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 10-09
☒ Immediately upon filing.
☐ Later (specify) _____

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 provide for Treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington's relationship with Oregon.

Citation of existing rules affected by this order:
Repealed: WAC 220-32-05100Z, WAC 220-32-05100A
Amended: WAC 220-32-051
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); Puget Sound Gillnetters Ass'n v. Moos, 92 Wn.2d 939, 603 P.2d 819 (1979); State v. James, 72 Wn.2d 746, 435 P.2d 521 (1967); 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: January 15, 2010

NAME (TYPE OR PRINT)
Philip Anderson

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 15, 2010
TIME: 1:25 PM

WSR 10-03-061

(COMPLETE REVERSE SIDE)

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	1	Amended	_____	Repealed	1
Federal rules or standards:	New	1	Amended	_____	Repealed	1
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____

The number of sections adopted in the agency's own initiative:

New	1	Amended	_____	Repealed	2

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____

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	_____

N E W S E C T I O N

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam.
Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess Salmon, steelhead, sturgeon, shad, carp, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H; except that those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for Salmon, steelhead, sturgeon, shad, carp, walleye, bass, or yellow perch under the following provisions:

1. Open Areas: SMCRA 1F, 1G, 1H:
    a. Season: 12:00 p.m. February 1 to 6:00 p.m. March 21, 2010.
    b. Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.
    c. Allowable sale: Salmon, steelhead, sturgeon, shad, carp, walleye, bass, yellow perch. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools and between 38-54 inches in fork length in the Bonneville Pool may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Fish landed during an open commercial period may be sold at any time. Sale of platform or hook-and-line-caught fish is allowed during open commercial seasons.
    d. River mouth sanctuaries (WAC 220-32-058) remain in effect except the Spring Creek Hatchery sanctuary (section 5).
2. Open Area: On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only), for enrolled Yakama Nation members. Consistent with the 2007 MOA between Washington and Yakama Nation.
    a. Season: 12:00 p.m. February 1 to 6:00 p.m. March 21, 2010
    b. Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.
    c. Allowable Sales: Salmon, steelhead, shad, carp, walleye, bass, yellow perch. **Sturgeon retention is prohibited**, and may not be sold nor retained for ceremonial & subsistence purposes. Fish landed during an open commercial period may be sold at any time. Sale of platform or hook-and-line-caught fish is allowed during open commercial seasons. Sales may not occur on USACE property.
3. 24- hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

R E P E A L E R S

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100Z Columbia River salmon seasons above Bonneville Dam.

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2010:

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam.

Attachment

Sets the treaty Indian winter season. Allows sales of fish caught with platform and hook and line gear. Allows the Yakama Nation to conduct C&S fisheries in the area below Bonneville Dam consistent with the 2007 MOA between Washington and Yakama Nation. Fisheries are consistent with the 2008-2017 Interim Management Agreement and the associated Biological Opinion. Rule is consistent with the 2007 MOA between Yakama Nation and Washington State. Rule is consistent with action of the Columbia River Compact in January 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian Tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the Congressionally-ratified Columbia River Compact. Sohappy v. Smith, 302 F. Supp. 899 (D. Or. 1969). The Tribes and the States adopt parallel regulations for Treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. United States v. Oregon, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 United States v. Oregon Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 U.S. v. Oregon Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington and Oregon Departments of Fish and Wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. Sohappy, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.