



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 10-22

- 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 allow non-treaty commercial 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Repealed: WAC 220-33-04000F, WAC 220-33-04000G
 Amended: WAC 220-33-040
 Suspended:

Statutory authority for adoption: RCW 77.04.130, 77.12.045, and 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: Modifies the mainstem Columbia smelt fishery and closes those waters of SMCRA 1B that include parts of several Washington tributaries. The regulations are consistent with Level 1 fisheries in the "Washington and Oregon Eulachon Management Plan for the Columbia River." Abundance and productivity indicators project a weak return of smelt for 2010, and the minimal fishing plan adopted serves as a test fishery to monitor run strength and collect biological data. Rule is consistent with Columbia River Compact action of February 4, 2010. There is insufficient time to adopt permanent rules.

Date adopted: February 5, 2010

NAME (TYPE OR PRINT)
Philip Anderson

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 05, 2010
TIME: 12:51 PM

WSR 10-05-023

**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>2</u>
Federal rules or standards:	New	<u>1</u>	Amended	_____	Repealed	<u>2</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>2</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 220-33-04000G Smelt--Areas and Seasons.

Notwithstanding the provisions of WAC 220-33-040, effective immediately through March 31, 2010, the Columbia River and Washington tributaries are closed to fishing for smelt except under the following provisions:

- 1) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E, except the following waters are closed: Those waters of SMCRA 1B upstream of the markers at USCG navigation marker #16 in Deep River, those waters upstream of the outer most uplands at the mouth of the Grays River, and those waters upstream of the outer-most uplands at the mouth of the Elochoman River.
Dates: Mondays and Thursdays, 7:00 a.m. to 2:00 p.m.
Gear: Gillnets, dipnets, and trawl nets.
Allowable sales: Smelt.
Other: 24-hour quick-reporting required for Washington wholesale dealers, WAC 220-69-240.

- 2) **Area:** Cowlitz River downstream of Peterson's Eddy
Dates: Sundays, February 7, 14, 21, and 28; and Wednesdays, February 10, 17, and 24.
Hours: 7:00 p.m. to 10:00 p.m. each day.
Gear: Dipnets
Allowable sales: Smelt.
Other: 24-hour quick-reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALERS

The following section of the Washington Administrative Code is repealed:

WAC 220-33-04000F Smelt—Areas and Seasons. (10-16)

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

WAC 220-33-04000G Smelt – Areas and Seasons.