



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 15-255

- Immediately upon filing.
- Later (specify) August 24, 2015

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

- Yes
 - No
- If Yes, explain:

Purpose: Columbia River seine fishery emerging commercial fishery.

Citation of existing rules affected by this order:

Repealed: WAC 220-88-05000B, WAC 220-88-06000B, WAC 220-88-07000E, WAC 220-88-08000B
 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 17, 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: August 17, 2015

TIME: 3:35 PM

WSR 15-17-081

(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| Federal statute: | New | _____ | Amended | _____ | Repealed | _____ |
| Federal rules or standards: | New | _____ | Amended | _____ | Repealed | _____ |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 | _____ |
|-----|-------|---------|-------|----------|-------|

The number of sections adopted in the agency's own initiative:

| | | | | | |
|-----|----------|---------|-------|----------|----------|
| New | <u>4</u> | Amended | _____ | Repealed | <u>4</u> |
|-----|----------|---------|-------|----------|----------|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

| | | | | | |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

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 220-88-05000C Designation of Columbia River seine fishery as an emerging commercial fishery.

- (1) 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.
- (2) 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. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

NEW SECTION

WAC 220-88-06000C Columbia River seine emerging commercial fishery -- Qualifications – Issuance of experimental fishery permits – License fee - Permit conditions.

- (1) Individuals interested in participating in this fishery must apply for an emerging fishery license.
 - (a) The first round of experimental fishery permits were drawn randomly from a pool of emerging fishery license applications for Columbia River seine fisheries. Applications were pooled by gear type (i.e. beach seine pool and purse seine pool).
 - (b) Drawings continued until the number of permits needed is filled for each gear type and zone as determined by the agencies.
 - (c) Once drawn, the emerging fishery license and experimental fishery permit will be awarded so long as the applicant meets the qualifications for the license and permit as provided in subsection (2) of this section. Random drawings will continue from this pool of applicants until all permits are filled or the pool of qualified applicants is exhausted.
 - (d) The department may perform a second round of random drawings if the total number of permits needed is not filled from the applications received from the first round of applicants. Applications for any remaining permits will be accepted until filled.
 - (e) Alternate permits for each for gear type may be drawn. Alternate permits for each gear type may be awarded if needed at the Department's discretion.
 - (f) For the second round, applicants drawn for an emerging fishery license and experimental fishery permit are asked to respond within seven (7) business days of being notified by the department to accept the permit and purchase the emerging fishery license. At that time the emerging fishery license fee will be due, and the license and permit will be issued by WDFW upon receipt of payment. The department will not issue the emerging fishery license or the experimental fishery permit until payment is received. If an applicant is drawn for the license and permit and fails to purchase the license and permit within the 7-day period, the department may issue the license and permit to another selected applicant.
 - (g) The emerging fishery license and experimental fishery permit remains in effect until further notice.

- (2) Qualifications: An experimental fishery permit will only be issued to a natural person who has a valid emerging commercial fishery license and who:
 - (a) Possesses a commercial gillnet salmon license/permit issued by Washington or Oregon for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Harbor and can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas within the past two calendar years (2013 and 2014) under that license; or
 - (b) Can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas by the applicant under a commercial salmon license issued for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Harbor within the past two calendar years (2013 and 2014).
- (3) Nothing in this section gives preference to 2015 permit holders for issuance of potential future permits.
- (4) Experimental fishery permits are not transferable between persons. The permit holder must be present and in possession of a valid experimental fishery permit during seine fishing operations. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license--Penalty.
- (5) It is unlawful to violate the conditions of the experimental fishery permit for the Columbia River seine emerging commercial fishery. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license--Penalty.
- (6) Experimental fishery permits may be revoked at the discretion of the Director and future permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.

NEW SECTION

WAC 220-88-07000F 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 this section:

- (1) Season:
 - (a) Open hours are 6:00 a.m. to 8:00 p.m. through September 11; and 6:30 a.m. to 7:30 p.m. thereafter:
 - (b) Open days are:
 - (i) Monday August 24 and Wednesday August 26, 2015
 - (ii) Monday, Tuesday, Wednesday, and Thursday August 31 – September 3, 2015
 - (iii) Tuesday, Wednesday, and Thursday September 8-10, 2015
 - (iv) Monday September 14 and Wednesday September 16, 2015
 - (v) Monday September 21 and Wednesday September 23, 2015
 - (vi) Monday September 28 and Wednesday September 30, 2015

- (2) Open area: SMCRA 1B and 1C through August 26 and SMCRA 1B, 1C and upper area of SMCRA 1D thereafter. . Lower boundary for seine fishing in Zone 4 (SMCRA 1D) is described as a line from USCG light #10 "Red" on the Oregon shore at Henrici Landing across to a wing jetty on the Washington shore at river mile 90.25).
- (3) Gear type: Beach seines or purse seines only. Only one seine net per primary vessel.
 - (a) Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure).
 - (b) Net material to consist of 3-strand nylon; twine size \geq #12.
 - (c) Seines may include a bunt of 1.0-2.0 inch knotless mesh.
 - (d) Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet)
 - (e) Seine and lead lines may not be connected. Lead nets must be retrieved daily.
 - (f) No restrictions on corkline, leadline or use of stringers and slackers.
 - (g) 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.
 - (h) 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.
 - (i) Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size \geq #12, \leq 3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size \geq 14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

NEW SECTION

WAC 220-88-08000C – Columbia River seine emerging commercial fishery – Allowable possession and sales – Catch handling requirements.

- (1) Allowable possession and sales: Adipose or left ventral fin-clipped Chinook, adipose-clipped coho, pink and sockeye salmon and shad. Subject to IFQs as defined on individual permits and fishery regulations, all legally-caught salmon must be landed and sold.
- (2) Handling of catch: 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.
- (3) 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.
- (4) Observer Program – Agency observers must be present during all fishing operations
- (5) 24-hour quick-report required pursuant to WAC 220-69-240.

REPEALERS

The following sections of the Washington Administrative Code are repealed:

WAC 220-88-05000B Designation of Columbia River seine fishery as an emerging commercial fishery. (15-137)

WAC 220-88-06000B Columbia River seine emerging commercial fishery -- Qualifications -- Issuance of experimental fishery permits -- License fee - Permit conditions. (15-137)

WAC 220-88-07000E Columbia River seine emerging commercial fishery -- Season, area, and gear requirements. (15-137)

WAC 220-88-08000B -- Columbia River seine emerging commercial fishery -- Allowable possession and sales -- Catch handling requirements. (15-137)

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 the second year that a fishery allowing seine gear in the Columbia River has occurred, 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 11, 2015. 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.

(15-255, 8/17/2015)

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: