



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 15-118

- 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: Amend recreational fishing rules

Citation of existing rules affected by this order:

Repealed: WAC 220-310-20000G
 Amended: WAC 220-310-200
 Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.055, 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: May 12, 2015

NAME (TYPE OR PRINT)

J W Unsworth

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: May 12, 2015

TIME: 1:34 PM

WSR 15-11-026

(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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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>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 220-310-20000I Exceptions to statewide rules—Columbia River.

Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Columbia River: Open May 16 through June 15, 2015:

- (a) 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), except closed to fishing for salmonids from boats upstream of Beacon Rock. For the purposes of this section, Beacon Rock is 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.
- (b) 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.
- (c) Release all wild Chinook, wild steelhead and sockeye.
- (d) Salmon minimum size is 12 inches.

(2) Deep River (Wahkiakum Co.): Effective immediately through June 15, 2015: The hatchery adult Chinook daily limit is 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 is the same as provided in the permanent rules for Deep River.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000G Exceptions to statewide rules—Columbia River. (15-109)

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:

Attachment

Allows fishing from boats for shad within the area from Beacon Rock upstream to the Bonneville Dam deadline. The area was inadvertently closed to shad when the area was closed to salmonid fishing. Shad fishing is very popular and WDFW strongly supports the harvest of shad. Shad fishing opens under permanent regulations beginning May 16. Also clarifies that sockeye retention is not allowed. The Regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation continues to allow for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery Chinook. The regulation continues to allow anglers to possess up to four hatchery chinook in fresh form in the geographic area from the Dalles Dam to the Oregon/Washington border when the area is open for hatchery Spring Chinook. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery Chinook retention. The regulation continues to allow only hand-casted lines in the geographic area of Bonneville Pool from the Tower Island powerlines (located approximately 6 miles below The Dalles Dam) downstream to Bonneville Dam on the Washington shore. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery Chinook retention. 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. Regulation is consistent with Compact Action of January 28, May 5 and May 11 2015. There is insufficient time to promulgate 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.