



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 11-148

- Immediately upon filing.
- Later (specify) 12:01 a.m. July 9, 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Repealed: WAC 232-28-61900M
 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: July 8, 2011

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 08, 2011

TIME: 3:58 PM

WSR 11-15-024

**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 sturgeon.

Notwithstanding the provisions of WAC 232-28-619:

- (1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.
- (2) Effective immediately until August 31, 2011, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.
- (3) Effective immediately, until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries, except a person may retain white sturgeon through July 31, 2011. Minimum size when open to retain white sturgeon in this area is 41 inches fork length through July 31, 2011.
- (4) Effective July 9, 2011, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900M Exceptions to statewide rules—Columbia River sturgeon. (11-135)

Attachment

The closure date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of 2,000 fish has been reached. Closing the fishery on July 9 is the soonest action can be taken and still allow the agencies to provide at least 24-hour notice to anglers. There is insufficient time to adopt permanent rules.

(11-148, 7/8/2011)

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.

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

Reasons for this finding: