



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 16-222

- 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: Columbia River seine fishery emerging commercial fishery.

Citation of existing rules affected by this order:

Repealed: WAC 220-88-07000G, WAC 220-88-08000D
 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 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: 10:33 AM

WSR 16-18-021

(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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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>2</u>	Amended	_____	Repealed	<u>2</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 220-88-07000H Columbia River seine emerging commercial fishery – Season, area, and gear requirements.

Notwithstanding the provisions of Chapter 220-88 WAC, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, with beach or purse seine gear except during the times and conditions listed below:

Season:

- (a) Open hours are 6:00 a.m. to 4:00 p.m. through September 11; and 7:00 a.m. to 5:00 p.m. thereafter:
- (b) Open days are:
 - i. Monday August 29 and Wednesday August 31, 2016
 - ii. Tuesday, Wednesday, Thursday, and Friday September 6-9, 2016
 - iii. Monday, Tuesday, Wednesday, Thursday, and Friday September 12-16, 2016
 - iv. Monday September 19 and Wednesday September 21, 2016
 - v. Monday September 26 and Wednesday September 28, 2016

- (1) **Open area: SMCRA 1A-1C.** Beach seining restricted to 1B and 1C. Purse seining restricted to Zones 1A and 1C. The deadline at the upper end of Zone 3 is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore.
- (2) **Sanctuaries:** Elokomin-B, Cowlitz, Kalama-B and Select Area commercial fishing sites.
- (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 220-88-08000E – Columbia River seine emerging commercial fishery – Allowable possession and sales – Catch handling requirements.

Notwithstanding the provisions of Chapter 220-88 WAC:

- (1) Allowable possession and sales:** Subject to IFQs as defined on individual permits. Allowable sales limited to adipose or left ventral fin-clipped Chinook, adipose-clipped Coho, pink, and sockeye salmon and shad. Retained Chinook and Coho must have a healed scar at the location of the clipped fin. All legal salmon caught must be kept and sold. **EXCEPT –any Chinook caught with a purse seine on September 7 and any Chinook caught with a beach seine on September 14 may be kept. On these days, all legal hatchery Chinook must be retained 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 220-88-07000G Columbia River seine emerging commercial fishery – Season, area, and gear requirements. (16-211)

WAC 220-88-08000D – Columbia River seine emerging commercial fishery – Allowable possession and sales – Catch handling requirements. (16-211)

Reasons for this finding: Modifies the allowable sales to include unclipped Chinook on certain days with certain gear. The change in retention rules is part of an investigation to determine if fishers can accurately identify chinook stock (bright or tule) based on visual characteristics. Fishers may keep all bright unclipped Chinook and are asked to release any unclipped Chinook deemed tule stock.

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 third 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 16 and 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.

(16-222, 8/26/2016)

