

WSR 15-22-028
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 27, 2015, 10:59 a.m., effective October 28, 2015]

Effective Date of Rule: October 28, 2015.

Purpose: The department is amending and adding new sections to chapter 388-106 WAC to implement the new community first choice option program effective July 1, 2015. In accordance with ESHB 2746, which mandated the department to refinance medicaid personal care services under the community first choice option, the department is establishing and implementing a new 1915(k) state plan program. The purpose of this WAC is to define the scope and eligibility for the new 1915(k) services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0015, 388-106-0020, 388-106-0033, 388-106-0045, 388-106-0047, 388-106-0050, 388-106-0055, 388-106-0070, and 388-106-0120.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: ESHB 2746, SSB 6387.

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: The department is proceeding with the permanent rule process by working on filing the CR-102. This emergency filing supersedes WSR 15-14-085 filed on June 29, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 13, Amended 9, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 9, Repealed 0.

Date Adopted: October 22, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in

WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home, adult family home, or in ~~((a))~~ an adult residential care facility, as defined in WAC 388-110-020.

(2) **Community options program entry system (COPEs)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) Community first choice (CFC) is a medicaid state plan program authorized under RCW 74.39A.400. Clients eligible for this program may receive services in their own home or in a residential setting, as defined in WAC 388-110-020.

(4) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

~~((4))~~ (5) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

~~((5))~~ (6) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

~~((6))~~ (7) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

~~((7))~~ (8) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

~~((8))~~ (9) **Medical care services** is a state-funded program authorized under RCW 74.09.035. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

~~((9))~~ (10) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

~~((10))~~ (11) **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

~~((11))~~ (12) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

~~((12))~~ (13) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

~~((13))~~ (14) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-850 WAC.

~~((14))~~ (15) **Nursing facility.**

~~((15))~~ **(16) New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.

~~((16))~~ **(17) Residential support** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in a licensed and contracted enhanced services facility or in a licensed adult family home with a contract to provide specialized behavior services.

AMENDATORY SECTION (Amending WSR 12-16-026, filed 7/25/12, effective 8/25/12)

WAC 388-106-0020 Under the MPC, CFC, COPEs, and chore programs, what services are not covered? The following types of services are not covered under MPC, CFC, COPEs, and chore:

- (1) Child care.
- (2) Individual providers must not provide:
 - (a) Sterile procedures unless the provider is a family member or the client self directs the procedure;
 - (b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.
- (3) Agency providers must not provide:
 - (a) Sterile procedures;
 - (b) Self-directed care;
 - (c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.
- (4) Services provided over the telephone.
- (5) Services to assist other household members not eligible for services.
- (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (7) Nursing care.
- (8) Pet care.
- (9) Assistance with managing finances.
- (10) Respite.
- (11) Yard care.

AMENDATORY SECTION (Amending WSR 14-15-071, filed 7/15/14, effective 8/15/14)

WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services? (1) You may be eligible to receive services in a licensed assisted living facility that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC")," which is defined in WAC 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

- (a) You are enrolled in ~~((COPEs))~~ CFC, as defined in WAC 388-106-0015;
- (b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

- (i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;
- (ii) Inappropriate toileting/menses activities;
- (iii) Rummages/takes others belongings;
- (iv) Up at night when others are sleeping and requires intervention(s);
- (v) Wanders/exit seeking;
- (vi) Wanders/not exit seeking;
- (vii) Has left home and gotten lost;
- (viii) Spitting;
- (ix) Disrobes in public;
- (x) Eats non-edible substances;
- (xi) Sexual acting out;
- (xii) Delusions;
- (xiii) Hallucinations;
- (xiv) Assaultive;
- (xv) Breaks, throws items;
- (xvi) Combative during personal care;
- (xvii) Easily irritable/agitated;
- (xviii) Obsessive regarding health/body functions;
- (xix) Repetitive movement/pacing;
- (xx) Unrealistic fears or suspicions;
- (xxi) Repetitive complaints/questions;
- (xxii) Resistive to care;
- (xxiii) Verbally abusive;
- (xxiv) Yelling/screaming;
- (xxv) Inappropriate verbal noises; or
- (xxvi) Accuses others of stealing.

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

WAC 388-106-0045 When will the department authorize my long-term care services? The department will authorize long-term care services when you:

- (1) Are assessed using CARE;
- (2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;
- (3) Have given written consent for services and approved your plan of care; and
- (4) Have chosen a provider(s), qualified for payment.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

WAC 388-106-0047 When can the department terminate or deny long-term care services to me? (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to WAC 388-106-0210, 388-106-0310, or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) After a department representative reviews with you your rights and responsibilities as a client of the department, per WAC 388-106-1300 and 388-106-1303, you refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (e.g., dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (e.g., exposed sewage, evidence of a methamphetamine lab).

(3) The department will terminate long-term care services if you do not sign and return your service summary document within two months of your assessment completion date.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, ~~((or your place of))~~ current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least ~~((annually))~~ every twelve months, or more often when there are significant changes ~~((to your ability to care for yourself))~~ neecessitating revisions to your CARE plan, or at your request. In order to continue receiving services, if the assessment is not completed in the residence where your services will be provided, a visit to that residence must be made to evaluate your living situation and environment.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

- (a) Errors made by department staff in coding the information from your in-person interview;
- (b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);
- (c) Changes in the level of informal support available to you; or
- (d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, goals, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities;
- (5) Determine availability of informal supports, shared benefits, and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.
- (11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving DDA services, CFC, COPEs, MPC, chore, respite, adult day health, medical care services, PACE, private duty nursing, residential support, and new freedom.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility.

(1) For CFC, COPEs, MPC, medical care services, RCL, and new freedom programs, the department assigns payment rates to the CARE classification group. Under these programs, payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

(2) The enhanced services facility rate is determined by legislative action and appropriation.

(3) The rate for adult family homes with a specialized behavior support contract is based on the CARE classification group and an add-on amount, which is negotiated through the collective bargaining process.

Community First Choice

NEW SECTION

WAC 388-106-0270 What services are available under community first choice (CFC)? The services you may receive under the community first choice program include:

(1) Personal care services, as defined in WAC 388-106-0010.

(2) Relief care, which provides personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training, which is defined as training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are defined as specific tasks related to the needs of an individual, which under state law licensed health professionals can delegate or assign to a qualified health care practitioner.

(4) Personal emergency response systems (PERS), a basic electronic device that enables you to secure help in an emergency when:

(a) You live alone in your own home; or

(b) You are alone, in your own home, for significant parts of the day and have no provider for extended periods of time; or

(c) No one in your home, including you, can secure help in an emergency.

(5) Assistive technology, items which increase your independence or substitute for human assistance specifically with ADL, IADL, or health related tasks, including but not limited to:

(a) Additions to the standard PERS unit, such as fall detection, GPS, or medication delivery and/or reminder systems. For cost allocation purposes, any amount above the cost of the standard PERS unit will be considered assistive technology; or

(b) Department approved devices, which include but are not limited to: visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance; and

(c) Computing devices.

(6) Nurse delegation services, as defined in WAC 246-840-910 through 246-840-970:

(a) You are receiving personal care services from a certified home care aide or a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(7) Nursing services, when you are not already receiving this type of service from another source. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. Skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and

(f) Evaluation of health-related care needs affecting service plan and delivery.

(8) Community transition services, non-recurring, set-up items or services to assist you with being discharged from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home. Items and services may include:

(a) Security deposits that are required to obtain a lease on an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;

(c) Set-up fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for the participant's health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure needed resources.

(9) Caregiver management training on how to select, manage and dismiss personal care providers. Training is provided in written, DVD, and web-based formats.

NEW SECTION

WAC 388-106-0271 Are there limits to the skills acquisition training I may receive? Skills acquisition training:

(1) Does not replace any training or therapy otherwise provided under medicaid, medicare, or any private insurance;

(2) Does not include therapy or nursing services that must be performed by a licensed therapist or nurse, but may be used to complement therapy or nursing goals coordinated through the care plan;

(3) For children, must be related to the child's disability and will not be provided for tasks that are determined to be age appropriate as described in WAC 388-106-0130(7); and

(4) In combination with assistive technology purchases, is limited to a yearly amount determined by the department per fiscal year.

NEW SECTION

WAC 388-106-0272 Who are qualified providers for skills acquisition training? (1) Long term care workers, who must only provide skills acquisition training on IADLs and the following ADL tasks: dressing, application of deodorant, washing hands and face, hair washing, hair combing and styling, application of make-up, menses care, shaving with an electric razor, tooth brushing or denture care, and bathing tasks excluding any transfers in or out of the bathing area; and

(2) Contracted home health agencies, which may provide skills acquisition training on ADLs, IADLs or health related tasks that are within the profession's scope of practice.

NEW SECTION

WAC 388-106-0273 May I receive additional personal emergency response services? Under the assistive technology benefit, you may be eligible to receive:

- (1) A fall detection system, if:
 - (a) You are eligible for a standard PERS unit; and
 - (b) You have a recent documented history of falls.
- (2) A global positioning system (GPS) tracking device with locator capabilities if:
 - (a) You have a recent documented history of short-term memory loss; and a recent documented history of wandering with exit seeking behavior; or
 - (b) A recent documented history of getting lost in a familiar surrounding and being unaware of the need or unable to ask for assistance; and
 - (c) In addition, if you are under the age of 12, there must be information presented at your assessment that due to your disability the support you are provided for memory or decision making is greater than is typical for a person of your age.
 - (d) A medication reminder if:
 - (i) You are eligible for a standard PERS unit;
 - (ii) You do not have a caregiver available to provide the service; and
 - (iii) You are able to use the reminder to take your medications.

NEW SECTION

WAC 388-106-0274 Are there limits to the assistive technology I may receive? (1) Assistive technology excludes:

- (a) Any purchase that is solely for recreational purposes;
- (b) Applications for devices that are sold separately from the device, subscriptions, and data plan charges, or items that require a monthly recurring fee;
- (c) Medical supplies and medical equipment;
- (d) Home modifications; and
- (e) Any item that would otherwise be covered under any other payment source, including but not limited to, medicare, medicaid, and private insurance.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize this service, the department may require a treating professional's written rec-

ommendation regarding the need for the assistive technology evaluation. The treating professional making this recommendation must:

- (a) Have personal knowledge of or experience with the requested assistive technology; and
- (b) Have examined you, reviewed your medical records, and have knowledge of your level of functioning, and ability to use the technology.
- (c) Your choice of services is limited to the most cost effective option that meets your health and welfare needs.

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

NEW SECTION

WAC 388-106-0275 Are there limits to the community transition services I may receive? Community transition services:

- (1) Do not include recreational or diverting items, such as a television, cable or VCR;
- (2) Do not include room and board; and
- (3) May not exceed eight hundred fifty dollars per discharge.

NEW SECTION

WAC 388-106-0276 Where can I receive CFC services? You may receive CFC services;

- (1) In your own home; or
- (2) In a residential facility, which include licensed and contracted:
 - (a) Adult family homes, as defined in RCW 70.128.010; or
 - (b) Assisted living facilities as defined in RCW 18.20.020.
- (3) As applicable, while you are out of the home accessing the community or working.

NEW SECTION

WAC 388-106-0277 Am I eligible for CFC services? You are eligible for CFC-funded services if you meet all of the following criteria:

- (1) Your CARE assessment shows you need the level of care provided in a hospital, nursing facility, an intermediate care facility for the intellectually disabled (ICF/ID), an institution providing psychiatric services for individuals under age twenty-one, or an institution for mental diseases for individuals age sixty-five or over (or will likely need the level of care within thirty days unless CFC services are provided); and
- (2) You are eligible for a categorically needy (CN) or the alternative benefit plan (ABP) Washington apple health program. Financial eligibility rules for CFC are described in WAC 182-513-1210 through WAC 182-513-1220.
- (3) If you are not financially eligible for a non-institutional CN or ABP program, but are financially eligible for a home and community based waiver, you are eligible for CFC as long as you continue to receive at least one monthly waiver service.

NEW SECTION**WAC 388-106-0280 When do CFC services begin?**

Your services begin on the date the department authorizes services.

NEW SECTION

WAC 388-106-0283 How do I remain eligible for CFC services? (1) In order to remain eligible for CFC, you must remain financially eligible and be in need of services in accordance with WAC 388-106-0310 as determined through a CARE assessment. The assessment in CARE must be completed at least annually or more often when there are significant changes in your functional or financial circumstances; or

(2) If you receive services through DDA, you must remain financially eligible and eligible for ICF/ID or nursing facility level of care as described in WAC 388-828-4400, 388-828-3080 and 388-106-0355.

(3) When your eligibility is dependent on your eligibility for a home and community based waiver, you must receive at least one waiver service every month. If you do not receive a waiver service for more than thirty calendar days, you will no longer be eligible for CFC and the department will terminate your CFC services.

(4) If eligibility laws, regulations, or rules for CFC change, and if you do not meet the changed eligibility requirements, the department will terminate your CFC services, even if your functional or financial circumstances have not changed.

NEW SECTION

WAC 388-106-0285 What do I pay for if I receive CFC services? (1) If you are receiving services through CFC only, you may be required to pay toward the cost of your care as outlined in WAC 182-513-1215. If you are receiving services in:

(a) Your own home, you will not have to pay toward the cost of your care.

(b) A residential facility, you must use your income to pay for your room and board. You are allowed to keep some of your income for personal needs allowance (PNA). Depending on your financial eligibility group and income, you may also be responsible to pay an additional amount towards the cost of your care.

(2) If you are receiving services through CFC and a home and community based waiver, you may be required to pay toward the cost of your care as outlined in WAC 182-515-1509. If you are receiving services in:

(a) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(b) If you are living in a residential facility, you must use your income to pay for your room and board and may have to pay an additional amount towards the cost of services. You are allowed to keep some of your income for PNA.

NEW SECTION

WAC 388-106-0290 What does the department pay towards the cost of care when you are receiving CFC ser-

vices and live in a residential facility? When you receive CFC services and live in a residential facility, the department pays the facility the difference between what you are required to pay the facility and the department-set rate for the facility. The department pays the residential facility from the first day of service through the:

- (1) The day before your discharge date; or
- (2) The last day of service if you die while living at the facility.

NEW SECTION

WAC 388-106-0295 May I be employed and receive CFC services? You may be employed and continue to receive CFC services as long as you remain medicaid eligible under the categorically needy (CN) or alternative benefit plan (ABP) program.

WSR 15-23-008**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed November 5, 2015, 1:40 p.m., effective November 5, 2015, 1:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The community services division is repealing WAC 388-273-0020 Who may receive Washington telephone assistance program (WTAP)? and 388-273-0030 How you can apply for WTAP.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-273-0020 and 388-273-0030.

Statutory Authority for Adoption: RCW 74.08.090, 80.36.470.

Other Authority: State of Washington 2015-17 biennial operating budget (ESSB 6052 207).

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: RCW 80.36.470 prohibits enrollment in WTAP if program expenditures exceed the total amount of funds made available by the legislature. The department is repealing the above rules because WTAP is not funded in the state of Washington 2015-2017 biennium legislative budget (ESSB 6052 207).

The amendments are currently in place via emergency [rule making] (WSR 15-16-074) which was filed on July 31, 2015. The emergency expires on November 28, 2015. The department is concurrently working on a permanent rule filing process. The CR-102 was filed as WSR 15-20-106 on October 6, 2015. A public hearing is scheduled for November 10, 2015. This second emergency filing is to cover the time frame between the emergency WAC expiration and the effective date of the permanent rule.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 2.

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

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Date Adopted: November 3, 2015.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-273-0020 Who may receive Washington telephone assistance program (WTAP)?

WAC 388-273-0030 How you can apply for WTAP.

WSR 15-23-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-416—Filed November 6, 2015, 3:09 p.m., effective November 7, 2015]

Effective Date of Rule: November 7, 2015.

Purpose: Amend recreational fishing rules for Grays Harbor tributaries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000E; and amending WAC 220-310-180.

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: An emergency rule is needed to open areas that were closed by emergency rule WSR 15-22-041 as sufficient numbers of coho have entered Grays Harbor hatcheries to achieve 2015 production goals of early timed coho. 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: November 6, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000J Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-310-180, effective November 7, 2015, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended all permanent rules remain in effect:

(1) All waters draining into Grays Harbor are closed to fishing except:

(a) Humptulips River (Grays Harbor County): Open for salmon and gamefish only from the downstream edge of Reynvanns Bar up to Hwy 101 Bridge. Salmon daily limit is 2. Release wild coho. Release all Chinook beginning November 16, 2015.

(b) Wishkah River (Grays Harbor County): Open for salmon and gamefish only from West Wishkah Road Bridge to the Wishkah Rearing Ponds. Salmon daily limit is 2. Release all salmon except chum and hatchery coho.

(c) Satsop River (Grays Harbor/Mason Counties): Open for salmon and gamefish only from the confluence with West Fork Satsop River to bridge at Schafer State Park. Salmon daily limit is 2. Release all wild chinook and wild coho. Release all Chinook beginning December 1, 2015.

(d) Satsop River (Grays Harbor/Mason Counties): Open for salmon and gamefish only from 400 feet below Bingham Creek Hatchery dam to dam and only for anglers with disabilities who permanently use a wheelchair AND who have a designated harvester companion card. Salmon daily limit is 2. Release all wild chinook and wild coho. Release all Chinook beginning December 1, 2015.

(e) Skookumchuck River (Lewis/Thurston Counties): Open for salmon and gamefish only from first Skookumchuck Rd SE Bridge downstream from the hatchery to 100 feet below outlet of PP&L/WDFW steelhead rearing pond located at the base of Skookumchuck Dam. Salmon daily limit is 2. Release all salmon except hatchery coho.

(f) Newaukum River, including South Fork (Lewis County): Open for salmon and gamefish only from Gish Rd. Bridge to Leonard Rd. Bridge. Salmon daily limit is 2. Release all salmon except hatchery coho.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective

WAC 220-310-18000E Freshwater exceptions to statewide rules—Coast. (15-405)

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 15-23-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-417—Filed November 6, 2015, 3:59 p.m., effective November 6, 2015, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal recreational crab fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-330.

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: A closure is needed after routine testing showed domoic acid levels in crab exceeded standards established by the Washington department of health. Domoic acid, a natural toxin produced by certain types of marine algae, can be harmful or even fatal if consumed in sufficient quantities. 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: November 6, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-33000V Crab—Areas and seasons.
Notwithstanding the provisions of WAC 220-56-330:

(1) Effective immediately until further notice, it is unlawful to fish for crab in Marine Area 2-1 (Willapa Bay).

(2) Effective immediately until further notice, it is unlawful to set, maintain, operate, or possess in those waters, any baited or unbaited shellfish pots or ring nets for any reason.

WSR 15-23-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-418—Filed November 9, 2015, 4:34 p.m., effective November 9, 2015, 4:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-47-31100U and 220-47-41100P; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 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: There is not enough nontreaty chum share remaining in Hood Canal for a purse seine opening. This creates uncertainty about purse seine effort and catches in South Sound. A reduction in openings is needed to avoid exceeding the nontreaty share of South Sound chum. 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: November 9, 2015.

Ron Warren
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-31100U Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, effective November 11, 2015, it is unlawful to fish for, or possess salmon taken for commercial purposed with purse seine in Puget Sound Salmon Management and Catch Reporting Areas 10 and 11.

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

[NEW SECTION]

WAC 220-47-41100P Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below and with the minimum mesh size indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
10, 11	4 PM November 10 - 8 AM November 11

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 PM November 11, 2015:

WAC 220-47-31100U Purse seine—Open periods.

WAC 220-47-41100P Gillnet—Open periods.

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.

Purpose: The department is updating the rate table contained in WAC 388-105-0005 in accordance with the 2015-2017 operating budget.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

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: The budget raised rates, and the table must reflect that. The department intends to file a CR-102 proposal for permanent adoption in November 2015.

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 1, 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 1, Repealed 0.

Date Adopted: November 3, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-03-113, filed 1/21/14, effective 2/21/14)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and assisted living facilities contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

WSR 15-23-050
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed November 12, 2015, 9:14 a.m., effective November 12, 2015, 9:14 a.m.]

Effective Date of Rule: Immediately upon filing.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((65.58)) <u>67.22</u>	\$((71.00)) <u>72.64</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Med	\$((70.97)) <u>72.74</u>	\$((76.39)) <u>78.16</u>	\$((52.71)) <u>54.03</u>	\$((52.71)) <u>54.03</u>	\$((53.84)) <u>56.53</u>
A High	\$((79.58)) <u>81.57</u>	\$((85.00)) <u>86.99</u>	\$((57.85)) <u>59.30</u>	\$((57.85)) <u>59.30</u>	\$((60.10)) <u>63.11</u>
B Low	\$((65.58)) <u>67.22</u>	\$((71.00)) <u>72.64</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((73.13)) <u>74.96</u>	\$((78.55)) <u>80.39</u>	\$((58.92)) <u>60.39</u>	\$((58.92)) <u>60.39</u>	\$((60.39)) <u>63.41</u>
B Med-High	\$((82.76)) <u>84.83</u>	\$((88.18)) <u>90.25</u>	\$((62.62)) <u>64.19</u>	\$((62.62)) <u>64.19</u>	\$((64.62)) <u>67.85</u>
B High	\$((87.10)) <u>89.28</u>	\$((92.52)) <u>94.70</u>	\$((71.52)) <u>73.31</u>	\$((71.52)) <u>73.31</u>	\$((73.71)) <u>77.40</u>
C Low	\$((70.97)) <u>72.74</u>	\$((76.39)) <u>78.16</u>	\$((52.71)) <u>54.03</u>	\$((52.71)) <u>54.03</u>	\$((53.84)) <u>56.53</u>
C Med	\$((79.58)) <u>81.57</u>	\$((85.00)) <u>86.99</u>	\$((66.05)) <u>67.70</u>	\$((66.05)) <u>67.70</u>	\$((68.42)) <u>71.84</u>
C Med-High	\$((98.96)) <u>101.43</u>	\$((104.38)) <u>106.85</u>	\$((87.89)) <u>90.09</u>	\$((87.89)) <u>90.09</u>	\$((89.26)) <u>93.72</u>
C High	\$((99.94)) <u>102.44</u>	\$((105.36)) <u>107.86</u>	\$((88.73)) <u>90.95</u>	\$((88.73)) <u>90.95</u>	\$((90.49)) <u>95.01</u>
D Low	\$((73.13)) <u>74.96</u>	\$((78.55)) <u>80.38</u>	\$((71.09)) <u>72.87</u>	\$((71.09)) <u>72.87</u>	\$((69.72)) <u>73.21</u>
D Med	\$((81.20)) <u>83.23</u>	\$((86.62)) <u>88.65</u>	\$((82.29)) <u>84.35</u>	\$((82.29)) <u>84.35</u>	\$((85.07)) <u>89.32</u>
D Med-High	\$((104.87)) <u>107.49</u>	\$((110.29)) <u>112.91</u>	\$((104.52)) <u>107.13</u>	\$((104.52)) <u>107.13</u>	\$((102.12)) <u>107.23</u>
D High	\$((112.97)) <u>115.79</u>	\$((118.39)) <u>121.21</u>	\$((112.97)) <u>115.79</u>	\$((112.97)) <u>115.79</u>	\$((116.10)) <u>121.91</u>
E Med	\$((136.43)) <u>139.84</u>	\$((141.85)) <u>145.26</u>	\$((136.43)) <u>139.84</u>	\$((136.43)) <u>139.84</u>	\$((140.04)) <u>147.04</u>
E High	\$((159.89)) <u>163.89</u>	\$((165.31)) <u>169.31</u>	\$((159.89)) <u>163.89</u>	\$((159.89)) <u>163.89</u>	\$((163.99)) <u>172.19</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>
A Med	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.64)) <u>51.91</u>	\$((50.64)) <u>51.91</u>	\$((51.75)) <u>54.34</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A High	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((55.18)) <u>56.56</u>	\$((55.18)) <u>56.56</u>	\$((56.96)) <u>59.81</u>
B Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((55.82)) <u>57.22</u>	\$((55.82)) <u>57.22</u>	\$((57.24)) <u>60.10</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((82.80)) <u>84.75</u>	\$((59.33)) <u>60.81</u>	\$((59.33)) <u>60.81</u>	\$((61.30)) <u>64.37</u>
B High	\$((84.95)) <u>87.07</u>	\$((89.87)) <u>91.99</u>	\$((69.51)) <u>71.25</u>	\$((69.51)) <u>71.25</u>	\$((71.66)) <u>75.24</u>
C Low	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.85)) <u>52.12</u>	\$((50.85)) <u>52.12</u>	\$((52.13)) <u>54.74</u>
C Med	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((65.21)) <u>66.84</u>	\$((65.21)) <u>66.84</u>	\$((66.78)) <u>70.12</u>
C Med-High	\$((95.71)) <u>98.10</u>	\$((100.63)) <u>103.02</u>	\$((81.69)) <u>83.73</u>	\$((81.69)) <u>83.73</u>	\$((83.02)) <u>87.17</u>
C High	\$((96.67)) <u>99.09</u>	\$((101.59)) <u>104.01</u>	\$((86.87)) <u>89.04</u>	\$((86.87)) <u>89.04</u>	\$((88.01)) <u>92.41</u>
D Low	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((70.12)) <u>71.87</u>	\$((70.12)) <u>71.87</u>	\$((68.21)) <u>71.62</u>
D Med	\$((79.00)) <u>80.98</u>	\$((83.92)) <u>85.90</u>	\$((80.65)) <u>82.67</u>	\$((80.65)) <u>82.67</u>	\$((82.81)) <u>86.95</u>
D Med-High	\$((101.44)) <u>103.98</u>	\$((106.36)) <u>108.90</u>	\$((101.95)) <u>104.50</u>	\$((101.95)) <u>104.50</u>	\$((99.04)) <u>103.99</u>
D High	\$((109.88)) <u>112.63</u>	\$((114.80)) <u>117.55</u>	\$((109.88)) <u>112.63</u>	\$((109.88)) <u>112.63</u>	\$((112.36)) <u>117.98</u>
E Med	\$((132.21)) <u>135.52</u>	\$((137.13)) <u>140.44</u>	\$((132.21)) <u>135.52</u>	\$((132.21)) <u>135.52</u>	\$((135.15)) <u>141.91</u>
E High	\$((154.54)) <u>158.40</u>	\$((159.46)) <u>163.32</u>	\$((154.54)) <u>158.40</u>	\$((154.54)) <u>158.40</u>	\$((157.94)) <u>165.84</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>
A Med	\$((63.43)) <u>65.02</u>	\$((68.67)) <u>70.26</u>	\$((49.62)) <u>50.86</u>	\$((49.62)) <u>50.86</u>	\$((50.72)) <u>53.26</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A High	\$((77.43)) <u>79.37</u>	\$((82.67)) <u>84.61</u>	\$((54.30)) <u>55.66</u>	\$((54.30)) <u>55.66</u>	\$((55.93)) <u>58.73</u>
B Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((74.04)) <u>75.76</u>	\$((54.79)) <u>56.16</u>	\$((54.79)) <u>56.16</u>	\$((56.20)) <u>59.01</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((83.12)) <u>85.07</u>	\$((58.22)) <u>59.68</u>	\$((58.22)) <u>59.68</u>	\$((60.12)) <u>63.13</u>
B High	\$((84.95)) <u>87.07</u>	\$((90.19)) <u>92.31</u>	\$((65.77)) <u>67.41</u>	\$((65.77)) <u>67.41</u>	\$((67.84)) <u>71.23</u>
C Low	\$((63.43)) <u>65.02</u>	\$((68.67)) <u>70.26</u>	\$((49.62)) <u>50.86</u>	\$((49.62)) <u>50.86</u>	\$((50.72)) <u>53.26</u>
C Med	\$((77.43)) <u>79.37</u>	\$((82.67)) <u>84.61</u>	\$((61.66)) <u>63.20</u>	\$((61.66)) <u>63.20</u>	\$((64.27)) <u>67.48</u>
C Med-High	\$((95.71)) <u>98.10</u>	\$((100.95)) <u>103.34</u>	\$((78.58)) <u>80.54</u>	\$((78.58)) <u>80.54</u>	\$((79.90)) <u>83.90</u>
C High	\$((96.67)) <u>99.09</u>	\$((101.91)) <u>104.33</u>	\$((82.13)) <u>84.18</u>	\$((82.13)) <u>84.18</u>	\$((83.30)) <u>87.47</u>
D Low	\$((68.80)) <u>70.52</u>	\$((74.04)) <u>75.76</u>	\$((66.30)) <u>67.96</u>	\$((66.30)) <u>67.96</u>	\$((64.57)) <u>67.80</u>
D Med	\$((79.00)) <u>80.98</u>	\$((84.24)) <u>86.22</u>	\$((76.26)) <u>78.17</u>	\$((76.26)) <u>78.17</u>	\$((78.37)) <u>82.29</u>
D Med-High	\$((101.44)) <u>103.98</u>	\$((106.68)) <u>109.22</u>	\$((96.38)) <u>98.79</u>	\$((96.38)) <u>98.79</u>	\$((93.72)) <u>98.41</u>
D High	\$((103.88)) <u>106.48</u>	\$((109.12)) <u>111.72</u>	\$((103.88)) <u>106.48</u>	\$((103.88)) <u>106.48</u>	\$((106.30)) <u>111.62</u>
E Med	\$((124.99)) <u>128.11</u>	\$((130.23)) <u>133.35</u>	\$((124.99)) <u>128.11</u>	\$((124.99)) <u>128.11</u>	\$((127.84)) <u>134.23</u>
E High	\$((146.10)) <u>149.75</u>	\$((151.34)) <u>154.99</u>	\$((146.10)) <u>149.75</u>	\$((146.10)) <u>149.75</u>	\$((149.39)) <u>156.86</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 15-23-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-419—Filed November 12, 2015, 1:40 p.m., effective November 14, 2015]

Effective Date of Rule: November 14, 2015.

Purpose: Amend recreational fishing rules in the Klickitat River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-195.

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 adult coho hatchery returns are behind schedule and broodstock goals at Klickitat Hatchery may not be met. A conservative daily limit of one adult coho has been implemented in an effort to help achieve those goals. Fish are being collected at the #5 Fishway in an effort to help achieve that goal. The Yakama Nation has enacted emergency regulations to reduce their fishery on the lower Klickitat River. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: November 12, 2015.

Joe Stohr
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19500Q Freshwater exceptions to statewide rules—Eastside Notwithstanding the provisions of WAC 220-310-195, effective November 14, 2015, until further notice, no more than 1 adult coho per day may be retained on the Klickitat River. Unless otherwise amended, all other permanent rules remain in effect.

WSR 15-23-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-421—Filed November 12, 2015, 3:51 p.m., effective November 16, 2015, 6:00 a.m.]

Effective Date of Rule: November 16, 2015 [2015], 6:00 a.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 220-32-05700M; and amending WAC 220-32-057.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Adopts additional seasons for a sturgeon set line commercial treaty fishery in The Dalles Pool (SMCRA 1G) and Bonneville Pool (SMCRA 1F). Allows only sturgeon to be sold, (including platform and hook and line consistent with items #1 and #2). Sturgeon remain available for harvest based on the current sturgeon guidelines. Conforms state rules to tribal rules. Consistent with compact action of November 12, 2015. 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 rules 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 allow[s] 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. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 12, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05700M Columbia River sturgeon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except that those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

(1) Open period #1: 6:00 AM November 16 to 6:00 PM November 25, 2015.

Area: SMCRA 1G (The Dalles Pool)

(2) Open period #2: 6:00 AM November 27 to 6:00 PM December 31, 2015.

Area: SMCRA 1F (Bonneville Pool)

(3) Gear: Setlines. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.

(4) Allowable Sales: White Sturgeon from 43 to 54 inches in fork length in The Dalles Pool and White Sturgeon from 38 to 54 inches in fork length in Bonneville Pool may be sold. Sturgeon within the legal size limit and caught in plat-

form and hook and line fishery may be sold if caught during the open period and open area of the set line fishery. Sales of fish landed during the open period are allowed after the period concludes.

(5) Sanctuaries: Standard sanctuaries applicable to these gear types.

(6) Additional Regulations: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240, **except** that landings must be reported within 24-hours of completing the fish ticket.

(7) Miscellaneous: It is unlawful to sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter RCW 75.28, or to sell or barter sturgeon eggs at retail. It is unlawful to deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.

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 6:01 p.m. December 31, 2015:

WAC 220-32-05700M Columbia River sturgeon seasons above Bonneville Dam.

WSR 15-23-059 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-420—Filed November 12, 2015, 3:51 p.m., effective November 12, 2015, 3:51 p.m.]

Effective Date of Rule: Immediately upon filing.

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 220-32-05100M; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Sets an end date for the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6 and tributaries. Sales of fish landed in the area downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area is lawfully open for sales under tribal regulations. Similarly, the sale of fish caught in Yakama Nation tributary fisheries are allowed when open under Yakama Nation regulations. The quick reporting rule continues to be modified to require quick reporting within twenty-four hours of completing the fish ticket, which is intended to allow harvest to be tracked as the season progresses. 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 November 12, 2015. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. 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 allow[s] 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 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 12, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100N 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 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, 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 Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: Immediately until 6 PM December 31, 2015.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or 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 and John Day pools may be retained for subsistence purposes only. Sturgeon within the legal size limit may be sold if caught during the open period and open area of the set line fishery. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect.

(2) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately until 6 PM December 31, 2015, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, Wind River and Klickitat River.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(3) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam (within SMCRA 1E1). Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately until further notice. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(4) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. (15-373)

**WSR 15-23-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-422—Filed November 13, 2015, 5:06 p.m., effective November 14, 2015, 7:00 a.m.]

Effective Date of Rule: November 14, 2015, 7:00 a.m.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100T, 220-47-31100V, 220-47-41100N and 220-47-41100Q; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 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: There is a small amount of the nontreaty chum share remaining in Hood Canal and south Puget Sound. A reduction in openings is needed to avoid exceeding the nontreaty share of chum. 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 4.

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: November 13, 2015.

Kelly Cunningham
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-31100V Purse seine—Open periods.

Notwithstanding the provisions of WAC 220-47-311, effective November 17, 2015, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with purse seine gear in Puget Sound Salmon Management and Catch Reporting Area 12.

[NEW SECTION]

WAC 220-47-41100Q Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, it is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following Puget Sound Salmon Management and Catch Reporting Areas and dates:

(1) Areas 10 and 11 are closed on November 18, 2015

(2) Area 12 is closed on November 16, 2015 and November 18, 2015

(3) Areas 12B and 12C are closed on November 18, 2015

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 AM November 14, 2015:

WAC 220-47-31100T Purse seine—Open periods.

WAC 220-47-41100N Gillnet—Open periods.

The following section of the Washington Administrative Code is repealed effective 8:01 AM November 19, 2015:

WAC 220-47-31100V Purse seine—Open periods.

WAC 220-47-41100Q Gillnet—Open periods.

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 15-23-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-423—Filed November 16, 2015, 4:49 p.m., effective November 17, 2015]

Effective Date of Rule: November 17, 2015.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100W; and amending WAC 220-47-311.

Statutory Authority for Adoption: RCW 77.04.012, 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: There is a harvestable surplus of chum remaining in Hood Canal and there is not enough nontreaty share in Areas 10 and 11 for a commercial purse seine opening. 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: November 16, 2015.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-31100W Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, the following rules apply for commercial Purse seines:

(1) Areas 10, 11, 12B and 12C are closed on November 17, 2015

(2) Areas 12B and 12C are open November 18, 2015 from 7 AM to 5 PM

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 PM November 18, 2015:

WAC 220-47-31100W Purse seine—Open periods.

WSR 15-23-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-424—Filed November 17, 2015, 3:45 p.m., effective November 17, 2015, 3:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100X and 220-47-41100R; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 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: An emergency rule is needed to close Puget Sound Salmon Management and Catch Reporting Area 8D for commercial fishing due to concerns over the Tulalip Hatchery not reaching egg-take goals for chum. 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: November 17, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-47-31100X Purse seine—Open periods.

Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes in Puget Sound Salmon Management and Catch Reporting Area 8D.

[NEW SECTION]

WAC 220-47-41100R Gillnet—Open periods.

Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes in Sound Salmon Management and Catch Reporting Area 8D.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

REPEALER

The following sections of the Washington Administrative Code are repealed effective 4:01 PM November 27, 2015:

WAC 220-47-31100X Purse seine—Open periods.

WAC 220-47-41100R Gillnet—Open periods.

**WSR 15-23-106
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-426—Filed November 18, 2015, 9:44 a.m., effective November 18, 2015, 9:44 a.m.]

Effective Date of Rule: Immediately upon filing.

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 220-32-05700M and 220-32-05700N; and amending WAC 220-32-057.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Corrects an error in emergency rule filing WSR 15-23-058 filed on November 12, 2015. Adopts additional seasons for a sturgeon set line commercial treaty fishery in The Dalles Pool (SMCRA 1G) and Bonneville Pool (SMCRA 1F). Allows only sturgeon to be sold, (including platform and hook and line consistent with items #1 and #2). Sturgeon remain available for harvest based on the current sturgeon guidelines. Conforms state rules to tribal rules. Consistent with compact action of November 12, 2015. 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 rules 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 allow[s] 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: November 18, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05700N Columbia River sturgeon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except that those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

(1) Open period #1: Immediately to 6:00 PM November 25, 2015.

Area: SMCRA 1G (The Dalles Pool)

(2) Open period #2: 6:00 AM November 27 to 6:00 PM December 31, 2015.

Area: SMCRA 1F (Bonneville Pool)

(3) Gear: Setlines. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.

(4) Allowable Sales: White Sturgeon from 43 to 54 inches in fork length in The Dalles Pool and White Sturgeon from 38 to 54 inches in fork length in Bonneville Pool may be sold. Sturgeon within the legal size limit and caught in platform and hook and line fishery may be sold if caught during the open period and open area of the set line fishery. Sales of fish landed during the open period are allowed after the period concludes.

(5) Sanctuaries: Standard sanctuaries applicable to these gear types.

(6) Additional Regulations: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240, **except** that landings must be reported within 24-hours of completing the fish ticket.

(7) Miscellaneous: It is unlawful to sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter

RCW 75.28, or to sell or barter sturgeon eggs at retail. It is unlawful to deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05700M Columbia River sturgeon seasons above Bonneville Dam. (15-421)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. December 31, 2015:

WAC 220-32-05700N Columbia River sturgeon seasons above Bonneville Dam.