RULE-MAKING ORDER

Agency: Washington Department of Fish and Wildlife

Effective date of rule:
- Emergency Rules 14-265
  - Immediately upon filing.
  - Later (specify) 6:00 a.m. September 22, 2014

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 provide for Treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington’s relationship with Oregon.

Citation of existing rules affected by this order:
- Repealed: WAC 220-32-05100K
- Amended: WAC 220-32-051
- Suspended:

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


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 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: September 19, 2014

NAME (TYPE OR PRINT)
Philip Anderson

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 19, 2014
TIME: 1:16 PM
WSR 14-20-019

(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Federal statute: New 1 Amended _____ Repealed 1
Federal rules or standards: New 1 Amended _____ Repealed 1
Recently enacted state statutes: New _____ Amended _____ Repealed _____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 1 Amended _____ Repealed 1

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 220-32-05100L Columbia River salmon seasons above Bonneville Dam.
Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052
and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to
take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch
taken for commercial purposes in Columbia River Salmon Management and Catch Reporting
Areas 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake and specific areas
of SMCRA 1E. However, those individuals possessing treaty fishing rights under the Yakama,
Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad,
carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
   (a) Season: 6:00 AM Monday Sept. 22 to 6:00 PM Thursday, Sept. 25, 2014
   (b) Gear: Gillnets only; 8-inch minimum mesh restriction.
   (c) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch.
      Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon
      between 43-54 inches in fork length in The Dalles and John Day pools may be retained
      for subsistence purposes only.
   (d) Standard river mouth and dam sanctuaries applicable to gillnet gear. Spring Creek Hatchery
      sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

(2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
   (a) Season: Open immediately until further notice.
   (b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
   (c) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch.
      Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon
      between 43-54 inches in fork length in The Dalles and John Day pools may be retained
      for subsistence purposes only.
   (d) All dam sanctuaries for these gear types are in effect.

(3) Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or
    MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the
    area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in
    accordance with the appropriate MOA or MOU specific to each tribe, and only within
    any specific regulations set by each tribe.
    (a) Participants:
       (i) Tribal members may participate under the conditions described in the 2007
           Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010
           Memorandum of Understanding (MOU) with the Confederated Tribes of the
           Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated
           Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the
           Nez Perce Tribe.
       (ii) Tribal members fishing below Bonneville Dam must carry an official tribal
            enrollment card.
    (b) Season: Open immediately until further notice. Open only during those days and hours
        when open under lawfully enacted tribal subsistence fishery regulations for enrolled
        tribal members.
(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(4) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Open immediately until further notice, and only during those days and hours when the tributaries listed in subsection (4) (b) of this section are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, Wind River and Klickitat River.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line only, except gill nets may be used in Drano Lake.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Sales of fish are allowed after an open period concludes, as long as the fish sold were landed during an open period.

R E P E A L E R

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 22, 2014:

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam. (14-201)
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: Allows the sale of fish caught during week 39 of the 2014 treaty
commercial gillnet fall season. Reduces the sanctuary at Spring Creek Hatchery as the
broodstock needs are expected to be met. Continues to allow the sale of platform and hook and
line caught fish from mainstem tribal fisheries in Zone 6. Sales of fish landed in the area
downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area
is lawfully open for sales under tribal regulations. Similarly, the sale of fish caught in Yakama
Nation tributary fisheries are allowed when open under Yakama Nation regulations. Over
72,000 adult fall Chinook remain available to the treaty tribes for harvest based on the in-season
forecast of 1,258,000 fish. Steelhead harvest is expected to remain within the guideline based on
the inseason forecast of 36,500 Group B fish. The quick-reporting rule continues to be modified
to require quick reporting within 24-hours of completing the fish ticket, which is intended to
allow harvest to be tracked as the season progresses. Fisheries are consistent with the 2008-
2017 Management Agreement and the associated Biological Opinion. Rule is consistent with
action of the Columbia River Compact on September 18, 2014. Conforms state rules with tribal
rules. The Yakama, Warm Springs, Umatilla, and Nez Perce Indian Tribes have treaty fishing
rights in the Columbia River and inherent sovereign authority to regulate their fisheries.
Washington and Oregon also have some authority to regulate fishing by treaty Indians in the
Columbia River, authority that the states exercise jointly under the Congressionally-ratified
Columbia River Compact. Sohappy v. Smith, 302 F. Supp. 899 (D. Or. 1969). The Tribes and
the States adopt parallel rules for Treaty Indian fisheries under the supervision of the federal
courts. A court order sets the current parameters. United States v. Oregon, Civil No. 68-513-KI
2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River 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 allow
for some incidental take of these species in the fisheries as described in the 2008-2017 U.S. v.
Oregon Management Agreement. Columbia River fisheries are monitored very closely to ensure
consistency with court orders and Endangered Species Act guidelines. Because conditions
change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by
court order, the Washington and Oregon Departments of Fish and Wildlife convene public
hearings and invite tribal participation when considering proposals for new emergency rules
affecting treaty fishing rights. Sohappy, 302 F. Supp. at 912. WDFW and ODFW then adopt
regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.
(14-265, 9/19/2014)