules in effect, and boats with internal combustion engines prohibited.

WSR 10-10-111
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-105—Filed May 4, 2010, 2:07 p.m., effective May 4, 2010, 9:00 p.m.]

Effective Date of Rule: May 4, 2010, 9:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000B; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Shappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions

change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Reopens the 2010 spring select area fishing season consistent with compact action of May 4, 2010. The adopted seasons are minimal in comparison to the preseason plan, and are designed to minimize harvest of any upriver spring chinook, which may stray into these terminal areas. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 4, 2010

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000B Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed:

1. Blind Slough/Knappa Slough Select Area

a) Area: The lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (boundary used in fall season).

b) Dates: 9:00 PM May 4 to 5:00 AM May 5, and 9:00 PM May 6 to 5:00 AM May 7, 2010.

c) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on headline. Use of additional weights or anchors attached directly to the headline is allowed. 9 3/4-inch maximum mesh size.

d) Allowable sales: Salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during

each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers.

2. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: 9:00 PM May 4 to 5:00 AM May 5, and 9:00 PM May 6 to 5:00 AM May 7, 2010.

c) Gear: Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to any stationary structures. Nets may not fully cross the navigation channel. 9 3/4-inch maximum mesh size.

d) Allowable sale: Salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

f) 24-hour quick reporting in effect for Washington buyers.

3. Tongue Point

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: 9:00 PM May 6 to 5:00 AM May 7, 2010

c) Gear: In the Tongue Point fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable sale: Salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will

be established at the MERTS dock for the first eight fishing periods. After sampling, fishers will be issued a transportation permit by agency staff.

f) 24-hour quick reporting in effect for Washington buyers.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 a.m. May 7, 2010:

WAC 220-33-01000B Columbia River seasons below Bonneville.

WSR 10-10-112

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed May 4, 2010, 2:43 p.m., effective May 4, 2010, 2:43 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending sections of chapter 388-448 WAC to repeal changes to general assistance incapacity criteria, including how the department uses social and vocational factors to determine eligibility proposed as WSR 10-08-2010. The proposed amendments will repeal changes to the general assistance incapacity criteria, and are required in order for the department to comply with ESSB 6444 as passed by the legislature, April 12, 2010. The bill limits the department's ability to make any changes to the incapacity determination and progressive evaluations process regulations until at least September 30, 2010, except for provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-448-0050, 388-448-0080, 388-448-0090, 388-448-0100, and 388-448-0110.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.005.

Other Authority: The Worker, Homeownership, and Business Assistance Act of 2009.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The bill limits the department's ability to make any changes to the incapacity determination and progressive evaluations process regulations until at least September 30, 2010, except for provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be updated.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: May 1, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The typographical error in the above material occurred in the copy filed by the department of social and health services and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-11 issue of the Register.

WSR 10-10-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-102—Filed May 4, 2010, 2:49 p.m., effective May 6, 2010]

Effective Date of Rule: May 6, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900I; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d

638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The closure date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of 300 fish will be reached on May 6, 2010. Rule is consistent with Washington department of fish and wildlife's compact hearing action of April 28, 2010. Also sets the annual season for recreational white sturgeon fisheries below the Wanau [Wauna] power line crossing in the mainstem Columbia River and specific tributaries. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 4, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900H Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 6, 2010, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to McNary Dam.

(2) Effective immediately through August 31, 2010, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.

(3) Effective immediately until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries, except a person may retain white sturgeon from May 22 through June

26. Minimum size when open to retain white sturgeon is 41 inches fork length, May 22 through June 26.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 6, 2010:

WAC 232-28-61900I Exceptions to statewide
rules—Columbia River stur-
geon. (10-83)