

WSR 13-14-006
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed June 20, 2013, 9:17 a.m., effective June 23, 2013]

Effective Date of Rule: June 23, 2013.

Purpose: The department is amending and clarifying rules to revise the assessment process for allocating personal care hours as a result of the Washington state supreme court decision in *Samantha A. v. Department of Social and Health Services*. The department is in the process of adopting these rules as permanent rules.

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

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The department is proceeding with the permanent rule process. The department filed a CR-101 as WSR 12-20-076 on October 3, 2012, and is currently working on filing the CR-102. This fourth emergency is being requested so that the rule implementation coincides with the necessary enhancements to the department's assessment instrument (CARE). This will ensure that the rules match the technical changes to CARE. Additional time is needed to provide department field staff with training and support, so they are prepared when the enhancements to our electronic systems are implemented. The department has taken the following action over the last twelve months including but not limited to: Hiring a child development expert from Oregon to review our ages in WAC 388-106-0130; review of the expert's opinion; coordination of necessary enhancements to the department's assessment instrument with technical staff.

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: June 19, 2013.

Katherine I. Vasquez
Rules Coordinator

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

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

(a) Understood: You express ideas clearly;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

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

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

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

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

(a) Partially met due to availability of other support; or
(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

- ~~((a))~~ (i) Less than one-fourth of the time;
- ~~((b))~~ (ii) One-fourth to one-half of the time;
- ~~((c))~~ (iii) Over one-half of the time to three-fourths of the time; or
- ~~((d))~~ (iv) Over three-fourths but not all of the time.

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

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

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

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

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

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

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

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

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

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

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

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

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

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

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

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

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

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

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

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

"Designee" means area agency on aging.

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

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

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disability" is described under WAC 388-511-1105.

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

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

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

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

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

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

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

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

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

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

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

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

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

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

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

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

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

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

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

- (a) The design, delivery and evaluation of services and supports;
- (b) Exercising control of decisions and resources, making their own decisions about health and well being;
- (c) Determining how to meet their own needs;
- (d) Determining how and by whom these needs should be met; and
- (e) Monitoring the quality of services received.

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

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

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

- (a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;
- (b) In a building that you own;
- (c) In a relative's established residence; or
- (d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

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

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instru-

mental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 388-500-0005.

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

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

- (a) Having a signed department contract to provide long-term care client services; and
- (b) Qualified and eligible to receive department payment.

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

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

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

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

- (a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;
- (b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;
- (c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;
- (d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

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

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

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

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

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

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

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

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

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

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

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

"Shared benefit" means:

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

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

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

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

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

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

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

(d) Shared benefit, which means:

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

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

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

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

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

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

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

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

(c) One-person physical assist provided;

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

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

"You/your" means the client.

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

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

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

(a) The CARE tool determines the ~~((adjustment for))~~ status of informal supports ~~((by determining))~~, shared benefit, and age appropriate functioning; determines the amount of assistance available ~~((to meet your needs;))~~; assigns ~~((it))~~ a numeric ~~((percentage;))~~ value to those assessed indicators; and ~~((reduces))~~ adjusts the base hours assigned to the classification group by the numeric ~~((percentage))~~ value. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

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

		<u>Partially met or Shared benefit</u>	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
			>3/4 time	.05
IADLs	Self Performance	Status	Assistance Available	Value ((Percent-age))
Travel to medical	<u>The rules to the right apply for all Self Performance codes ((apply)) except independent which is not counted((-)) as a qualifying IADL</u>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
>3/4 time	.3			
Key: > means greater than < means less than				

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

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

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

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

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

~~(4)) Effective July 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in ((subsections (2) and (3))) subsection (2), the department may add on hours based on ((your living environment)) offsite laundry, living more than forty-five minutes from essential services, and wood supply:~~

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. <u>The status used for the rules to the right is for housekeeping.</u>	((N/A)) <u>Unmet</u>	N/A	8
	<u>Met</u>	<u>N/A</u>	<u>0</u>
	<u>Declines</u>	<u>N/A</u>	<u>0</u>
	<u>Age appropriate</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit:</u>	<1/4 time	<u>8</u>
		<u>between 1/4 to 1/2 time</u>	<u>6</u>

Condition	Status	Assistance Available	Add On Hours	
		between 1/2 to 3/4 time	4	
		>3/4 time	2	
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). <u>The status used for the rules to the right is essential shopping.</u>	Unmet	N/A	5	
	Met	N/A	0	
	<u>Declines</u>	<u>N/A</u>	<u>0</u>	
	<u>Age appropriate</u>	<u>N/A</u>	<u>0</u>	
	<u>Partially met or Shared benefit</u>		<1/4 time	5
			between 1/4 to 1/2 time	4
between 1/2 to 3/4 time			(2) 3	
>3/4 time			2	
Wood supply used as sole source of heat.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	<u>Age appropriate</u>	<u>N/A</u>	<u>0</u>	
	<u>Partially met or Shared benefit</u>		<1/4 time	8
			between 1/4 to 1/2 time	6
			between 1/2 to 3/4 time	4
			>3/4 time	2

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

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

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

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

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

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000

(i.e. one hour from the available hours for each hour of PDN authorized).

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

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

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

(b) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (d), unless the circumstances in subpart (c) below apply.

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

(d)

<u>Developmental Milestones for Activities of Daily Living (ADLS)</u>		
<u>ADL</u>	<u>Self-Performance</u>	<u>Developmental Age Range</u>
<u>Medication Management</u>	<u>Independent</u> <u>Self-Directed</u> <u>Assistance Required</u> <u>Must Be Administered</u>	<u>Birth through the 17th year</u>
<u>Locomotion in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Locomotion Outside Room</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 5th year</u>
	<u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Walk in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Bed Mobility</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 2nd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Transfers</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 2nd year</u>
<u>Toilet Use</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 3rd year</u>
<u>Eating</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 2nd year</u>
<u>Bathing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Physical help/Transfer only</u> <u>Physical help/part of bathing</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>
<u>Dressing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>

Developmental Milestones for Activities of Daily Living (ADLS)		
ADL	Self-Performance	Developmental Age Range
	Limited	Birth through the 7th year
	Extensive	
	Total	Birth through the 4th year
Personal Hygiene	Independent	Birth through the 11th year
	Supervision	
	Limited or extensive	Birth through the 7th year
	Total	Birth through the 4th year

(e) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "age appropriate" as indicated by the developmental milestones table for IADLs below in subpart (g).

(f) If the department determines during your assessment that frequently and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department may code status as other than "age appropriate" for an IADL.

(g)

Developmental Milestones for Instrumental Activities of Daily Living		
IADL	Self Performance	Developmental Age Range
Telephone	Independent	Birth through the 17th year
Transportation	Supervision	
Essential Shopping	Limited	
Wood Supply	Extensive	
Housework	Total	
Finances		
Meal Preparation		

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

(i)

Additional Developmental Milestones coding		
CARE panel	Selection	Developmental Age Range
Speech/Hearing: Comprehension	By others client is = Age Appropriate	Birth through the 2nd year
Psych Social: MMSE	Can MMSE be administered? = No	Birth through the 17th year
Psych Social: Memory/Short Term	Recent memory = Age appropriate	Birth through the 11th year
Psych Social: Memory/Long Term	Long Term memory = Age appropriate	Birth through the 11th year
Psych Social: Depression	Interview = unable to obtain	Birth through the 11th year
Psych Social: Decision Making	Rate how client makes decision = Age appropriate	Birth through the 11th year
Bladder/Bowel:	Bladder/Bowel Control: Continent Usually Continent Occasionally Incontinent Frequently Incontinent	Birth through the 11th year

Additional Developmental Milestones coding		
CARE panel	Selection	Developmental Age Range
Bladder/Bowel:	Bladder/Bowel Control: Incontinent all or most of the time	Birth through the 5th year
Bladder/Bowel:	Appliance and programs = Potty Training	Birth through the 3rd year

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded age appropriate as determined under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide support to them.

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

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

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

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

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

Reasons for this Finding: In order to comply with the 2014-2015 biennial budget, the 17-level payments for adult family homes must be adjusted. The adjusted rates will ensure adequate care for medicaid clients residing in adult family homes.

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

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

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

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

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

Date Adopted: July 3, 2013.

Katherine I. Vasquez
Rules Coordinator

WSR 13-15-002

**EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed July 3, 2013, 2:22 p.m., effective July 3, 2013, 2:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To adjust the rate table in WAC 388-105-0005 in accordance with the 2014-2015 biennial budget (3ESSB 5034).

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

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

AMENDATORY SECTION (Amending WSR 13-03-093, filed 1/15/13, effective 2/15/13)

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

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$65.58	\$71.00	\$46.51	\$46.51	\$((47.45)) <u>47.59</u>
A Med	\$70.97	\$76.39	\$52.71	\$52.71	\$((53.70)) <u>53.84</u>
A High	\$79.58	\$85.00	\$57.85	\$57.85	\$((59.96)) <u>60.10</u>
B Low	\$65.58	\$71.00	\$46.51	\$46.51	\$((47.68)) <u>47.82</u>
B Med	\$73.13	\$78.55	\$58.92	\$58.92	\$((60.25)) <u>60.39</u>
B Med-High	\$82.76	\$88.18	\$62.62	\$62.62	\$((64.48)) <u>64.62</u>
B High	\$87.10	\$92.52	\$71.52	\$71.52	\$((73.57)) <u>73.71</u>
C Low	\$70.97	\$76.39	\$52.71	\$52.71	\$((53.70)) <u>53.84</u>
C Med	\$79.58	\$85.00	\$66.05	\$66.05	\$((68.28)) <u>68.42</u>
C Med-High	\$98.96	\$104.38	\$87.89	\$87.89	\$((89.12)) <u>89.26</u>
C High	\$99.94	\$105.36	\$88.73	\$88.73	\$((90.35)) <u>90.49</u>
D Low	\$73.13	\$78.55	\$71.09	\$71.09	\$((69.58)) <u>69.72</u>
D Med	\$81.20	\$86.62	\$82.29	\$82.29	\$((84.93)) <u>85.07</u>
D Med-High	\$104.87	\$110.29	\$104.52	\$104.52	\$((101.98)) <u>102.12</u>
D High	\$112.97	\$118.39	\$112.97	\$112.97	\$((115.96)) <u>116.10</u>
E Med	\$136.43	\$141.85	\$136.43	\$136.43	\$((139.90)) <u>140.04</u>
E High	\$159.89	\$165.31	\$159.89	\$159.89	\$((163.85)) <u>163.99</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$60.19	\$65.11	\$46.51	\$46.51	\$((47.45)) <u>47.59</u>
A Med	\$63.43	\$68.35	\$50.64	\$50.64	\$((51.61)) <u>51.75</u>
A High	\$77.43	\$82.35	\$55.18	\$55.18	\$((56.82)) <u>56.96</u>
B Low	\$60.19	\$65.11	\$46.51	\$46.51	\$((47.68)) <u>47.82</u>
B Med	\$68.80	\$73.72	\$55.82	\$55.82	\$((57.10)) <u>57.24</u>
B Med-High	\$77.88	\$82.80	\$59.33	\$59.33	\$((61.16)) <u>61.30</u>
B High	\$84.95	\$89.87	\$69.51	\$69.51	\$((71.52)) <u>71.66</u>
C Low	\$63.43	\$68.35	\$50.85	\$50.85	\$((51.99)) <u>52.13</u>
C Med	\$77.43	\$82.35	\$65.21	\$65.21	\$((66.64)) <u>66.78</u>
C Med-High	\$95.71	\$100.63	\$81.69	\$81.69	\$((82.88)) <u>83.02</u>
C High	\$96.67	\$101.59	\$86.87	\$86.87	\$((87.87)) <u>88.01</u>
D Low	\$68.80	\$73.72	\$70.12	\$70.12	\$((68.07)) <u>68.21</u>
D Med	\$79.00	\$83.92	\$80.65	\$80.65	\$((82.67)) <u>82.81</u>
D Med-High	\$101.44	\$106.36	\$101.95	\$101.95	\$((98.90)) <u>99.04</u>
D High	\$109.88	\$114.80	\$109.88	\$109.88	\$((112.22)) <u>112.36</u>
E Med	\$132.21	\$137.13	\$132.21	\$132.21	\$((135.01)) <u>135.15</u>
E High	\$154.54	\$159.46	\$154.54	\$154.54	\$((157.80)) <u>157.94</u>

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

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$59.13	\$64.37	\$46.51	\$46.51	\$((47.45)) <u>47.59</u>
A Med	\$63.43	\$68.67	\$49.62	\$49.62	\$((50.58)) <u>50.72</u>
A High	\$77.43	\$82.67	\$54.30	\$54.30	\$((55.79)) <u>55.93</u>
B Low	\$59.13	\$64.37	\$46.51	\$46.51	\$((47.68)) <u>47.82</u>
B Med	\$68.80	\$74.04	\$54.79	\$54.79	\$((56.06)) <u>56.20</u>
B Med-High	\$77.88	\$83.12	\$58.22	\$58.22	\$((59.98)) <u>60.12</u>
B High	\$84.95	\$90.19	\$65.77	\$65.77	\$((67.70)) <u>67.84</u>
C Low	\$63.43	\$68.67	\$49.62	\$49.62	\$((50.58)) <u>50.72</u>
C Med	\$77.43	\$82.67	\$61.66	\$61.66	\$((64.13)) <u>64.27</u>
C Med-High	\$95.71	\$100.95	\$78.58	\$78.58	\$((79.76)) <u>79.90</u>
C High	\$96.67	\$101.91	\$82.13	\$82.13	\$((83.16)) <u>83.30</u>
D Low	\$68.80	\$74.04	\$66.30	\$66.30	\$((64.43)) <u>64.57</u>
D Med	\$79.00	\$84.24	\$76.26	\$76.26	\$((78.23)) <u>78.37</u>
D Med-High	\$101.44	\$106.68	\$96.38	\$96.38	\$((93.58)) <u>93.72</u>
D High	\$103.88	\$109.12	\$103.88	\$103.88	\$((106.16)) <u>106.30</u>
E Med	\$124.99	\$130.23	\$124.99	\$124.99	\$((127.70)) <u>127.84</u>
E High	\$146.10	\$151.34	\$146.10	\$146.10	\$((149.25)) <u>149.39</u>

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

WSR 13-15-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-141—Filed July 3, 2013, 4:13 p.m., effective July 6, 2013, 6:00 a.m.]

Effective Date of Rule: July 6, 2013, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets an additional fishing period for treaty Indian commercial gillnet fishing in the mainstem Columbia River for salmon and steelhead. Sales of fish caught from platform/hook and line in Zone 6 and immediately downstream of Bonneville Dam remain open and Sunday and Monday closure is rescinded. Sales of fish caught from Yakama Nation tributary fisheries continue to be allowed. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on June 26 and July 3, 2013. Conforms state rules with tribal rules. There is insufficient time to adopt permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May

5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 3, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in the Wind River, Klickitat River, Yakima River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: 6:00 a.m. Monday, July 8, through 6:00 p.m. Thursday July 11, 2013.
 - b. Gear: Gillnets. 7-inch minimum mesh restriction.
 - c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sales of fish caught during open gillnet periods are allowed after the

period concludes, as long as the fish were landed during the open period.

d. Sanctuaries: All sanctuaries for this gear type in effect, except Spring Creek.

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: Open through July 31, 2013.

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

c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only.

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

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

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Open through July 31, 2013.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property. Sales of fish caught during open gillnet periods are allowed after the period concludes, as long as the fish were landed during the open period.

4. Columbia River Tributaries upstream of Bonneville Dam:

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

b. Area: Drano Lake, Wind River, Klickitat River, and Yakima River.

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

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sales are allowed only when lawfully enacted by Yakama Nation regulations.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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 a.m. July 6, 2013:

WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam. (13-137)

WSR 13-15-004

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-143—Filed July 3, 2013, 4:16 p.m., effective July 6, 2013, 12:01 a.m.]

Effective Date of Rule: July 6, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Returns of spring/summer chinook to the hatchery are well below egg-take needs. Adult chinook are staging in the river near the hatchery and will likely enter the hatchery trap as stream flows change. This closure is needed to protect these chinook until broodstock needs are achieved. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 3, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Sol Duc River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. July 6, 2013, until further notice, it is unlawful to fish in those waters of the Sol Duc River from the Sol Duc Hatchery outfall creek upstream to the concrete pump station.

**WSR 13-15-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-145—Filed July 11, 2013, 10:41 a.m., effective July 13, 2013, 12:01 a.m.]

Effective Date of Rule: July 13, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Yakama Nation and the Washington department of fish and wildlife (WDFW) are continuing the reintroduction of anadromous (sea-going) sockeye salmon in the upper Cle Elum basin. Eliminating the sixteen kokanee daily limit and implementing the statewide daily limit of five fish for trout, including kokanee, is necessary to further protect juvenile sockeye needed for this reintroduction effort. This is expected to reduce harvest of juvenile sockeye and increase harvest of other trout, including nonnative lake trout (mackinaw), eastern brook trout, and brown trout.

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: July 11, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir). Notwithstanding the provisions of WAC 232-28-619:

(1) Effective July 13, 2013, until further notice, in waters of Cooper Lake, minimum size for kokanee is 7 inches in length, and maximum size is 14 inches in length.

(2) Effective July 13, 2013, until further notice, in waters of Cle Elum Lake, minimum size for kokanee is 7 inches in length, and maximum size is 14 inches in length. The trout daily limit is 5 fish, including kokanee.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 13, 2013:

WAC 232-28-61900X Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir). (13-140)

**WSR 13-15-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-149—Filed July 11, 2013, 2:57 p.m., effective July 13, 2013, 12:01 a.m.]

Effective Date of Rule: July 13, 2013, 12:01 a.m.

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

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

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

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

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

Reasons for this Finding: Reopens the 2013 sockeye recreational salmon season in the Columbia River in the area from Astoria-Megler Bridge upstream to Bonneville Dam. Based on the in-season run-size projection, sockeye remain available for harvest. Regulation is consistent with guidance from Washington fish and wildlife commission and director, and compact/joint state action of July 10, 2013. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. Carson National Fish Hatchery is expected to meet its escapement goal of one thousand five hundred fish. Surplus hatchery origin fish are available for harvest in the Wind River.

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

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

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

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

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

Date Adopted: July 11, 2013.

Lori Pruess
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900B Freshwater exceptions to state-wide rules. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. July 13, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River from the Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(a) Effective immediately through July 31, it is permissible to retain sockeye.

2. Columbia River from a line projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) to the Oregon/Washington border:

(a) From the Rocky Point/Tongue Point line upstream to Bonneville Dam: Effective immediately through July 31, it is permissible to retain sockeye.

3. Kalama River from boundary markers at the mouth to 1,000 feet below the fishway at upper salmon hatchery:

(a) Effective immediately through July 31, release all Chinook.

(b) Until further notice, the stationary gear restriction is rescinded.

4. Lewis River (Clark/Cowlitz County) from mouth to mouth of East Fork:

(a) Effective immediately through July 31, the salmon daily limit is 6 hatchery Chinook, of which no more than 2 may be adults. Release all salmon other than hatchery Chinook. Minimum size is 12 inches.

5. Lewis River, North Fork (Clark/Cowlitz County) from mouth of East Fork to overhead powerlines below Merwin Dam:

(a) Effective immediately through July 31, the salmon daily limit is 6 hatchery Chinook, of which no more than 2 may be adults. Release all salmon other than hatchery Chinook. Minimum size is 12 inches.

6. Washougal River (Clark County) from mouth to Salmon Falls: Until further notice, stationary gear restriction is rescinded.

7. Wind River from the mouth (boundary line/markers) upstream, including all tributaries:

(a) Effective immediately until further notice, the two-pole endorsement is rescinded.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 13, 2013:

WAC 232-28-61900J Exceptions to statewide rules. (13-119)

WSR 13-15-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-147—Filed July 11, 2013, 3:27 p.m., effective July 15, 2013, 6:00 a.m.]

Effective Date of Rule: July 15, 2013, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets an additional fishing period for treaty Indian commercial gillnet fishing in the mainstem Columbia River for salmon and steelhead. Sales of fish caught from platform/hook and line in Zone 6 and immediately downstream of Bonneville Dam remain open. Sales of fish caught from Yakama Nation tributary fisheries continue to be allowed. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compacts on June 26, July 3, and July 10, 2013. Conforms state rules with tribal rules. There is insufficient time to adopt permanent regulations.

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

Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 11, 2013.

Lori Pruess
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in the Wind River, Klickitat River, Yakima River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: 6:00 a.m. Monday, July 15, through 6:00 p.m. Thursday July 18, 2013.
 - b. Gear: Gillnets. 7-inch minimum mesh restriction.
 - c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sales of fish caught during open gillnet periods are allowed after the period concludes, as long as the fish were landed during the open period.
 - d. Sanctuaries: All sanctuaries for this gear type are in effect, except Spring Creek.
2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: Open through July 31, 2013.
 - b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
 - c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only.
 - d. All sanctuaries for these gear types are in effect.
3. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.
 - a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.
 - b. Season: Open through July 31, 2013.
 - c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
 - d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property. Sales of fish caught during open gillnet periods are allowed after the period concludes, as long as the fish were landed during the open period.
4. Columbia River Tributaries upstream of Bonneville Dam:
 - a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.
 - b. Area: Drano Lake, Wind River, Klickitat River, and Yakima River.

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

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sales are allowed only when lawfully enacted by Yakama Nation regulations.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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 a.m. July 15, 2013:

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam. (13-141)

**WSR 13-15-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-148—Filed July 11, 2013, 3:29 p.m., effective July 15, 2013, 9:00 p.m.]

Effective Date of Rule: July 15, 2013, 9:00 p.m.

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

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

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

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

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

Reasons for this Finding: Sets the second opener of the 2013 summer season non-Indian mainstem commercial salmon season. Based on in-season forecasts and management guidelines, a total of one thousand eight hundred

ninety-two adult upper Columbia summer chinook have been allocated to mainstem commercial non-Indian fisheries, which leaves fish to harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 10, 2013. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: July 11, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River

a) **Dates:** 9:00 p.m. July 15, to 5:00 a.m. July 16, 2013.

b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

c) **Gear:** Drift gillnets only. 8-inch minimum mesh size.

Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a 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.

d) **Allowable Sales:** Chinook, sockeye, shad and white sturgeon. A maximum of 2 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **Sanctuaries:** Elochoman-A, Cowlitz River, Kalama-A, Lewis-A, Washougal, and Sandy rivers.

f) **Miscellaneous Regulations:** 24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 a.m. June 16, 2013:

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

WSR 13-15-048

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-150—Filed July 11, 2013, 4:40 p.m., effective July 11, 2013, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. Chinook catch rates have been

lower than expected. An increase in the chinook open-period limit is needed to ensure the coastal salmon troll fishery meets the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with pre-season fishing plans and the National Marine Fisheries Service from an in-season call. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 11, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-24-0400U All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

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

July 12 through July 16, 2013;

July 19 through July 23, 2013;

July 26 through July 30, 2013;

August 2 through August 6, 2013;

August 9 through August 13, 2013;

August 16 through August 20, 2013;

August 23 through August 27, 2013;

August 30 through September 3, 2013;

September 6 through September 10, 2013; and

September 13 through September 17, 2013.

(2) Landing and possession limit of 100 Chinook and 40 coho per boat per each entire open period for the entire Catch Areas 1 and 2. Landing and possession limit of 50 Chinook and 40 coho per boat per each entire open period for the entire Catch Areas 3 and 4. Under no circumstance can a boat land more than a total of 100 Chinook or 40 coho in any open period.

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

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

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

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with area fished, total Chinook and halibut catch on board, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch on board, and destination. Any vessel with fish on board from either Area 3 or 4 may not possess more than 50 Chinook on board.

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

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

(9) Mandatory Yelloweye Rockfish Conservation Area – This is defined as the area in Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and

4 must be landed before fishing south of Cape Falcon, Oregon.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000T All-citizen commercial salmon troll.
(13-110)

WSR 13-15-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-151—Filed July 15, 2013, 4:11 p.m., effective July 15, 2013, 4:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The hatchery escapement broodstock goal has been met, allowing the Kalama River to open for the retention of hatchery chinook salmon and providing additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 15, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Freshwater exceptions to state-wide rules. Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River from the Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(a) Effective immediately through July 31, it is permissible to retain sockeye.

2. Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) to the Oregon/Washington border:

(a) From the Rocky Point/Tongue Point line upstream to Bonneville Dam: Effective immediately through July 31, it is permissible to retain sockeye.

3. Effective July 16 through July 31, it is permissible to retain salmon in the Kalama River from boundary markers at the mouth to 1,000 feet below the fishway at upper salmon hatchery:

(a) The salmon daily limit is 6 hatchery Chinook, of which no more than 2 may be adults. Release all salmon other than hatchery Chinook.

4. Effective immediately through July 31, it is permissible to retain salmon in the Lewis River (Clark/Cowlitz County) from mouth to mouth of East Fork:

(a) The salmon daily limit is 6 hatchery Chinook, of which no more than 2 may be adults. Release all salmon other than hatchery Chinook. Minimum size is 12 inches.

5. Effective immediately through July 31, it is permissible to retain salmon in the Lewis River, North Fork (Clark/Cowlitz County) from mouth of East Fork to overhead powerlines below Merwin Dam:

(a) The salmon daily limit is 6 hatchery Chinook, of which no more than 2 may be adults. Release all salmon other than hatchery Chinook. Minimum size is 12 inches.

6. Washougal River (Clark County) from mouth to Salmon Falls: Until further notice, stationary gear restriction is rescinded.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900B Exceptions to statewide rules. (13-149)

WSR 13-15-067**EMERGENCY RULES****DEPARTMENT OF LICENSING**

[Filed July 16, 2013, 7:33 a.m., effective July 28, 2013]

Effective Date of Rule: July 28, 2013.

Purpose: Amend chapter 308-330 WAC to update the model traffic ordinance (MTO) to include reference to new sections of traffic law enacted by the 2013 legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-197, 308-330-316, and 308-330-462.

Statutory Authority for Adoption: RCW 46.90.010.

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: Avoiding the delay resulting from permanent rule adoption will enable local law enforcement to hold drivers accountable for new statutory requirements by enabling them to cite the MTO which has been adopted by many local authorities, rather than state statute, since many are accustomed to cite to the MTO. The proposal for a permanent rule, with an opportunity for comment, is forthcoming.

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 3, 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 3, 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: July 16, 2013.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.310, 46.09.330, 46.09.350, 46.09.360, 46.09.-420, 46.09.440, 46.09.450, 46.09.460, 46.09.470, 46.09.480, (~~and~~) 46.09.490, 2013 c 23 s 4, 2013 c 23 s 5, 2013 c 23 s 6, 2013 c 23 s 7, and 2013 c 23 s 9.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.-050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420, 46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, (~~and~~) 46.37.680, and 2013 c 135 s 1.

AMENDATORY SECTION (Amending WSR 97-10-068, filed 5/5/97, effective 6/5/97)

WAC 308-330-462 RCW sections adopted—Stopping, standing, and parking. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle stopping, standing, and parking as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: 2013 c 60 s 1, RCW 46.61.560, 46.61.570, 46.61.575, 46.61.-581, 46.61.582, 46.61.583, 46.61.585, 46.61.587, and 46.61.-590.

WSR 13-15-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-153—Filed July 16, 2013, 3:42 p.m., effective July 16, 2013, 3:42 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000U; and amending WAC 232-28-620.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal-use fishing plans agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect. Expanding the open days in Area 2 is consistent with the management plan while expanding opportunity in the fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62000W Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 1:** Immediately until further notice: Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(2) **Catch Record Card Area 2:** Immediately through July 18: Open Sundays through Thursdays only, daily limit of 2 salmon, of which not more than one may be a Chinook salmon; release wild coho. July 19 until further notice, open seven days a week: Daily limit of 2 salmon, of which not more than one may be a Chinook salmon; release wild coho.

(3) **Catch Record Card Area 3:** Immediately through September 22: Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho. September 28 through October 13: Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho. Opening restricted to the area north of 47 degrees 50 minutes 00 seconds N. lat. and south of 48 degrees 00 minutes 00 seconds N lat.

(4) **Catch Record Card Area 4:** Immediately until further notice: Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho salmon. Waters east of a true north-south line through Sail Rock are closed through July 31; release Chinook salmon caught east of the Bonilla-Tatoosh line beginning August 1; and release chum salmon beginning August 1.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000U Coastal salmon—Saltwater seasons and daily limits.

WSR 13-15-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-154—Filed July 17, 2013, 8:50 a.m., effective July 17, 2013, 8:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft shelled crab and is in conformity with the coastal Dungeness crab summer fishery management plan. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-0400Z Coastal crab fishery—Weekly trip limits Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) It is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

July 21 through July 27, 2013;
July 28 through August 3, 2013;
August 4 through August 10, 2013;
August 11 through August 17, 2013;
August 18 through August 24, 2013
August 25 through August 31, 2013
September 1 through September 7, 2013
September 8 through September 14, 2013
September 15 through September 15, 2013

(2) Any crab taken prior to July 21, 2013, and not landed before 11:59 p.m. July 20, 2013, become part of the July 21 through July 27, 2013, accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

WSR 13-15-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-146—Filed July 17, 2013, 2:44 p.m., effective July 17, 2013, 2:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: The department of fish and wildlife is in the process of promulgating a permanent rule to increase the daily bag limit for walleye in the lower San Poil River. This emergency rule is needed to allow an increased daily limit of walleye while the permanent rule process is conducted.

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: July 17, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—San Poil River. Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is permissible to fish for walleye in waters of the lower San Poil River from Boundary Line A upstream to Boundary Line C. Daily limit of 16 walleye, with no size restriction.

WSR 13-15-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-152—Filed July 18, 2013, 4:07 p.m., effective July 22, 2013, 6:00 a.m.]

Effective Date of Rule: July 22, 2013, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets an additional fishing period for treaty Indian commercial gillnet fishing in the mainstem Columbia River for salmon and steelhead. Removes the minimum mesh size restriction for gillnets in the mainstem. Sales of fish caught from platform/hook and line in Zone 6 and immediately downstream of Bonneville Dam remain open through 6 p.m., July 27. Sales of fish caught from Yakama Nation tributary fisheries continue to be allowed through 6 p.m., July 27. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on July 17, 2013. Conforms state rules with tribal rules. There is insufficient time to adopt permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal

Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 18, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in the Wind River, Klickitat River, Yakima River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: 6:00 a.m. July 22 to 6:00 p.m. July 25, 2013.
 - b. Gear: Gillnets. No minimum mesh restriction.
 - c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sales of fish caught during open gillnet periods are allowed after the period concludes, as long as the fish were landed during the open period.
 - d. Sanctuaries: All sanctuaries for this gear type are in effect, except Spring Creek.
2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: Open through 6:00 p.m. July 27, 2013.
 - b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
 - c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only.
 - d. All sanctuaries for these gear types are in effect.
3. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in

the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Open through 6:00 p.m. July 27, 2013.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property. Sales of fish caught during open gillnet periods are allowed after the period concludes, as long as the fish were landed during the open period.

4. Columbia River Tributaries upstream of Bonneville Dam:

a. Season: Open through 6:00 p.m. July 27, 2013, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, Wind River, Klickitat River, and Yakima River.

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

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sales are allowed only when lawfully enacted by Yakama Nation regulations.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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 a.m. July 22, 2013:

WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam. (13-147)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. July 27, 2013:

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

WSR 13-15-093 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-155—Filed July 18, 2013, 4:08 p.m., effective July 18, 2013, 4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100C; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2013 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule lowers the spot shrimp biweekly management limit in Catch Area 25A and raises the biweekly limit in SMA 1A and 1C. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 18, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 3, 4, and 6 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed.

ii) All waters of Shrimp Management Areas 4 and 6 are closed to the harvest of spot shrimp.

iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all shrimp species other than spot shrimp.

(b) The spot shrimp catch accounting biweekly management periods are as follows:

i) July 17-30, July 31-August 13, and August 14-27, 2013.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds per biweekly management period, with the following exceptions:

i) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per biweekly management period in Shrimp Management Areas 1A and 1C, or to exceed 600 pounds per biweekly management period in Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Area) 23A-E and 23B, or to exceed 900 pounds per biweekly management period in 25A.

(d) It is unlawful to pull shellfish pots in more than one catch area per day.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

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

(b) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B are open, effective immediately, until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100C Puget Sound shrimp beam trawl fishery—Season. (13-134)

WSR 13-15-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-156—Filed July 19, 2013, 2:26 p.m., effective July 19, 2013, 2:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Harvest landings limits for sea cucumbers have been requested by the industry in an effort to conserve harvest quota and maximize market opportunities. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 19, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 2 on Monday, Tuesday and Wednesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 3 on Monday, July 22, and Tuesday, July 23, 2013, only.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100Y Sea cucumbers. (13-132)

WSR 13-15-099

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-157—Filed July 19, 2013, 2:32 p.m., effective July 22, 2013]

Effective Date of Rule: July 22, 2013.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300F; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of red sea urchins exist in the area described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin onboard discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 19, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-07300F Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective July 22 through August 30, 2013, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Red sea urchins: Sea Urchin District 4 is open Monday through Friday of each week.

(2) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 31, 2013:

WAC 220-52-07300F Sea urchins.

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.

WSR 13-15-135

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed July 23, 2013, 11:54 a.m., effective July 23, 2013, 11:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-980-030, revising the deadline for nonexempt long-term care workers for submitting an application for a home care aide credential.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-030.

Statutory Authority for Adoption: Chapter 18.88B RCW.

Other Authority: Chapter 74.39A RCW.

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: Elderly and vulnerable adults would be at risk of losing access to personal care services if their home care aides are unable to submit a timely application for a department of health credential. A CR-102 adoption for permanent rules has been filed. A hearing was held on July 9, 2013, to incorporate this change into a permanent rule.

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

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

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

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

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

Date Adopted: July 23, 2013.

John Wiesman, DrPh, MPH
Secretary

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

WAC 246-980-030 Can a nonexempt long-term care worker work before obtaining certification as a home care aide? (1) A nonexempt long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW 74.39A.073 (4)(a) and (b).

(b) The long-term care worker must submit an application for home care aide certification to the department within ~~((three))~~ fourteen days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or online, the date it is accepted by the department.

(2) The long-term care worker may not work for more than one hundred fifty calendar days from their date of hire without obtaining certification.