

WSR 07-06-018
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 27, 2007, 11:14 a.m., effective February 27, 2007]

Effective Date of Rule: Immediately.

Purpose: The department is codifying new special terms and conditions in the new family planning/TAKE CHARGE waiver as set forth by the Centers for Medicare and Medicaid Services (CMS) for the state of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-750, 388-532-760, 388-532-780, and 388-532-790.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.800.

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

Reasons for this Finding: This emergency rule adoption is necessary while the permanent rule-making process is being completed because the current rules are out of compliance with special terms and conditions of the new family planning/TAKE CHARGE waiver set forth by the CMS for the state of Washington. The waiver was signed August 31, 2006, and is retroactive effective July 1, 2006. Immediate adoption of this emergency rule is required to prevent loss of 90% federal match funds for the family planning/TAKE CHARGE program.

This continues the emergency rule that is currently in effect under WSR 06-22-080 while the department completes the permanent rule-making process begun under WSR 06-22-093. The department anticipates the permanent rule proposal (CR-102) by March 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 15, Repealed 0.

Date Adopted: February 20, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-050 Reproductive health services—Definitions. The following definitions and those found in WAC 388-500-005, Medical definitions, apply to this chapter.

"Complication"—A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

"Comprehensive family planning preventive medicine visit" - For the purposes of this program, is a comprehensive, preventive, contraceptive visit which includes:

- An age and gender appropriate history and examination offered to female Medicaid clients at-risk for pregnancy;

- Education and counseling for risk reduction (ECRR) regarding the prevention of unintended pregnancy; and

- For family planning only and take charge clients, routine gonorrhea and chlamydia testing for women thirteen through twenty-five years of age only.

This preventive visit may only be billed once every twelve months, per client by a department-contracted TAKE CHARGE provider and only for female clients needing contraception.

"Contraception"—Preventing pregnancy through the use of contraceptives.

"Contraceptive"—A device, drug, product, method, or surgical intervention used to prevent pregnancy.

"Delayed pelvic protocol" - The practice of allowing a woman to postpone a pelvic exam during a contraceptive visit to facilitate initiation or continuation of a hormonal contraceptive method.

"Department"—The department of social and health services.

"Department-approved family planning provider"—A physician, advanced registered nurse practitioner (ARNP), or clinic that has:

- Agreed to the requirements of WAC 388-532-110;
- Signed a core provider agreement with the department;
- Assigned a unique family planning provider number by the department; and

(Signed a special agreement that allows the provider) Agreed to bill for family planning laboratory services provided to clients enrolled in a department-managed care plan through an independent laboratory certified through the Clinical Laboratory Improvements Act (CLIA).

"Family planning services"—Medically safe and effective medical care, educational services, and/or contraceptives that enable individuals to plan and space the number of children and avoid unintended pregnancies.

"Medical identification card"—The document the department uses to identify a client's eligibility for a medical program.

"Natural family planning"—Also known as fertility awareness method, means methods such as observing, recording, and interpreting the natural signs and symptoms associated with the menstrual cycle to identify the fertile days of the menstrual cycle and avoid unintended pregnancies.

"Over-the-counter (OTC)"—See WAC 388-530-1050 for definition.

"**Sexually transmitted disease infection (STD-I)**"—Is a disease or infection acquired as a result of sexual contact.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-100 Reproductive health services—Client eligibility. (1) The department covers limited reproductive health services for clients eligible for the following medical assistance programs:

- (a) Children's health insurance program (CHIP);
- (b) Categorically needy program (CNP);
- (c) General assistance unemployable (GAU);
- (d) Limited casualty program-medically needy program (LCP-MNP); and
- (e) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

(2) Clients enrolled in a department managed care plan may self-refer outside their plan for family planning services (excluding sterilizations for clients twenty-one years of age or older), abortions, and STD-I services to any of the following:

- (a) A department-approved family planning provider;
- (b) A department-contracted local health department/STD-I clinic; ~~((e))~~
- (c) A department-contracted provider for abortion services; or
- (d) A department-contracted pharmacy for:
 - (i) Over-the-counter contraceptive drugs and supplies;
 - (ii) Contraceptives and STD-I related prescriptions from a department-approved family planning provider or department-contracted local health department/STD-I clinic.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-110 Reproductive health services—Provider requirements. To be reimbursed by the department for reproductive health services provided to eligible clients, physicians, ARNPs, licensed midwives, and department-approved family planning providers must:

- (1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules;
- (2) Provide only those services that are within the scope of their licenses;
- (3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter (OTC) birth control drugs and supplies and related medical services;
- (4) Provide medical services related to FDA-approved prescription birth control methods and OTC birth control drugs and supplies upon request;
- (5) Supply or prescribe FDA-approved prescription birth control methods and OTC birth control drugs and supplies upon request; and
- (6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-120 Reproductive health—Covered services. In addition to those services listed in WAC 388-531-0100 Physician's related services, the department covers the following reproductive health services:

(1) **Services for women**

(a) ~~((Cervical, vaginal, and breast cancer screening examination once per year as medically necessary))~~ One of the following per client, per year as medically necessary:

(i) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year; or

(ii) A gynecological examination, billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination, when it is medically necessary.

(b) The comprehensive family planning preventive medicine visit must be:

(i) Provided by one or more of the following TAKE CHARGE trained providers:

(A) Physician or physician's assistant (PA);

(B) An advanced registered nurse practitioner (ARNP);

or

(C) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.

(ii) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.

~~((b))~~ (c) Food and Drug Administration (FDA) approved prescription contraception methods as identified in chapter 388-530 WAC, Pharmacy services.

~~((e))~~ (d) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

~~((d))~~ (e) Sterilization procedures that meet the requirements of WAC 388-531-1550, if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

~~((e))~~ (f) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

~~((f))~~ (g) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

~~((g))~~ (h) Mammograms for clients forty years of age and older, once per year;

~~((h))~~ (i) Colposcopy and related medically necessary follow-up services;

~~((i))~~ (j) Maternity-related services as described in chapter 388-533 WAC; and

~~((j))~~ (k) Abortion.

(2) **Services for men**

(a) Office visits where the primary focus and diagnosis is contraceptive management and/or there is a medical concern;

(b) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(c) Sterilization procedures that meet the requirements of WAC 388-531-1550(1), if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

(d) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

(e) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(f) Prostate cancer screenings for men (~~who are fifty years of age and older~~), once per year, when medically necessary.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-520 Family planning only program—Provider requirements. To be reimbursed by the department for services provided to clients eligible for the family planning only program, physicians, ARNPs, and/or department-approved family planning providers must:

(1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules;

(2) Provide only those services that are within the scope of their licenses;

(3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter (OTC) birth control drugs and supplies and related medical services;

(4) Provide medical services related to FDA-approved prescription birth control methods and ~~(over the counter)~~ OTC birth control drugs and supplies upon request;

(5) Supply or prescribe FDA-approved prescription birth control methods and ~~(over the counter)~~ OTC birth control drugs and supplies upon request; and

(6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-530 Family planning only program—Covered services. The department covers the following services under the family planning only program:

(1) One of the following, per client, per year as medically necessary:

(a) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year; or

(b) A gynecological examination (~~that~~), billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination, one per year when it is:

~~((a))~~ (i) Provided according to the current standard of care; and

~~((b))~~ (ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.

(2) The comprehensive family planning preventive medicine visit must be:

(a) Provided by one or more of the following TAKE CHARGE trained providers:

(i) Physician or physician's assistant (PA);

(ii) An advanced registered nurse practitioner (ARNP);
or

(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.

(b) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.

(3) An office visit directly related to a family planning problem, when medically necessary.

(4) Food and Drug Administration (FDA) approved prescription contraception methods meeting the requirements of chapter 388-530 WAC, Pharmacy services.

~~((3))~~ (5) Over-the-counter (OTC) contraceptive, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

~~((4))~~ (6) Sterilization procedure that meets the requirements of WAC 388-531-1550, if it is:

(a) Requested by the client; and

(b) Performed in an appropriate setting for the procedure.

~~((5))~~ (7) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory test and procedures only when the screening and treatment is:

(a) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age; or

(b) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

~~((b))~~ (c) Medically necessary for the client to safely, effectively, and successfully use, or to continue to use, her chosen contraceptive method.

~~((6))~~ (8) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-700 TAKE CHARGE program—Purpose. TAKE CHARGE is a (~~five-year~~) family planning demonstration and research program approved by the federal government under a Medicaid program waiver. The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred percent of the federal poverty level. (~~TAKE CHARGE is approved by the federal government under a Medicaid program waiver and runs from July 1, 2001, through June 30, 2006 (unless terminated or extended prior to June 30, 2006).~~) See WAC 388-532-710 for a definition of TAKE CHARGE.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-710 TAKE CHARGE program—Definitions. The following definitions and those found in WAC 388-500-0005 medical definitions and WAC 388-532-050 apply to the ~~((medical assistance administration's (MAA's))) department's~~ TAKE CHARGE program.

"Ancillary services"—Those family planning services provided to TAKE CHARGE clients by ~~((MAA's))~~ department-contracted providers who are not TAKE CHARGE providers. These services include, but are not limited to, family planning pharmacy services, family planning laboratory services and sterilization ~~((surgical))~~ services.

"Application assistance"—The process a TAKE CHARGE provider follows in helping a client to complete and submit an application to MAA for the TAKE CHARGE program.

"Education, counseling and risk reduction intervention" or "ECRR"—~~((A stand alone department designated service, specifically intended for clients at higher risk of contraceptive failure, that strengthen a client's decision making skills to make the best choice of contraceptive method and reduce the risk of unintended pregnancy. ECRR services must include:~~

~~(1) Helping the client critically evaluate which contraceptive method is most acceptable and can be used most effectively by her/him.~~

~~(2) Assessing and addressing other client personal considerations, risk factors (including sexually transmitted infections), and behaviors that impact her/his use of contraception.~~

~~(3) Facilitating a discussion of the male role in successful use of chosen contraceptive method, as appropriate.~~

~~(4) Facilitating contingency planning (the back-up method) regarding the chosen contraceptive method, including planning for emergency contraception.~~

~~(5) Scheduling a follow-up appointment as medically necessary for birth control evaluation for the safe, effective and successful use of the client's chosen contraceptive method and to reinforce positive contraceptive and other self protective behaviors.~~

~~(6) If no contraceptive method is chosen, discussing the likelihood of a pregnancy and helping the client assess his/her emotional, physical, and financial readiness for pregnancy and/or parenting)) Client-centered education and counseling services designed to strengthen decision making skills and support a client's safe, effective and successful use of his or her chosen contraceptive method. For women, ECRR is part of the annual preventive medicine visit. For men, ECRR is a stand alone service for those men seeking family planning services and whose partners are at moderate to high risk of unintended pregnancy.~~

~~((**"Intensive follow-up services" or "IFS"**—Those supplemental services specified in some TAKE CHARGE provider contracts that support clients in the successful use of contraceptive methods. Department-selected TAKE CHARGE providers perform IFS as part of the research component of the TAKE CHARGE program (see WAC 388-532-730 (1)(f)).))~~

"TAKE CHARGE"—The department's ~~((five-year))~~ demonstration and research program approved by the federal gov-

ernment under a Medicaid program waiver to provide family planning services.

"TAKE CHARGE provider"—A provider who is approved by the department to participate in TAKE CHARGE by:

(1) Being a department-approved family planning provider; and

(2) Having a supplemental TAKE CHARGE agreement to provide TAKE CHARGE family planning services to eligible clients under the terms of the federally approved Medicaid waiver for the TAKE CHARGE program.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC and provide proof of citizenship or qualified alien status, and identity;

(b) Be a resident of the state of Washington as described in WAC 388-468-0005;

(c) Have income at or below two hundred percent of the federal poverty level as described in WAC 388-478-0075;

(d) Need family planning services;

~~(e) Apply voluntarily for family planning services with a TAKE CHARGE provider; and~~

~~((e) Need family planning services but have:~~

~~(i) No family planning coverage through another medical assistance program; or~~

~~(ii) Family planning coverage that does not cover one hundred percent of the applicant's chosen birth control)) (f) Not currently covered through another medical assistance program for family planning or have any health insurance that covers family planning.~~

(2) A client who is currently pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the department determines eligibility or for the duration of the demonstration and research program, whichever is shorter, as long as the criteria in subsection (1) and (2) of this section continue to be met. Upon reapplication for TAKE CHARGE by the client, the department may renew the coverage for additional periods of up to one year each, or for the duration of the demonstration and research program, whichever is shorter.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-730 TAKE CHARGE program—Provider requirements. (1) A TAKE CHARGE provider must:

(a) Be a department-approved family planning provider as described in WAC 388-532-050;

(b) Sign the supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE demonstration and research program according to the department's TAKE CHARGE program guidelines;

(c) Participate in the department's specialized training for the TAKE CHARGE demonstration and research program prior to providing TAKE CHARGE services. Providers must ~~((assure))~~ document that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program;

(d) Comply with the required general department and TAKE CHARGE provider policies, procedures, and administrative practices as detailed in the department's billing instructions and provide referral information to clients regarding available and affordable nonfamily planning primary care services; ~~((and))~~

(e) If requested by the department, participate in the research and evaluation component of the TAKE CHARGE demonstration and research program. ~~((If selected by the department for the research and evaluation component, the provider must accept assignment to either:~~

~~(i) A randomly selected group of providers that give intensive follow-up service (IFS) to TAKE CHARGE clients under a TAKE CHARGE research component client services contract. See WAC 388-532-740(2) for a related limitation; or~~

~~(ii) A randomly selected control group of providers subject to a TAKE CHARGE research component client services contract.))~~

(f) Unless otherwise requested in writing by the client, forward the client's medical identification card and TAKE CHARGE brochure to the client within seven working days of receipt;

(g) Inform the client of their right to see any TAKE CHARGE provider within the state; and

(h) Refer the client to available and affordable non-family planning care services, as needed.

(2) Department providers (e.g., pharmacies, laboratories, surgeons performing sterilization procedures) who are not TAKE CHARGE providers may furnish family planning ~~((and take charge-lary))~~ ancillary TAKE CHARGE services, as defined in this chapter, to eligible clients. The department reimburses for these services under the rules and fee schedules applicable to the specific services provided under the department's other programs.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-740 TAKE CHARGE program—Covered services for women. (1) The department covers the following TAKE CHARGE services for ~~((men and))~~ women:

(a) One session of application assistance per client, per year;

(b) Food and Drug Administration (FDA) approved prescription and nonprescription contraceptives as provided in chapter 388-530 WAC;

(c) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter ~~((388-538))~~ 388-530 WAC, Pharmacy services);

~~((Gynecological examination that may include a cervical and vaginal cancer screening exam, one per year when it is:~~

~~(i) Provided according to the current standard of care; and~~

~~(ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.~~

~~(e) Education, counseling, and risk reduction (ECRR) intervention, specifically intended for clients at higher risk of contraceptive failure, that have identified or demonstrated risks of unintended pregnancy. MAA limits ECRR as follows:~~

~~(i) For women at risk of unintended pregnancy, limited to one ECRR service every ten months;~~

~~(ii) For men whose sexual partner is at risk of unintended pregnancy, limited to one ECRR service every twelve months;~~

~~(iii) Must be a minimum of thirty minutes in duration;~~

~~(iv) Must be appropriate and individualized to the client's needs, age, language, cultural background, risk behaviors, sexual orientation, and psychosocial history;~~

~~(v) Must be provided by one of the following TAKE CHARGE trained providers:~~

~~(A) An advanced registered nurse practitioner (ARNP);~~

~~(B) Registered nurse (RN), licensed practical nurse (LPN);~~

~~(C) Physician or physician's assistant (PA); or~~

~~(D) A trained and experienced health educator or medical assistant when used for assisting and augmenting the above listed clinicians.~~

~~(vi) Must be documented in the client's chart with detailed information that would allow for a well-informed follow-up visit;~~

~~(vii) A client who does not have identified or demonstrated risks of unintended pregnancy and who is not at increased risk of contraceptive failure is not eligible for ECRR.~~

(f)) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year.

(e) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

(i) Requested by the TAKE CHARGE client; and

(ii) Performed in an appropriate setting for the procedure.

~~((g))~~ (f) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is:

(i) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age; or

(ii) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

~~((h))~~ (iii) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

~~((h))~~ (g) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

~~(2) ((The department covers intensive follow-up services (IFS) for certain clients as part of the research component of the TAKE CHARGE demonstration and research program. Only those clients served by the department's randomly selected research sites receive IFS (see WAC 388-532-730 (1)(e)(i)). The specific elements of IFS are negotiated with each research site)) The comprehensive family planning preventive medicine visit must be:~~

~~(a) Provided by one or more of the following TAKE CHARGE trained providers:~~

~~(i) Physician or physician's assistant (PA);~~

~~(ii) An advanced registered nurse practitioner (ARNP);~~
or

~~(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.~~

~~(b) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.~~

~~(3) An office visit directly related to a family planning problem, when medically necessary.~~

NEW SECTION

WAC 388-532-745 TAKE CHARGE Program - Covered services for men. The department covers the following TAKE CHARGE services for men:

(1) One session of application assistance per client, per year;

(2) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter 388-530 WAC, Pharmacy Services);

(3) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

(a) Requested by the TAKE CHARGE client; and

(b) Performed in an appropriate setting for the procedure.

(4) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is related to, and medically necessary for, a sterilization procedure.

(5) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(6) One education and counseling session for risk reduction (ECRR) per client, every twelve months. ECRR must be:

(a) Provided by one or more of the following TAKE CHARGE trained providers:

(i) Physician or physician's assistant (PA);

(ii) An advanced registered nurse practitioner (ARNP);

or
(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians; and

(b) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-750 TAKE CHARGE program—Non-covered services. The department does not cover medical services under the TAKE CHARGE program (~~unless those services are~~):

(1) Abortions and other pregnancy-related services;

(2) Any other medical services, unless those services are:

(a) Performed in relation to a primary focus and diagnosis of family planning; and

~~((2))~~ (b) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-760 TAKE CHARGE program—Documentation requirements. In addition to the documentation requirements in WAC 388-502-0020, TAKE CHARGE providers must keep the following records:

(1) TAKE CHARGE (~~(preapplication worksheet)~~) application form(s) ((and application(s));

(2) Signed supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE program;

(3) Documentation of the department's specialized TAKE CHARGE training and/or in-house in-service TAKE CHARGE training for each individual responsible for providing TAKE CHARGE.

(4) Chart notes that reflect the primary focus and diagnosis of the visit was family planning;

(5) Contraceptive methods discussed with the client;

(6) Notes on any discussions of emergency contraception and needed prescription(s);

(7) The client's plan for the contraceptive method to be used, or the reason for no contraceptive method and plan;

(8) Documentation of the education, counseling and risk reduction (ECRR) service, if provided, (~~including all of the required components as defined in WAC 388-532-710~~) with sufficient detail that allows for follow-up;

(9) Documentation of referrals to or from other providers;

(10) A form signed by the client authorizing release of information for referral purposes, as necessary; (~~and~~)

(11) The client's written and signed consent requesting that his or her medical identification card be sent to the TAKE CHARGE provider's office to protect confidentiality;

(12) A copy of the client's picture identification;

(13) Documentation used to establish US citizenship or legal permanent resident; and

(14) If applicable, a copy of the completed DSHS sterilization consent form [DSHS 13-364 - available for download at <http://www.dshs.wa.gov/msa/forms/eforms.html>] (see WAC 388-531-1550).

Reviser's note: The brackets and enclosed material in the text of 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.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-780 TAKE CHARGE program—Reimbursement and payment limitations. (1) The department limits reimbursement under the TAKE CHARGE program to those services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; and

(b) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

(2) The department reimburses providers for covered TAKE CHARGE services according to the department's published TAKE CHARGE fee schedule.

(3)~~((3))~~ The department limits reimbursement for TAKE CHARGE ~~((intensive follow-up services (IFS) to those randomly selected research sites described in WAC 388-532-740(2). See WAC 388-532-730 (1)(e)(i) for related information))~~ research and evaluation activities to selected research sites.

(4) Federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health providers who choose to become TAKE CHARGE providers must bill the department for TAKE CHARGE services without regard to their special rates and fee schedules. The department does not reimburse FQHCs, RHCs or Indian health providers under the encounter rate structure for TAKE CHARGE services.

(5) The department requires TAKE CHARGE providers to meet the billing requirements of WAC 388-502-0150 (billing time limits). In addition, all final billings and billing adjustments related to the TAKE CHARGE program must be completed no later than ~~((June 30, 2008, or no later than))~~ two years after the demonstration and research program terminates ~~((, whichever occurs first))~~. The department will not accept new billings or billing adjustments that increase expenditures for the TAKE CHARGE program after the cut-off date ~~((in this subsection))~~.

(6) The department does not cover inpatient services under the TAKE CHARGE program. However, inpatient charges may be incurred as a result of complications arising directly from a covered TAKE CHARGE service. If this happens, providers of TAKE CHARGE related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for inpatient services for the department to consider payment under WAC 388-501-0165.

(7) The department requires a provider under WAC 388-501-0200 to seek timely reimbursement from a third party when a client has available third party resources. The exceptions to this requirement are described under WAC 388-501-0200 (2) and (3) and 388-532-790.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-790 TAKE CHARGE program—Good cause exemption from billing third party insurance. (1) TAKE CHARGE applicants who are ~~((either adolescents or~~

~~young adults))~~ eighteen years of age or younger and ((who)) depend on their parents' medical insurance, or individuals who are domestic violence victims who depend on their spouses insurance may request an exemption of available third party family planning coverage due to "good cause." Under the TAKE CHARGE program, "good cause" means that use of the third party coverage would violate his or her privacy because the third party:

(a) Routinely or randomly sends verification of services to the third party subscriber and that subscriber is other than the applicant; and/or

(b) Requires the applicant to use a primary care provider who is likely to report the applicant's request for family planning services to another party.

(2) If subsection (1)(a) or (1)(b) of this section applies, the applicant is considered for TAKE CHARGE without regard to the available third party family planning coverage.

WSR 07-07-019

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-32—Filed March 9, 2007, 2:29 p.m., effective March 9, 2007]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-0400A and 220-33-0400B; and amending WAC 220-33-040.

Statutory Authority for Adoption: RCW 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 smelt fishery regulations are consistent with Level 1 fisheries in the "Washington and Oregon Eulachon Management Plan["] for the Columbia River. Abundance and productivity indicators project a weak return of smelt for 2007. Modification of season is to allow attendance at the March 12 North of Falcon meeting as per industry request. There is insufficient time to promulgate 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 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 Mak-

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

Date Adopted: March 7, 2007.

J. P. Koenings
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-33-040, effective immediately through March 31, 2007, the Columbia River and Washington tributaries are closed to fishing for smelt except under the following provisions:

1) Area: Columbia River - SMCRA 1A, 1B, 1C, 1D, and 1E

Dates: Mondays and Thursdays, 7:00 a.m. to 4:00 p.m. daily, except open Sunday March 11 and closed Monday March 12, 2007, only.

Gear: Gillnets, dipnets and trawl nets.

Allowable sales: Smelt.

Other: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

Miscellaneous: Notwithstanding the provisions of WAC 220-20-010, during open salmon and/or sturgeon seasons, fishers can store onboard their boats, while fishing, smelt gill nets; and while smelt fishing, fishers can store onboard their boats, gill nets of a size that meets the commercial salmon/sturgeon mesh size, weight, and length restrictions for the open salmon/sturgeon season.

2) Area: Cowlitz River downstream of Peterson's Eddy

Dates: Sundays and Wednesdays, 6:00 p.m. to midnight daily

Gear: Dipnets.

Allowable sales: Smelt.

Other: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-04000A Smelt—Areas and seasons.
(06-307)

The following section of the Washington Administrative Code is repealed effective April 1, 2007:

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

**WSR 07-07-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-33—Filed March 9, 2007, 2:30 p.m., effective March 16, 2007, 12:01 a.m.]

Effective Date of Rule: March 16, 2007, 12:01 a.m.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 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: Only 2,100 adult spring chinook are expected to return to Wind River in 2007. An estimated 1,300 fish are needed to meet escapement goals leaving 800 for tribal and sport harvest. A full sport fishery will not meet escapement needs. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 8, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900R Wind River (Skamania Co.)

Notwithstanding the provisions of WAC 232-28-619, effective March 16 through June 30, 2007, it is unlawful to fish for salmonids in those waters of the Wind River except from boundary line/markers to 400 feet below Shipherd Falls. Daily limit of one hatchery salmon greater than 12 inches in length or one hatchery steelhead greater than 20 inches in length. Night closure and non-buoyant lure restrictions in effect. Only fish hooked inside the mouth may be retained.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2007:

WAC 232-28-61900R Wind River (Skamania Co.)

WSR 07-07-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-35—Filed March 9, 2007, 2:31 p.m., effective March 9, 2007,
6:00 p.m.]

Effective Date of Rule: March 9, 2007, 6:00 p.m.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Closes The Dalles Pool (1G) for commercial gillnet season, as the guideline for sturgeon harvest in that area has been reached. Platform and hook and line remain open for ceremonial and subsistence use only. Fisheries are consistent with the 2005-2007 interim management agreement and the biological opinion. Rule is consistent with action of the Columbia River compact on March 7, 2007. Confirms state rules with tribal rules.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally-ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2005-2007 interim management agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act 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 promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 8, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-32-05100H 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, shad, or 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 Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, or sturgeon under the following provisions:

1. Open Periods: 6:00 p.m. March 9 through 6:00 p.m. March 21, 2007.

2. Open Areas: SMCRA 1F and 1H.

3. Gear: No mesh restriction on gillnets. Hoop nets, dip bag nets, and rod and reel with hook and line.

4. Allowable sale: salmon, steelhead, walleye, shad, carp, and sturgeon. Sturgeon between 4 feet and 5 feet in length in The Dalles and John Day pools and between 45-60 inches in the Bonneville pool may be sold or retained for subsistence purposes.

5. Miscellaneous: Sale of platform or hook-and-line-caught fish is allowed during open commercial season if caught in the area open. Platform or hook-and-line-caught fish may be kept for subsistence purposes only and may not be sold in The Dalles pool (area 1G).

6. Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

7. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a. Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b. Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c. Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d. Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e. Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35."

f. Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g. Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h. Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

8. Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a. Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b. Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c. Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right

angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 9, 2007:

WAC 220-32-05100G Columbia River salmon seasons above Bonneville Dam. (07-11)

The following section of the Washington Administrative Code is repealed effective March 22, 2007:

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

WSR 07-07-022

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[07-37—Filed March 9, 2007, 2:32 p.m., effective March 11, 2007, 8:00 a.m.]

Effective Date of Rule: March 11, 2007, 8:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 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: California Assembly Bill 2773 (effective January 1, 2007) limits the geographic area where a California coastal Dungeness crab license is valid to the state and federal waters adjacent to the coast of California. Washington department of fish and wildlife agreed to adopt reciprocal regulations limiting the area that Washington coastal Dungeness crab licenses are valid to the state and federal waters adjacent to the coast of Washington. Similar reciprocal rules between Oregon and Washington were in place at the beginning of the 2005-2006 season. Special management area closures described according to agreed state-tribal management plans. Special management areas for tribal fishing are included as part of the crab management plan agreements. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 9, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-04600E Coastal crab season. Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. on March 11, 2007, until further notice, it is unlawful to commercially fish for Dungeness crab in the following areas:

(1) A Quinault special management area (QIN SSMA) will close to fishing for Dungeness crab effective at 8:00 am on March 1, 2007: The QIN SSMA includes the coastal waters shoreward of a line approximating the 25-fathom depth curve from Copalis River to Point Grenville as described by the following coordinates:

- Northeast Corner: 47°18.35 N Lat. - 124°16.00 W Lon.
- Northwest Corner: 47°18.35 N Lat. - 124.28.40 W. Lon.
- Southwest Corner: 47°08.00 N. Lat. - 124°23.50 W. Lon.
- Southeast Corner: 47°08.00 N. Lat. - 124°11.20 W. Lon.

(2) A Quinault special management area (QIN SSMA) will close to fishing for Dungeness crab effective at 8:00 am on March 1, 2007: The QIN SSMA includes the coastal waters shoreward of a line approximating the 30-fathom depth curve from Point Grenville to Split Rock as described by the following coordinates:

- Northeast corner: 47°24.50 N Lat. - 124°20.00 W Lon.
- Northwest corner: 47°24.50 N Lat. - 124°33.70 W Lon.
- Southwest corner: 47°18.35 N Lat. - 124°31.20 W Lon.
- Southeast corner: 47°18.35 N Lat. - 124°16.00 W Lon.

(3) It is unlawful for a vessel to use more than 100 pots in any area open to the state fishery, shoreward of 25-fathoms from Raft River to Copalis River, from March 1, 2007 through April 30, 2007. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Brandon Bryant at 360-664-0689;
- Email to Brandon Bryant at: bryanblb@dfw.wa.gov or
- Telephone call to: Brandon Bryant at 360-249-4628, ext. 229

(4) The Quileute special management area (SMA) is closed to fishing for Dungeness crab through 7:59 a.m. May 1, 2007. The Quileute SMA is described as the area from Cape Johnson to Destruction Island. The following points outline the SMA:

1. Cape Johnson: 47°58.00 N. Lat. - 124°40.40 W. Lon.
2. 47°58.00 N. Lat. - 124°49.00 W. Lon.
3. 47°54.293 N. Lat. - 124°47.089 W. Lon.
4. 47°54.293 N. Lat. - 124°48.817 W. Lon.
5. 47°40.50 N. Lat. - 124°44.218 W. Lon.
6. Destruction Island: 47°40.50 N. Lat. - 124°24.43 W. Lon.

(5) The Makah special management area (SMA) is closed to fishing for Dungeness crab through 7:59 a.m. on April 14, 2007. The Makah SMA is described as the coastal waters between 48°02.15 N to 48°20.00 N east of a line connecting those points approximating the 25-fathom depth line according to the following coordinates:

- Northeast corner; Tatoosh Island
- Northwest corner; 48°20.00 N Lat. - 124°50.45 W Lon.
- Southwest corner; 48°02.15 N Lat. - 124°50.45 W Lon.
- Southeast corner; 48°02.15 N Lat. - 124°41.00 W Lon.

(6) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15.00 N. Latitude), extending 200 nautical miles westward.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. on March 11, 2007:

WAC 220-52-04600D Coastal crab season. (07-30)

WSR 07-07-031

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 12, 2007, 12:39 p.m., effective March 12, 2007, 12:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing these rule amendments to comply with federal standards changes effective January 1, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0070 and 388-478-0080.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

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

Reasons for this Finding: Federal standards changed effective January 1, 2007, making the current rules obsolete and out of compliance with federal requirements.

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: March 8, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN). (1) Beginning January 1, ~~((2006))~~ 2007, the medically needy income level (MNIL) is:

(a) One person	\$ ((603)) <u>623</u>
(b) Two persons	\$ ((603)) <u>623</u>
(c) Three persons	\$667
(d) Four persons	\$742
(e) Five persons	\$858
(f) Six persons	\$975
(g) Seven persons	\$1,125
(h) Eight persons	\$1,242
(i) Nine persons	\$1,358
(j) Ten persons and more	\$1,483

(2) The MNIL standard for a person who meets institutional status requirements is in WAC 388-513-1305(3).

(3) Countable resource standards for the MN program is:

(a) One person	\$2,000
(b) Two persons	\$3,000
(c) For each additional family member add	\$50

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards. (1) The SSI payment standards, also known as the federal benefit rate (FBR), beginning January 1, ~~((2006))~~ 2007 are:

(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)

Individual	\$ ((603)) <u>623</u>
Individual with an ineligible spouse	\$ ((603)) <u>623</u>
Couple	\$ ((904)) <u>934</u>

(b) Shared living (in the home of another)

Individual	\$ ((402)) <u>416</u>
Individual with an ineligible spouse	\$ ((402)) <u>416</u>
Couple	\$ ((603)) <u>623</u>

(c) Living in an institution

Individual	\$30
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(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) The SSI-related CNIL standards are:

(a) Single person	\$ ((603)) <u>623</u>
(b) Married couple - both eligible	\$ ((904)) <u>934</u>
(c) Supplied shelter - single person	\$ ((402)) <u>416</u>
(d) Supplied shelter couple - both eligible	\$ ((603)) <u>623</u>

(4) The countable resource standards for SSI and SSI-related CN medical programs are:

(a) One person	\$2,000
(b) A legally married couple	\$3,000

**WSR 07-07-037
EMERGENCY RULES
HOME CARE
QUALITY AUTHORITY**

[Filed March 12, 2007, 2:15 p.m., effective March 12, 2007, 2:15 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amending WAC 257-05-160 Who is required to complete safety training and when must it be completed? and 257-05-240 Will DSHS deny payment of an individual provider who does not complete safety training?

- To remove the safety training requirement for individual providers working for a consumer prior to December 1, 2004.

The home care quality authority (HCQA) is also in the process of making this rule permanent and has filed a CR-102 for that purpose.

Citation of Existing Rules Affected by this Order: Amending WAC 257-05-160 and 257-05-240.

Statutory Authority for Adoption: RCW 74.39A.280(3).

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 current WAC would require individual providers already caring for consumers of in-home care services prior to December 1, 2004, to complete safety training conducted by and through the HCQA. Without the emergency rule, if this WAC were to be applied on or after January 1, 2007, to all the workers in this category who have not completed the training, DSHS must deny payment to these workers who continue to care for consumers of in-home care services. Without payment, care providers might not provide continued care, which could jeopardize the health and safety of those consumers.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, 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: March 21 [12], 2006 [2007].

Rick Hall
Executive Director

AMENDATORY SECTION (Amending WSR 05-01-158, filed 12/20/04, effective 1/20/05)

WAC 257-05-160 Who is required to complete safety training and when must it be completed? (1) Individual providers must complete safety training no later than one hundred twenty calendar days after beginning to work with their first DSHS consumer. Safety training must be provided by appropriate HCQA staff or contracted entities, or by approved trainers who meet DSHS requirements outlined in WAC 388-71-05875.

~~(2) ((Individual providers who are already working for a consumer as of December 1, 2004, have two calendar years to complete safety training-~~

~~(3)))~~ Individual providers who are not required to complete basic core training, such as revised fundamentals of caregiving, identified in WAC 388-71-0500 through 388-71-05952 may complete safety training via distance learning. Alternate methods to complete safety training will be provided that could include innovative learning strategies such as:

- (a) CD, video, DVD, or other electronic method.
- (b) Internet-based or other computerized method.

(c) Workbook of printed subject matter.

AMENDATORY SECTION (Amending WSR 05-01-158, filed 12/20/04, effective 1/20/05)

WAC 257-05-240 Will DSHS deny payment of an individual provider who does not complete safety training? HCQA will notify DSHS of an individual provider's noncompliance. DSHS will deny payment of an individual provider who does not return the attestation form and complete safety training within one hundred twenty calendar days after beginning to work with their first DSHS consumer.

~~((DSHS will deny payment of an individual provider who is already caring for a consumer as of December 1, 2004, and who does not complete the safety training by December 31, 2006.))~~

WSR 07-07-057

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 07-36—Filed March 14, 2007, 1:34 p.m., effective March 16, 2007, 12:01 p.m.]

Effective Date of Rule: March 16, 2007, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

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

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

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

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

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

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

Date Adopted: March 12, 2007.

J. P. Koenings
Director

NEW SECTION

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

1. Effective 12:01 p.m. March 16, 2007 through 11:59 p.m. March 18, 2007, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

2. Effective 12:01 p.m. March 16, 2007 through 11:59 p.m. March 16, 2007, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Copalis River and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

3. Effective 12:01 p.m. March 17, 2007 through 11:59 p.m. March 17, 2007, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County), and that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

4. Effective 12:01 p.m. March 17, 2007 through 11:59 p.m. March 18, 2007, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 19, 2007:

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

WSR 07-07-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-39—Filed March 14, 2007, 1:34 p.m., effective April 1, 2007]

Effective Date of Rule: April 1, 2007.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-69-240.

Statutory Authority for Adoption: RCW 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: This rule is necessary to comply with the provisions of Amendment 14 to the federal groundfish fishery management plan. There is insufficient time to promulgate 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: March 13, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-69-24000I Duties of commercial fishers. Notwithstanding the provisions of WAC 220-69-240, effective April 1, 2007, until further notice, it is unlawful for commercial purchasers and receivers to accept sablefish landed under the authority of a federal sablefish endorsed limited entry permit unless the federal permit number is recorded on the fish ticket in the space reserved for dealer's use. A separate fish ticket is required for sablefish landed under each permit, if multiple permits were used in the landing.

WSR 07-07-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-40—Filed March 14, 2007, 1:35 p.m., effective March 17, 2007, 12:01 a.m.]

Effective Date of Rule: March 17, 2007, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900N.

Statutory Authority for Adoption: RCW 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 cumulative wild steelhead impacts (incidental hooking mortality) allowed under WDFW's NOAA ESA permit, which allows this fishery, is anticipated to be reached by this date. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 13, 2007.

J. P. Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 17, 2007:

WAC 232-28-61900N Exceptions to statewide rules—Columbia River. (07-23)

WSR 07-07-060 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-41—Filed March 14, 2007, 1:35 p.m., effective March 15, 2007, 7:00 p.m.]

Effective Date of Rule: March 15, 2007, 7:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 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: This closure complies with state/treaty management agreements for harvest allocation

and to reduce fishing mortality in areas that do not meet the hardshell criteria. Gear retrieval period is to allow for inclement weather conditions. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 14, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-04600F Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

1) Effective 7:00 p.m. on March 15, 2007, until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Marine Fish Shellfish Catch Reporting Areas 26AW, 25B, 25D, 23C and 29 (Crab Management Regions 2 West and 3-3). Fishers may continue to remove their gear from the grounds until 7:00 p.m. on March 18, 2007. No crab may be landed from or possessed from these areas after 7:00 p.m. on March 15, 2007.

2) Effective 7:00 p.m. on March 31, 2007, until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Marine Fish Shellfish Catch Reporting Areas 23A, 23B, 25A, 25E, 23D (Crab Management Regions 3-1 and 3-2).

3) Effective immediately until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, and 26A-East (Crab Management Regions 1 and 2 East).

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. on March 15, 2007:

WAC 220-52-04600C Crab fishery—Seasons and areas. (07-26)

WSR 07-07-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-43—Filed March 16, 2007, 2:20 p.m., effective March 17, 2007, 12:01 a.m.]

Effective Date of Rule: March 17, 2007, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-230; and amending WAC 220-56-230 and 220-56-235.

Statutory Authority for Adoption: RCW 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: Depth restrictions adopted in 2006 were effective in avoiding early canary and yelloweye rockfish harvest guideline attainment. Based on the success of last year's management measures, the Pacific Council adopted the same management measures for 2007 that were in place for 2006. Lingcod abundance determined by the most recent stock assessment supports a reduction in the minimum size for recreational lingcod from twenty-four inches to twenty-two inches. There is insufficient time to promulgate 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 1.

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

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

Date Adopted: March 16, 2007.

J. P. Koenings
 Director

NEW SECTION

WAC 220-56-23000F Bottomfish closed areas. Notwithstanding the provisions of WAC 220-56-230, WAC 220-56-235 and WAC 220-56-250, effective 12:01 a.m. March 17 through June 15, 2007, in Marine Catch Area 2, it is unlawful to fish for or possess bottomfish, except sablefish and Pacific Cod for personal use seaward of a line approximating the 30-fathom depth contour, as defined by the following coordinates.

- 47°31.70'N lat. 124°37.03'W long.;
- 47°25.67'N lat. 124°34.79'W long.;
- 47°12.82'N lat. 124°29.12'W long.;
- 46°52.94'N lat. 124°22.58'W long.;
- 46°44.18'N lat. 124°18.00'W long.;
- 46°38.17'N lat. 124°15.88'W long.

NEW SECTION

WAC 220-56-23500V Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-56-235, effective March 17, 2007, until further notice, the minimum size for lingcod in Marine Catch Areas 1 through 3 is 22 inches in length.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 16, 2007:

WAC 220-56-23000F Bottomfish closed areas.

WSR 07-07-111
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-42—Filed March 20, 2007, 10:18 a.m., effective April 21, 2007]

Effective Date of Rule: April 21, 2007.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 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: This emergency rule is necessary to open waters of Long Lake during Fishing Kids Event. This event is usually conducted at Long's Pond. However, construction near the pond requires using a substitute site. Long Lake is an "Opening Day" lake, and does not open to the general public until April 28, 2007. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 16, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Long Lake (Thurston Co.) Notwithstanding the provisions of WAC 232-28-619, it is unlawful to fish in those waters of Long Lake, except open to fishing 8:00 a.m. through 7:00 p.m. April 21, 2007, to juvenile anglers participating in the Fishing Kids Event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. April 21, 2007:

WAC 232-28-61900S	Exceptions to statewide rules—Long Lake (Thurston Co.)
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**WSR 07-07-123
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-44—Filed March 20, 2007, 4:07 p.m., effective March 20, 2007]

Effective Date of Rule: Immediately.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement for Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *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 second winter salmon directed fishing period. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of March 19, 2007, and conforms Washington and Oregon state rules. 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, 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 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 20, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000E Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except during the times and conditions listed:

1. Area: SMCRA 1A, 1B, 1C, and 1D upstream to Kelley Point.

a) Season: 8:00 p.m. Tuesday March 20 to 6:00 a.m. Wednesday March 21, 2007 (10 hours).

b) Gear: Drift gill nets only, 4 1/4-inch maximum mesh. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Monofilament gill nets are not allowed for the 4 1/4-inch mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

Net length not to exceed 150 fathoms, except under the following conditions: An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4-inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A drop-per-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers may extend to a maximum length of 175 fathoms. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two

red corks at each end of the net, as well as the red corks under miscellaneous regulations.

i. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), it shall be lawful to have onboard a commercial fishing vessel more than one licensed net in excess of the lawful size or length prescribed for a single net as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.

ii. Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c) Allowable Sale: Adipose fin-clipped salmon, white sturgeon, and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. Green sturgeon retention is prohibited.

d) Sanctuaries: Grays River, Elokomin-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-

e) Miscellaneous Regulations:

i. At least one fisher on each boat must have tangle net certification.

ii. Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes.

iii. Red corks are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

iv. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

v. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

vi. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

vii. All fish placed in recovery boxes must be released to the river prior to landing or docking.

viii. Quick reporting is required for Washington wholesale dealers, WAC 220-69-240.

ix. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

x. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and who obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

xi. Nothing in this section sets any precedent for any fishery after the 2007 spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If the department authorizes a tangle net fishery in any other time, WDFW may establish qualifications and requirements that are different from those established for 2007. In particular, the department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

2. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, and downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge.

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to a north-south line defined by a marker on the eastern end of Minaker Island, to markers on Karlson Island and the Oregon shore.

b) Dates:

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 19 until June 15, 2007.

After March 12, both Blind Slough and Knappa Slough are open.

During May 3 through June 15, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, and shad. A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

3. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 19 through June 15, 2007.

c) Gear: 8-inch maximum mesh. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms, and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

a) Allowable sale: salmon, white sturgeon, and shad. A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

b) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000D Columbia River seasons below Bonneville. (07-31)

The following section of the Washington Administrative Code is repealed effective June 16, 2007:

WAC 220-33-01000E Columbia River seasons below Bonneville.