



# 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 16-219**

- 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:** 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Repealed: WAC 220-310-20000Y  
 Amended: WAC 220-310-200  
 Suspended:

**Statutory authority for adoption:** RCW 77.04.012, 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:** August 26, 2016

**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 26, 2016**

**TIME: 10:17 AM**

**WSR 16-18-020**

(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:**

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	Amended	_____	Repealed	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	Amended	_____	Repealed	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	Amended	_____	Repealed	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

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

	New	<u>1</u>	Amended	_____	Repealed	<u>1</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:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

## NEW SECTION

### **WAC 220-310-20000Y Freshwater 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:

**Columbia River:** From a true north/south line through Buoy 10 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:

- (1) On Sundays and Mondays through August 29, all Chinook must be adipose fin-clipped or left-ventral fin clipped to be retained.

## REPEALER

The following section of the Washington Administrative Code is repealed effective September 6, 2016:

WAC 220-310-20000Y Freshwater exceptions to statewide rules—Columbia River.

## Attachment

Chinook catch at The Buoy 10 recreational fishery is less than anticipated. Removing the mark-selective regulations for the last two days (September 4 and September 5) will provide additional opportunity and not pose any substantial risk to meeting the preseason objective of having Chinook retention through Labor Day. The seasons are consistent with the *U.S. v Oregon* 2008-2017 Interim Management Agreement and the Fall Chinook Allocation agreement developed through the North of Falcon process. The rule is consistent with Compact Action of August 25, 2016. 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.

