



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 11-55

- Immediately upon filing.
- Later (specify) April 8, 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 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Repealed: WAC 232-28-61900Z
 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 7, 2011

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 07, 2011

TIME: 9:37 AM

WSR 11-09-003

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

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

1. Columbia River:

- i. From a true north-south line through Buoy 10 to a true north/south line projected from Rooster Rock on the Oregon shore to the Washington shoreline: Effective April 8 through April 15, 2011, fishing for salmonids and shad is open. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook.
 - ii. From a true north/south line projected from Rooster Rock on the Oregon shore to the Washington shoreline upstream to 600 feet below the fish ladder at the new Bonneville Dam powerhouse: Effective April 8 through April 15, 2011, closed to fishing for salmonids and shad from boats. Open to fishing for salmonids and shad from the bank only. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook.
 - iii. From Tower Island power lines in Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations): Effective immediately through April 24, 2011: daily salmonid limit is 6 fish, (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook.
 - iv. Effective immediately through June 15, 2011: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.
 - v. Effective immediately until further notice: On the mainstem Columbia River below Bonneville Dam, anglers may not possess in the field fish mutilated so that size, species or fin clip cannot be determined until anglers have reached their automobile or principle means of land transportation and have completed their daily angling.
 - vi. Effective immediately through April 30, 2011, 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
- 2. Deep River (Wahkiakum Co.):** Effective immediately through June 15, 2011: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 8, 2011:

WAC 232-28-61900Z Exceptions to statewide rules—Columbia River. (11-25)

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: Re-opens the spring recreational salmon season in the Columbia River in the area downstream of Bonneville Dam. Chinook remain available on the pre-update harvest guideline. Continues to stipulate that the hatchery adult bag limit in Deep River is consistent with the adjacent Columbia River when both areas are open. Continues to include rules that prohibit filleting of fish in the field and full removal of non-legal fish from the water. Maintains the angling closure in the area of Sand Island slough. Regulation is consistent with guidance from Washington Fish and Wildlife Commission and Director and Joint State Action of February 8 and April 6, 2011. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated Biological Opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt 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.
(11-55, 4/7/2011)

