



# 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 10-319**

- Immediately upon filing.
- Later (specify) January 18, 2011

**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Repealed: WAC 220-33-01000Q, WAC 220-33-01000R  
 Amended: WAC 220-33-010  
 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: (See Attachment)

**Date adopted:** December 21, 2010

**NAME (TYPE OR PRINT)**

Philip Anderson

**SIGNATURE**

**TITLE**

Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: December 21, 2010**

**TIME: 4:09 PM**

**WSR 11-01-151**

**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:**

|   |     |          |         |       |          |          |
|---|-----|----------|---------|-------|----------|----------|
| <b>Federal statute:</b>                 | New | <u>1</u> | Amended | _____ | Repealed | <u>2</u> |
| <b>Federal rules or standards:</b>      | New | <u>1</u> | Amended | _____ | Repealed | <u>2</u> |
| <b>Recently enacted state statutes:</b> | 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 | <u>2</u> |
|-----|---|---------|-------|----------|----------|

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

|     |       |         |       |          |       |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

**The number of sections adopted using:**

|                                       |     |       |         |       |          |       |
|---------------------------------------|-----|-------|---------|-------|----------|-------|
| <b>Negotiated rule making:</b>        | New | _____ | Amended | _____ | Repealed | _____ |
| <b>Pilot rule making:</b>             | New | _____ | Amended | _____ | Repealed | _____ |
| <b>Other alternative rule making:</b> | New | _____ | Amended | _____ | Repealed | _____ |

NEW SECTION

**WAC 220-33-01000R Columbia River season below Bonneville.**

Notwithstanding the provision of WAC 220-33-010 and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections:

- 1) **AREA:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5)
- 2) **SEASON:** 6 PM Tuesday January 18 – 6 PM Wednesday January 19, 2011;  
6 PM Tuesday January 25 – 6 PM Wednesday January 26, 2011;  
6 PM Tuesday February 1 – 6 PM Wednesday February 2, 2011;  
6 PM Tuesday February 8 – 6 PM Wednesday February 9, 2011.
- 3) **GEAR:** Drift gillnet only. 9-inch minimum mesh. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.
- 4) **ALLOWABLE SALES:** White Sturgeon and adipose fin-clipped salmon. A maximum of ten white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Green sturgeon retention prohibited. Sturgeon sales limited to sturgeon 43-54 inches in fork length (as measured from nose to the fork in the tail).
- 5) **SANCTUARIES:** Sandy River
- 6) **QUICK REPORT:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

REPEALERS

The following section of the Washington Administrative code is repealed:

WAC 220-33-01000Q Columbia River season below Bonneville. (10-282)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. February 9, 2011:

WAC 220-33-01000R Columbia River season below Bonneville.

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## EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

(x) 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.

(x) 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: Sets the 2011 winter season sturgeon fishery. Season is based on a catch guideline of 400 fish for the winter season. The minimal catch is not expected to effect management policies to be decided in February. The Commission has been briefed on white sturgeon population status, and the allocated sturgeon represents an overall reduction of 29% to the annual sturgeon harvest guideline. Regulation is consistent with Compact Action of December 17, 2010. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the Congressionally-ratified Columbia River Compact. Four Indian Tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the Tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. Sohappy v. Smith, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. 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 Columbia River Basin salmon and steelhead stocks 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 allows for some incidental take of these species in treaty and non-treaty Columbia River fisheries governed by the 2008-2017 U.S. v. Oregon Management Agreement. The Washington and Oregon Fish and Wildlife Commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of non-treaty fisheries.

Columbia River non-treaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and Commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington and Oregon Departments of Fish and Wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

**(10-319, 12/21/2010)**

