

WSR 15-10-056
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed April 30, 2015, 1:54 p.m., effective May 1, 2015]

Effective Date of Rule: May 1, 2015.

Purpose: The department is amending chapter 388-107 WAC in order to address concerns of the Center for Medicare/Medicaid Services (CMS) Home and Community Based Services (HCBS) and stakeholders with operationalization of the requirements stated therein.

Citation of Existing Rules Affected by this Order: Amending WAC 388-107-0001, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, and 388-107-1190.

Statutory Authority for Adoption: RCW 70.97.230.

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: After receiving input from stakeholders, DSHS' residential care services has revised chapter 388-107 WAC to operationalize the enhanced services facilities (ESF) program.

Immediate Adoption is Necessary for Public Safety and General Welfare: The Washington state operating budget directs the department to implement chapter 70.97 RCW, which requires the establishment of ESF. ESFs are intended to relieve pressure on institutional mental health settings such as Eastern and Western state hospitals. If certain patients are relocated to ESFs, more beds will be available to those who need an institutional level of mental health care.

Due to shortage of beds at evaluation and treatment centers and Western and Eastern state hospitals, some patients have been kept in non-psychiatric acute care hospital settings such as emergency rooms and medical surgical units. In the case known as *In re: the Detention of D.W., et al. v. Department of Social and Health Service[s]*, the Washington state supreme court found these placements, known as "psychiatric boarding," to be unconstitutional. In order to comply with *D.W.*, DSHS needs to immediately develop alternatives to institutional mental health settings in order to reduce the need for psychiatric boarding. Therefore, adoption of these rules, which will allow ESFs to become licensed and begin operation, is an urgent and time-sensitive matter of public safety and general welfare.

Immediate Adoption is Necessary to Receive Federal Funds: In order to qualify for federal matching funds, the ESF program must conform to federal CMS/HCBS require-

ments. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, the proposed rule amendments need to be adopted immediately.

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 29, 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 29, Repealed 0.

Date Adopted: April 29, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints except as described in section 388-107-0420;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching,

including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrator" means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

"Advance directive," as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

"Aggressive behavior" means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

"Antipsychotic medications" means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

"Applicant" means the individual or entity, as defined in this section, that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

"Capacity" means the maximum amount an enhanced services facility can serve is sixteen residents.

"Caregiver" means the same as "long-term care worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other

direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Challenging behavior" means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

"Chemical dependency" means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

"Department" means the department of social and health services.

"Direct supervision" means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

"Facility" means an enhanced services facility.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Holding technique" means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the ~~((individual treatment))~~ person-centered service plan. Examples include holds taught in approved training for deescalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Inspection" means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

"License suspension" is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

"Licensee" means the individual or entity, as defined in this chapter, to whom the department issues the enhanced services facility license.

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

"Likelihood of serious harm" means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

"Long-term care worker" as defined in RCW 74.39A-.009, has the same meaning as the term "caregiver."

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, Assisted living facility; chapter 18.51 RCW, Nursing homes; chapter 70.128 RCW, Adult family homes; chapter 72.36 RCW, Soldiers' homes; chapter 71A.20 RCW, Residential habilitation centers; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

"Medically fragile" means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring; dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication service" means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

"Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe medications.

"Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Reasonable accommodation" and "reasonably accommodate" have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the enhanced services facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

"Resident" means a person admitted to an enhanced services facility.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.-010 (1)(e).

"Secretary" means the secretary of the department or the secretary's designee.

"Significant change" means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

"Significant medication error" includes any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufac-

turer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

"Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.-010.

"Staff" or "staff person" means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter 388-112 WAC.

"Stop placement" or "stop placement order" is an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

"Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

"Violation" is an enhanced services facility failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any enhanced services facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0080 Ongoing comprehensive assessments. The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's ~~((individual treatment))~~ person-centered service plan no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the ongoing assessments is qualified to perform them.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0100 ~~((Enhanced services facility))~~ Person-centered service planning team. The facility ~~((will identify a team for each resident. The team will))~~ must develop and maintain a person-centered service planning team for each resident. The team must:

(1) Include the resident, the resident's representative when applicable, individuals chosen ~~((and any support persons identified))~~ by the resident, ~~((as well as))~~ a mental health professional, nursing staff, the medicaid client's department case manager, and other persons ~~((identified by the facility))~~ as needed;

(2) Provide the necessary information and support to ensure that the resident has an opportunity to identify team members, make informed choices and decisions regarding care and treatment, and direct the person-centered service planning process to the maximum extent possible;

(3) Ensure a coordinated approach to the development, implementation and evaluation of the ~~((individual treatment))~~ comprehensive person-centered service plan for the resident; and

~~((3))~~ (4) Meet at least monthly and more often as needed, at times and locations convenient to the resident, to review and modify the ~~((individual treatment))~~ comprehensive person-centered service plan as needed.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0110 Initial ~~((individual treatment))~~ person-centered service plan. The ~~((enhanced services facility))~~ resident's person-centered service planning team must develop the initial ~~((individual treatment))~~ person-centered service plan prior to admission to the ESE, using information from the resident, the resident's representative if the resident has one, the comprehensive assessment reporting evaluation (CARE) assessment for medicaid clients, and the

preadmission assessment, prior to admitting the resident to the facility. The ~~((enhanced services facility))~~ person-centered service planning team must ensure that each resident has an initial ~~((individual treatment))~~ person-centered service plan that includes:

(1) The resident's immediate specific ~~((problems and))~~ support needs (physical, mental and behavioral) identified in the preassessment;

(2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;

(3) The means ~~((for))~~ by which the resident chooses not to accept or refuses care or services;

(4) The resident's informed consent to the person-centered service plan;

~~((4))~~ (5) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;

~~((5))~~ (6) Resident defined goals and preferences;

~~((6))~~ (7) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility while respecting the resident's rights; ~~((and~~

~~((7))~~ (8) While in the community, what the facility will do to ensure resident and community safety; and

~~((8))~~ (9) ~~((Identifying))~~ Identification of factors that ~~((will))~~ prevent the resident from accessing less restrictive community based services and ~~((developing))~~ development of a plan ~~((regarding))~~ that describes when and how the resident may be able to transfer or transition from the enhanced services facility to a more independent living situation in the community.

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

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.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0120 Comprehensive ~~((individual treatment))~~ person-centered service plan. (1) The ~~((enhanced services facility))~~ person-centered service planning team must integrate the information obtained in the resident's preadmission assessment, medicaid client's CARE assessment information from the department's case manager, comprehensive assessment and initial ~~((individual treatment))~~ person-centered service plan to develop a written comprehensive ~~((individual treatment))~~ person-centered service plan.

(2) The enhanced services facility must:

(a) Complete the comprehensive person-centered service plan within fourteen days of the resident's move-in date.

(b) Provide the comprehensive person-centered service plan to the resident in a clear and understandable format that is accessible to residents, including those with disabilities and persons who have limited English proficiency.

(c) Ensure that the resident, and the resident's representative, when applicable, consents to the person-centered service

plan in writing and that the plan is signed by all individuals on the person-centered service planning team.

(d) Distribute a copy of the comprehensive person-centered service plan to the resident and all others responsible for the implementation of the plan.

(3) The ~~((enhanced services facility))~~ person-centered service planning team must ensure each resident's comprehensive ~~((individual treatment))~~ person-centered service plan includes:

~~((1))~~ (a) A list of the care and services to be provided;

~~((2))~~ (b) Identification of who will provide the care and services;

~~((3))~~ (c) When and how the care and services will be provided;

(d) A method for the resident to request updates to the plan as needed;

(e) A list of services that the resident chooses to self-direct;

~~((4))~~ (f) How medications will be managed, including how the resident will receive medications when the resident is not in the facility;

~~((5))~~ (g) The resident's daily activities preferences, spiritual and/or cultural preferences, interests, strengths and needs and how the facility will meet those within the behavioral challenges of the resident;

~~((6))~~ (h) Other preferences and choices about issues important to the resident, including, but not limited to:

~~((a))~~ (i) The setting in which the resident resides;

(ii) Food;

~~((b))~~ (iii) Daily routine;

~~((c))~~ (iv) Grooming; and

~~((d))~~ (v) How the enhanced services facility will accommodate the preferences and choices.

~~((7))~~ (i) A behavioral support plan to prevent crisis and maintain placement in the facility by:

~~((a))~~ (i) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

~~((b))~~ (ii) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

~~((c))~~ (iii) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

~~((d) A plan on))~~ (iv) A description of how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

~~((8))~~ (j) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;

~~((9))~~ (k) A hospice care plan if the resident is receiving ~~((services for))~~ hospice care ~~((delivered by))~~ services from a licensed hospice agency.

~~((10))~~ (l) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 and 71.32 RCW, as applicable;

~~((11))~~ (m) A plan ~~((regarding how the facility will work))~~ for working with the department of corrections

(DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of re-offense.

~~((12))~~ (n) A plan which maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services and care and treatment provided in the least restrictive manner appropriate to the resident and to any relevant court orders with which the resident must comply.

(o) Strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.

~~((13))~~ (p) A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the transition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.

~~((14) The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date:))~~

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0130 Ongoing comprehensive ~~((individual treatment))~~ person-centered service plan. (1) The ~~((enhanced services facility))~~ person-centered service planning team will review and update each resident's comprehensive ~~((individual treatment))~~ person-centered service plan, as follows:

(a) Within a reasonable time consistent with the needs of the resident following any significant change in the resident's physical, mental, emotional or behavioral functioning; ~~((and))~~

(b) Upon request by the resident;

~~((b))~~ (c) Whenever the comprehensive ~~((individual treatment))~~ person-centered service plan no longer adequately addresses the resident's current assessed needs and preferences; and

~~((c))~~ (d) Following every full comprehensive assessment and medicaid client's full CARE assessment; and

(e) At least once every twelve months.

~~((2) The process of developing and updating the comprehensive individual treatment plan will include the following:~~

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The medicaid client's department case manager; and

(e) Staff designated by the enhanced services facility:))

~~((3))~~ (2) The ~~((enhanced services facility))~~ person-centered service planning team ~~((will))~~ must ensure:

(a) Individuals participating in developing the resident's comprehensive ~~((individual treatment))~~ person-centered service plan:

(i) Discuss the resident's assessed needs, capabilities, and preferences; ~~((and))~~

(ii) Negotiate~~((, if possible and feasible,))~~ an agreed-upon comprehensive ~~((individual treatment))~~ person-centered service plan which would support the resident; and

(iii) Prevent the provision of unnecessary or inappropriate services and supports.

(b) The agreed plan for services is documented in the resident's record.

~~((b) Staff persons document in the resident's record the agreed-upon plan for services.))~~

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.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0140 Implementation of the ~~((individual treatment))~~ person-centered service plan. (1) The ~~((enhanced services facility))~~ person-centered service planning team must provide the care and services as agreed upon or outlined in the initial and comprehensive ~~((individualized treatment))~~ person-centered service plan to each resident unless a deviation from the plan is mutually agreed upon between the ~~((enhanced services facility))~~ person-centered service planning team, the medicaid client's department case manager, and the resident or the resident's representative at the time the care or services are scheduled.

(2) The details of any deviation from the plan must be clearly documented in the resident record.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0150 Comprehensive ~~((individual treatment))~~ person-centered service plan sent to the state. (1) When a resident's services are paid for by the department, the enhanced services facility must give the department case manager a copy of the comprehensive ~~((individual treatment))~~ person-centered service plan each time it is completed or updated and after it has been signed and dated. The department's case manager will:

~~((1))~~ (a) Review the ~~((individual treatment))~~ person-centered service plan;

~~((2))~~ (b) Sign, date, and return the ~~((individual treatment))~~ person-centered service plan to the facility;

~~((3))~~ (c) Document the review in the resident record, indicating it was signed and approved; and

~~((4))~~ (d) Schedule a department reassessment.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0160 Behavioral support plan. (1) The ~~((enhanced services facility))~~ person-centered service planning team will ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support that are used first when a resident's behavior is escalating at home or in the community, including but not limited to the following:

~~((1))~~ (a) Strengths the individual holds that support strategies for prevention and intervention.

~~((2))~~ (b) Specific indicators which may signal a potential crisis for the individual or that left unaddressed in the past has led to a behavioral crisis. Examples include but are not limited to typical challenging behaviors the individual displays when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.

~~((3))~~ (c) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above.

~~((4))~~ (d) Steps to be taken by each of the facility ~~((team members))~~ staff if the prevention or intervention strategies are unsuccessful in diverting the individual from a behavior or action that leads to crisis.

(e) A description of the types of holding techniques that are safe and effective for the individual.

~~((5))~~ (f) A plan to ensure coordination with community crisis responders in regard to each resident's ~~((treatment))~~ person-centered service plan as part of a regular, routine protocol for crisis prevention and intervention.

~~((6))~~ (g) A resident may not be secluded or isolated as part of the behavior support plan.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0180 Self-determination and participation. Except when the health or safety of the individual or other residents or members of the community would be endangered and consistent with the ~~((individual treatment))~~ person-centered service plan, each resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and ~~((individual treatment))~~ person-centered service plan;

(2) Interact with members of the community both inside and outside the enhanced services facility;

(3) Make choices about aspects of his or her life in the facility that are significant to the resident; and

(4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the enhanced services facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0190 Rights of residents. (1) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and must retain all rights not denied him or her under these chapters.

(2) The enhanced services facility will only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.

(3) The facility must give each resident, at the time of his or her ~~((treatment))~~ person-centered service planning meeting, a written statement setting forth the substance of this section.

(4) Every resident of an enhanced services facility has the right to ~~((adequate))~~ appropriate care and individualized treatment, interventions, and support that will not harm the resident.

(5) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(6) Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in (a) through ~~((m))~~ (o) below, unless exercise of these rights creates a danger to the resident or to others. The facility must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To have access to fluids and snacks of choice at any time;

(c) To ~~((keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases))~~ control his or her personal finances;

(d) To have access to individual locked storage space for his or her private use;

(e) To have visitors at ~~((reasonable))~~ convenient to the resident and in accordance with the person-centered service plan;

(f) To have ~~((reasonable))~~ twenty-four hour access to a telephone, both to make and receive confidential calls ~~((consistent with an effective treatment program))~~;

(g) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(h) To discuss and actively participate in ~~((treatment))~~ the development of person-centered service plans and decisions with professional persons;

(i) To a clean, comfortable, ~~((and))~~ home ~~((like))~~ environment;

~~((i))~~ (j) To furnish and decorate the sleeping room in accordance with the person-centered service plan.

~~((j))~~ (k) Not to have psychosurgery performed on him or her under any circumstances;

(l) To refuse antipsychotic medication consistent with RCW 70.97.050;

~~((k))~~ (m) To dispose of property and sign contracts unless the resident has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

~~((l))~~ (n) To complain about rights violations or conditions and request the assistance of a mental health ombuds or representative of Disability Rights Washington ((protection and advocacy)). The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

~~((m))~~ (o) To receive a minimum of thirty days written notice if there are any changes to the scope of services identified in the ((individual treatment)) person-centered service plan.

(7) Any modification of the resident rights requirements outlined in 42 CFR § 441.301 (c)(4)(vi)(A) through (D) must be supported by a specific assessed need and justified in the person-centered service plan. When making said modifica-

tions, the person-centered service planning team must document:

(a) The specific individualized assessed need;

(b) The positive interventions and supports used prior to any modification;

(c) Less intrusive methods of meeting the needs that have been tried but did not work;

(d) A clear description of the condition that is directly proportionate to the specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the modification;

(f) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(g) Informed consent of the resident;

(h) An assurance that interventions and supports will cause no harm to the resident.

~~((7))~~ (8) Nothing contained in this chapter ~~((must))~~ may prohibit a resident from petitioning by writ of habeas corpus for release.

~~((8))~~ (9) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

~~((9))~~ (10) A resident has a right to refuse placement in an enhanced services facility. No person ~~((must))~~ may be denied other department services solely on the grounds that he or she has made such a refusal.

~~((10))~~ (11) A resident has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal.

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0200 Quality of care. (1) Consistent with resident rights, the enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and ~~((individual treatment))~~ person-centered service plan.

(2) Based on the comprehensive assessment of a resident, the enhanced services facility must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance with the resident's individualized assessments and ~~((individualized treatment))~~ person-centered service plan:

- (a) Mental health treatment;
- (b) Chemical dependency treatment;
- (c) Vision and hearing;
- (d) Skin;
- (e) Continence;
- (f) Range of motion;
- (g) Mental and psychosocial functioning and adjustment;
- (h) Nutrition;
- (i) Hydration;
- (j) Special needs, including but not limited to:
 - (i) Injections;
 - (ii) Parenteral and enteral fluids;
 - (iii) Colostomy, urostomy, or ileostomy care;
 - (iv) Tracheostomy care and/or tracheal suctioning;
 - (v) Respiratory care;
 - (vi) Dental care;
 - (vii) Foot care; and
 - (viii) Prostheses.
- (k) Medications, including freedom from:
 - (i) Unnecessary medications; and
 - (ii) Significant medication errors; and
- (l) Independent living skills.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0210 Care and services. The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

(1) The care and services identified in the ~~((individualized treatment))~~ person-centered service plan.

(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.

(3) The care and services in a manner and in an environment that:

- (a) Actively supports, maintains or improves each resident's quality of life;
- (b) Actively supports the safety of each resident; and
- (c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual, another resident, or a member of the community; and ~~((:))~~

(4) Services by the appropriate professionals based upon the resident's assessment and ~~((individualized treatment))~~ person-centered service plan.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0240 Staffing ~~((ratios))~~ levels. (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services consistent with residents' ~~((negotiated service agreements))~~ person-centered service plan safely under routine conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are awake and on duty in the facility at all times if there are any residents in the facility.

(2) A ~~((licensed))~~ registered nurse must be ~~((on duty in the facility at all times-))~~ available to meet the needs of the residents as follows:

(a) On duty in the facility at least twenty hours per week; and

(b) Available on call when not present to respond within thirty minutes by phone or in person.

~~((a))~~ (3) A ~~((registered))~~ licensed nurse must be on duty in the facility ~~((at least eight hours per day; and))~~ whenever a registered nurse is not on site.

~~((b))~~ A registered nurse must be on call during any shift that a licensed practical nurse is on duty in the facility-))

~~((3))~~ (4) A mental health professional must be ~~((on-site))~~ available to meet the needs of the residents as follows:

(a) On site in the facility at least ~~((sixteen))~~ eight hours per day; and

(b) Available on call when not present to respond within thirty minutes by phone or in person.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0280 Transfer and discharge. (1) Upon completion of the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the ~~((enhanced services))~~ person-centered service planning team will review each resident for possible discharge. The team will determine if the resident:

(a) No longer needs the level of behavioral support provided by the enhanced services facility;

(b) Behaviors are now mitigated by changed medical or personal care needs;

(c) Expresses the desire to move to a different type of community based setting and has demonstrated the ability or capacity to be successful; or

(d) Is a good candidate for relocation and recommends other community based programs to the resident.

(2) The enhanced services facility, with input from the person-centered service planning team, will meet with case management staff to identify residents with potential for discharge or transfer to a less restrictive program, and will participate in discharge planning for each resident who meets the above criteria for potential discharge from the facility.

(3) The enhanced services facility must provide a thirty day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0370 Treatment services. The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the ~~((individual treatment))~~ person-centered service plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support in accordance with WAC 388-107-0160;

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0390 Use of routine psychopharmacologic medications. When the resident is using a ~~((psychopharmacological))~~ psychopharmacologic medication on a routine basis, the facility must ensure that ~~((the))~~:

(1) Medication is prescribed by a physician or health care professional with prescriptive authority;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Changes in medication only occur when the prescriber decides it is medically necessary;

(4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what the resident needs to be able to do or stop doing in order to discontinue the medication; ~~((and))~~

(5) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the psychopharmacologic medication~~((-))~~; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and RCW 70.97.050.

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0400 Use of as needed psychopharmacologic medications. If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that ~~((the))~~:

(1) ~~((Order))~~ The order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes behavioral intervention strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) ~~((Documentation))~~ There is documentation in the resident record ~~((is done on))~~ about the specific symptom or behavior that caused the need for the medication and ~~((what))~~ the results of the medication use ~~((is))~~; ~~((and))~~

(4) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the medication~~((-))~~;

(5) The resident, guardian, or legal representative has given informed consent for the medication; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and RCW 70.97.050.

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.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0410 Management of escalating behaviors. (1) An enhanced services facility must have a specific procedure for deescalating, preventing and redirecting aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues. The protocol must include:

(a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation;

(2) If the facility uses holding techniques as a last resort to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Describe the types of holding techniques that are safe and effective for the individual in the resident's person-centered service plan;

~~((a))~~ (b) Use other established resident-specific behavioral interventions first to attempt to deescalate the situation;

~~((b))~~ (c) Limit the holding technique to specific emergent situations where behavioral interventions have not been successful in deescalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

~~((c))~~ (d) Limit the time used to only until the arrival of emergency personnel and/or the emergency ceases;

~~((d))~~ (e) Release residents from the holding technique as soon as possible;

~~((e))~~ (f) Instruct observers on how to support signs of:

(i) Distress by the client; and

(ii) Fatigue by the staff.

~~((f))~~ (g) Document:

- (i) The reason for use of the holding technique;
- (ii) Other behavioral interventions attempted prior to the use of the holding technique;
- (iii) The duration of the use of the holding technique; and
- (iv) The condition of the resident at the time of release from the holding technique.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0420 Physical restraints for medical purposes only. (1) For the purposes of this section, "physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, required to treat the resident's medical symptoms. The enhanced services facility must ensure:

(2) Each resident has the right to be free from physical and chemical restraints used for discipline, behavioral intervention, or staff convenience;

(3) That physical restraints are used only during infrequent and episodic occurrences for the protection of the individual during delivery of medical care or treatment.

(4) That before using the physical restraint, the least restrictive alternatives have been tried and documented, and such restraint is deemed required to temporarily protect the resident from harming themselves or others during the medical care or treatment;

(5) That before physical restraints are used, the resident has been assessed as needing the restraint to treat the emergent medical symptoms or provide the medical care, and to prevent the resident from self-harm; and

(a) The resident has given informed consent for the use of physical restraints for medical purposes.

~~((a))~~ (b) The ~~((treatment))~~ person-centered service team has been consulted and evaluated the resistance to medical care; and

~~((b))~~ (c) The ~~((documentation has been updated to include))~~ use of positive interventions and supports ((used)) has been documented.

(6) That if physical restraints are used, the restraints are episodic and infrequently applied and immediately supervised on-site by a:

- (a) Licensed registered nurse;
- (b) Licensed practical nurse; or
- (c) Licensed physician; and
- (d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility, quickly and easily available;

(7) When any physical restraint is used per (3) above:

(a) A staff person is in the presence of the resident at all times when the restraint is in use;

(i) The staff person must be either a licensed or registered nurse, a mental health professional, a certified nursing assistant, or a certified home care aid.

(b) A physician's order is obtained within one hour;

(c) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint;

(d) Behavioral consultation is obtained within two hours;

(e) Resident is released immediately upon the cessation of the behavior that preceded the need for restraint.

(f) The restraint is removed immediately at the conclusion of the medical emergency, treatment or procedure;

(g) The enhanced services facility self-reports within twenty-four hours the use of the physical restraint for medical purposes to the complaint resolution unit; and

(h) The use of the physical restraint is documented:

(i) On the specific medical issue that caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the restraint; and

(ii) That the resident, guardian or legal representative, if any, was informed of the need for restraint;

(i) The ~~((treatment))~~ person-centered service planning team will consult within ~~((twenty-four))~~ seventy-two hours to determine less intrusive methods to meet the resident's needs for future care.

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0430 Food services. The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

(1) The enhanced services facility must:

(a) Provide a minimum of three meals a day;

(b) Provide snacks;

(i) Between meals and in the evening at regular intervals; and

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the enhanced services facility provides a nutritious snack after the evening meal and before breakfast.

(c) Provide access to fluids and snacks at all times;

(d) Provide sufficient time and staff support for residents to consume meals;

(e) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (h) of this subsection;

(ii) Indicate the date, day of week, month and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are kept at least six months;

(v) Provide a variety of foods;

(vi) Provide foods at safe and appropriate temperatures; and

(vii) Are not repeated for at least three weeks, except that breakfast menus in enhanced services facilities that provide a

variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;

(g) Serve nourishing, palatable and attractively presented meals adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

(h) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;

(i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The enhanced services facility must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive ~~((individual treatment))~~ person-centered service plan, nonprescribed:

(a) Modified or therapeutic diets; and

(b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose ~~((individual treatment))~~ person-centered service plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0560 Resident records—Clinical records. (1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(i) Transfer to another health care institution;

(ii) Law; or

(iii) The resident.

(2) The enhanced services facility must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

(b) Medical information;

(c) Physician's orders;

(d) Assessments;

(e) ~~((Individual treatment))~~ Person-centered service plans;

(f) Services provided;

(g) Progress notes;

(h) Medications administered;

(i) Consents, authorizations, releases;

(j) Allergic responses;

(k) Laboratory, X ray, and other findings; and

(l) Other records as appropriate.

(3) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.96A RCW.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0770 Environment of care. The facility must ensure that:

(1) The facility is designed to provide ~~((the level of))~~ safety and security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served (e.g., geriatric, acute psychiatric, or forensic).

~~((2) Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.))~~

~~(2)~~ All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for ~~((all))~~ appropriate staff.

~~(3)~~ The facility must be physically accessible to all residents.

~~((4) Perimeter security addresses elopement prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.~~

~~(5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.))~~

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0810 Resident room. The facility must ensure that each resident sleeping room:

- (1) Meets the following standards:
 - (a) Maximum capacity of one resident.
 - (b) May be locked by the resident:
 - (i) Unless otherwise indicated by an identified need in the ~~((individual treatment))~~ person-centered service plan; and
 - (ii) ~~((AH))~~ Appropriate staff have a readily accessible means of unlocking the room when the door is locked.
 - (c) Minimum clear floor area of ~~((100))~~ 80 square feet and meet the needs of the resident.
 - (d) Has one or more outside windows that:
 - (i) If used for ventilation, are easily opened;
 - (ii) Have ~~((break-away))~~ adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; and
 - (2) Is adjacent to bathing and toilet facilities;
 - (3) Is designed to offer visual privacy from casual observation by other residents and visitors. The design for privacy must not restrict resident access to the entrance, handwashing station, or toilet.
 - (4) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:
 - (a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;
 - (b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs, if applicable as assessed by resident need; and
 - (c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom.
 - (5) Is equipped with:
 - (a) One or more waste containers;
 - (b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:
 - (i) A chair, which may be used in either the bedroom or a group room interchangeably;
 - (ii) A bed of appropriate length and size that is thirty-six or more inches wide with a mattress that fits the bed frame, is in good condition, and is at least four inches thick unless otherwise requested or necessary for resident health or safety; and
 - (iii) A lockable storage space accessible to each resident for storage of small personal items, upon request.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0830 Resident bathing facilities. The facility must provide access to a bathtub or shower for every

resident. The facility will ensure that bathing facilities are designed and located for resident convenience and privacy. The facility must ensure:

- (1) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;
- (2) Access to at least one bathing device for immersion;
- (3) Access to at least one roll-in shower or equivalent on each resident care unit:
 - (a) Designed and equipped for unobstructed ease of shower chair entry and use;
 - (b) With a spray attachment equipped with a backflow prevention device;
 - (c) One-half inch or less threshold that may be a collapsible rubber water barrier; and
 - (d) A minimum nominal (rough-framed) size of thirty-six inches by forty-eight.
- (4) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.
- (5) In each bathing unit containing more than one bathing facility:
 - (a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;
 - (b) The entry wall may be a ~~((break-away))~~ "shower" type curtain or equivalent that is designed to meet the safety needs of the resident;
 - (c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;
 - (d) All shower and tub surfaces are slip-resistant; and
 - (e) All bathing areas are constructed of materials that are impervious to water and cleanable.
- (6) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities.
- (7) Grab bar(s) must be installed to prevent fall and injury in bathing facilities in nonaccessible resident rooms.
- (8) Grab bar(s) in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0890 Outdoor recreation space and walkways. (1) A facility must provide a safe, protected outdoor area for resident use.

- (2) The facility must ensure the outdoor area:
 - (a) Has areas protected from direct sunshine and rain throughout the day;
 - (b) Is easily accessible ~~((from the floor or story))~~ to the resident ~~((resides on))~~ and has walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;
 - (c) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;
 - (d) Contains nonpoisonous shrubs, natural foliage, and trees;

(e) Is surrounded by walls or fences at least seventy-two inches high; and

(f) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0940 Resident safety ~~((and suicide prevention))~~. The enhanced services facility must be designed to prevent injury and ~~((suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:))~~ promote resident safety.

(1) ~~((Ceilings))~~ The facility must ensure:

(a) ~~((In resident bathrooms are secured to prevent resident access. Ceiling systems of a nonsecured (nonclipped down) lay-in ceiling tile design are not permitted.~~

(b) ~~In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.~~

(2) ~~Doors and door hardware:))~~

~~((a))~~ Doorways are at least 36" wide;

(b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access((-);

~~((((i))~~ (c) Door closers ~~((will))~~ are not ((be)) used unless required by the building code. If required on the resident room door, the closer ~~((will))~~ must be mounted on the public side of the door rather than the private resident's side of the door((-);

~~((3) Door hinges:~~

~~((a) Are designed to minimize points for hanging (i.e., cut hinge type); and~~

~~((b) Are consistent with the level of care for the resident.~~

(4) Door lever handles are specifically designed ~~antiligature hardware.~~

~~((5) All hardware has tamper-resistant fasteners:))~~

~~((6))~~ (d) Windows that are((-

~~((a) Located))~~ located in areas accessible to residents are designed to limit the opportunities for breakage;

(e) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;

~~((e) Use of tempered glass for interior windows is permitted.~~

~~((d) Break-away window coverings for visual privacy; and))~~

~~((e))~~ (f) The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with American National Standards Institute (ANSI) Z97.1. Where operable windows are used, the hinges and locking devices must also be tested((-);

~~((7) Bathroom hardware and accessories:~~

~~((a))~~ (g) Special design considerations for resident safety and injury ((and suicide) prevention ((must be)) are given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders((-);

~~((b) Grab bars:~~

(i) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic

space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

~~((8))~~ (h) An overall design for ~~((antiligature))~~ resident safety and injury prevention including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions((-); and

~~((9))~~ (i) Ceiling systems of a nonsecured (nonclipped down) lay-in ceiling tile design are not used.

~~((9) Towel bars and shower curtain rods are not permitted.~~

~~((10) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.~~

~~((11) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.))~~

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

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.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0960 Plumbing—Water supply. The facility must:

(1) Provide:

(a) Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(b) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

(c) Labels or color codes for nonpotable water supplies as "unsafe for domestic use."

(2) Provide faucet controls in lavatories and sinks with:

(a) ~~((Either antiligature fixtures or fixtures))~~ Fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold."

(3) Ensure that all lavatories and sinks have gooseneck spouts, without aerators in areas requiring infection control. ~~((Locations determined by the facility's risk assessment must be permitted to have antiligature devices:))~~

(4) Provide shower heads that are of the flash-mounted type.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-1190 Administrator responsibilities. The licensee must ensure the administrator:

(1) Directs and supervises the overall twenty-four hour per day operation of the enhanced services facility;

(2) Ensures residents receive the care and services identified in their ~~((individual treatment))~~ person-centered service plans and assessments;

- (3) Is readily accessible to meet with residents;
- (4) Complies with the enhanced services facility's policies;
- (5) When not available on the premises, either:
 - (a) Is available by telephone or electronic pager; or
 - (b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:
 - (i) Qualified by experience to assume designated duties; and
 - (ii) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

WSR 15-11-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-108—Filed May 6, 2015, 2:41 p.m., effective May 6, 2015, 4:00 p.m.]

Effective Date of Rule: May 6, 2015, 4:00 p.m.

Purpose: This emergency rule will 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 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 220-33-01000L; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Sets a mainstem commercial fishing period for hatchery spring chinook. The upriver spring chinook return has been upgraded by TAC to two hundred forty-one thousand fish. This update allows additional fish to be available for harvest in mainstem commercial fisheries. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28 and May 5, 2015. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal 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: May 6, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000M 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:** 4:00 PM Wednesday May 6 to 6:00 AM Thursday May 7, 2015.

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

(c) **Sanctuaries:** Grays River, Elochoman-B, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

(d) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad.

(e) **Gear:** Drift nets only. 4 1/4" maximum mesh size (tangle net). Single-wall multi-filament net only. Monofilament tangle nets are not allowed. Mesh size is determined by placing three consecutive meshes under hand tension, and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

Net length may be increased from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers. An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4" maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks as required under subsection (1)(f)(ii) of this section.

(f) Miscellaneous Regulations:

(i) **Soak times** are defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

(ii) **Red corks** are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two

chambers. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

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

Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery. In addition, cooperation with department personnel prior to a fishing period is expected.

(v) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live-capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live-capture certification.

(2) Deep River Select Area

(a) **Dates:** Open 7:00 PM to 7:00 AM on Monday and Thursday nights from May 7 through June 12, 2015.

(b) **Area:** From USCG navigation marker #16 upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible. It is unlawful to tie off nets to stationary structures. It is unlawful for a net to fully cross a navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fish-

ing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in department rule (WAC 220-20-010)(17)).

(d) **Miscellaneous:** Except for transport of fish to the sampling station, it is unlawful to transport or possess fish unless and until WDFW has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, approximately 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(e) **Allowable possession:** Salmon and shad.

(3) Tongue Point/South Channel

(a) **Dates:** Open 7:00 PM to 7:00 AM on Monday and Thursday nights from May 7 through June 12, 2015.

(b) **Area:**

(i) The Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

(ii) The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear is restricted to a maximum net length of 250 fathoms, and weight must not exceed two pounds on any one fathom. In the South Channel fishing area, gear is restricted to a maximum net length of 250 fathoms, there is no weight restriction on leadline, and the use of additional weights or anchors attached directly to the leadline is permissible.

(d) **Miscellaneous:** Permanent transportation rules are in effect.

(e) **Allowable possession:** Salmon and shad

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Open 7:00 PM to 7:00 AM on Monday and Thursday nights from May 7 through June 12, 2015.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible.

(d) **Allowable possession:** Salmon and shad

(5) The following provisions apply to all seasons listed above:

(a) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules are in effect.

(b) **Multi-Net Rule:** It is permissible to possess onboard a vessel nets not specifically authorized for use in these areas so long as they are properly stored (WAC 220-33-001(2)).

(c) **Lighted Buoys:** Nets fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is fished while attached to a boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:00 p.m. May 6, 2015:

WAC 220-33-01000L Columbia River seasons below Bonneville. (15-103)

WSR 15-11-002

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-109—Filed May 6, 2015, 2:43 p.m., effective May 6, 2015, 2:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000F; and amending WAC 220-310-200.

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

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

Reasons for this Finding: Reopens the 2015 spring recreational salmon season in the Columbia River in the area downstream of Bonneville Dam. The season upstream of Bonneville Dam has also been extended for four additional days. The upriver spring chinook return has been updated to two hundred forty-one thousand fish, which means harvestable fish remain on the guidelines for recreational fishing. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation continues

to allow for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery chinook. The regulation continues to allow anglers to possess up to four hatchery chinook in fresh form in the geographic area from The Dalles Dam to the Oregon/Washington border when the area is open for hatchery spring chinook. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention. The regulation continues to allow only hand-casted lines in the geographic area of Bonneville Pool from the Tower Island powerlines (located approximately six miles below The Dalles Dam) downstream to Bonneville Dam on the Washington shore. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention. The fishery is consistent with the U.S. v. Oregon Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28, April 8, and May 5, 2015. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: May 6, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000G Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Columbia River: Open May 9 and May 16 through June 15, 2015:

(a) Open for fishing for salmonids and shad from the Tongue Point/Rocky Point Line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2), except closed to fishing from boats upstream of Beacon Rock. For the purposes of this section, Beacon Rock is defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

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

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(2) Columbia River: Open immediately through May 10, 2015:

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

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

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(3) Columbia River Possession limit: Effective immediately through June 15, 2015, when the Columbia River is open to fishing for hatchery spring Chinook from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, including the Washington bank between Bonneville Dam and the Tower Island power lines, from the Dalles Dam upstream: Anglers may possess 2 daily limits in fresh form (special rule) in addition to the 2 daily limits in fresh form allowed by permanent rule, except anglers aboard

a boat may only possess one daily limit of salmon in fresh form.

(4) Columbia River hand cast restriction: Effective immediately through June 15, 2015:

(a) When the Columbia River from the Tower Island powerlines (located approximately 6 miles below The Dalles Dam) downstream to Bonneville Dam is open to fishing from the Washington bank for hatchery spring Chinook, only hand-casted lines may be used.

(b) It is unlawful to use a floating device to set lines for salmon and steelhead.

(5) Deep River (Wahkiakum Co.): Effective immediately through June 15, 2015: The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000F Exceptions to statewide rules—
Columbia River. (15-104)

WSR 15-11-003 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-107—Filed May 6, 2015, 4:05 p.m., effective May 10, 2015]

Effective Date of Rule: May 10, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-19500M; and amending WAC 220-310-195.

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

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

Reasons for this Finding: Based on current harvest estimates, and anticipated harvest through Tuesday, May 5, an estimated one thousand two hundred adult hatchery chinook are expected to have been harvested. Monday, May 4, the upriver spring chinook run was updated to two hundred forty-one thousand fish. In an effort to share fishing opportunity and harvest, the lower two fishery zones on the Snake River will close and the upper two zones will remain open on a

three day rotating basis until further notice. 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: May 6, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500S Freshwater exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 220-310-195 and WAC 220-56-180, effective May 10, 2015, until further notice:

(1) It is permissible to fish for and possess salmon in the Snake River from the downstream edge of the large power lines crossing the Snake River (just upstream from the West Evans Road on the south shore) upstream about 3.5 miles to the Washington state line (from the east levee of the Greenbelt boat launch in Clarkston northwest across the Snake River to the WA/ID boundary waters marker on the Whitman County shore).

(a) Open Thursday through Saturday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(b) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(c) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(d) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(e) Night closure is in effect for salmon and sturgeon.

(f) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(g) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

(2) It is permissible to fish for and possess salmon in waters of the Snake River from the south shore boat launch (Ilia boat launch) across to the mouth of Almota Creek upstream about four miles to the restricted fishing area below Lower Granite Dam. Open Sunday through Tuesday each

week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) Open Sunday through Tuesday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(b) All Chinook with adipose fins intact and all steelhead must be released immediately, unharmed.

(c) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(d) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(e) Night closure is in effect for salmon and sturgeon.

(f) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(g) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rules.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19500M Freshwater exceptions to statewide rules—Snake River. (15-71)

WSR 15-11-004 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-111—Filed May 7, 2015, 1:17 p.m., effective May 7, 2015, 1:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000E.

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

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

Reasons for this Finding: Test results from the Washington department of health suggest that clams from Razor Clam Areas 1, 3, and 5 will not be safe for human consumption. Levels of domoic acid, detected through routine testing, have been on the rise since late Monday and could exceed state health guidelines by this weekend. 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: May 7, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

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

WSR 15-11-010 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-113—Filed May 7, 2015, 4:07 p.m., effective May 7, 2015, 4:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial razor clam harvest rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000Q.

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

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

Reasons for this Finding: Test results from the Washington department of health suggest that clams from Razor Clam Area 2 will not be safe for human consumption. Levels of domoic acid, detected through routine testing, have been on the rise since late Monday and could exceed state health guidelines by this weekend. 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: May 7, 2015.

James B. Scott, Jr.
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-03000Q Commercial razor clams. (15-54)

WSR 15-11-018 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-112—Filed May 11, 2015, 1:36 p.m., effective May 11, 2015, 1:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: 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.

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: May 11, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62000J 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:

(a) Effective immediately through May 29: Closed.

(b) From May 30 through June 12: Open; daily limit of 2 salmon, release coho and wild Chinook.

(c) From June 13 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:

(a) Effective immediately through May 29: Closed.

(b) From May 30 through June 12: Open; daily limit of 2 salmon, release coho and wild Chinook.

(c) From June 13 until further notice: Daily limit of 2 salmon, of which not more than one may be a Chinook salmon, release wild coho.

(3) Willapa Bay (Catch Record Card Area 2-1):

(a) Effective immediately through May 29: Closed.

(b) From May 30 through July 15: Open concurrent with Area 2 when Area 2 is open for salmon angling; Area 2 rules apply.

(4) Grays Harbor (Catch Record Card Area 2-2 west of Buoy 13 line):

(a) Effective immediately through May 29: Closed.

(b) From May 30 until further notice: Open concurrent with Area 2 when Area 2 is open for salmon angling; Area 2 rules apply.

(5) Catch Record Card Area 3:

(a) Effective immediately through May 29: Closed, except open May 15-16, and May 22-23. When open, daily limit of 2 salmon, release coho and wild Chinook.

(b) From May 30 through June 12: Open; daily limit of 2 salmon, plus two additional pink salmon, release coho and wild Chinook.

(c) From June 13 until further notice: Open; daily limit of 2 salmon, release wild coho.

(6) Catch Record Card Area 4:

(a) Effective immediately through May 29: Closed, except open May 15-16, and May 22-23. When open, daily limit of 2 salmon, release coho and wild Chinook.

(b) From May 30 through June 12: Open; daily limit of 2 salmon, plus two additional pink salmon, release coho and wild Chinook.

(c) From June 13 until further notice:

(i) Open; daily limit of 2 salmon, release wild coho.

(ii) The waters east of a true north-south line through Sail Rock are closed through July 31.

(iii) The waters south of a line from Kydaka Point to Shipwreck Point are closed.

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

**WSR 15-11-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-116—Filed May 11, 2015, 4:42 p.m., effective May 13, 2015]

Effective Date of Rule: May 13, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-19500S.

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

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

Reasons for this Finding: Based on the most current harvest estimates and anticipated harvest through Tuesday, May 12, 2015, for the Lower Granite Dam area, the Snake [River] harvest allocation will have been met. 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: May 11, 2015.

Joe Stohr
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective May 13, 2015:

WAC 220-310-19500S Freshwater exceptions to statewide rules—Snake River. (15-107)

**WSR 15-11-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-117—Filed May 12, 2015, 1:07 p.m., effective May 12, 2015, 4:00 p.m.]

Effective Date of Rule: May 12, 2015, 4:00 p.m.

Purpose: This emergency rule will 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 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 220-33-01000M; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Sets a mainstem commercial fishing period for hatchery spring chinook. The upriver spring chinook return has been upgraded by TAC to two hundred fifty thousand fish. This update allows additional fish to be available for harvest in mainstem commercial fisheries. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Confirms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28 and May 11, 2015. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries

accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal 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: May 12, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000N 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:** 4:00 PM May 12 to 6:00 AM May 13, 2015.

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

(c) **Sanctuaries:** Grays River, Elochoman-B, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

(d) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad.

(e) **Gear:** Drift nets only. 4 1/4" maximum mesh size (tangle net). Single-wall multi-filament net only. Monofilament tangle nets are not allowed. Mesh size is determined by placing three consecutive meshes under hand tension, and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

Net length may be increased from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers. An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4" maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks as required under subsection (1)(f)(ii) of this section.

(f) Miscellaneous Regulations:

(i) **Soak times** are defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

(ii) **Red corks** are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each cham-

ber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

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

Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery. In addition, cooperation with department personnel prior to a fishing period is expected.

(v) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live-capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live-capture certification.

(2) Deep River Select Area

(a) **Dates:** Open 7:00 PM to 7:00 AM on Monday and Thursday nights immediately through June 12, 2015.

(b) **Area:** From USCG navigation marker #16 upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible. It is unlawful to tie off nets to stationary structures. It is unlawful for a net to fully cross a navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in department rule (WAC 220-20-010)(17)).

(d) **Miscellaneous:** Except for transport of fish to the sampling station, it is unlawful to transport or possess fish unless and until WDFW has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, approximately 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(e) **Allowable possession:** Salmon and shad.

(3) Tongue Point/South Channel

(a) **Dates:** Open 7:00 PM to 7:00 AM on Monday and Thursday nights immediately through June 12, 2015.

(b) **Area:**

(i) The Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

(ii) The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear is restricted to a maximum net length of 250 fathoms, and weight must not exceed two pounds on any one fathom. In the South Channel fishing area, gear is restricted to a maximum net length of 250 fathoms, there is no weight restriction on leadline, and the use of additional weights or anchors attached directly to the leadline is permissible.

(d) **Miscellaneous:** Permanent transportation rules are in effect.

(e) **Allowable possession:** Salmon and shad

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Open 7:00 PM to 7:00 AM on Monday and Thursday nights immediately through June 12, 2015.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible.

(d) **Allowable possession:** Salmon and shad

(5) The following provisions apply to all seasons listed above:

(a) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules are in effect.

(b) **Multi-Net Rule:** It is permissible to possess onboard a vessel nets not specifically authorized for use in these areas so long as they are properly stored (WAC 220-33-001(2)).

(c) **Lighted Buoys:** Nets fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is fished while attached to a boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:00 p.m. May 12, 2015:

WAC 220-33-01000M Columbia River seasons below
Bonneville. (15-108)

WSR 15-11-026 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-118—Filed May 12, 2015, 1:34 p.m., effective May 12, 2015, 1:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-20000G; and amending WAC 220-310-200.

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

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

Reasons for this Finding: Allows fishing from boats for shad within the area from Beacon Rock upstream to the Bonneville Dam deadline. The area was inadvertently closed to shad when the area was closed to salmonid fishing. Shad fishing is very popular and Washington department of fish and wildlife (WDFW) strongly supports the harvest of shad. Shad fishing opens under permanent regulations beginning May 16. Also clarifies that sockeye retention is not allowed. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation continues to allow for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery chinook. The regulation continues to allow anglers to possess up to four hatchery chinook in fresh form in the geographic area from The Dalles Dam to the Oregon/Washington border when the area is open for hatchery spring chinook. The state will pursue making this regulation a permanent rule during the spring

season when the area is open for hatchery chinook retention. The regulation continues to allow only hand-casted lines in the geographic area of Bonneville Pool from the Tower Island powerlines (located approximately six miles below The Dalles Dam) downstream to Bonneville Dam on the Washington shore. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28, May 5, and 11, 2015. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal 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 and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000I Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Columbia River: Open May 16 through June 15, 2015:

(a) Open for fishing for salmonids from the Tongue Point/Rocky Point Line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2), except closed to fishing for salmonids from boats upstream of Beacon Rock. For the purposes of this section, Beacon Rock is defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

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

(c) Release all wild Chinook, wild steelhead and sockeye.

(d) Salmon minimum size is 12 inches.

(2) Deep River (Wahkiakum Co.): Effective immediately through June 15, 2015: The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000G Exceptions to statewide rules—Columbia River. (15-109)

**WSR 15-11-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-119—Filed May 12, 2015, 1:36 p.m., effective May 12, 2015, 1:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000D; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Closes The Dalles Pool and adjacent tributaries for the retention of white sturgeon. The harvest guideline of one hundred fish is expected to be reached. The summer-period white sturgeon retention season in Bonneville Reservoir remain in place. Catch and release is allowed during nonretention periods, except within the May-July sturgeon spawning sanctuaries. This emergency rule is consistent with the joint Washington-Oregon action of April 8, and May 11, 2015, and conforms Washington state rules with Oregon state rules. 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: May 12, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000J Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 220-310-200:

(1) From June 19 through June 21, June 26 through June 28, and July 3 through July 5, 2015, it is permissible to retain white sturgeon between 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to sturgeon spawning Sanctuary boundary located 1.8 miles downstream of The Dalles Dam.

(2) Effective immediately until further notice, except for the specific dates described in subsection (1) of this section, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is permissible except from May 1 through July 31, 2015 in the sturgeon

spawning Sanctuary located from The Dalles Dam downstream 1.8 miles.

(3) Effective May 14, 2015 until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and in all adjacent Washington tributaries from The Dalles Dam upstream to John Day Dam. The Dalles Dam sanctuary remains in place through July 31 under permanent regulations.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000D Exceptions to statewide rules—
Columbia River sturgeon. (15-70)

WSR 15-11-033 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-122—Filed May 13, 2015, 2:56 p.m., effective May 22, 2015]

Effective Date of Rule: May 22, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-18500X; and amending WAC 220-310-185.

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

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

Reasons for this Finding: This rule change is necessary to ensure a safe and successful event. The reason for closing Kress Lake is to ensure safety for the public as well as the event participants. There is expected to be over six hundred people participating in the safety day program. Boats will be used for teaching safety classes to kids and adults. Closing the lake will alleviate any boat traffic from anglers. 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: May 13, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500X Exceptions to statewide rules—Kress Lake (Cowlitz Co.) Notwithstanding the provisions of WAC 220-310-185, effective 12:01 a.m. May 22 through 6:00 p.m. May 23, 2015, it is unlawful to fish in those waters of Kress Lake, except open to fishing 10:00 a.m. through 3:00 p.m. May 23, 2015, to juvenile anglers participating in the fishing event and Safety Day program.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. May 23, 2015:

WAC 220-310-18500X Exceptions to statewide rules—
Kress Lake (Cowlitz Co.)

WSR 15-11-034 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-123—Filed May 13, 2015, 4:15 p.m., effective May 13, 2015, 4:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-25500Y; and amending WAC 220-56-255.

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

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

Reasons for this Finding: The Marine Area 2 recreational Pacific halibut quota set aside for the primary season is projected to be reached. Any quota remaining from the primary season will be added to a separate quota set aside for the Northern Nearshore area and is sufficient to continue to allow halibut fishing seven days per week in that area. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. 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: May 13, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500Z Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) Catch Record Card Area 1:

(a) Open until further notice, Thursdays through Sundays.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(2) Catch Record Card Area 1 (Nearshore fishery):

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon).

(a) Open until further notice, Mondays through Wednesdays.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) Catch Record Card Area 2: Closed.

(a) Catch Record Card Area 2 (Northern Nearshore fishery): Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47°31.70 N. lat, 124°37.03 W. long

47°25.67 N. lat, 124°34.79 W. long

47°12.82 N. lat, 124°29.12 W. long

47°58.00 N. lat, 124°24.24 W. long

(b) It is permissible to take, retain and possess lingcod seaward of the 30 fathom line on any day open to the primary halibut fishery as provided in subsection (2) above.

(4) Catch Record Card Areas 3 and 4:

(a) Open May 14, May 16, May 21, and May 23, 2015, Thursdays and Saturdays only.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 east of the Bonilla-Tatoosh Line it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms) except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

(5) Catch Record Card Area 5:

(a) Open May 15 through May 16, 2015, Friday and Saturday.

(b) Open May 21 through May 24, 2015, Thursday through Sunday.

(c) Open May 29 through May 30, 2015, Friday and Saturday.

(d) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open.

(6) Catch Record Card Areas 6 through 10:

(a) Open May 15 through May 16, 2015, Friday and Saturday.

(b) Open May 21 through May 24, 2015, Thursday through Sunday

(c) Open May 28 through May 30, 2015, Thursday through Saturday.

(d) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days that halibut fishing is open in Marine Area 6.

(7) Catch Record Card Areas 11, 12 and 13: Closed.

(8) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(9) Unless otherwise amended, all other permanent rules remain in effect.

(10) It is unlawful to land halibut in a port within an area closed to halibut fishing.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500Y Halibut—Seasons—Daily and possession limits. (15-88)

**WSR 15-11-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-121—Filed May 13, 2015, 4:57 p.m., effective May 13, 2015, 4:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational hunting rules for deer.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-359.

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

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

Reasons for this Finding: This emergency rule allows for second deer tags on Washington's islands for youth, seniors,

and disabled hunters to address the overabundance of deer in these areas and the resulting impacts to the public's well-being and property. The permanent rule was amended on April 9-10, 2015, and these changes were omitted in error. The emergency rule is needed immediately because the application deadline for deer permit hunts, including those in this emergency rule, is next week. There is insufficient time to adopt permanent rules. The department will engage in permanent rule making to rectify this issue.

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: May 13, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-35900A 2015 Deer special permits Notwithstanding the provisions of WAC 232-28-359, effective immediately until further notice:

(1) The following hunt permits listed within the "Youth" table are struck:

Youth						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Orcas	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	411	5
Shaw	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	412	2
San Juan	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	413	5
Lopez	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	414	3
Blakely	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	415	2
Decatur	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	416	1
Cypress	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	417	1
Guemes	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	419	1
Whidbey	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	420	10
Camano	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	421	3
Vashon-Maury	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	422	10
Orcas	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	411	4
Shaw	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	412	2

Youth						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
San Juan	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	413	4
Lopez	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	414	3
Blakely	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	415	2
Decatur	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	416	1
Cypress	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	417	1
Guemes	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	419	1
Whidbey	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	420	10
Camano	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	421	3
Vashon-Maury	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	422	10

(2) A new table is inserted after the "Youth" table as provided below:

Youth-2nd Deer						
Second deer permits are only valid with the purchase of a second deer license. The second deer license must be for the same tag type as the first deer license.						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Orcas	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	411	5
Shaw	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	412	2
San Juan	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	413	5
Lopez	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	414	3
Blakely	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	415	2
Decatur	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	416	1
Cypress	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	417	1
Guemes	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	419	1
Whidbey	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	420	10
Camano	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	421	3
Vashon-Maury	Modern	Youth	Oct. 17-30 and Nov. 12-15	Antlerless	422	10
Orcas	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	411	4
Shaw	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	412	2
San Juan	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	413	4
Lopez	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	414	3

Youth-2nd Deer						
Second deer permits are only valid with the purchase of a second deer license. The second deer license must be for the same tag type as the first deer license.						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Blakely	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	415	2
Decatur	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	416	1
Cypress	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	417	1
Guemes	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	419	1
Whidbey	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	420	10
Camano	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	421	3
Vashon-Maury	Archery	Youth	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	422	10

(3) The following hunt permits listed within the "Senior 65+" table are struck:

Senior 65+						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Orcas	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	411	4
Shaw	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	412	2
San Juan	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	413	4
Lopez	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	414	3
Blakely	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	415	2
Decatur	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	416	1
Cypress	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	417	1
Guemes	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	419	1
Whidbey	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	420	5
Camano	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	421	3
Vashon-Maury	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	422	5
Orcas	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	411	4
Shaw	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	412	2
San Juan	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	413	4
Lopez	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	414	3
Blakely	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	415	2
Decatur	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	416	1

Senior 65+						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Cypress	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	417	1
Guemes	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	419	1
Whidbey	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	420	5
Camano	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	421	3
Vashon-Maury	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	422	5
Whidbey	Muzzleloader	65+	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	420	2
Vashon-Maury	Muzzleloader	65+	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	422	2

(4) A new table is inserted after the "Senior 65+" table as provided below:

Senior 65+, 2nd Deer						
Second deer permits are only valid with the purchase of a second deer license. The second deer license must be for the same tag type as the first deer license.						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Orcas	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	411	4
Shaw	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	412	2
San Juan	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	413	4
Lopez	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	414	3
Blakely	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	415	2
Decatur	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	416	1
Cypress	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	417	1
Guemes	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	419	1
Whidbey	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	420	5
Camano	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	421	3
Vashon-Maury	Modern	65+	Oct. 17-30 and Nov. 12-15	Antlerless	422	5
Orcas	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	411	4
Shaw	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	412	2
San Juan	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	413	4
Lopez	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	414	3
Blakely	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	415	2
Decatur	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	416	1

Senior 65+, 2nd Deer						
Second deer permits are only valid with the purchase of a second deer license. The second deer license must be for the same tag type as the first deer license.						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Cypress	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	417	1
Guemes	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	419	1
Whidbey	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	420	5
Camano	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	421	3
Vashon-Maury	Archery	65+	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	422	5
Whidbey	Muzzleloader	65+	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	420	2
Vashon-Maury	Muzzleloader	65+	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	422	2

(5) The following hunt permits listed within the "Hunters with Disabilities" table are struck:

Hunters with Disabilities						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Orcas	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	411	4
Shaw	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	412	2
San Juan	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	413	4
Lopez	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	414	3
Blakely	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	415	2
Decatur	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	416	1
Cypress	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	417	1
Guemes	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	419	1
Whidbey	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	420	5
Camano	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	421	3
Vashon-Maury	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	422	5
Orcas	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	411	2

Hunters with Disabilities						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Shaw	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	412	2
San Juan	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	413	2
Lopez	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	414	2
Blakely	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	415	2
Decatur	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	416	1
Cypress	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	417	1
Guemes	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	419	1
Whidbey	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	420	2
Camano	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	421	2
Vashon-Maury	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	422	2

(6) A new table is inserted after the "Hunters with Disabilities" table as provided below:

Hunters with Disabilities-2nd Deer						
Second deer permits are only valid with the purchase of a second deer license. The second deer license must be for the same tag type as the first deer license.						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Orcas	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	411	4
Shaw	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	412	2
San Juan	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	413	4
Lopez	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	414	3
Blakely	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	415	2
Decatur	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	416	1
Guemes	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	419	1
Whidbey	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	420	5
Camano	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	421	3

Hunters with Disabilities-2nd Deer						
Second deer permits are only valid with the purchase of a second deer license. The second deer license must be for the same tag type as the first deer license.						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Vashon-Maury	Archery	Hunter with Disability	Aug. 31 - Sept. 25 and Nov. 25 - Dec. 30	Antlerless	422	5
Orcas	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	411	2
Shaw	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	412	2
San Juan	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	413	2
Lopez	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	414	2
Blakely	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	415	2
Decatur	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	416	1
Guemes	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	419	1
Whidbey	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	420	2
Camano	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	421	2
Vashon-Maury	Muzzleloader	Hunter with Disability	Oct. 3-11 and Nov. 26 - Dec. 14	Antlerless	422	2

WSR 15-11-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-120—Filed May 14, 2015, 3:47 p.m., effective May 14, 2015, 3:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Wind River and Drano Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500W; and amending WAC 220-310-185.

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

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

Reasons for this Finding: The 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.

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: May 14, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500W Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Mill Creek (Lewis Co.): Effective June 6 until further notice, selective gear rules are in effect in Mill Creek (Lewis Co.) from the mouth to salmon hatchery road culvert.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-310-18500W Freshwater exceptions to statewide rules—Southwest.

**WSR 15-11-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-125—Filed May 14, 2015, 3:47 p.m., effective June 16, 2015]

Effective Date of Rule: June 16, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000K; and amending WAC 220-310-200.

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

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

Reasons for this Finding: [No further information supplied by agency].

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: May 14, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000K Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective June 16 through July 31, 2015:

(1) It is permissible to fish in waters of the Columbia River from the Astoria-Megler Bridge upstream to Bonneville Dam.

(2) Daily salmonid limit is 6 fish; minimum size is 12 inches. Up to 2 may be adult salmon or hatchery steelhead or 1 of each. Release all salmon other than hatchery Chinook and Sockeye. Salmon minimum size is 12 inches

(3) Effective July 7 through July 31: Release all adult Chinook and Sockeye.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-310-20000K Freshwater exceptions to statewide rules—Columbia River.

**WSR 15-11-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-110—Filed May 14, 2015, 3:47 p.m., effective June 6, 2015]

Effective Date of Rule: June 6, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-55-230.

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

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

Reasons for this Finding: 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.

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: May 14, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-55-23000A Columbia River endorsement. Notwithstanding the provisions of WAC 220-55-230, effective June 6, 2015, until further notice, a Columbia River Endorsement is no longer required to fish in waters of Rock Creek (Skamania Co.) from the falls at approximately River Mile 1 upstream.

**WSR 15-11-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-124—Filed May 14, 2015, 3:56 p.m., effective May 23, 2015]

Effective Date of Rule: May 23, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500U; and amending WAC 220-310-195.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules 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.

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: May 14, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500U Freshwater exceptions to statewide rules—Eastside Notwithstanding the provisions of WAC 220-310-195, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

White Salmon River (Klickitat/Skamania Co.): Effective May 23 through June 30, 2015 from the county road bridge below the former power house upstream to the Northwestern Road Bridge:

(a) The salmon and steelhead daily limit is two hatchery Chinook or hatchery steelhead or one of each.

(b) Salmon minimum size is 12 inches.

(c) Wild Chinook and wild steelhead must be released.

(d) Release all gamefish except hatchery steelhead.

Klickitat River (Klickitat Co.): Effective June 1 until further notice:

(1) From the mouth to the Fisher Hill Bridge (located approximately 3 miles from the mouth):

(a) Trout daily limit is three hatchery steelhead. Release all trout except hatchery steelhead.

(b) Salmon daily limit is six hatchery spring Chinook of which no more than two may be adults. Minimum size is 12 inches. Wild Chinook must be released.

(2) From 400 feet upstream from #5 fishway (located about one-half mile upstream from the Fisher Hill Bridge) upstream to the boundary markers below the Klickitat Salmon Hatchery:

(a) Trout daily limit is 3 fish of which no more than 2 may be other than hatchery steelhead. Minimum size is 12 inches. Wild steelhead must be released.

(b) Salmon daily limit is six hatchery spring Chinook of which no more than two may be adults. Minimum size is 12 inches. Wild Chinook must be released.

(3) From boundary markers above Klickitat Salmon Hatchery upstream to the Yakama Reservation boundary, the trout daily limit is 3 fish of which no more than 2 may be other than hatchery steelhead. Minimum size is 12 inches. Wild steelhead must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-310-19500U Freshwater exceptions to statewide rules—Eastside.

**WSR 15-11-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-127—Filed May 15, 2015, 9:08 a.m., effective May 17, 2015]

Effective Date of Rule: May 17, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-18500Y; and amending WAC 220-310-185.

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

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

Reasons for this Finding: Hatchery returns have been strong to date on the Cowlitz River, Drano Lake, Kalama River and the Wind River. The hatchery broodstock goal is expected to be met or has been met and surplus hatchery origin fish are available for harvest. 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: May 15, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500Y Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Cowlitz River (Cowlitz/Lewis Co.): Effective May 17 until further notice, from the boundary markers at the mouth upstream to 400 feet or posted markers below the barrier dam:

(a) The salmon daily limit is 6 hatchery Chinook of which no more than 3 may be adults.

(b) Release wild Chinook.

(c) Anglers may fish with two poles with a valid Two Pole Endorsement from the Lexington Drive Bridge (Sparks

Road Bridge) upstream to 400 feet or posted markers below the barrier dam.

(2) Kalama River (Cowlitz Co.): Effective May 17 until further notice, from the boundary markers at the mouth to 1,000 feet below the upper salmon hatchery, the salmon daily limit is 6 hatchery Chinook of which no more than 2 may be adults. Release wild Chinook.

(3) Wind River (Skamania Co.): Effective May 17 through June 30 from the mouth (boundary line/markers) upstream to 800 yards downstream from Carson National Fish Hatchery except closed waters from 400 feet below to 100 feet above Shipherd Falls and from 400 feet to 100 feet above the coffer dam:

(a) The salmon and steelhead daily limit is 3 fish of which no more than 2 may be hatchery steelhead.

(b) Release wild steelhead.

(c) Release wild Chinook from Shipherd Falls downstream.

(d) The anti-snagging rule is in effect from the Highway 14 Bridge upstream. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(e) From the mouth (boundary line/markers) upstream to the Highway 14 Bridge, anglers may fish for salmon and steelhead with two poles with a valid Two Pole Endorsement. In addition, each angler aboard a vessel may deploy salmon and steelhead angling gear until the daily salmon/steelhead limit for all anglers aboard has been achieved.

(f) Barbed hooks may be used.

(4) Drano Lake (Skamania Co.): Effective May 17 through June 30 downstream from markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge:

(a) The salmon and steelhead daily limit is 3 hatchery Chinook or hatchery steelhead of which no more than 2 may be hatchery steelhead.

(b) Release wild Chinook and wild steelhead.

(c) Barbed hooks may be used.

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 August 1, 2015:

WAC 220-310-18500Y Freshwater exceptions to statewide rules—Southwest.

**WSR 15-11-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-129—Filed May 15, 2015, 11:44 a.m., effective May 23, 2015]

Effective Date of Rule: May 23, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500Z; and amending WAC 220-310-185.

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

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

Reasons for this Finding: Hatchery summer run steelhead are released into these rivers. Returning adults are not needed for broodstock. In addition, on the Elochoman River stray hatchery spring chinook have been previously found in the system. These fish are also not needed for broodstock. Opening the rivers two weeks early will allow additional opportunity to harvest surplus hatchery steelhead and hatchery spring chinook. Selective gear rules will be in effect to aid in the release of any remaining juvenile salmonid outmigrants. 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: May 15, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500Z Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Elochoman River (Wahkiakum Co.): Effective May 23 through June 5, it is permissible to fish in waters of the Elochoman River from mouth to the bridge located 400 feet below the upper hatchery rack at the site of the former salmon hatchery:

(a) Daily limit is six fish of which no more than two may be hatchery adult Chinook or hatchery steelhead, or one of each.

(b) Salmon minimum size is 12 inches.

(c) Wild Chinook and wild steelhead must be released.

(d) Release all fish except hatchery steelhead.

(e) Selective gear rules are in effect.

(2) Green River (Cowlitz Co.): Effective May 23 through June 5, it is permissible to fish in waters of the Green River from the mouth upstream to 400 feet below the Toutle Hatchery intake:

(a) Daily limit is 2 hatchery steelhead.

(b) Release all fish except hatchery steelhead.

(c) Selective gear rules are in effect.

(3) South Fork Toutle River (Cowlitz Co.): Effective May 23 through June 5, it is permissible to fish in waters of the South Fork Toutle River from the mouth upstream to the 4700 Road Bridge:

(a) Daily limit is 2 hatchery steelhead.

(b) Release all fish except hatchery steelhead.

(c) Selective gear rules are in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 6, 2015:

WAC 220-310-18500Z Freshwater exceptions to statewide rules—Southwest.

WSR 15-11-052

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-130—Filed May 15, 2015, 11:47 a.m., effective May 17, 2015]

Effective Date of Rule: May 17, 2015.

Purpose: Amend recreational fishing rules for Grays River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500A; and amending WAC 220-310-185.

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

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

Reasons for this Finding: Stray hatchery spring chinook have been found in the system. These fish are also not needed for broodstock. Opening the rivers two weeks early will allow additional opportunity to harvest surplus hatchery spring chinook and hatchery steelhead. 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: May 15, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500A Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Grays River (Wahkiakum Co.): Effective May 17 through June 5, it is permissible to fish in waters of the Grays River from mouth to the South Fork:

(a) Daily limit is six fish of which no more than two may be hatchery adult Chinook or hatchery steelhead, or one of each.

(b) Salmon minimum size is 12 inches.

(c) Wild Chinook and wild steelhead must be released.

(d) Release all fish except hatchery Chinook and hatchery steelhead.

(2) West Fork Grays River (Wahkiakum Co.) Effective May 17 through June 5, it is permissible to fish in waters of the West Fork Grays River from the mouth upstream to the hatchery intake/footbridge:

(a) Daily limit is six fish of which no more than two may be hatchery adult Chinook or hatchery steelhead, or one of each.

(b) Salmon minimum size is 12 inches.

(c) Wild Chinook and wild steelhead must be released.

(d) Release all fish except hatchery Chinook and hatchery steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 6, 2015:

WAC 220-310-18500A Freshwater exceptions to statewide rules—Southwest.

**WSR 15-11-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-132—Filed May 15, 2015, 3:00 p.m., effective May 16, 2015, 12:00 p.m.]

Effective Date of Rule: May 16, 2015, 12:00 p.m.

Purpose: Amend commercial salmon troll fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Catches of salmon in Areas 3 and 4 are approaching the available quota. A large harvestable quota of salmon remains available for the troll fleet in Areas 1 and 2. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 15, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-24-04000R All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective 12:00 p.m. May 16, 2015, 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 below:

(1) Salmon Management and Catch Reporting Areas 1 and 2 open through June 30, 2015.

(2) Columbia River Control Zone is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

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

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. 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 aboard, and destination. 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.

(6) The Columbia Control Zone 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°15'48" 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.

(7) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1 or 2 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1 or 2 must be landed before fishing south of Cape Falcon, Oregon.

(8) 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, 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 effective 12:00 p.m. May 16, 2015:

WAC 220-24-04000Q All-citizen commercial salmon troll.
(15-80)

WSR 15-11-060 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-115—Filed May 18, 2015, 3:44 p.m., effective May 20, 2015]

Effective Date of Rule: May 20, 2015.

Purpose: Amend recreational fishing rules for the Wenatchee and Icicle rivers.

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

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

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

Reasons for this Finding: Hatchery-origin spring chinook in excess of desired escapement are forecast to return to the Wenatchee River. The fishery will reduce the number of excess hatchery-origin spring chinook and consequently increase the proportion of natural-origin spring chinook on the spawning grounds. Opening two sections of the Wenatchee River and a section of the Icicle River will provide additional fishing 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 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: May 18, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500T Freshwaters exceptions to statewide rules—Wenatchee River. Notwithstanding the provisions of WAC 220-310-195, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective May 23, 2015, until further notice, it is permissible to fish in waters of the Wenatchee River from the Washington State Parks foot bridge at Confluence Park (just upstream from the confluence with the Columbia River) to 400 feet below Dryden Dam and it is permissible to fish in

waters of the Wenatchee River from the confluence with Peshastin Creek and from that point to a line perpendicular with the river to the opposite river bank (approximately 1,000 feet above Dryden Dam), then to the downstream point of the confluence with the Icicle River and from that point to a line perpendicular with the Wenatchee River to the marker on the opposite river bank.

(a) Daily limit two hatchery Chinook.

(b) Anglers must release adipose present Chinook unharmed and cannot be removed from the water prior to release.

(c) Anglers must release all Chinook with one or more round 1/4 inch diameter holes punched in the caudal (tail) fin.

(d) Anglers may fish with one line with up to two single point barbless hooks, knotless nets, and bait is allowed.

(e) Night closure is in effect.

(4) Effective May 20 through July 31, 2015, it is permissible to fish in waters of the Icicle River from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(a) Daily limit two hatchery Chinook.

(b) Anglers must release adipose present Chinook unharmed and cannot be removed from the water prior to release.

(c) Anglers must release all Chinook with one or more round 1/4 inch diameter holes punched in the caudal (tail) fin.

(d) No gear restrictions. Night closure is in effect.

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

**WSR 15-11-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-131—Filed May 18, 2015, 3:45 p.m., effective May 18, 2015, 3:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-071.

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

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

Reasons for this Finding: Harvestable surpluses of sea cucumbers exist in Sea Cucumber District 1 to allow for commercial harvest. 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: May 18, 2015.

J. W. Unsworth
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 from Monday, May 25, to Wednesday, May 27 only.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 850 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 850 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.

**WSR 15-11-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-135—Filed May 18, 2015, 5:04 p.m., effective May 19, 2015, 6:00 a.m.]

Effective Date of Rule: May 19, 2015, 6:00 a.m.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008)

(Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Allows the sale of fish caught in Zone 6 Columbia River tribal fisheries with gillnets, platform and hook and line gear. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) remains closed to sales of fish. The upriver spring chinook has been updated to two hundred fifty thousand fish, and harvestable fish are available to the treaty tribes. 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 May 5 and 18, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

Date Adopted: May 18, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 6:00 a.m. May 19 to 6:00 p.m. May 22, 2015.

(b) Gear: Gillnets.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(e) Season: immediately until further notice.

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

(g) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

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

(3) 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 and Klickitat River.

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. May 19, 2015:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. (15-106)

WSR 15-11-082 EMERGENCY RULES

OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-01—Filed May 19, 2015, 3:12 p.m., effective May 19, 2015, 3:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The federal government announced its plans in March 2015 to adjust the essential health benefits standards for plan year 2017. The first step in this process is for each state to designate its base benchmark plan by June 1, 2015, and then engage in any further rule making necessary for supplementing the base benchmark plan; the result of this latter rule making would be published in fall 2015. The federal rules require choosing a base benchmark plan from a designated list of ten plans, based on enrollment in each plan as of March 31, 2014. RCW 48.43.715 further provides that the base benchmark plan must be the small group plan with the greatest enrollment. This rule making is solely for the purpose of meeting the federal government's June 1 deadline for designating a base benchmark plan; the subsequent supplementation is anticipated to be achieved by normal rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-865.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Other Authority: P.L. 111-148, sec. 1302 (2010).

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: New federal rules require choosing a base benchmark plan from a designated list of ten plans, based on enrollment in each plan as of March 31, 2014. This emergency rule making is solely for the purpose of meeting the federal government's June 1 deadline for designating a base benchmark plan; the subsequent supplementation is anticipated to be achieved by normal rule making.

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

Date Adopted: May 19, 2015.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-19-099, filed 9/19/12, effective 10/20/12)

WAC 284-43-865 Essential health benefits package benchmark reference plan. A not grandfathered individual or small group health benefit plan offered, issued, amended or renewed on or after January 1, 2014, must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered by health care service contractor Regence Blue Shield as the ~~((Innova))~~ Regence Direct Gold + small group plan policy form, policy form number ~~((WW0714CCONMS))~~ WW0114CCONMSD, and certificate form number ~~((WW0112BINNS))~~ WW0114BPPO1SD, offered during the first quarter of ~~((2012))~~ 2014. The SERFF filing number is ~~((RGWA-427372701))~~ RGWA-128968362.

(2) The services and items covered by a health benefit plan that are within the categories identified in Section 1302(b) of PPACA including, but not limited to, ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and

devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including oral and vision care, and as supplemented by the commissioner or required by the secretary of the U.S. Department of Health and Human Services.

(3) Mandated benefits pursuant to Title 48 RCW enacted before December 31, 2011.