

## Summary

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**Meeting dates:** August 4-5, 2017

**Agenda item:** Americans with Disabilities Act (ADA)

**Presenter(s):** Dolores Noyes - ADA Program Manager & Scott Bird – Rules Coordinator

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**Background summary:** The department needs to make changes to two WAC regulations ensuring compliance with the Americans with Disabilities Act (ADA), Title II, and Section 504 of the Rehabilitation Act. The department is removing section (5) from WAC 220-310-150 as that language is covered under the Special Use Permit program. The department will recodify three WAC sections to new locations in the Fish and Wildlife Code to better streamline and clarify ADA rules for the public.

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**Policy issue(s) you are bringing to the Commission for consideration:** There are no policy issues for consideration.

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**Public involvement process used and what you learned:** The purpose of the rule changes is to ensure that state rules are consistent with federal regulations and easy to understand for the public. Consequently, the public involvement process has been limited.

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**Action requested:** The Commission needs to approve proposed language changes to WAC 220-220-240 and WAC 220-413-140. In addition, the Commission needs to remove language section (5) in WAC 220-310-150. Last, the Commission needs to recodify WAC 220-220-240 to 220-305-120, WAC 220-413-150 to 220-200-160 and WAC 220-413-130 to 220-200-170.

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**Draft motion language:** I move to approve language changes to WAC 220-220-240 and WAC 220-413-140; remove section (5) from WAC 220-310-150; recodify WAC 220-220-240 to 220-305-120; recodify WAC 220-413-150 to 220-200-160; and recodify WAC 220-413-130 to 220-200-170.

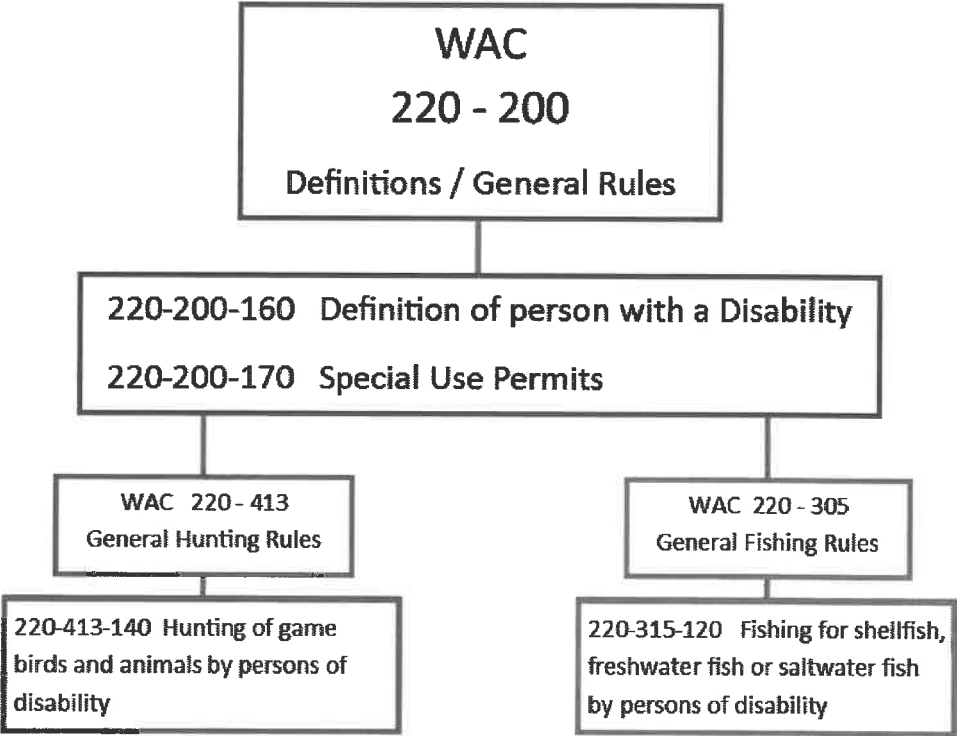
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**Justification for Commission action:** Meet the requirements of the federal Americans with Disabilities Act law.

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**Communications Plan:** There are was no Communication Plan necessary because the changes are being made to ensure that state rules are consistent with federal regulations.

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# PROPOSED RULE MAKING

**CR-102 (June 2012)**  
(Implements RCW 34.05.320)  
Do NOT use for expedited rule making

**Agency:** Washington Department of Fish and Wildlife

- |   |   |
|---|---|
| <input type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 17-09-096 ; or   | <input type="checkbox"/> Original Notice                  |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____ ; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).         | <input type="checkbox"/> Continuance of WSR _____         |

**Title of rule and other identifying information:** (Describe Subject)

WAC 220-413-130 Special use permits.  
WAC 220-413-140 Hunting of game birds and animals by persons with a disability.  
WAC 220-413-150 Definition of a person with a disability.  
WAC 220-310-150 Fly fishing.  
WAC 220-220-240 Fishing for shellfish, freshwater fish or saltwater fish by persons of disability.

**Hearing location(s):**  
Natural Resources Building, Room 172  
1111 Washington St SE  
Olympia WA 98504

**Submit written comments to:**  
Scott Bird  
WDFW Rules Coordinator  
Address: 600 Capitol Way N.  
Olympia WA 98501-1091

e-mail [Rules.Coordinator@dfw.wa.gov](mailto:Rules.Coordinator@dfw.wa.gov)  
fax (360)902-2403 by (date) August 5, 2017

Date: August 4-5, 2017 Time: 8:00 a.m.

**Assistance for persons with disabilities:** Contact  
Tami Lininger by August 3, 2017  
TTY (360) 902-2207 or (360) 902-2267

**Date of intended adoption:** On or after August 6, 2017  
(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**  
The purpose of the rule changes and recodification of selected regulations is to streamline and clarify rules related to people with disabilities who hunt and fish and to ensure compliance with the Americans with Disabilities Act (ADA) Title II and Section 504 of the Rehabilitation Act.

**Reasons supporting proposal:**

Ensure that the public can find and understand the rules concerning hunting and fishing activities for individuals with a disability.

**Statutory authority for adoption:** RCW 77.04.012, 77.04.055, 77.12.045 and 77.12.047.

**Statute being implemented:** RCW 77.04.012, 77.04.055, 77.12.045 and 77.12.047.

- Is rule necessary because of a:**
- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

**CODE REVISER USE ONLY**

**OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED**

**DATE: June 16, 2017  
TIME: 2:11 PM  
WSR 17-13-077**

**DATE**  
June 16, 2017

**NAME** (type or print)  
Scott Bird

**SIGNATURE**

**TITLE**  
Rules Coordinator

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

None

**Name of proponent:** (person or organization)

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Dolores Noyes	1111 Washington St. SE, Olympia, WA	(360) 902-2349
Implementation.... Dolores Noyes	1111 Washington St. SE, Olympia, WA	(360) 902-2349
Enforcement..... Chief Chris Anderson	1111 Washington St. SE, Olympia, WA	(360) 902-2403

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared. There is no impact on small business.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain: These rule proposal does not affect hydraulics.

**WAC 220-310-150 Fly fishing.** (1) It is unlawful to fish in waters restricted to "fly fishing only" with the use of:

(a) A fixed spool reel.

(b) Fishing line other than conventional fly line or conventional "Tenkara" fly line, except that other line may be used for backing and leader if it is attached to not less than 25 feet of conventional fly line.

(c) Hooks that exceed 1/2 inch when measured from point to shank.

(d) Not more than two flies each with a barbless single hook.

(e) Bait.

(f) Weight attached to the leader or line.

(2) Only knotless nets may be used to land fish in waters restricted to "fly fishing only."

(3)(a) A violation of gear restrictions in subsection (1) or (2) of this section is an infraction, punishable under RCW 77.15.160, unless the person possesses fish taken with prohibited gear.

(b) It is unlawful to possess fish taken with gear in violation of the provisions of this section. Possession of fish while using gear in violation of the provisions of this section is a rebuttable presumption that the fish were taken with such gear. Possession of such fish is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

(4) "Fly" means a lure on which thread, feathers, hackle, foam, rubber, or yarn cover a minimum of half the shank of the hook. Metallic colored tape, metal wire, metal tape, tinsel, mylar, or beadeyes may be used as an integral part of the design of the fly pattern.

~~((5) Notwithstanding the provisions of this section, persons who have a permanent disability that significantly limits the use of one or both upper extremities may use spinning gear and may fish from a floating device equipped with an electric motor in lakes where fishing from a floating device is allowed in fly fishing only waters as provided for in this section.~~

~~(a) A fisher with a disability must apply for a fly fishing special use permit by presenting a letter from a physician stating that the fisher's disability is permanent and that, because of the inability to use one or both upper extremities, the fisher is physically incapable of using conventional fly fishing gear.~~

~~(b) The fisher will be issued a fly fishing special use permit in the form of a wearable tag. The fisher must have the special use permit in his or her possession at all times while using spin casting gear in fly fishing only waters, and may display the permit on outer clothing.~~

~~(c) It is permissible for persons in possession of a fly fishing special use permit to use the following gear:~~

~~(i) Fishers may use spin casting gear with a casting bubble.~~

~~(ii) Monofilament line with no limit on the breaking strength of the line.~~

~~(iii) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in this section apply to both conventional fly fishing and spin bubble fly fishing.)~~

**WAC 220-413-140 Hunting of game birds and animals by persons with a disability.** (1) Definitions:

(a) "Hunter with a disability" means a person with a permanent disability who possesses a disabled hunter permit issued by the department.

(b) "Disabled hunter permit" means a permit, card, or endorsement to a license issued by the department to any person with a permanent disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability.

(i) Upon approval of the application, the department will issue a vehicle identification placard.

(ii) A designated hunter companion card will be issued to the holder of a disabled hunter permit along with the issuance of a hunting license.

(c) "Designated hunter companion" means a designated person who only assists (~~or acts on behalf of a hunter with a disability in the~~) with that physical function the hunter with a disability is unable to perform, such as stalking, shooting, tracking, retrieving, or the tagging of game birds and game animals.

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

(e) "Accompany" means the hunter with a disability and the designated hunter companion are in the physical presence of each other, not to exceed a 1/4-mile separation. While stalking or shooting an animal, the hunter with a disability and the designated hunter companion must have a form of reliable and direct communication.

(2) It is unlawful for a hunter with a disability to fail to obtain all required licenses, tags, or stamps before hunting.

(3) It is unlawful for a designated hunter companion to assist a hunter with a disability unless the designated hunter companion has the designated hunter companion card on his or her person. A designated hunter companion must have a valid hunting license issued by Washington state or another state.

(a) The designated hunter companion must accompany the hunter with a disability when stalking or shooting game on behalf of the hunter with a disability.

(b) The designated hunter companion does not need to accompany the hunter with a disability while tracking an animal wounded by either hunter, or while tagging or retrieving a downed animal on behalf of the hunter with a disability.

(4) It is unlawful for the hunter with a disability or the designated hunter companion to fail to:

(a) Immediately cut, notch, or date any required tag upon harvesting a game bird or animal; and

(b) Affix the tag to the carcass of the game bird or animal as soon as reasonably possible after killing the game.

(5) A violation of subsection (2), (3), or (4) of this section is punishable under RCW 77.15.400, 77.15.410, 77.15.430, or 77.15.750 or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

(6) Game birds or game animals killed, tagged or retrieved by a designated hunter companion on behalf of a hunter with a disability do not count against the designated hunter companion's bag or possession limit.

(7) It is unlawful for a hunter with a disability to possess a loaded firearm in a motor vehicle, or shoot from a motor vehicle, unless the vehicle is stopped, the vehicle is removed from the maintained portion of the roadway, and the motor is turned off. A disabled hunter vehicle identification placard must be displayed and visible.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-220-240 (~~(Fishing for)~~) Harvesting of shellfish, ((freshwater)) food fish or ((saltwater)) game fish by persons ((ef)) with a disability. (1) Definitions:

(a) (~~("Designated harvester" means a licensed fisher who accompanies a disabled fisher and assists the disabled fisher in the taking of shellfish, game fish or food fish.~~

~~(b) "Disabled fisher")) "Harvester with a disability" means a person ((ef)) with a permanent disability who possesses a valid ((fishing license or shellfish license)) disabled harvester permit issued by the department (~~(. A disabled fisher must have all required licenses and catch record cards before fishing.~~~~

~~(c) "Disabled");~~

(b) "Disabled harvester permit" means a permit, card, or endorsement to a license issued by the department to any person with a permanent disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability;

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

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

(d) "Designated harvester ((identification)) companion card" means ((a)) an identification card issued by the department to ((any person ef)) a harvester with a disability ((who applies to the department and presents such evidence as the director may require showing that the applicant is a person of disability. Upon issuance of a disabled license, the department will also issue a designated harvester identification card.

~~(d) "Person of disability" means:~~

~~(i) A permanently disabled person who is not ambulatory over natural terrain without a prosthesis or assistive device; or~~

~~(ii) A permanently disabled person who is unable to hold or use any legal fishing or shell fishing device; or~~

~~(iii) A person who is totally blind or visually impaired.~~

~~This definition includes, but is not limited to, permanently disabled persons with upper or lower extremity impairments who have lost the use of one or both upper or lower extremities, or who have a significant limitation in the use of upper or lower extremities, or who have a diagnosed disease or disorder which substantially impairs or interferes with mobility of the use of upper extremities.~~

(e) "Visually impaired" means central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than 20 degrees)) for use by another person in assisting or acting on the behalf of the harvester with a disability while engaging in fishing or harvesting activities.

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

(3) The designated harvester companion, when accompanied by the ((disabled fisher)) harvester with a disability, may assist the ((dis-



~~abled fisher~~) harvester with a disability in taking shellfish, game fish and food fish or engage in the taking of shellfish, game fish, and food fish on behalf of the ~~((disabled fisher))~~ harvester with a disability.

~~((3))~~ (4) It is unlawful for a designated harvester companion to assist a ~~((disabled fisher))~~ harvester with a disability unless the ~~((disabled fisher))~~ harvester with a disability is present and participating in the fishing activity(~~(, except, the disabled fisher)~~), except:

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

~~((4))~~ (5) It is unlawful for a designated harvester companion to assist a ~~((disabled fisher))~~ harvester with a disability unless the designated harvester companion is licensed and has the designated harvester ~~((identification))~~ companion card on his or her person.

~~((5))~~ (6) Shellfish, game fish or food fish harvested by a designated harvester companion on behalf of a ~~((disabled fisher))~~ harvester with a disability becomes part of the ~~((disabled fisher's))~~ harvester with a disability's bag or possession limit, and must be kept separate from the designated ~~((harvester's))~~ harvester companion's bag or possession limit.

(7) A violation of this section is punishable under RCW 77.15.380.

#### NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-220-240	220-305-120

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
220-413-130	220-200-170
220-413-150	220-200-160