



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 13-263

- Immediately upon filing.
- Later (specify) 6:00 p.m. October 9, 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 provide for Treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington's relationship with Oregon.

Citation of existing rules affected by this order:

Repealed: WAC 220-32-05100T
 Amended: WAC 220-32-051
 Suspended:

Statutory authority for adoption: RCW 77.04.020, 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 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: October 8, 2013

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 08, 2013

TIME: 3:11 PM

WSR 13-21-030

(COMPLETE REVERSE SIDE)

**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	<u>1</u>

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 220-32-05100U Columbia River salmon seasons above Bonneville Dam.

Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Klickitat River. However, individuals who possess treaty fishing rights under the Yakama, Warm Springs, Umatilla, or Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Yakama Nation tributary fisheries

- a. Season: Open until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.
- b. Open Area: Klickitat River.
- c. Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line.
- d. Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp which may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length may be kept for subsistence purposes.
- e. 24-hour quick reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240, for all areas.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 9, 2013:

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam. (13-258)

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 and 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: This emergency rule prohibits the sale of fish caught in platform/ hook-and-line fisheries in Zone 6 and the area immediately downstream of Bonneville Dam (consistent with MOUs/MOAs) and in Yakama Nation tributary fisheries (except for the Klickitat River), consistent with Yakama Nation regulations. This regulation allows the sales of fish caught during open periods (prior to 6 p.m. October 9) to occur after the period concludes. The Klickitat River fishery does not handle Group B steelhead. Based on the in-season run size forecasts for steelhead and estimated catch to-date, treaty fisheries have slightly exceeded the Endangered Species Act (ESA) limit for Group B steelhead based on a return of 10,700 fish. Harvest of these Group B fish in last week's commercial gillnet fishery was greater than expected. ESA limits on Chinook are expected to remain within the limits of the 2008-2017 Management Agreement. The rule is consistent with action of the Columbia River Compact on August 8 and October 7, 2013. There is insufficient time to promulgate permanent regulations.
(13-263, 10/8/2013)

