



PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320)

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STATE OF WASHINGTON
FILED

DATE: March 06, 2018

TIME: 11:20 AM

WSR 18-06-084

Agency: Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-23-044 filed on November 8, 2017 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____ ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is creating new and amending existing hunting and fishing rules that apply to individuals with disabilities to include the following:

Amended WACs:

WAC 220-200-160 Definition of a person with a disability.

WAC 220-200-170 Special use permits.

WAC 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability.

WAC 220-413-140 Hunting of game birds and animals by persons with a disability.

New WACs:

WAC 220-200-180 Suspension of a special use permit—Appeal hearing.

WAC 220-200-190 Disability Designation.

WAC 220-413-210 Trapping of furbearing animals by persons with a disability.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 13-14, 2018	8:00 am	Natural Resources Building Room 172 1111 Washington Street SE Olympia, WA 98501	

Date of intended adoption: On or after June 15, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Scott Bird, WDFW Rules Coordinator

Address: 600 Capitol Way N. Olympia, WA 98501-1091

Email: Rules.Coordinator@dfw.wa.gov

Fax: (360) 902-2155

Other:

By (date) April 10, 2018

Assistance for persons with disabilities:

Contact Dolores Noyes

Phone: (360) 902-2349

Fax:

TTY: (360) 902-2207

Email: Delores.Noyes@dfw.wa.gov

Other:

By (date) April 10, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of the new and amended rules is to better clarify hunting and fishing regulations for individuals with disabilities and ensure consistency with state law.

Reasons supporting proposal: The department seeks to better define hunting and fishing privileges that apply to the disabled and designated hunter companions.

Statutory authority for adoption: RCWs 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400.

Statute being implemented: RCWs 77.12.045, 77.12.047, and 77.04.020

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:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) WDFW

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Dolores Noyes	1111 Washington Street SE, Olympia, WA 98504	360-902-2349
Implementation:	Dolores Noyes	1111 Washington Street SE, Olympia, WA 98504	360-902-2349
Enforcement:	Chief Steve Bear	1111 Washington Street, Olympia, WA 98501	360-902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:

TTY:

Email:

Other:

No: Please explain: The proposed rule changes do not affect hydraulics.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. .
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: March 6, 2018

Name: Scott Bird

Title: Rules Coordinator

Signature:



NEW SECTION

WAC 220-200-180 Suspension of a special use permit—Appeal hearing. (1) The department may suspend a person's special use permit for the following reasons and corresponding lengths of time:

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

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

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

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

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

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

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

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

(3) Any person with a disability issued a special use permit, who is notified of an intended suspension may request an appeal hearing

under chapter 34.05 RCW. A written request for hearing must be received within twenty days of the notice of suspension.

NEW SECTION

WAC 220-200-190 Disability designation. (1) A person meeting the definition of "person with a disability" under WAC 220-200-160, and who submits the required application and accompanying documentation shall be granted a disability designation by the department.

(2) A person whose application for a disability designation is denied by the department may request a hearing to contest the denial. A written request for a hearing must be received within twenty days of the notice of suspension.

WAC 220-200-160 Definition of a person with a disability. (1)

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

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

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

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

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

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

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

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

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

WAC 220-200-170 Special use permits. (1) (~~The director may develop conditions and criteria for administering and issuing special use permits to allow for reasonable accommodations for persons with disabilities.~~

~~(2) The hunters and fishers with disabilities advisory committee established in RCW 77.04.150 may assist the department in evaluating requests and criteria for issuing special use permits.~~

~~(3) Special use permits must be carried on the person acting under or using devices authorized by the special use permit.~~

~~(4) The terms for use granted by a special use permit, when provided as a reasonable modification, supersede department rules that conflict with the terms of the special use permit.~~

~~(5) Failure to abide by the conditions of a special use permit is punishable under RCW 77.15.400, 77.15.430, or 77.15.750,))~~ A special use permit issued by the department sets forth terms and conditions to allow for reasonable accommodations for persons granted disability designation.

(2) A special use permit must be carried on the person acting under or using devices authorized by the special use permit.

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

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

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

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

(b) "Disabled harvester (~~((permit))~~) endorsement" means (~~((a permit, card, or))~~) an endorsement to a license issued by the department to ((any)) a 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)) who has been granted a disability designation;

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

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

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

~~((3))~~ (4) The designated harvester companion, when accompanied by the harvester with a disability, may assist the harvester with a disability in taking shellfish, game fish and food fish or engage in the taking of shellfish, game fish, and food fish on behalf of the harvester with a disability.

~~((4))~~ (5) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the harvester with a disability is present and participating in the fishing activity, except:

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

~~((5))~~ (6) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion ((is licensed and has the designated harvester companion

card on his or her person)) has a valid equivalent harvesting license issued by Washington state or another state.

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

((+6)) (8) Shellfish, game fish or food fish harvested by a designated harvester companion on behalf of a harvester with a disability becomes part of the harvester with a disability's ((bag)) daily or possession limit, and must be kept separate from the designated harvester companion's ((bag)) daily or possession limit.

((7) A violation of this section is punishable under RCW 77.15.380.)) (9) It is unlawful for a harvester with a disability to utilize spin casting gear during fly fishing only season, unless the harvester with a disability has been issued a special use permit from the department.

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

(b) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in WAC 220-310-150, apply to both conventional fly fishing and spin casting fly fishing.

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

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))~~ who has been granted a disability designation and who possesses a valid disabled hunter ((permit)) endorsement issued by the department.

(b) "Disabled hunter ~~((permit)) endorsement~~" means ~~((a permit, card, or))~~ an endorsement to a license issued by the department to ((any)) a person ((with a permanent)) granted a 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)) designation.~~

(c) "Designated hunter companion" means a designated person who only assists 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) A designated hunter companion card will be issued to the holder of a disabled hunter endorsement upon purchase of a hunting license.

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

~~((3))~~ (4) 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))~~ (5) 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))~~ hunter with a disability has been issued a special use permit from the department, and:

(a) The vehicle is stopped, the vehicle is removed from the maintained portion of the roadway, and the motor is turned off; and

(b) A valid blue disabled hunter "shooting from a vehicle" identification placard must be displayed and visible.

(8) It is unlawful for a hunter with a disability to utilize a crossbow in archery or muzzleloader season, unless the hunter with a disability has been issued a special use permit from the department.

(9) A violation 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.

NEW SECTION

WAC 220-413-210 Trapping of furbearing animals by persons with a disability. (1) Definitions:

(a) "Trapper with a disability" means a person who has been granted a disability designation and who possesses a valid disabled trappers endorsement issued by the department.

(b) "Disabled trapper endorsement" means an endorsement to a license issued by the department to a person granted a disability designation.

(c) "Designated trapper companion" means a designated person who only assists with that physical function the trapper with a disability is unable to perform, such as trap placement, baiting, patrolling, retrieving, or the tagging of furbearing animals during trapping season.

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

(e) "Accompany" means the trapper with a disability and the designated trapper companion are in the physical presence of each other, not to exceed a 100-foot separation. The trapper with a disability and the designated trapper companion must have a form of reliable and direct communication.

(2) A designated trapper companion card will be issued to the holder of a disabled trapper endorsement upon purchase of a trapping license.

(3) It is unlawful for a trapper with a disability to not follow all agency rules and to fail to possess all required licenses and permits before trapping.

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

(a) The designated trapper companion must accompany the trapper with a disability during trap placement, baiting, and patrolling on behalf of the trapper with a disability.

(b) The designated trapper companion does not need to accompany the trapper with a disability while retrieving the catch on behalf of the trapper with a disability.

(5) Furbearing animals killed or retrieved by a designated trapper companion on behalf of a trapper with a disability do not count against the designated trapper companion's bag, daily, or possession limit.

(6) A violation of this section is punishable under WAC 220-417-010, 220-417-020, 220-417-030, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.