



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 15-73

- 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Repealed: WAC 220-310-20000C
 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: April 10, 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: April 10, 2015

TIME: 8:50 AM

WSR 15-09-044

(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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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 220-310-20000E 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: Effective immediately through April 11 and open on April 16, 2015:

- (a) Open for fishing for salmonids and shad from a true north-south line through Buoy 10 upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2), except closed to fishing 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 and wild steelhead.
- (d) Salmon minimum size is 12 inches.

(2) Columbia River: Effective immediately through May 6, 2015:

- (a) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).
- (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 and wild steelhead.
- (d) Salmon minimum size is 12 inches.

(3) Columbia River Possession limit: Effective April 13 through June 15, 2015, when the Columbia River is open to fishing for hatchery Spring Chinook from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, including the Washington bank between Bonneville Dam and the Tower Island power lines, from the Dalles Dam upstream: Anglers may possess 2 daily limits in fresh form (special rule) in addition to the 2 daily limits in fresh form allowed by permanent rule, except anglers aboard a boat may only possess one daily limit of salmon in fresh form.

(4) Columbia River Hand cast restriction: Effective April 13 through June 15:

(a) When the Columbia River from the Tower Island powerlines (located approximately 6 miles below The Dalles Dam) downstream to Bonneville Dam is open to fishing from the Washington bank for hatchery spring Chinook, only hand-casted lines may be used.

(b) It is unlawful to use a floating device to set lines for salmon and steelhead.

(5) 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 220-310-20000C Exceptions to statewide rules—Columbia River. (15-69)

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: Extends the 2015 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to Bonneville Dam for two additional days. Catch rates have been less than expected and harvestable fish remain on the guideline. 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.

In the geographic area from the Dalles Dam to the Oregon/Washington border when the area is open for hatchery Spring Chinook, the possession limit was increased to allow up to four adult hatchery fish in fresh form. When the daily limit was reduced from two to one hatchery adult fish, this also affected the number of fish allowed under possession limit rules. Today's action will allow anglers who use this fishery as a destination fishery to remain in the area for a longer period of time. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery Chinook retention.

In the geographic area of Bonneville Pool from the Tower Island powerlines (located approximately 6 miles below The Dalles Dam) downstream to Bonneville Dam, anglers on the Washington shore may only use hand-casted lines. Anglers have been using boats or other floating devices to set lines further out from the bank. This is causing the stock mix of Chinook in the catch to change by including more fish destined for areas upriver, which is contrary to the analysis performed to justify the opening of the bank fishery beginning in 2008. 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 and April 8, 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. **(15-73, 4/9/2015)**

