



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Washington Department of Fish and Wildlife

Emergency Rule Only

Effective date of rule:

Emergency Rules 13-109

- Immediately upon filing.
- Later (specify) 12:01 a.m. May 23, 2013

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Repealed: WAC 232-28-61900I, WAC 232-28-61900X, WAC 232-28-61900Y
 Amended: WAC 232-28-619
 Suspended:

Statutory authority for adoption:

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 year 2009, 2010, 2011, 2012, or 2013, 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: May 22, 2013

NAME (TYPE OR PRINT)
Philip Anderson

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 22, 2013

TIME: 12:01 PM

WSR 13-12-001

**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>3</u>
Federal rules or standards:	New	<u>1</u>	Amended	_____	Repealed	<u>3</u>
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>1</u>	Amended	_____	Repealed	<u>3</u>
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The number of sections adopted in the agency's own initiative:

	New	_____	Amended	_____	Repealed	_____
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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 232-28-61900C Freshwater exceptions to statewide rules—Columbia River and tributaries.

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

Columbia River from the Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

- (a) Effective July 1 through July 31, release adult Chinook and sockeye.

Columbia River from a line projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) to Bonneville Dam:

- (a) From the Rocky Point/Tongue Point line upstream to the I-5 Bridge: Effective immediately through May 24 release adult Chinook and sockeye.
- (b) Effective May 25 through June 15, open for fishing for salmonids from the Tongue Point/Rocky Point line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2). However, closed to fishing from boats upstream of Beacon Rock (defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock).
 - (i) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook. Release all sockeye, wild Chinook and wild steelhead. Salmon minimum size is 12 inches.
- (c) From the Rocky Point/Tongue Point line upstream to Bonneville Dam: Effective July 1 through July 31, release adult Chinook and sockeye.

Columbia River from the Rocky Point/Tongue Point line upstream to the Oregon/Washington border: Effective immediately through June 15, when open for salmon and steelhead 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.

Deep River (Wahkiakum Co.): Effective immediately through June 15, 2013: 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.

Kalama River from boundary markers at the mouth to 1,000 feet below the fishway at upper salmon hatchery:

- (a) Effective immediately through July 31, release all Chinook.
- (b) Until further notice, stationary gear restriction has been rescinded.

Lewis River (Clark/Cowlitz County) from mouth to mouth of East Fork: Effective immediately through July 31, release all Chinook.

Lewis River, North Fork (Clark/Cowlitz County) from mouth of East Fork to Johnson Creek: Effective immediately through July 31, release all Chinook.

Lewis River, North Fork (Clark/Cowlitz County) from Johnson Creek to overhead powerlines below Merwin Dam:

- (a) Effective immediately through May 31, closed to all fishing.
- (b) Effective immediately through July 31, release all Chinook.
- (c) Trout: Effective June 1 until further notice, catch and release, except up to 2 hatchery steelhead may be retained.
- (d) Other game fish: Effective June 1, statewide minimum size and daily limit are in effect.
- (e) Night closure and anti-snagging rule will be in effect June 1 until further notice.

Washougal River (Clark County) from mouth to Salmon Falls: Until further notice, stationary gear restriction has been rescinded.

Wind River from the mouth (boundary line/markers) upstream, including all tributaries.

- (a) Effective immediately until further notice, the two-pole endorsement has been rescinded.

REPEALERS

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. May 23, 2013:

WAC 232-28-61900X Exceptions to statewide rules—Wind River. (13-36)

WAC 232-28-61900I Exceptions to statewide rules—Columbia River. (13-62)

WAC 232-28-61900Y Exceptions to statewide rules—Columbia River and tributaries. (13-78)

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.

() 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, 2011, 2012 or 2013, 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: Re-opens the 2013 spring recreational salmon season in the Columbia River in the area from Tongue Point/Rocky Point line upstream to Bonneville Dam. Based on the inseason run size projection, upriver spring Chinook remain available for harvest. Maintains the adjustment to the hatchery adult bag limit in Deep River so that it is consistent with the adjacent Columbia River when both areas are open. Prohibits full removal of non-legal fish from the water. Regulation is consistent with guidance from Washington Fish and Wildlife Commission and Director, and Compact/Joint State Action of January 30 and May 20, 2013. 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. Carson National Fish Hatchery is expected to meet its escapement goal of 1,500 fish. Surplus hatchery origin fish are available for harvest in the Wind River.

