

**WSR 23-06-075**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-10—Filed March 1, 2023, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-090 on May 3, 2022.

**Title of Rule and Other Identifying Information:** The department of fish and wildlife (WDFW) proposes to amend and clarify existing rules and establish new rules associated with program modifications and accessibility permits for individuals with disabilities.

Amending WAC 220-200-160 Definition of a person with a disability, 220-200-170 Special use permits, 220-200-180 Suspension of a special use permit—Appeal hearing, 220-200-190 Disability designation, and 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability.

New WAC 220-200-200 Crossbow, 220-200-210 Scope, 220-200-220 Shooting from a vehicle (blue placard), 220-200-230 Alternative angling gear in fly-fishing waters, and 220-200-240 Accessibility special use permit for a person with a disability.

**Hearing Location(s):** On April 10, 2023, at 1:00 p.m., virtual meeting via Zoom <https://us06web.zoom.us/j/85114526308>. The deadline for written public comment submissions is April 10, 2023, by midnight. All public comments will be considered, however, to have your comment incorporated into the director's decision briefing presentation, your comment must be submitted no later than 8 a.m. on April 3, 2023. If you are interested in providing verbal public comments during the virtual meeting, please register here [contact agency for link]. Registration for public testimony closes at April 7, 2023, at 8 a.m.

**Date of Intended Adoption:** On or after April 11, 2023.

**Submit Written Comments to:** Katherine Waldrop, P.O. Box 43200, Olympia, WA 98504, email [special-use-permits@PublicInput.com](mailto:special-use-permits@PublicInput.com), fax 360-902-2349, website <https://publicinput.com/special-use-permits>, voicemail comments 855-925-2801, project code 2656, by April 10, 2023.

**Assistance for Persons with Disabilities:** Contact civil rights/ADA coordinator, phone 360-902-2349, fax 360-902-2392, TTY 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov). For more information, see [dfw.wa.gov/accessibility/requests-accommodation](http://dfw.wa.gov/accessibility/requests-accommodation) by March 17, 2023.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** Amended:

WAC 220-200-160 Definition of a person with a disability. This rule proposal provides clarity by addressing formatting errors. It also adds new definitions for the terms used in related rules and proposed rules.

WAC 220-200-170 Special use permits. This rule proposal adds standard terms and conditions that apply to all special use permits.

WAC 220-200-180 Suspension of a special use permit—Appeal hearing. This rule proposal increases agency options for managing special use permits, including the ability to modify and revoke those permits. It requires the department to notify a person of the basis for a suspension, modification, revocation, or denial of a special use permit. This rule proposal also establishes appeal rights and time frames when a special use permit is modified, revoked, or denied.

WAC 220-200-190 Disability designation—Suspension or denial—Appeal hearing. This rule proposal allows the agency to suspend a per-

son's disability designation and related benefits if the person submits fraudulent information in support of their disability designation application. The rule requires WDFW to notify a person of the basis for a suspension or denial of a person's disability designation. This rule proposal also establishes appeal rights and time frames.

WAC 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability. This rule proposal updates and clarifies terminology to align with terms used in the proposed rules.

New WAC 220-200-200 through 220-200-240, these new rule proposals establish specific and consistent criteria for the standard special use permits provided to persons with disabilities under RCW 77.32.237.

WAC 220-200-200 Crossbow. This rule proposal allows use of a crossbow during archery or muzzleloader season by a person with a disability that impairs the person's ability to hold and safely utilize a long bow, recurve bow, or compound bow. The rule includes requirements for use of a crossbow special use permit.

WAC 220-200-210 Scope. The proposed rule sets requirements that allow a person who is blind or visually impaired to utilize a scope device during archery or muzzleloader season.

WAC 220-200-220 Shooting from a vehicle (blue placard). The rule as proposed sets criteria by which a person with a disability will be allowed to operate their hunting device from within a motorized vehicle. This rule includes requirements for utilizing this special use permit.

WAC 220-200-230 Alternate casting gear. The proposed rule provides the option to utilize alternate casting gear in fly-fishing only seasons or waters to a person with a disability whose permanent impairment renders the person incapable of holding and safely operating conventional fly-fishing gear. This rule proposal includes requirements for utilizing this special use permit.

WAC 220-200-240 Accessibility special use permit for a person with a disability. This rule allows WDFW to consider requests for specific special use permits other than the standard criteria specified in WAC 220-200-200 through 220-200-230. The rule proposal includes criteria that WDFW will consider in determining whether to grant unique requests not covered by the standard criteria.

Reasons Supporting Proposal: WDFW seeks to increase the diversity of individuals afforded recreational hunting and fishing opportunities. The proposed rule making is to simplify the process of applying for program modifications and accessibility permits by specifying the criteria for the most common special use permits (WAC 220-200-200 through 220-200-230). The changes are intended to reduce barriers that may impede participation by persons with disabilities by streamlining the administrative processes associated with these common requests. The proposed changes are also intended to ensure consistent application of permit standards, allowing for increased equity and efficiency of department services to Washington communities.

The proposed rules at WAC 220-200-240 are also intended to ensure that WDFW may appropriately consider requests for program modifications based on unique circumstances not covered by WAC 220-200-200 through 220-200-230.

Finally, the proposed rules seek to clarify existing definitions, provide new definitions, and to provide appropriate appeal rights for decisions to deny, revoke, suspend, or modify special use permits and disability designations.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.32.237, 77.04.020.

Statute Being Implemented: RCW 77.32.237.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Wal-drop, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2567; Implementation: Amy Windrope, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2720; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-338-2895.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt under RCW 34.05.328 (5) (a).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: WDFW is exempt from the requirements of chapter 19.85 RCW because the proposed rules associated with program modifications and accessibility permits for persons with disabilities do not regulate small businesses; rather, the department's proposed rules facilitate opportunities for persons with disabilities to participate in recreational hunting, fishing, trapping, shell fishing, and other department programs, services, and activities. In doing so, the proposed rules only regulate those individuals by governing the requirements, processes, and limitations of the disability designation and special use permit programs. The economic effect of these rule creations and amendments do not constitute the direct imposition of any regulatory compliance costs on small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 1, 2023

Chris Fredley

Acting Agency Rules Coordinator

## OTS-4358.2

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

### **WAC 220-200-160 Definitions ~~((of a person with a disability))~~.**

~~((1) "Person with a disability" for purposes of eligibility under disability designation means a person who has a permanent physical disability or permanent developmental disability which substantially impairs the person's ability to participate in recreational activities or to access department lands including, but not limited to:~~

~~(a) "Lower extremity disability," which means the person has a permanent lower extremity impairment and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently~~

~~use a medically prescribed assistive device every time for mobility including, but not limited to, a wheelchair, crutch, walker, or oxygen bottle; or~~

~~(b) "Upper extremity disability," which means the person has a permanent upper extremity impairment and is physically limited in their ability to hold and safely operate a legal hunting or harvesting device.~~

~~(c) These definitions include, but are not limited to, persons with a permanent upper or lower extremity impairment who have lost the use of one or both upper or lower extremities, or who have a severe physical limitation in the use of one or both upper or lower extremities, or who have a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities.~~

~~(2) "Blind" or "visually impaired," which means:~~

~~(a) Having a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed twenty degrees; or~~

~~(b) Having a severe loss of visual acuity ranging from 20/70 to 20/200 while retaining some visual function; or~~

~~(c) Having inoperable visual impairments including, but are not limited to: Albinism, aniridia, aphakia, cataracts, glaucoma, macular degeneration, or other similar diagnosed disease or disorder.~~

~~(3) "Developmental disability," which means a cognitive intellectual disability such as: Cerebral palsy, down syndrome, epilepsy, autism, or another neurological condition of an individual found to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.)~~

The following definitions apply to WAC 220-200-170 through 220-200-240:

(1) "Person with a disability" for purposes of eligibility under disability designation means a person who has a permanent physical disability or permanent developmental disability which substantially impairs the person's ability to participate in recreational activities or to access department lands including, but not limited to:

(a) "Extremity disability" which means the person has lost the use of one or both upper or lower extremities, or has a severe physical limitation in the use of one or both upper or lower extremities, or has a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities. This definition includes, but is not limited to, the definitions in (a)(i) and (ii) of this subsection.

(i) "Lower extremity disability" which means the person has a permanent lower extremity impairment and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently use a medically prescribed assistive device every time for mobility including, but not limited to, a wheelchair, crutch, walker, or oxygen bottle; or

(ii) "Upper extremity disability" which means the person has a permanent upper extremity impairment and is physically limited in their ability to hold and safely operate a legal hunting or harvesting device.

(b) "Blind" or "visually impaired" which means:

(i) Having a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed 20 degrees; or

(ii) Having a severe loss of visual acuity ranging from 20/70 to 20/200 while retaining some visual function; or

(iii) Having inoperable visual impairments including, but not limited to: Albinism, aniridia, aphakia, cataracts, glaucoma, macular degeneration, or other similar diagnosed disease or disorder.

(c) "Developmental disability" which means a cognitive intellectual disability such as: Cerebral palsy, down syndrome, epilepsy, autism, or another neurological condition of an individual found to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which originates before the individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(2) "Approved medical professional" means a medical doctor (MD), doctor of osteopathy (DO), advanced registered nurse practitioner (ARNP), physician assistant (PA), physician assistant of osteopathy (PAO).

(3) "In good standing" means:

(a) The applicant has received and maintains a disability designation under WAC 220-200-190 and that disability designation is not currently suspended under WAC 220-200-190;

(b) The applicant's hunting or fishing license or privileges are not currently revoked or suspended in Washington or in another state; and

(c) No special use permit previously awarded to the applicant is currently suspended under WAC 220-200-180.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-160, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 17-17-109, recodified as § 220-200-160, filed 8/21/17, effective 9/21/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-413-150, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-825, filed 4/25/14, effective 5/26/14.]

## OTS-4359.2

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

**WAC 220-200-170 Special use permits.** (1) A special use permit issued by the department sets forth terms and conditions determined by the director to allow for reasonable accommodations for persons granted disability designation.

(2) The following terms and conditions apply to all special use permits:

(a) A special use permit(s) must be carried on the person named on the permit, who is acting under or using devices authorized by the special use permit(s);

(b) A special use permit holder must, upon request, surrender the permit(s) for inspection to any authorized law enforcement officer or department employee; and

(c) A special use permit holder must deny use of the permit to any other person.

(3) The terms ~~((for use granted by))~~ and conditions of a special use permit ~~(, when provided as a reasonable modification,)~~ supersede department rules that conflict with the terms and conditions of the special use permit.

(4) When utilizing a special use permit, the person named on the permit must comply with all applicable statutes and rules other than those department rules specifically superseded by the special use permit.

(5) It is unlawful to fail to abide by the terms and conditions of a special use permit. Violation of this subsection is punishable under RCW 77.15.160(6) ~~((b))~~, 77.15.230, or 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-170, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 17-17-109, recodified as § 220-200-170, filed 8/21/17, effective 9/21/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-413-130, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-819, filed 4/25/14, effective 5/26/14.]

#### OTS-4360.1

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

**WAC 220-200-180 Special use permit—Suspension ((of a special use permit)), modification, revocation, or denial—Appeal hearing.**

(1) The department may suspend a person's special use permit for the following reasons and corresponding lengths of time:

(a) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is found to have committed an infraction under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for two years;

(b) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific

terms or conditions or is convicted of a misdemeanor or gross misdemeanor under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for five years;

(c) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department, the department shall suspend the person's special use permit for life;

(d) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of a felony violation under Title 77 RCW for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for life;

(e) If the person has a hunting or fishing license revoked or has hunting or fishing license privileges suspended in another state, the department shall suspend the person's special use permit for the duration of the underlying suspension or revocation;

(f) If the person is cited, or charged by complaint, for an offense under Titles 76, 77, 79, 79A, 9, and 9A RCW; or for unlawful use of a department permit, trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department for an act committed while the person is using the special use permit, the department shall immediately suspend the person's special use permit until the offense has been adjudicated; or

(g) If the person submits fraudulent information to the department related to the person's special use permit, the department shall suspend the person's special use permit for five years.

(2) The department may suspend a person's special use permit for two years if the person fails to abide by the terms or conditions of the special use permit issued to that person.

(3) The department may modify or revoke a person's special use permit in order to:

(a) Address conservation management needs relating to the special use permit;

(b) Ensure the safety of the public and WDFW employees;

(c) Avoid a fundamental alteration of the program, service or activity facilitated by the special use permit;

(d) Incorporate appropriate updates in adaptive equipment;

(e) Address changes in federal or state law or regulations; or

(f) Address other compelling circumstances identified by the WDFW director.

(4) The department will provide written notice of suspension, modification, or revocation of a special use permit to the permit holder. The notice will describe the circumstances underlying the suspension, modification, or revocation. Any person with a disability issued a special use permit, who is notified of an intended suspension, modification, or revocation, may request an appeal hearing under chapter 34.05 RCW. A written request for hearing must be received by the department within (~~twenty~~) 20 days of the date of the notice of suspension, modification, or revocation.

(5) Any person with a disability designation in good standing, as defined in WAC 220-200-160, whose application for a special use permit is denied by the department may request an appeal hearing under chapter 34.05 RCW. A written request for a hearing must be received by the department within 20 days of the date of the notice of denial.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-180, filed 7/30/18, effective 8/30/18.]

### OTS-4361.1

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

**WAC 220-200-190 Disability designation—Suspension or denial—Appeal hearing.** (1) A person meeting the definition of "person with a disability" under WAC 220-200-160, and who submits the required application (~~and accompanying documentation~~) properly completed and certified, shall be granted a disability designation by the department.

(2) If a person submits fraudulent information to the department related to the person's application for disability designation, the department shall suspend the person's disability designation for five years.

(3) The department will provide written notice of suspension to the permit holder. The notice will describe the circumstances underlying the suspension.

(4) A person whose application for a disability designation is denied or whose disability designation is suspended by the department may request ((a)) an appeal hearing to contest the denial or suspension under chapter 34.05 RCW. A written request for a hearing must be received by the department within ((twenty)) 20 days of the date of the notice of denial or suspension.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-190, filed 7/30/18, effective 8/30/18.]

### OTS-4343.2

#### NEW SECTION

**WAC 220-200-200 Crossbow special use permit—Eligibility—Terms and conditions.** (1) A crossbow special use permit issued by the department allows a person with a disability, meeting the requirements of subsection (2) of this section, to utilize a crossbow device during archery or muzzleloader season with the corresponding license and



transport tag. The permit also allows the use of a manufacturer-equipped scope, and a tripod system or mount support for the crossbow.

(2) A special use permit for a crossbow device is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional, as defined in WAC 220-200-160(2), who certifies that:

(i) The applicant has an upper extremity disability or a developmental disability as defined in WAC 220-200-160(1); and

(ii) The applicant's upper extremity or developmental disability permanently limits the person's ability to hold and safely operate a long bow, recurve bow, or compound bow.

(3) In addition to the terms and conditions in WAC 220-200-170, the following terms and conditions also apply under the crossbow special use permit:

(a) The crossbow must meet the requirements of WAC 220-414-100 (1)(b) through (f);

(b) The crossbow must be equipped with a cocking assistive device which must be employed prior to firing the crossbow; and

(c) Other individual terms and conditions as set forth on the permit or award letter.

(4) It is unlawful to fail to abide by the terms and conditions of this special use permit. Violation of this subsection is punishable under RCW 77.15.160(6), 77.15.230, 77.15.400, 77.15.410, 77.15.430, 77.15.750, or other statutes under chapter 77.15 RCW, depending on the circumstances of the violation.

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#### NEW SECTION

**WAC 220-200-210 Scope special use permit—Eligibility—Terms and conditions.** (1) A scope special use permit issued by the department allows a person who is blind or visually impaired, and who meets the requirements of subsection (2) of this section, to utilize a scope device during archery or muzzleloader season, with the corresponding license and transport tag. The permit also authorizes the use of a tripod system or mount support, and an iScope or similar visual aid for assistance.

(2) A special use permit for a scope device is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Accounting for the department's recommended processing time, submits the required application completed by a doctor of ophthalmology, doctor of optometry, or an approved medical professional, who certifies that:

(i) The applicant is blind or visually impaired as defined in WAC 220-200-160(1) as a result of a condition other than hyperopia, myopia, astigmatism, presbyopia, or other similar conditions; and

(ii) The applicant's blindness or visual impairment, as those terms are defined in WAC 220-200-160(1), is significant enough to ren-

der the person unable to safely operate a muzzleloader or archery device without a scope.

(3) In addition to the terms and conditions in WAC 220-200-170, other individual terms and conditions as set forth on the permit or award letter also apply under the scope special use permit.

(4) It is unlawful to fail to abide by the terms and conditions of this special use permit. Violation of this subsection is punishable under RCW 77.15.160(6), 77.15.230, 77.15.400, 77.15.410, 77.15.430, 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

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#### NEW SECTION

**WAC 220-200-220 Shooting from a vehicle (blue placard) special use permit—Eligibility—Terms and conditions.** (1) A person with a disability who meets the requirements of subsection (2) of this section is eligible for a special use permit to operate their hunting device from within a motorized vehicle in accordance with WAC 220-413-140.

(2) A disabled hunter "shooting from a vehicle" identification placard (blue placard) special use permit is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Has been issued a department of licensing disability parking placard or disability vehicle license plate, or equivalent from another state, for a permanent disability; and

(c) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional who certifies that the applicant:

(i) Has a lower extremity disability or developmental disability as defined in WAC 220-200-160(1); and

(ii) Meets one of the following:

(A) Requires physical assistance from another individual, a wheelchair lift, ramp, or other boarding assistance device to help the applicant board (enter) and disembark (exit) from a motorized vehicle each and every time; or

(B) Requires the assistance of a portable DC life-sustaining medical device (oxygen generator, heart pump machine, etc.) every time to board, ride, and disembark from a motorized vehicle; and

(iii) The applicant's lower extremity disability or developmental disability is significant enough to render the person unable to hunt without this permit.

(3) In addition to the terms and conditions in WAC 220-200-170, the following terms and conditions also apply under the "shooting from a vehicle - blue placard" special use permit:

(a) When utilizing this special use permit, the "blue placard" must be placed on the vehicle and clearly visible to the public;

(b) This special use permit does not allow for illegal travel cross-country, behind locked gates, or onto private property;

(c) It is unlawful for any person to shoot from upon or from within a motorized vehicle unless they are named on the special use

permit. The designated hunter companion is not permitted to utilize this special use permit on behalf of the hunter with a disability; and

(d) Other individual terms and conditions as set forth on the permit or award letter.

(4) It is unlawful to fail to abide by the conditions of this special use permit. Violation of this subsection is punishable under RCW 77.15.160(6), 77.15.230, 77.15.400, 77.15.410, 77.15.430, or 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

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#### NEW SECTION

**WAC 220-200-230 Alternate casting gear special use permit—Eligibility—Terms and conditions.** (1) A person with a disability who meets the requirements of subsection (2) of this section is eligible for a special use permit to utilize alternate casting gear in fly fishing only waters or seasons in accordance with WAC 220-305-120.

(2) An "alternate casting gear" special use permit is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional who certifies that:

(i) The applicant has an upper extremity disability or a developmental disability as defined in WAC 220-200-160(1); and

(ii) The applicant's upper extremity disability or developmental disability is such that the person is physically incapable of holding and safely operating conventional fly fishing gear.

(3) In addition to the terms and conditions in WAC 220-200-170, the following terms and conditions also apply under the "alternate casting gear" special use permit:

(a) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in WAC 220-310-150; and

(b) Other individual terms and conditions as set forth on the permit or award letter.

(4) It is unlawful to fail to abide by the terms and conditions of this special use permit. A violation of this section is punishable under RCW 77.15.160(6), 77.15.380, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

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#### NEW SECTION

**WAC 220-200-240 Accessibility special use permit for a person with a disability.** (1) In addition to the specific criteria provided elsewhere in this chapter, the department may issue an accessibility

special use permit to a person with a disability, as defined in WAC 220-200-160(1), who:

- (a) Has applied for, received, and maintains a disability designation in good standing; and
- (b) Requests an accessibility special use permit;
- (c) Specifically identifies the department rule(s) for which an exception is requested;
- (d) Clearly describes the need and justification for a departure from an existing department rule(s) as a result of a disability condition; and
- (e) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional, as defined in WAC 220-200-160(2), who certifies that all of the following are true:

- (i) The applicant is a person with a disability, as defined in WAC 220-200-160(1);
- (ii) The applicant's disability condition, as defined in WAC 220-200-160(1), prevents the applicant from meaningfully and equally participating in a department program, service, or activity; and
- (iii) The requested accessibility special use permit would enable the applicant to participate in the relevant program, service, or activity in a meaningful and equal manner.

(2) In addition to the terms and conditions in WAC 220-200-170, other individual terms and conditions, as set forth on the permit or award letter, also apply under the accessibility special use permit.

(3) It is unlawful to fail to abide by the conditions of this special use permit. A violation of this section is punishable under RCW 77.15.160(6), 77.15.230, 77.15.380, 77.15.410, 77.15.430, 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

(4) The department may deny a special use permit request submitted under subsection (1) of this section if:

- (a) The requested special use permit would fundamentally alter the nature of the program, service, or activity;
- (b) The requested special use permit would result in an undue financial or administrative burden;
- (c) The requested special use permit would create a safety risk;
- (d) The requested special use permit would create a conservation concern; or
- (e) Alternate appropriate means, other than the requested accessibility special use permit, are available that would facilitate the person's participation in the relevant program, service, or activity.

[ ]

## OTS-4349.2

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

**WAC 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability.** (1) Definitions:

(a) "Harvester with a disability" means a person who has been granted a disability designation and who possesses a valid disabled harvester endorsement issued by the department;

(b) "Disabled harvester endorsement" means an endorsement to a license issued by the department to a person who has been granted a disability designation;

(c) "Designated harvester companion" means a designated person who only assists with that physical function the harvester with a disability is unable to perform during his or her recreational activity in the taking of shellfish, food fish, or game fish;

(d) "Designated harvester companion card" means an identification card issued by the department to a harvester with a disability for use by another person in assisting or acting on the behalf of the harvester with a disability while engaging in fishing or harvesting activities.

(2) A designated harvester companion card will be issued to the holder of a disabled harvester endorsement along with the issuance of a harvesting license.

(3) It is unlawful for a harvester with a disability to fail to obtain all licenses, permits and catch record cards prior to fishing.

(4) The designated harvester companion, when accompanied by the harvester with a disability, may assist the harvester with a disability in taking shellfish, game fish and food fish or engage in the taking of shellfish, game fish, and food fish on behalf of the harvester with a disability.

(5) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the harvester with a disability is present and participating in the fishing activity, except:

(a) The harvester with a disability is not required to be present at the location where the designated harvester companion is harvesting shellfish for the harvester with a disability. The harvester with a disability is required to be in the direct line of sight of the designated harvester companion who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the harvester with a disability is required to be within one-quarter mile of the designated harvester companion who is harvesting shellfish for him or her and must have a form of reliable and direct communication.

(6) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion has a valid equivalent harvesting license issued by Washington state or another state.

(7) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion is licensed and has the designated harvester companion card on his or her person.

(8) Shellfish, game fish or food fish harvested by a designated harvester companion on behalf of a harvester with a disability becomes part of the harvester with a disability's daily or possession limit, and must be kept separate from the designated harvester companion's daily or possession limit.

(9) It is unlawful for a harvester with a disability to utilize (~~spin-casting~~) any angling gear other than fly fishing gear during fly fishing only season, unless the harvester with a disability has been issued a special use permit from the department.

(a) Such person may use (~~spin~~) alternate casting gear with a casting bubble and monofilament line with no limit on breaking strength; and

(b) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in WAC 220-310-150, apply to both conventional fly fishing and (~~spin-casting~~) alternate casting gear fly fishing under a special use permit.

(10) A violation of this section is punishable under RCW 77.15.380, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-305-120, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 17-17-109, amended and recodified as § 220-305-120, filed 8/21/17, effective 9/21/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-220-240, filed 2/15/17, effective 3/18/17. Statutory Authority: 1998 c 191 and RCW 75.08.080. WSR 99-03-029 (Order 99-02), § 220-55-065, filed 1/13/99, effective 2/13/99. Statutory Authority: RCW 75.08.080. WSR 94-01-001, § 220-55-065, filed 12/1/93, effective 1/1/94; WSR 91-08-054 (Order 91-13), § 220-55-065, filed 4/2/91, effective 5/3/91; WSR 88-05-002 (Order 88-03), § 220-55-065, filed 2/4/88; WSR 87-09-066 (Order 87-16), § 220-55-065, filed 4/21/87; WSR 80-13-064 (Order 80-123), § 220-55-065, filed 9/17/80; WSR 79-09-021 (Order 79-58), § 220-55-065, filed 8/10/79.]