

WSR 17-12-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-100—Filed May 24, 2017, 12:44 p.m., effective June 1, 2017]

Effective Date of Rule: June 1, 2017.

Purpose: Amend recreational Puget Sound shrimp rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-330-070 and 220-330-010.

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 regulation is needed to ensure an orderly fishery, manage the fishery within court ordered sharing requirements, and ensure conservation. Sufficient amounts of spot shrimp remain available in Marine Areas 6 and 7 West to raise the daily bag limit on a trial basis, and in Marine Area 12 sufficient amounts of spot shrimp remain to allow one more day of fishing. In addition, harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 24, 2017.

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

NEW SECTION

WAC 220-330-07000B Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective June 1, 2017, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6 (excluding the Discovery Bay Shrimp District) and 7 West are open to the harvest of all shrimp species.

(2) All waters equal to or less than 200 feet in depth in Marine Area 7 East are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(3) All waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(4) All waters equal to or less than 250 feet in depth in Marine Area 13 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

(5) Marine Area 12: Open June 3, 2017, from 9:00 a.m. through 1:00 p.m.

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

NEW SECTION

WAC 220-330-01000B Shellfish—Daily limits. Notwithstanding the provisions of WAC 220-330-010, effective 12:01 a.m. June 1, 2017, until further notice, in Marine Areas 6 and 7 West it is permissible for any one person to take up to 120 shrimp for personal use in any one day.

WSR 17-12-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-102—Filed May 24, 2017, 1:08 p.m., effective May 26, 2017]

Effective Date of Rule: May 26, 2017.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-314-03000C; and amending WAC 220-314-030.

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 emergency rule is needed to close the all depth fishery in Marine Area 1. There is not sufficient quota remaining to allow another day of halibut fishing. There is enough quota reserved to continue to allow halibut retention with bottomfish on board in the nearshore

area of Marine Area 1 Mondays through Wednesdays 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 24, 2017.

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

NEW SECTION

WAC 220-314-03000D Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective May 26, 2017, 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** - Closed.

(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., 124°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.

(4) **Card Areas 3 and 4**

(a) Open June 1, 2017.

(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) In Marine Areas 3 and 4 (west of the Bonilla-Tatoosh Line) 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 220-314-010.

(5) **Catch Record Card Area 5 through 10**

(a) Open June 1, 2017.

(b) 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 in Areas 5 and 6.

(6) **Catch Record Card Areas 11, 12 and 13** - Closed.

(7) 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.

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

(9) All other permanent rules remain in effect.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000C Halibut—Seasons—Daily and possession limits. (17-95)

WSR 17-12-005

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed May 25, 2017, 8:14 a.m., effective May 29, 2017]

Effective Date of Rule: May 29, 2017.

Purpose: Public Law 114-22 amended the Child Abuse Prevention and Treatment Act (CAPTA), a federal law for state receipt of federal funds, to require that a child be considered a victim of "child abuse and neglect" and of "sexual abuse" if the child is a victim of sex trafficking. To continue to qualify for federal funds, this WAC must be changed to

incorporate sex trafficking on May 29, 2017. These changes also align with anticipated changes to the Washington state criminal code.

Citation of Existing Rules Affected by this Order: Amending WAC 388-15-009.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, 74.13.031, chapter 26.44 RCW.

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

Reasons for this Finding: This change must be implemented on May 29, 2017, in order for the state to continue to qualify for federal CAPTA funds.

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

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

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

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

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

Date Adopted: April 26, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-011, filed 6/22/07, effective 7/23/07)

WAC 388-15-009 What is child abuse or neglect?

Child abuse or neglect means the injury, sexual abuse, or sexual exploitation of a child by any person under circumstances which indicate that the child's health, welfare, or safety is harmed, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the nonaccidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

- (a) Throwing, kicking, burning, or cutting a child;
- (b) Striking a child with a closed fist;
- (c) Shaking a child under age three;
- (d) Interfering with a child's breathing;
- (e) Threatening a child with a deadly weapon;
- (f) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare or safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide child-care for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, sex trafficking and commercial sexual exploitation as those terms are defined by law. Sexual exploitation also includes, but is not limited to, such actions as allowing, ~~((permitting))~~ compelling, encouraging, aiding, or otherwise causing a child to ~~((engage))~~ participate in one or more of the following:

(a) ~~((Prostitution))~~ Any sex act when anything of value is given to or received by any person for the sex act;

(b) Sexually explicit, obscene, or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; ~~((or))~~

(c) Sexually explicit, obscene, or pornographic activity as part of a live performance~~((;))~~ or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, or safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, or safety. Negligent treatment or maltreatment includes, but is not limited, to:

(a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, or safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves;

(b) Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child; or

(c) The cumulative effects of a pattern of conduct, behavior or inaction by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or

guardian to perform basic parental functions, obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

WSR 17-12-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-103—Filed May 25, 2017, 3:46 p.m., effective May 25, 2017,
3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial scallop fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-06900L; and amending WAC 220-340-610.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 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: A harvestable surplus of pink and spiny scallops exists in the Puget Sound marine fish and shellfish catch reporting areas specified to allow for commercial harvest. This emergency rule is needed to close Scallop Area 1 which has been closed by the department of health. 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 25, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-61000A Puget Sound commercial scallops. Notwithstanding the provisions of WAC 220-340-610, effective immediately until further notice, it is unlawful

to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is allowed within Rosario Strait Scallop Area 2 defined by the Washington Department of Health in Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, and 22A.

(3) Pink or spiny scallop harvest using shellfish diver gear is also allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B and 25A.

(4) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(5) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations and when pink or spiny scallops are onboard the harvest vessel.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-06900L Puget Sound commercial scallops.
(17-19)

WSR 17-12-022
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 30, 2017, 11:49 a.m., effective May 30, 2017, 11:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule creates a temporary limited category 03 license for individuals that is restricted to work performed on hand powered manlifts in grain terminals.

Statutory Authority for Adoption: Chapter 70.87 RCW, Elevators, lifting devices, and moving walks.

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: In Washington, all conveyances other than residential units must be inspected and tested at least once each year. Because of our statewide construction boom, there are more conveyances than ever in our state. But, there aren't enough licensed elevator mechanics to do inspection and testing.

While there are gaps between the number of conveyances and the number of licensed mechanics, this "service gap" is especially acute in the grain industry.

Grain terminals often have hand powered manlifts, which are simple to operate. Even so, these manlifts must be inspected and tested at least once per year. The inspection gap causes work stoppages, increased costs for farmers, and risks to those who work around the manlifts, particularly during the busy harvest season in the summer and fall.

Statewide, there are only three licensed elevator mechanics who hold a current Category 03 license, and only two service providers, who can work on all kinds of electric, belt, and hand powered manlifts and special purpose elevators.

We estimate there are about three hundred fifty hand powered manlifts statewide that use only manual energy to operate and don't present the same sorts of risks that electric and belt manlifts and special purpose elevators do. However, our current rules require that hand powered manlifts be inspected and tested by either service providers that hold a full Category 03 license, or those who hold a temporary Category 09 license. To get a temporary license, the applicant must have finished seventy-five percent of education and training.

The elevator program has learned from stakeholders that there are three individuals who have finished fifty percent of the education and training to qualify for a full Category 03 license. Finding a way to license them to inspect only hand powered manlifts could potentially address the inspection gap during the upcoming harvest season in the grain industry.

Stakeholders from the grain industry have asked the elevator program to create a temporary limited Category 03 license, restricted to limited duties as an elevator mechanic to perform maintenance, testing, and repair of hand powered manlifts in grain terminals. This license excludes any type of electrical work.

The elevator program has created an emergency rule creating this temporary limited Category 03 license to address the inspection gap in the grain industry for the upcoming harvest season.

To qualify for this temporary limited Category 03 license for hand powered manlifts in grain terminals, individuals must meet the qualifications specified in the emergency rule. Elevator contractors must be able to demonstrate a backlog or need for the temporary limited license. The department will issue the temporary limited license based upon a contractor's ability to attest to a shortage of qualified elevator mechanics in these specific areas of the elevator industry: Maintenance, repair, installation or testing.

The temporary limited license for hand powered manlifts in grain terminals is valid for thirty days. It may be issued six times and renewed consecutively for a six month period. An individual holding the license must be employed and designated as competent by a licensed elevator contractor and must be actively pursuing education and training to become a fully licensed Category 03 elevator mechanic. The elevator contractor must be able to attest to a backlog or need for the temporary limited license for hand powered manlifts in the following areas: Maintenance, repair, installation, and testing of conveyances. The department will determine whether to

issue the temporary limited Category 03 license for hand powered manlifts based upon a demonstrated shortage of qualified elevator mechanics in these specific areas of the elevator industry.

The department is initiating the permanent rule-making process and will work with stakeholders to develop the permanent rule.

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

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

Date Adopted: May 30, 2017.

Joel Sacks
Director

NEW SECTION

WAC 296-96-00911 Temporary limited category 03 license for hand powered manlifts in grain terminals. (1) The department may issue a temporary limited category 03 license allowing the holder to perform limited duties as an elevator mechanic to do maintenance, testing, and repair of hand powered manlifts in grain terminals.

(2) A temporary limited category 03 license allows the individual to do maintenance, testing, and repair of hand powered manlifts in grain terminals as designated on the license.

(3) A temporary limited category 03 license for hand powered manlifts in grain terminals is issued when:

(a) The individual is employed by a licensed elevator contractor;

(b) The individual is designated as competent by a licensed elevator contractor;

(c) The individual has not yet qualified for a temporary category 09 license, has completed at least 50 percent of the training and education toward a category 03 license, and is actively pursuing education to qualify for a temporary category 03 license;

(d) The department determines there is a shortage of qualified elevator mechanics in this specific area of the elevator industry.

(4) An individual holding a temporary limited category 03 license for hand powered manlifts in grain terminals must demonstrate ongoing education and training in an effort toward meeting the requirements for a full category 03 license for the license to be renewed.

(5) A temporary limited category 03 license for hand powered manlifts in grain terminals may be renewed not more than six times in a consecutive six-month period.

(6) An elevator contractor must attest to an existing backlog in one or all of the following areas to support the need for the temporary category 03 license for hand powered manlifts in grain terminals: Maintenance, repair, installation or testing of conveyances.

WSR 17-12-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-104—Filed May 30, 2017, 1:34 p.m., effective June 1, 2017]

Effective Date of Rule: June 1, 2017.

Purpose: Amend recreational fishing rules for the Lewis River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500N and 220-312-03000C; and amending WAC 220-312-030.

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 emergency rule is needed to allow hatchery Chinook harvest because escapement goals for the hatchery have been met. Reopening the Lewis River for spring Chinook will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 30, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-03000C Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provi-

sions of WAC 220-312-030, effective June 1 until July 31, 2017, it is permissible to fish for salmon in those waters of the Lewis River from the mouth upstream to the overhead powerlines below Merwin Dam. Daily limit 6 hatchery Chinook of which only 1 may be an adult. Minimum size 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed:

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

The following section of the Washington Administrative Code is repealed effective August 1, 2017:

WAC 220-312-03000C Freshwater exceptions to statewide rules—Southwest.

WSR 17-12-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-105—Filed June 1, 2017, 10:22 a.m., effective June 4, 2017]

Effective Date of Rule: June 4, 2017.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-314-03000D; and amending WAC 220-314-030.

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 emergency rule is needed to open an additional day of halibut fishing because sufficient quota remains in the north coast (Marine Areas 3 and 4) and Puget Sound (Marine Areas 5-10). Opening the fishery for an additional day will provide recreational angling opportunity. These rules conform to action taken by the Pacific Fishery Management Council 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: June 1, 2017.

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

NEW SECTION

WAC 220-314-03000E Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective June 4, 2017, 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** - Closed.

(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.

(4) **Card Areas 3 and 4**

(a) Open June 4, 2017.

(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) In Marine Areas 3 and 4 (west of the Bonilla-Tatoosh Line) 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 220-314-010.

(5) **Catch Record Card Area 5 through 10**

(a) Open June 4, 2017.

(b) 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 in Areas 5 and 6.

(6) **Catch Record Card Areas 11, 12 and 13** - Closed.

(7) 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.

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

(9) All other permanent rules remain in effect.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000D Halibut—Seasons—Daily and possession limits. (17-102)

WSR 17-12-041 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-106—Filed June 1, 2017, 1:45 p.m., effective June 5, 2017]

Effective Date of Rule: June 5, 2017.

Purpose: Amend Columbia River recreational fishing rules for sturgeon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-06000B; and amending WAC 220-312-060.

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: This emergency rule is needed to allow a limited harvest of sturgeon in the estuary and to allow the summer sturgeon season in the Bonneville Pool and adjacent tributaries. This rule will provide for additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 1, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-0600G Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Open June 5, June 7, June 10, June 12, June 14, and June 17, 2017 in waters of the Columbia River from Buoy 10 upstream to Wauna powerlines:

(a) The daily limit of white sturgeon is one fish between 44-inches minimum and 50-inches maximum fork length. The yearly limit is two sturgeon.

(b) Closed to angling for sturgeon at 2:00 p.m. daily on open fishing days.

(c) Catch and release angling is permissible on days not open to sturgeon retention.

(2) Effective June 10, 2017, the Columbia River is open for retention of white sturgeon.

(a) Open to fishing in the mainstem Columbia River from Bonneville Dam upstream to The Dalles Dam, including adjacent tributaries.

(b) The daily limit of white sturgeon is one fish between 38-inches minimum and 54-inches maximum fork length. The yearly limit is two sturgeon.

(c) Catch and release continues to be allowed, except angling for sturgeon prohibited through July 31 from The Dalles Dam downstream 1.8 miles to a line from the east (upstream) dock at the Port of The Dalles boat ramp straight across to a marker on the Washington shore.

(3) Fork length is measured in a straight line from the tip of the nose to the fork in the caudal fin (tail) with the fish laying on its side on a flat surface, with the tape measure/ruler positioned flat under the fish.

(4) Catch and release is permissible from The Dalles Dam to McNary Dam except in the sturgeon spawning Sanctuary located from John Day Dam downstream 2.4 miles, and in the sturgeon spawning Sanctuary located from McNary Dam downstream 1.5 miles.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 5, 2017:

WAC 220-312-0600B Freshwater exceptions to statewide rules—Columbia River. (17-63)

**WSR 17-12-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-101—Filed June 1, 2017, 3:17 p.m., effective June 11, 2017]

Effective Date of Rule: June 11, 2017.

Purpose: Amend freshwater recreational fishing rules for the Skagit River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-04000E; and amending WAC 220-312-040.

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: 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: June 1, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000E Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective June 11 through July

15, 2017, it is permissible to fish for sockeye salmon in those waters of the Skagit River from the Hwy. 536 at Mt. Vernon (Memorial Hwy. Bridge) to mouth of Gilligan Creek.

(1) Closed on June 28, 29, July 6, 7, and 11, 2017, from the mouth to the Highway 530 Bridge at Rockport.

(2) Daily limit of three sockeye salmon.

(3) Night closure is in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 16, 2017:

WAC 220-312-04000E Freshwater exceptions to statewide rules—Eastside.

WSR 17-12-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-110—Filed June 6, 2017, 10:24 a.m., effective June 6, 2017,
10:24 a.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 220-314-03000E; and amending WAC 220-314-030.

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 emergency rule is needed to open an additional day of halibut fishing because sufficient quota remains in the north coast (Marine Areas 3 and 4) and Puget Sound (Marine Areas 5-10). Remaining quota from the Marine Area 1 all depth fishery is available for the nearshore area resulting in sufficient quota to allow halibut retention in the nearshore area seven days per week. These rules conform to action taken by the Pacific Fishery Management Council 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: June 6, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-314-03000F Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, 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** - Closed.

(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, seven days per week.

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

(3) **Catch Record Card Area 2** - Closed.

(4) **Card Areas 3 and 4**

(a) Open June 10, 2017.

(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) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line) 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 permissi-

ble to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) **Catch Record Card Area 5 through 10**

(a) Open June 10, 2017.

(b) 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 in Areas 5 and 6.

(6) **Catch Record Card Areas 11, 12 and 13** - Closed.

(7) 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.

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

(9) All other permanent rules remain in effect.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000E Halibut—Seasons—Daily and possession limits. (17-105)

WSR 17-12-108

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 7, 2017, 7:58 a.m., effective June 7, 2017, 7:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The WAC needs to be amended to implement Title V, Section 5007 the 21st Century Cures Act to allow for a person to create his or her own D4A special needs trust. The agency also needs to revise references to incorrect WAC citations in WAC 182-516-0100.

Citation of Existing Rules Affected by this Order: Amending WAC 182-516-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 21st Century Cures Act, Title V - Savings, Section 5007 Fairness in Medicaid supplemental needs trusts (Section 1917 (d)(4)(A) of the Social Security Act/42 U.S.C. 1396p (d)(4)(A)).

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

Reasons for this Finding: To incorporate changes prompted by Title V - Savings, Section 5007 Fairness in Medicaid supplemental needs trusts of the 21st Century Cures Act, signed on December 13, 2016. This emergency is necessary to continue the current emergency rules filed on February 10, 2017, under WSR 17-05-055 while the permanent rules are being finalized. The agency has completed the preliminary drafting of the permanent rule and is proceeding to the agency's review processes.

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 1, Repealed 0.

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

Date Adopted: June 7, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0100 Trusts. (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993, the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under ~~((subsection (3)))~~(a) of this subsection then it is considered either:

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC ~~((388-513-1363, 388-513-1364 or 388-513-1365))~~ 182-513-1363.

(c) If a revocable trust doesn't meet the description under ~~((subsection (3)))~~(a) of this subsection:

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under ~~((subsection (4))~~(d)(ii) of this subsection, are considered a transfer of client assets.

(e) For an irrevocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of the distributions from the trust.

(d) For a revocable trust established as described under ~~((subsection (5))~~(a) of this ~~((section))~~ subsection:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under ~~((subsection (5))~~(d)(ii) of this subsection, are considered a transfer of client assets.

(e) For an irrevocable trust established as described under ~~((subsection (5))~~(a) of this ~~((section))~~ subsection:

(i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:

(A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;

(ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of

assets. For such a trust, the transfer of assets is effective the date:

- (A) The trust is established; or
- (B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.
- (iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.
- (6) Trusts established on or after August 11, 1993, are not considered available resources if they contain the assets of either:
 - (a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050) and the trust:
 - (i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and
 - (ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or
 - (b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050), and the trust meets the following criteria:
 - (i) It is irrevocable;
 - (ii) It is established and managed by a nonprofit association;
 - (iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;
 - (iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;
 - (v) Accounts in the trust are established by:
 - (A) The individual;
 - (B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;
 - (C) The individual's parent, grandparent, legal guardian;
 - (D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - (E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
 - (vi) It stipulates that either:
 - (A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or
 - (B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.
 - (7) Trusts established on or after August 1, 2003, are not considered available resources if they contain the assets of either:
 - (a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050) and the trust:
 - (i) Is irrevocable;
 - (ii) Is established for the sole benefit of this person by ~~(their)~~ the person's parent, grandparent, legal guardian, ~~((or))~~ a court, or after December 13, 2016, the person; and
 - (iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of

the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

- (b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050), and the trust meets the following criteria:
 - (i) It is irrevocable;
 - (ii) It is established and managed by a nonprofit association;
 - (iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;
 - (iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;
 - (v) Accounts in the trust are established by:
 - (A) The individual;
 - (B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;
 - (C) The individual's parent, grandparent, legal guardian;
 - (D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - (E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
 - (vi) It stipulates that either:
 - (A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or
 - (B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.
- (8) Trusts described in subsections (6)(a) and (7)(a) of this section continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.
- (9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) of this section if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC ((~~388-513-1363 and 388-513-1364~~)) 182-513-1363 and the transfer is made to the trust before the individual reaches age sixty-five.
- (10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6) of this section, the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) of this section to be unearned income.
- (11) The department will only count income received by the client from trusts and not the principal, if:
 - (a) The beneficiary has no control over the trust; and
 - (b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC (~~388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366~~) 182-513-1363 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.