



RULE-MAKING ORDER

CR-103E (May 2009)
(Implements RCW 34.05.360)

Agency: Washington Department of Fish and Wildlife

Emergency Rule Only

Effective date of rule:

Emergency Rules 09-246

- Immediately upon filing.
- Later (specify) October 22, 2009

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The purpose of this rule-making is to allow non-treaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. This rule-making implements federal court orders governing Washington's relationship with Treaty Indian Tribes, federal law governing Washington's relationship with Oregon, and Washington Fish and Wildlife Commission policy guidance for Columbia River fisheries.

Citation of existing rules affected by this order:

Repealed: WAC 232-28-61900D
 Amended: WAC 232-28-619
 Suspended:

Statutory authority for adoption: RCW 77.04.130, RCW 77.12.045 and RCW 77.12.047

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

EMERGENCY RULE

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.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: (See attachment)

Date adopted: October 20, 2009

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 20, 2009

TIME: 3:47 PM

WSR 09-21-099

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>1</u>	Amended	_____	Repealed	<u>1</u>
Federal rules or standards:	New	<u>1</u>	Amended	_____	Repealed	<u>1</u>
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>1</u>	Amended	_____	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Columbia River.

Notwithstanding the provisions of WAC 232-28-619, effective October 22, through December 31, 2009, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

- (1) Lower Columbia River from the Rocky Point/Tongue Point line upstream to a line projected from the Warrior Rock Lighthouse through Red Buoy #4 to the orange marker atop the dolphin on the lower end of Bachelor Island - The daily limit is six fish. Up to three may be adults, of which no more than two may be hatchery steelhead. Release all salmon other than hatchery coho. Salmon minimum size is 12 inches.
- (2) Lower Columbia River from a line projected from the Warrior Rock Lighthouse upstream to Bonneville Dam - The daily limit is six fish. Up to three may be adults, of which no more than two may be hatchery steelhead. Only one adult Chinook may be retained. Release all salmon other than Chinook and hatchery coho. Salmon minimum size is 12 inches.
- (3) Bonneville Dam upstream to the Hwy. 395 Bridge at Pasco – The daily limit is six fish. Up to three may be adults. No more than two may be hatchery steelhead or Chinook, or one of each. Release all salmon other than Chinook and coho. Release wild coho from Bonneville Dam to the Hood River Bridge. Salmon minimum size is 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2010:

WAC 232-28-61900D Exceptions to statewide rules—Columbia River.

Attachment

The Technical Advisory Committee (TAC) reviewed the Columbia River early and late coho stock status and reported the overall run was tracking at or above expectations of a total return of 700,000 adults. TAC observed that the early stock return appears to be tracking slightly less than the preseason forecast of 466,700 fish, while the late stock return appears to be currently tracking ahead of the preseason forecast of 236,600. At Bonneville Dam, 196,300 adult coho had been counted through October 18, compared to the preseason expectation of 160,100 fish. Surplus hatchery origin coho are available for harvest. There is insufficient time to adopt permanent rules.