



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 10-98

- Immediately upon filing.
- Later (specify) 12:01 a.m. April 29, 2010

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Repealed: WAC 232-28-61900T
 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: April 28, 2010

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 28, 2010

TIME: 4:35 PM

WSR 10-10-047

**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 232-28-61900T Exceptions to statewide rules—Columbia River.

Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 29 through July 31, 2010, all angling is prohibited from a line between the upstream end of Sand Island, located east of Rooster Rock State Park on the Columbia River, to a marker on the Oregon shore, downstream to a line between the lower end of Sand Island and a marker on the Oregon shore.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2010:

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

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

: (a) 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.

9 (b) That state or federal law or federal rule a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Washington and Oregon fish managers estimate that 1,700 white sturgeon, or 35% of the 4,835 guideline for above Wauna, will have been caught by the end of April. Most of this catch has come from a large aggregation of white sturgeon holding in the shallow slough east of Rooster Rock State Park between Sand Island and the Oregon shore. Approximately 50% of the guideline (2,400 fish) is typically needed for the October-December timeframe, which leaves approximately 700 fish for May-July. This rule should not displace non-sturgeon anglers as the slough receives little effort for other species. Rule is consistent with Washington Department of Fish and Wildlife's Compact Hearing action of April 26, 2010. There is insufficient time to adopt permanent rules.

(10-98, 4/28/2010)

Attachment

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