

**WSR 14-04-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed January 23, 2014, 10:00 a.m., effective January 26, 2014]

Effective Date of Rule: January 26, 2014.

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 following changes are being made to WAC 388-106-0130:**

- To make changes to how personal care services are calculated for children and to clarify the role that responsible adults are expected to play in the lives of children with disabilities.
- To replace irrefutable presumptions regarding age and informal supports with individual determinations of those facts guided by rebuttable presumptions.
- To incorporate changes in what the department considers to be age appropriate functioning for normally developing children, and to clarify language around those developmental milestones.
- To provide better notice to the public regarding the definition of informal supports by separately addressing the situation where the benefit of a personal care task is shared among members of a household, which is not a change in practice but previously had been subsumed within the broader concept of informal supports.
- To make changes to how living environment factors are considered in determining personal care services.
- To update outdated WAC references.
- To otherwise update and clarify elements of the CARE tool.

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; 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: The department is filing another emergency rule filing to enable adoption of the permanent rule without a lapse. A public hearing was held on September 24, 2013. This emergency is being requested so that the rule implementation coincides with the necessary enhancements to the department's assessment instrument (CARE) effective September 30, 2013. The department is in

the process of considering and responding to public comments received, and expects to file the permanent CR-103 by the end of February 2014. This CR-103E supersedes the CR-103E filed as WSR 13-20-076 on September 27, 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 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: January 21, 2014.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-043, filed 10/27/11, effective 11/27/11)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood((-)); At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet((-));

(e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Activities of daily living (ADL)"** means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to

the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a (~~boarding home~~) contracted assisted living, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or get in/out of a vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

**"Age appropriate"** Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide

long-term care personal care services to you in your own home.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a summary of information that the department entered into the CARE assessment describing your needs.

**"Assessment or reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

**"Assistance available"** means the amount of (~~informal support~~) assistance available for a task if (~~the need~~) status is coded:

(a) Partially met due to availability of other support; or

(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

~~((a))~~ (i) Less than one-fourth of the time;

~~((b))~~ (ii) One-fourth to one-half of the time;

~~((c))~~ (iii) Over one-half of the time to three-fourths of the time; or

~~((d))~~ (iv) Over three-fourths but not all of the time.

**"Assistance with body care"** means you need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

**"Assistance with medication management"** means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are (~~a person~~) an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or

unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections. ~~((Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow-))~~

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC ((388-511-1105)) 182-500-0015 by the division of disability determination services of the medical assistance administration.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC ((388-475-0100)) 182-512-0010 and chapter ((388-513)) 182-513 WAC.

**"Child"** means an individual less than eighteen years of age.

"Chronic care management" means programs that provide care management and coordination activities for medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.

**"Health action plan"** means an individual plan which identifies health-related problems, interventions and goals.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

**"Decision making"** means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

- (a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.
- (b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.
- (c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.
- (d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Department"** means the state department of social and health services, aging and disability ((services)) administration or its designee.

**"Designee"** means area agency on aging.

**"Developmental milestones table"** is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- (a) No difficulty in performing the activity;
- (b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or
- (c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

**"Disability"** is described under WAC 182-500-0025.

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter ((388-527)) 182-527 WAC.

**"Home health agency"** means a licensed:

- (a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or
- (b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:
  - (i) Private duty nursing; or
  - (ii) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC ((388-500-0005)) 182-509-0001.

**"Individual provider"** means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

~~((**"Disability"** is described under WAC 388-511-1105-))~~

**"Informal support"** means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older. Examples of informal supports include but are not limited to: family members, friends, housemates/roommates, neighbors, school, child-care, after school activities, adult day health, church or community programs.

**"Institution"** means medical facilities, nursing facilities, and institutions for the ((mentally-retarded)) intellectually disabled. It does not include correctional institutions. See medical institutions in WAC ((388-500-0005)) 182-500-0050.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community and includes the following:

- (a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out

food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the aging and disability services (~~(administration)~~) and identified in WAC 388-106-0015.

**"Medicaid"** is defined under WAC (~~(388-500-0005)~~) 182-500-0070.

**"Medically necessary"** is defined under WAC (~~(388-500-0005)~~) 182-500-0070.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by you, as a New Freedom participant, within

the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC (~~(388-500-0005)~~) 182-500-0085.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

**"Reasonable cost"** means a cost for a service or item that is consistent with the market standards for comparable services or items.

**"Representative"** means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

**"Residential facility"** means a licensed adult family home under department contract or licensed (~~(boarding home)~~) assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self performance for ADLs"** means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more

occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

- (i) You were not able (e.g., walking, if paralyzed);
- (ii) No provider was available to assist; or
- (iii) You declined assistance with the task.

**"Self performance for IADLs"** means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

**"Shared benefit" means:**

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

**"SSI-related"** is defined under WAC ((388-475-0050)) 182-512-0050.

**"Status"** means the ((amount)) level of ((informal support)) assistance available for a task from informal supports; the shared benefit that a care provider may derive from doing a task for a client or that two or more clients derive from the same IADL being performed and the determination of whether a child's need for assistance is due primarily to his or her age. The department determines ((whether)) the status of each ADL or IADL ((is)) and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; ((or))

(d) Shared benefit, which means:

(i) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you do not want assistance with the task.

**"Supplemental Security Income (SSI)"** means the federal program as described under WAC ((388-500-0005)) 182-500-0100.

**"Support provided"** means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

**"You/your"** means the client.

**AMENDATORY SECTION** (Amending WSR 11-11-024, filed 5/10/11, effective 6/10/11)

**WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?** (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will ((deduct from the)) adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), ((or)) and other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for status and assistance available of informal supports ((by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and

IADL:)), shared benefit, and age appropriate functioning. A numeric value is assigned to the status and/or assistance available coding for ADLs and IADLS based on the table

below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

<b>Meds</b>	<b>((Self Performance))</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Numeric Value ((Percentage))</b>
<p>((Self administration of medications)) <u>Medication Management</u></p> <p>The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying ADL</p>	<p>((Rules for all codes apply except independent is not counted))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
>3/4 time	.3			
<b>Unscheduled ADLs</b>	<b>((Self Performance))</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
<p>Bed mobility, transfer, walk in room, eating, toilet use</p> <p>The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent are not counted as qualifying ADLs</p>	<p>((Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
>3/4 time	.3			
<b>Scheduled ADLs</b>	<b>((Self Performance))</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
<p>Dressing, personal hygiene, bathing</p> <p>The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent which are not counted as qualifying ADLs</p>	<p>((Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
			1/2 to 3/4 time	.35
>3/4 time	.15			

IADLs	((Self Performance))	Status	Assistance Available	Value ((Percentage))
Meal preparation, Ordinary housework, Essential shopping  <u>The rules to the right apply for all Self Performance codes except independent is not counted as a qualifying IADL</u>	((Rules for all codes apply except independent is not counted.))	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Child under (age) (see subsection (7))</u>	N/A	0
		Partially met or Shared benefit	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
>3/4 time	.05			
IADLs	((Self Performance))	Status	Assistance Available	Value ((Percentage))
Travel to medical  <u>The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying IADL</u>	((Rules for all codes apply except independent is not counted.))	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Child under (age) (see subsection (7))</u>	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
>3/4 time	.3			
Key: > means greater than < means less than				

(b) To determine the amount ~~((of reduction))~~ adjusted for informal support, shared benefit and/or age appropriate functioning, the ~~((value percentages))~~ numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours ~~((reduced for informal supports))~~. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

~~(3) ((Also, the department will adjust in-home base hours when:~~

~~(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:-~~

- ~~(i) Meal preparation;~~
- ~~(ii) Housekeeping;~~
- ~~(iii) Shopping; and~~
- ~~(iv) Wood supply.~~

~~(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.~~

~~(4)) Effective July 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in ((subsec-~~

~~tions (2) and (3))) subsection (2), the department may add on hours based on ~~((your living environment))~~ offsite laundry, living more than forty-five minutes from essential services, and wood supply:~~

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. <u>The status used for the rules to the right is for housekeeping.</u>	<del>((N/A))</del> <u>Unmet</u>	N/A	8
	<u>Met</u>	<u>N/A</u>	<u>0</u>
	<u>Declines</u>	<u>N/A</u>	<u>0</u>
	<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit:</u>	<u>&lt;1/4 time</u>	<u>8</u>
		<u>between 1/4 to 1/2 time</u>	<u>6</u>
		<u>between 1/2 to 3/4 time</u>	<u>4</u>
		<u>&gt;3/4 time</u>	<u>2</u>
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). <u>The status used for the rules to the right is essential shopping.</u>	Unmet	N/A	5
	Met	N/A	0
	<u>Declines</u>	<u>N/A</u>	<u>0</u>
	<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit</u>	<u>&lt;1/4 time</u>	<u>5</u>
	<u>between 1/4 to 1/2 time</u>	<u>4</u>	
	<u>between 1/2 to 3/4 time</u>	<del>((2))</del> <u>3</u>	
	<u>&gt;3/4 time</u>	<u>2</u>	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	<u>Declines</u>	<u>N/A</u>	<u>0</u>
	<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit</u>	<u>&lt;1/4 time</u>	<u>8</u>
		<u>between 1/4 to 1/2 time</u>	<u>6</u>
		<u>between 1/2 to 3/4 time</u>	<u>4</u>
	<u>&gt;3/4 time</u>	<u>2</u>	

~~((5))~~ (4) In the case of New Freedom consumer directed services (NFCDS), the department determines ~~((hours))~~ the monthly budget available as described in WAC 388-106-1445.

~~((6))~~ (5) The result of actions under subsections (2)(~~(3)~~) and (3)(~~(-and (4))~~) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to ~~((meet))~~ address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

~~((7))~~ (6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

- (a) Personal care services from a home care agency provider and/or an individual provider.
- (b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.
- (c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) A home health aide ~~((if you are eligible))~~ (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300 ~~((or 388-106-0500)).~~

(e) A private duty nurse (PDN) if you are eligible per WAC ~~((388-71-0910 and 388-71-0915))~~ 388-106-1010 or WAC ~~((388-551-3000))~~ 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible parents or other responsible adults who provide support for the child's ADLs, IADLs and other needs. The department will not provide services or supports that are within the range of activities that a legally responsible parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for



persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department may code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

<b>Developmental Milestones for Activities of Daily Living (ADLS)</b>		
<b>ADL</b>	<b>Self-Performance</b>	<b>Developmental Age Range</b>
<u>Medication Management</u>	<u>Independent Self-Directed Assistance Required</u>	<u>Child under 18 years of age</u>
	<u>Must Be Administered</u>	<u>Child under 12 years of age</u>
<u>Locomotion in Room</u>	<u>Independent Supervision Limited Extensive</u>	<u>Child under 4 years of age</u>
	<u>Total</u>	<u>Child under 13 months of age</u>
<u>Locomotion Outside Room</u>	<u>Independent Supervision</u>	<u>Child under 6 years of age</u>
	<u>Limited Extensive</u>	<u>Child under 4 years of age</u>
	<u>Total</u>	<u>Child under 25 months of age</u>
<u>Walk in Room</u>	<u>Independent Supervision Limited Extensive</u>	<u>Child under 4 years of age</u>
	<u>Total</u>	<u>Child under 19 months of age</u>
<u>Bed Mobility</u>	<u>Independent Supervision Limited</u>	<u>Child under 37 months of age</u>
	<u>Extensive</u>	<u>Child under 25 months of age</u>
	<u>Total</u>	<u>Child under 19 months of age</u>

<b>Developmental Milestones for Activities of Daily Living (ADLS)</b>		
<b>ADL</b>	<b>Self-Performance</b>	<b>Developmental Age Range</b>
<u>Transfers</u>	<u>Independent Supervision Limited Extensive</u>	<u>Child under 3 years of age</u>
	<u>Total</u>	<u>Child under 19 months of age</u>
<u>Toilet Use</u>	<u>Independent Supervision Limited Extensive</u>	<u>Child under 7 years of age</u>
	<u>Total</u>	<u>Child under 37 months of age</u>
<u>Eating</u>	<u>Independent Supervision Limited Extensive</u>	<u>Child under 3 years of age</u>
	<u>Total</u>	<u>Child under 13 months of age</u>
<u>Bathing</u>	<u>Independent Supervision</u>	<u>Child under 12 years of age</u>
	<u>Physical help/ Transfer only</u>	<u>Child under 5 years of age</u>
	<u>Physical help/part of bathing</u>	<u>Child under 6 years of age</u>
	<u>Total</u>	<u>Child under 37 months of age</u>
<u>Dressing</u>	<u>Independent Supervision</u>	<u>Child under 12 years of age</u>
	<u>Limited</u>	<u>Child under 8 years of age</u>
	<u>Extensive</u>	<u>Child under 7 years of age</u>
	<u>Total</u>	<u>Child under 25 months of age</u>
<u>Personal Hygiene</u>	<u>Independent Supervision</u>	<u>Child under 12 years of age</u>
	<u>Limited Extensive</u>	<u>Child under 7 years of age</u>
	<u>Total</u>	<u>Child under 37 months of age</u>

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen

year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department may code status as other than described in subpart (h) for an IADL.

(h)

<b><u>Developmental Milestones for Instrumental Activities of Daily Living</u></b>		
<b><u>IADL</u></b>	<b><u>Self-Performance</u></b>	<b><u>Developmental Age Range</u></b>
Finances Telephone Wood Supply	Independent Supervision Limited Extensive Total	Child under 18
Transportation	Independent Supervision Limited Extensive	Child under 18
	Total	Child under 16

<b><u>Developmental Milestones for Instrumental Activities of Daily Living</u></b>		
<b><u>IADL</u></b>	<b><u>Self-Performance</u></b>	<b><u>Developmental Age Range</u></b>
Essential Shopping Housework Meal Prep	Independent Supervision Limited Extensive	Child under 18
	Total	Child under 12

(i) The department presumes that children have legally responsible parents or other responsible adults who provide support for comprehension, decision-making, memory and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (k) unless the circumstances in subpart (j) below apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision-making, memory and continence issues is substantially greater than is typical for a person of your age, the department may code status as other than described in subpart (k) below.

(k)

<b><u>Additional Developmental Milestones coding within CARE</u></b>			
<b><u>CARE panel</u></b>	<b><u>CARE coding topic</u></b>	<b><u>Developmental Milestone coding selection</u></b>	<b><u>Developmental Age Range</u></b>
Speech/Hearing: Comprehension	"By others client is"	Child under 3	Child under 3
Psych Social: MMSE	"Can MMSE be administered?"	=No	Child under 18
Psych Social: Memory/Short Term	"Recent memory"	Child under 12	Child under 12
Psych Social: Memory/Long Term	"Long Term memory"	Child under 12	Child under 12
Psych Social: Depression	"Interview"	Unable to obtain	Child under 12
Psych Social: Decision Making	"Rate how client makes decision"	Child under 12	Child under 12
Bladder/Bowel:	"Bladder/Bowel Control"	Continent Usually Continent Occasionally Incontinent	Child under 12
		Frequently Incontinent	Child under 9
		Incontinent all or most of the time	Child under 6
Bladder/Bowel:	"Appliance and programs"	Potty Training	Child under 4

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7), the department will assess for any infor-

mal supports or shared benefit available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide support to them.

(a) The department will code status as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) The department will presume that you have informal supports, defined in WAC 388-106-0130, available to assist you with your ADLs and IADLs over three-fourths but not all of the time. This presumption may be rebutted if you provide specific information during your assessment to indicate why you do not have support available three-fourths or more of the time to assist you with a particular ADL or IADL.

(c) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(d) When you are living with your legally responsible parent(s), the department will take into account their legal obligation to care for you when determining the availability of informal supports. Legally responsible parents include natural parents, step-parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and which prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you.

**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 14-05-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-25—Filed February 6, 2014, 12:18 p.m., effective February 6, 2014, 12:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-56-350.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Surveys at Point Whitney Tidelands indicate that the clam population on this small beach has decreased, requiring a closure in 2014. 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: February 6, 2014.

February 6, 2014  
 Philip Anderson  
 Director

NEW SECTION

**WAC 220-56-3500X Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels for personal use from Point Whitney Tidelands (excluding Point Whitney Lagoon).

**WSR 14-05-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-27—Filed February 6, 2014, 12:20 p.m., effective February 8, 2014, 6:00 a.m.]

Effective Date of Rule: February 8, 2014, 6:00 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-56-27000K; and amending WAC 220-56-270.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.055, and 77.12.047.

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: Sets a limited sport fishery for eulachon smelt. The regulations are consistent with a reduced Level One fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. Returns of eulachon to the Columbia River have improved since 2011, with a very large return in 2013. The minimal sport fishing season, adopted along with a limited Columbia River commercial season, are expected to harvest less than one percent of the total run size forecasted for 2014. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. NOAA fisheries

concur that the fishery is consistent with recovery of eulachon smelt. Rule is consistent with Columbia River compact action of February 5, 2014. There is insufficient time to adopt permanent regulations.

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 6, 2014.

Philip Anderson  
Director

#### NEW SECTION

##### **WAC 220-56-27000K Smelt—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-265, and WAC 220-56-275, effective February 8 through March 1, 2014, it is unlawful to fish for or possess eulachon smelt in those waters of the Columbia River and Washington tributaries except as provided below:

Open Area:	Cowlitz River (bank only).
Open Dates:	Saturdays only, February 8, 15, 22 and March 1.
Hours:	6:00 a.m. to 12:00 p.m. (Noon) each Saturday (6-hour periods).
Daily limit:	10 pounds. Possession limit equal to one daily limit.
Gear:	Dip net.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective March 2, 2014:

WAC 220-56-27000K Smelt—Areas and seasons.

#### **WSR 14-05-010 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 14-28—Filed February 6, 2014, 2:09 p.m., effective February 10, 2014, 7:00 a.m.]

Effective Date of Rule: February 10, 2014, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-04000L; and amending WAC 220-33-040.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.055, and 77.12.047.

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: Sets a limited Columbia River commercial fishery for eulachon smelt. The regulation is consistent with a reduced Level One fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. Returns of eulachon to the Columbia River have improved since 2011, with a very large return in 2013. This minimal commercial fishing season, and a limited sport season adopted for the Cowlitz River, are expected to harvest less than one percent of the total run size forecasted for 2014. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. NOAA fisheries concurs that the fisheries are consistent with recovery of eulachon smelt. Rule is consistent with Columbia River compact action of February 5, 2014. There is insufficient time to adopt permanent regulations.

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 6, 2014.

Philip Anderson  
Director

#### NEW SECTION

##### **WAC 220-33-04000L Smelt—Areas and seasons.**

Notwithstanding the provisions of WAC 220-33-040, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

- Open Dates:** From February 10, 2014 through March 6, 2014, open Mondays and Thursdays only, 7:00 a.m. to 2:00 p.m. (7-hour periods).
- Open Area:** Columbia River – SMCRA 1A, 1B, 1C.
- Gear:** It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-33-040: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line. Use of monofilament nets is permissible.
- Allowable sales:** Smelt.
- Other:** 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 2:01 p.m. March 6, 2014:

WAC 220-33-04000L Smelt—Areas and seasons.

**WSR 14-05-011**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-21—Filed February 6, 2014, 2:20 p.m., effective February 6, 2014, 2:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000F and 220-52-04600V; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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 special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair start provisions. 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 2, 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 6, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-04000G Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts.** (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean through February 19, 2014, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel; and

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through February 19, 2014.

(c) Vessel hold inspection certificates dated from December 15, 2013 to January 13, 2014 are only valid for the area south of 46°28.00.

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

#### NEW SECTION

**WAC 220-52-04600W 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 US Canada Border to the WA/OR border (46°15.00) and Willapa Bay is open.

(2) For the purposes of this section, 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) Licenses and vessels designated to those licenses that participate (as defined by WAC 220-52-036) in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington, (46°28.00), including Willapa Bay, before January 15, 2014, are prohibited from:

a. Fishing in the area between Oysterville (46°33.00) and the U.S./Canada border until 8:00 A.M., February 19, 2014.

(4) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further

notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

- |                                       |                  |                   |
|---------------------------------------|------------------|-------------------|
| (a) Northeast Corner (Raft River):    | 47°28.00 N. Lat. | 124°20.70 W. Lon. |
| (b) Northwest Corner:                 | 47°28.00 N. Lat. | 124°34.00 W. Lon. |
| (c) Southwest Corner:                 | 47°08.00 N. Lat. | 124°25.50 W. Lon. |
| (d) Southeast Corner (Copalis River): | 47°08.00 N. Lat. | 124°11.20 W. Lon. |

(5) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

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

(6) The Makah special management area (SMA) is closed to fishing until 8:00 A.M. February 15, 2014. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- |                       |                  |                   |
|-----------------------|------------------|-------------------|
| (a) Northeast Corner: | Tatoosh Island   |                   |
| (b) Northwest Corner: | 48°19.50 N. Lat. | 124°50.45 W. Lon. |
| (c) Southwest Corner: | 48°02.15 N. Lat. | 124°50.45 W. Lon. |
| (d) Southeast Corner: | 48°02.15 N. Lat. | 124°41.00 W. Lon. |

(7) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. February 15, 2014, until 8:00 A.M. March 17, 2014. Fishers must preregister 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;
- E-mail to Carol Henry at [Carol.Henry@dfw.wa.gov](mailto: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 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 sections of the Washington Administrative Code are repealed:

WAC 220-52-04000F Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (14-08)

WAC 220-52-04600V Coastal crab seasons (14-05)

#### **WSR 14-05-014 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 14-29—Filed February 7, 2014, 3:21 p.m., effective February 10, 2014, 12:01 a.m.]

Effective Date of Rule: February 10, 2014, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

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: Preliminary estimates indicate that the encounters of legal size chinook in Area 9 are projected to exceed 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 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: February 7, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-62100Z Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective February 10 through April 15, 2014, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

All waters of Catch Record Card Area 9, excluding Edmonds Public Fishing Pier: 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, 2014:

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

**WSR 14-05-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-24—Filed February 7, 2014, 3:26 p.m., effective March 1, 2014]

Effective Date of Rule: March 1, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.055, and 77.12.047.

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: Sets the 2014 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to the Oregon/Washington border. The regulation adjusts the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation allows for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery chinook. 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. Regulation is consistent with compact action of January 29, 2014. There is insufficient time to promulgate permanent rules.

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 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 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.

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: February 7, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900D 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:** Effective March 1 through April 7, 2014

a. Open for fishing for salmonids and shad. From a true north-south line through Buoy 10 upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2), except closed March 25 and April 1.

b. HOWEVER, closed to fishing from boats upstream of Beacon Rock (defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock).

c. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

d. Release all wild Chinook and wild steelhead.

e. Salmon minimum size is 12 inches.

f. Effective March 16 through May 9, 2014:

(i) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

(ii) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(iii) Release all wild Chinook and wild steelhead.

(iv) Salmon minimum size is 12 inches.

2. **Deep River (Wahkiakum Co.):** Effective March 1, 2014, until further notice: The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

**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.

**WSR 14-05-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-23—Filed February 10, 2014, 4:00 p.m., effective February 10, 2014, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends cougar hunting rules described in WAC 232-28-297.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-29700H; and amending WAC 232-28-297.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.150.

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 change closes specific cougar hunt areas that have met or exceeded the area harvest guideline. Immediate action is necessary to protect cougars from overharvest in hunt areas that have met or exceeded the area harvest guideline. 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 10, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-29700I 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations.** Notwithstanding the provisions of WAC 232-28-297, effective immediately until further notice:

General cougar seasons in Game Management Units (GMUs) 105, 117, 145, 149, 154, 157, 162, 163, 166, 175, 178, 169, 172, 181, 186, 328, 329, 335, 336, 340, 342, 346, 382, 388, 466, 485, 490, 516, 560, 574, 578, 642, 648, 651, and 667 are closed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-29700H 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations.

**WSR 14-05-032**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-32—Filed February 11, 2014, 4:42 p.m., effective February 13, 2014]

Effective Date of Rule: February 13, 2014.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

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 analyses of the ongoing steelhead fisheries in portions of the upper Columbia River has revealed sufficient natural origin steelhead impacts still remain under the NOAA issued ESA section 10 permit. Reopening steelhead fisheries in the Columbia, Wenatchee



and Icicle rivers will help to reduce the proportion of hatchery fish on the spawning grounds and further reduce competition between natural origin and hatchery juvenile production. Opening these areas to steelhead angling also allows whitefish angling opportunity on the Wenatchee. 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 11, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900F Exceptions to statewide rules—Columbia, Methow, Okanogan, Similkameen, Wenatchee and Icicle rivers.** Notwithstanding the provisions of WAC 232-28-619, the following provisions are in effect February 13, 2014, one hour before official sunrise. Unless otherwise amended, all permanent rules remain in effect:

(1) It is permissible to fish for steelhead in the following waters:

(a) Mainstem Columbia River: From Wells Dam upstream to 400 feet below Chief Joseph Dam and from Rock Island Dam upstream to 400 feet below Wells Dam.

(b) Methow River: From the mouth upstream 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).

(c) Okanogan River: From the mouth upstream to the Highway 97 Bridge in Oroville.

(d) Similkameen River: From the mouth upstream to 400 feet below Enloe Dam.

(e) 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.

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

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

(4) Night closure and selective gear rules remain in effect. Bait is allowed on mainstem Columbia River from Rock Island Dam to 400 feet below Chief Joseph Dam.

(5) Whitefish anglers must follow selective gear rules in areas open to steelhead fishing, no bait is allowed.

(6) Release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective February 13, 2014, one hour before official sunrise:

WAC 232-28-61900T Exceptions to statewide rules—Columbia, Methow, Okanogan, Similkameen, Wenatchee and Icicle rivers. (13-296)

**WSR 14-05-040**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-33—Filed February 13, 2014, 11:12 a.m., effective March 1, 2014]

Effective Date of Rule: March 1, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Surveys at Dosewallips State Park indicate the clam population can support a season of the same length as last year. The earlier opening in 2014 provides a more continuous recreational clamming opportunity in the Hood Canal area, particularly with the closure of nearby Point Whitney Tidelands. 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: February 13, 2014.

Joe Stohr  
for Philip Anderson  
Director

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 13, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-35000Y Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective March 1, 2014, until further notice, it is permissible to take, dig for and possess clams, cockles, and mussels for personal use from Dosewallips State Park (only in the area defined by boundary markers and signs posted on the beach).

**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.

**WSR 14-05-041  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-34—Filed February 13, 2014, 11:14 a.m., effective February 13, 2014, 11:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100C; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed in this emergency rule. 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.

#### NEW SECTION

**WAC 220-52-07100D Sea cucumbers** Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 seven days-per-week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 on Monday through Friday of each week.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 1,800 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100C Sea cucumbers. (13-287)

**WSR 14-05-083  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-30—Filed February 18, 2014, 1:45 p.m., effective March 1, 2014, 12:01 a.m.]

Effective Date of Rule: March 1, 2014, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Steelhead returns to the Tucannon River are not meeting management goals for conservation or for maintaining fisheries and, therefore, the fishery for

hatchery steelhead must be constrained to provide more protection for naturally produced steelhead in the Tucannon River. A large component of Tucannon River wild steelhead enters the river in March. The incidental impact to wild steelhead from a recreational fishery is anticipated to increase to unacceptable levels in March. The intent of the recreational fishery is to focus on removal of stray hatchery steelhead that primarily enter the Tucannon River in late summer and fall to prevent them from spawning naturally. 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 18, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900E Exceptions to statewide rules—Tucannon River.** Notwithstanding the provisions of WAC 232-28-619, effective March 1 through June 6, 2014, it is unlawful to fish in waters of the Tucannon River.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 7, 2014:

WAC 232-28-61900E Exceptions to statewide rules—  
Tucannon River.