



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 14-207

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: Sets the season for the Columbia River seine emerging commercial fishery

Citation of existing rules affected by this order:

Repealed: WAC 220-88-05000A, WAC 220-88-06000A, WAC 220-88-07000A, WAC 220-88-08000A
 Amended:
 Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047

Other authority :

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: August 14, 2014

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 14, 2014

TIME: 3:44 PM

WSR 14-17-047

(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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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>4</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 220-88-07000B Columbia River seine emerging commercial fishery – Season, area, and gear requirements.

It is unlawful to fish for salmon for commercial purposes with beach or purse seine gear except as provided in the following section:

(1) Designation of Columbia River seine fishery as an emerging commercial fishery.

(a) The director designates the Columbia River seine salmon fishery as an emerging commercial fishery for which use of a vessel is required. The director has determined a need to limit the number of participants in this fishery.

(b) It is unlawful to fish for, possess, or deliver salmon taken for commercial purposes using beach or purse seine unless the fisher possesses a valid emerging commercial fishery license and a salmon experimental fishery permit for either beach seine or purse seine gear.

(2) Terms of Experimental Fishery Permit

(a) A limited number of experimental fishery permits have been issued by the director for participation in the 2014 Columbia River seine emerging commercial fishery.

(b) It is unlawful to violate the conditions of these experimental fishery permits.

(c) Conditions of each permit include, but are not limited to:

(i) Specific gear type (beach or purse seine) allowed under the permit.

(ii) Specific area (SMCRA) in which seine fishing is allowed under the permit

(iii) Individual Fish Quotas (IFQs) specific for each permit based on gear type.

(3) Season: Time, area and gear

(a) Open hours are 6:00 a.m. to 7:30 p.m. through September 11; and 6:30 a.m. to 7:00 p.m. thereafter:

(b) Open days are:

(i) Tuesday August 19 and Thursday August 21, 2014

(ii) Tuesday August 26 and Thursday August 28, 2014

(iii) Tuesday, Wednesday, and Thursday, September 2, 3, 4, 2014

(iv) Monday, Tuesday, Wednesday, and Thursday, September 8, 9, 10, 11, 2014

(v) Monday September 15 and Wednesday September 17, 2014

(vi) Monday September 22 and Wednesday September 24, 2014

(vii) Monday September 29, 2014

(c) Open area: SMCRA 1A and 1B through August 28 and SMCRA 1A-1E thereafter

(d) Sanctuaries: Elochoman-A, Cowlitz, Kalama-A, Lewis A, Sandy, Washougal and Select Area commercial fishing sites.

(e) Gear type: Beach seines or purse seines only. Only one net per boat.

(i) Net length not to exceed 200 fathoms (including associated lead nets).

(ii) Net depth not to exceed 200 meshes (approximately 50 feet)

(iii) Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure).

(iv) Net material to consist of 3-strand nylon; twine size \geq #12.

(v) Seines may include a bunt of 1.0-2.0 inch knotless mesh.

- (vi) Seine and lead lines may not be connected. Lead nets must be retrieved daily.
- (vii) No restrictions on corkline, leadline or use of stringers and slackers.
- (viii) A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline.
- (ix) Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net.

(4) Allowable possession and handling of catch

- (a) Allowable possession and sales: Adipose or left ventral fin-clipped Chinook, adipose-clipped coho, pink and sockeye salmon. Subject to IFQs as defined on individual permits and fishery regulations, all legally-caught salmon must be landed.
- (b) Hand sorting or use of a knotless dip net for sorting is required. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.
- (c) Sort time not to exceed 75 minutes.
 - (i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.
 - (ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(5) Observer Program – Agency observers must be present during all fishing operations as described in each experimental permit issued.

(6) 24-hour quick-report required pursuant to WAC 220-69-240.

REPEALERS

The following sections of the Washington Administrative Code are repealed:

WAC 220-88-05000A Designation of Columbia River seine fishery as an emerging commercial fishery. (14-129)

WAC 220-88-06000A Columbia River seine emerging commercial fishery -- Qualifications – Issuance of experimental fishery permits – License fee - Permit conditions. (14-129)

WAC 220-88-07000A Columbia River seine emerging commercial fishery – Season, area, and gear requirements. (14-129)

WAC 220-88-08000A – Columbia River seine emerging commercial fishery – Allowable possession and sales – Catch handling requirements. (14-129)

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 , 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: This rule establishes an emerging commercial fishery with limited participants using beach or purse seine gear in the Columbia River. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3620 which includes guiding principles and a progressive series of actions to improve the management of salmon in the Columbia River basin. The fisheries outlined here are part of a series of actions meant to be progressively implemented in 2013-2016 during the transitional period of the policy. This is a pilot fishery allowing seine gear in the Columbia River and is meant to inform fishery managers in how best to implement such fisheries. The seasons are consistent with the *U.S. v Oregon* 2008-2017 Interim Management Agreement, Commission guidance and the Fall Chinook Allocation agreement developed through the North of Falcon process. The regulation is consistent with Compact Action of August 12, 2014. 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.

(14-207, 8/14/2014)

