

WSR 13-06-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-40—Filed February 20, 2013, 2:05 p.m., effective February 20, 2013, 5:15 p.m.]

Effective Date of Rule: February 20, 2013, 5:15 p.m.

Purpose: Amend commercial fishing rules.

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

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: Non-Indian sea cucumber harvest quota shares have been taken in all areas. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: February 20, 2013.

Lori Preuss
 for Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective February 20, 2013, one-half hour before official sunset.

WAC 220-52-07100X Sea cucumbers. (13-30)

WSR 13-06-003
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Children's Administration)

[Filed February 21, 2013, 8:38 a.m., effective February 22, 2013]

Effective Date of Rule: February 22, 2013.

Purpose: To extend the emergency rule filed on October 25, 2012, as WSR 12-22-003, which will expire February 22, 2013. The preproposal statement of inquiry (CR-101) was filed October 25, 2012, as WSR 12-22-004. The proposed rule-making notice (CR-102) was filed January 7, 2013, as WSR 13-03-021. The hearing date is scheduled for February 26, 2013. The department created emergency WAC to support ESHB 2592 - Extended foster care services. It is anticipated the permanent rule will be adopted by April 1, 2013.

Citation of Existing Rules Affected by this Order:
 Amending WAC 388-25-0110 and 388-148-0010.

Statutory Authority for Adoption: RCW 74.13.031.

Other Authority: 2012 ESHB 2592; RCW 74.13.020 and 13.34.267.

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: ESHB 2592 enables Washington state to access a federal match of funds under 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." The act provides an option permitting states to use Title IV-E foster care funds for youth who wish to pursue secondary or postsecondary education programs from age eighteen up to twenty-one years old. ESHB 2592 authorizes continued extended foster care services for youth ages eighteen to twenty-one years to complete a postsecondary academic or postsecondary vocational education program. Because of the range and complexity of delivering foster care and legal service related to this program children's administration has collaborated with advocates and judicial officers, legal counsel for children and the department, service providers, youth, foster parents, juvenile rehabilitation administration, division of developmental disabilities, tribes and others in developing the proposed WACs to govern the program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 25, Amended 2, 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 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 25, Amended 2, Repealed 0.

Date Adopted: February 11, 2013.

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 13-07 issue of the Register.

WSR 13-06-006
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 22, 2013, 10:09 a.m., effective February 24, 2013]

Effective Date of Rule: February 24, 2013.

Purpose: The department is amending and clarifying rules to revise the assessment process for allocating personal care hours as a result of the Washington state supreme court decision in *Samantha A. v. Department of Social and Health Services*. The department is in the process of adopting these rules as permanent rules. Authorization for additional personal care hours for clients who have off-site laundry and/or are living more than forty-five minutes from essential services is reinstated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, 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 department is proceeding with the permanent rule process. The department filed a CR-101 as WSR 12-20-076 on October 3, 2012, and is continuing to work with internal stakeholders to clarify the language. This emergency reflects some of that language.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, 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 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 2, Repealed 0.

Date Adopted: February 21, 2013.

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 13-07 issue of the Register.

WSR 13-06-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-41—Filed February 22, 2013, 3:25 p.m., effective February 27, 2013, 6:00 p.m.]

Effective Date of Rule: February 27, 2013, 6:00 p.m.

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 220-32-05100C and 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); *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: Closes the John Day Pool for the remainder of the 2013 treaty Indian winter gillnet season. The treaty harvest guideline for that area is expected to be reached by February 27, 2013. The Bonneville and The Dalles Pool remain open for commercial sales. The John Day Pool remains open for subsistence purposes using platform/hook-and-line gear. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on February 21, 2013. Rule is also consistent with action of the Columbia River compact on January 23, 2012, when the compact adopted the rules as permanent. The process for making the rule permanent is not complete at this time. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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: February 22, 2013.

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, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Areas: SMCRA 1F, 1G (Bonneville Pool and The Dalles Pool):

a. Season: Immediately through 6:00 p.m. March 21, 2013.

b. Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

c. Allowable sale: Salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles Pool may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Fish caught during open commercial periods can be sold after the season closes.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary (sub-section 5) of WAC 220-32-058.

e. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the appropriate MOA or MOU specific to each tribe. Tribal members must carry an official tribal enrollment card.

b. Season: Immediately through 6:00 p.m. March 21, 2013.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Fish caught during open Zone 6 commercial periods can be sold after the season closes. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sales may not occur on USACE property.

e. 24-hour quick reporting required for Washington wholesale dealers, 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. February 27, 2013:

WAC 220-32-05100C	Columbia River salmon seasons above Bonneville Dam. (13-21)
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The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2013:

WAC 220-32-05100D	Columbia River salmon seasons above Bonneville Dam.
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WSR 13-06-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-39—Filed February 26, 2013, 10:58 a.m., effective March 1, 2013]

Effective Date of Rule: March 1, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900V; 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: Recent analysis of the steelhead fishery in the upper Columbia River revealed additional natural-origin steelhead impacts remain under current NOAA permit. Reopening steelhead fisheries in the Methow River will help to reduce the proportion of hatchery fish on the spawning grounds and further reduce competition between natural-origin and hatchery juvenile production. Sections of the Okanogan River around the mouth of Omak and Tonasket creeks will be closed to protect natural-origin steelhead staging prior to spawning within those tributaries. 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: February 26, 2013.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Columbia, Methow, Okanogan, Similkameen, Wenatchee and Icicle rivers Notwithstanding the provisions of WAC 232-28-619, effective one hour before official sunrise on March 1, 2013, in waters of the Columbia, Methow, Okanogan, Similkameen, Wenatchee and Icicle Rivers it is unlawful to violate the following provisions, pro-

vided that unless otherwise amended, all permanent rules remain in effect:

(1) Mandatory retention of adipose fin-clipped steelhead: daily limit two (2) hatchery steelhead, 20-inch minimum size. Hatchery steelhead are identified by a clipped adipose fin with a healed scar in its location.

(2) Adipose-present steelhead must be released unharmed and cannot be removed from the water prior to release.

(3) Night closure and selective gear rules remain in effect, except bait allowed on mainstem Columbia River.

(4) Whitefish anglers must follow selective gear rules in areas open to steelhead fishing. No bait is allowed. Daily whitefish limit fifteen (15) fish.

(a) A person may fish for steelhead in the Columbia River from Rock Island Dam to the boundary markers below Wells Dam and from the Highway 173 Bridge in Brewster to 400 feet below Chief Joseph Dam.

(b) A person may fish for steelhead in the Wenatchee River from the mouth to 400 feet below Tumwater Dam, including the Icicle River from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(c) A person may fish for steelhead in the Okanogan River from the mouth upstream to the Highway 97 Bridge in Oroville. However, effective one hour after sunset on March 17, 2013, closed from the first powerline crossing downstream of the Hwy 155 Bridge in Omak (Coulee Dam Credit Union Building) to the mouth of Omak Creek, and from the Tonasket Lagoons Park boat launch to the Tonasket Bridge (4th Street).

(d) A person may fish for steelhead and whitefish in the Methow River from the mouth (Hwy 97 Bridge) to the confluence with the Chewuch River in Winthrop. Fishing from a floating device is prohibited from the second powerline crossing (1 mile upstream from the mouth) to the first Hwy 153 bridge (4 miles upstream from the mouth).

(e) A person may fish for steelhead in the Similkameen River from the mouth upstream to 400 feet below Enloe Dam.

(f) A person may fish for whitefish in the Wenatchee River from the mouth to the Hwy 2 bridge at Leavenworth.

(5) It is unlawful to fish for whitefish in the following waters:

(a) Entiat River: Upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River, to Entiat Falls.

REPEALER

The following section of the Washington Administrative Code is repealed effective one hour before official sunrise March 1, 2013:

WAC 232-28-61900V	Exceptions to statewide rules—Columbia, Entiat, Icicle, Methow, Okanogan, Similkameen, and Wenatchee rivers. (13-28)
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WSR 13-06-027
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed February 27, 2013, 5:21 p.m., effective February 27, 2013, 5:21 p.m.]

Effective Date of Rule: Immediately.

Purpose: During the revision of the hospice rules under WSR 12-09-079, the agency incorrectly added "medical care services" (MCS) as an eligible program under WAC 182-551-1200 [(1)](d). To comply with the agency's federal Transitional Bridge 1115 Waiver, the agency is striking MCS from the list of eligible programs for hospice services.

Citation of Existing Rules Affected by this Order: Amending WAC 182-551-1200.

Statutory Authority for Adoption: RCW 41.05.021.

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; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, 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 existing rule is not in compliance with the agency's Transitional Bridge 1115 Waiver with the Centers for Medicare and Medicaid Services (CMS) which lists hospice services as not covered for MCS clients. This jeopardizes the agency's federal funding for MCS services under the waiver. Also, the Washington state legislature did not authorize funding to cover hospice services for MCS clients. This emergency rule is necessary to continue the current emergency rule adopted under WSR 12-22-057 until the permanent rules filed under WSR 13-04-094 become effective on March 9, 2013.

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 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, 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 1, Repealed 0.

Date Adopted: February 27, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-09-079, filed 4/17/12, effective 5/18/12)

WAC 182-551-1200 Client eligibility for hospice care. (1) A client who elects to receive hospice care must be eligible for one of the following medical assistance programs, subject to the restrictions and limitations in this chapter and other WAC:

- (a) Categorically needy (CN);
- (b) Children's health care as described in WAC ~~((388-505-0210))~~ 182-505-0210;
- (c) Medically needy (MN); or
- (d) ~~((Medical care services as described in WAC 182-508-0005 (within Washington state or designated border cities); or~~
- ~~(e)))~~ Alien emergency medical (AEM) as described in WAC ~~((388-438-0110))~~ 182-507-0110, when the medical services are necessary to treat a qualifying emergency medical condition.

(2) A hospice agency is responsible to verify a client's eligibility with the client or the client's department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO).

(3) A client enrolled in one of the medicaid agency's managed care organizations (MCO) must receive all hospice services, including facility room and board, directly through that MCO. The MCO is responsible for arranging and providing all hospice services for an MCO client.

(4) A client who is also eligible for medicare hospice under part A is not eligible for hospice care through the medicaid agency's hospice program. The medicaid agency does pay hospice nursing facility room and board for these clients if the client is admitted to a nursing facility or hospice care center (HCC) and is not receiving general inpatient care or inpatient respite care. See also WAC 182-551-1530.

(5) A client who meets the requirements in this section is eligible to receive hospice care through the medicaid agency's hospice program when all of the following is met:

- (a) The client's physician certifies the client has a life expectancy of six months or less.
- (b) The client elects to receive hospice care and agrees to the conditions of the "election statement" as described in WAC 182-551-1310.
- (c) The hospice agency serving the client:

- (i) Notifies the medicaid agency's hospice program within five working days of the admission of all clients, including:
 - (A) Medicaid-only clients;
 - (B) Medicaid-medicare dual eligible clients;
 - (C) Medicaid clients with third party insurance; and
 - (D) Medicaid-medicare dual eligible clients with third party insurance.
- (ii) Meets the hospice agency requirements in WAC 182-551-1300 and 182-551-1305.

(d) The hospice agency provides additional information for a diagnosis when the medicaid agency requests and deter-

mines, on a case-by-case basis, the information that is needed for further review.

WSR 13-06-037
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 1, 2013, 3:08 p.m., effective March 1, 2013, 3:08 p.m.]

Effective Date of Rule: Immediately.

Purpose: Chapter 6, Laws of 2011, amended RCW 51.36.010 to direct the department of labor and industries (L&I) to establish a statewide medical provider network for treating injured and ill workers. The department adopted rules in 2012 so that, starting January 1, 2013, only network providers may treat injured workers beyond an initial visit. WAC 296-20-01020 allows providers to be provisionally enrolled while the department decides on their application, but only for sixty days. The emergency rule will allow providers who applied prior to January 1, 2013, to continue to treat injured workers until their application is approved, denied, or withdrawn; and it removes the sixty-day limit on provisional enrollment until expiration of the emergency rule or until the department takes further action to change the rule, whichever is first.

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-01020.

Statutory Authority for Adoption: RCW 51.36.010, 51.04.020, and 51.04.030.

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 number of applications from medical providers to join the L&I network has exceeded expectations. Nearly twelve thousand providers have been approved into the network, but there are more than five thousand additional applications waiting for final decision. Additional time is needed to review whether these providers meet network standards. Amending the current rule is necessary to avoid disrupting care for patients of providers whose applications were submitted prior to January 1 and are currently under review.

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 1, 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 1, Repealed 0.

Date Adopted: March 1, 2013.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 12-23-020, filed 11/13/12, effective 12/14/12)

WAC 296-20-01020 Health care provider network enrollment. (1) The department or its delegated entity will review the provider's application, supporting documents, and any other information requested or accessed by the department that is relevant to verifying the provider's application, clinical experience or ability to meet or maintain provider network requirements.

(2) The department will notify providers of incomplete applications, including when credentialing information obtained from other sources materially varies from information on the provider application. The provider may submit a supplement to the application with corrections or supporting documents to explain discrepancies within thirty days of the date of the notification from the department. Incomplete applications will be considered withdrawn within forty-five days of notification.

(3) The provider must produce adequate and timely information and timely attestation to support evaluation of the application. The provider must produce information and respond to department requests for information that will help resolve any questions regarding qualifications within the time frames specified in the application or by the department.

(4) The department's medical director or designee is authorized to approve, deny, or further review complete applications consistent with department rules and policies. Providers will be notified in writing of their approval or denial, or that their application is under further review within a reasonable period of time.

(5) Providers who meet the minimum provider network standards, have not been identified for further review, and are in compliance with department rules and policies, will be approved for enrollment into the network.

(6) Enrollment of a provider is effective no earlier than the date of the approved provider application. The department and self-insured employers will not pay for care provided to workers prior to application approval, regardless of whether the application is later approved or denied, except as provided in subsection (7) of this section.

(7) The department and self-insured employers may pay a provider without an approved application only when:

(a) The provider is outside the scope of the provider network per WAC 296-20-01010; or

(b) The provider is provisionally enrolled; or

(c) The provider applied prior to January 1, 2013, and the application is not yet approved, denied, or withdrawn.

(8)(a) A provider may be provisionally enrolled by the department after it obtains:

(i) Verification of a current, valid license to practice;

(ii) Verification of the past five years of malpractice claims or settlements from the malpractice carrier or the results of the National Practitioner Data Bank (NPDB) or Healthcare Integrity and Protection Data Bank (HIPDB) query; and

(iii) A current and signed application with attestation.

~~((e))~~ (b) A provider may only be provisionally enrolled once ~~((and for no more than sixty calendar days))~~. Providers who have previously participated in the network are not eligible for provisional enrollment.

WSR 13-06-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-42—Filed March 1, 2013, 4:52 p.m., effective March 7, 2013,
12:01 p.m.]

Effective Date of Rule: March 7, 2013, 12:01 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-36000S; 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, 3, 4 and 5. 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: March 1, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000S 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, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 p.m. March 8 through 11:59 p.m. March 10, 2013, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. March 7 through 11:59 p.m. March 11, 2013, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. March 9 through 11:59 p.m. March 10, 2013, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. Effective 12:01 p.m. March 9 through 11:59 p.m. March 10, 2013, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

5. 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 a.m. March 12, 2013:

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

WSR 13-06-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-48—Filed March 4, 2013, 4:12 p.m., effective March 6, 2013]

Effective Date of Rule: March 6, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-62100S; and amending WAC 232-28-621.

Statutory Authority for Adoption: RCW 77.12.045, 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: Estimates indicate that the encounters of legal size chinook in Area 9 have exceeded the preseason expectations. This regulation reduces the retention of salmon in Area 9 to a daily limit of one in order to minimize encounters of legal-size hatchery and wild chinook, and

to ensure compliance with conservation objectives and agreed-to management 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: March 4, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62100S Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 9:**

(a) Edmonds Fishing Pier - Open until further notice - Daily limit, 1 salmon.

(b) All other waters of Area 9 - Daily limit, 1 salmon. Release wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 16, 2013:

WAC 232-28-62100S Puget Sound salmon—Saltwater seasons and daily limits.

**WSR 13-06-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-50—Filed March 5, 2013, 4:45 p.m., effective March 6, 2013, 6:00 p.m.]

Effective Date of Rule: March 6, 2013, 6:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.045, 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: Discontinues sales of chinook salmon in ongoing Columbia River treaty Indian fisheries. Closes the Bonneville Pool for the remainder of the 2013 treaty Indian winter gillnet season. The treaty harvest guideline for that area is expected to be reached prior to the scheduled closure date of March 21. The Dalles Pool remains open for commercial sales. The Bonneville and John Day pools remain open for subsistence purposes using platform/hook-and-line gear. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on February 21 and March 5, 2013. Rule is also consistent with action of the Columbia River compact on January 23, 2012, when the compact adopted the rules as permanent. The process for making the rule permanent is not complete at this time. Conforms state rules to tribal rules. There is insufficient time to promulgate permanent regulations.

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. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act (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 the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

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.

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: March 5, 2013.

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, 220-32-051, 220-32-052 and 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Areas: SMCRA 1G (The Dalles Pool):

a. Season: Immediately through 6:00 p.m. March 21, 2013. b. Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

c. Allowable sale: Steelhead, sturgeon, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 43-54 inches in fork length in The Dalles Pool may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Fish caught during open commercial periods can be sold after the season closes.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary (subsection 5) of WAC 220-32-058.

e. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the appropriate MOA or MOU specific to each tribe. Tribal members must carry an official tribal enrollment card.

b. Season: Immediately through 6:00 p.m. March 21, 2013.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable sales: Steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Fish caught during open Zone 6 commercial periods can be sold after the season closes. Sturgeon retention is prohibited: sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sales may not occur on USACE property.

e. 24-hour quick reporting required for Washington wholesale dealers, 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 6, 2013:

WAC 220-32-05100D Columbia River salmon seasons above Bonneville Dam. (13-21)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2013:

WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam.