



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- 366

- 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: This emergency rule will allow non-treaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. This rule 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Repealed: WAC 220-33-01000Z
 Amended: WAC 220-33-010
 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: September 29, 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: September 29, 2015

TIME: 2:39 PM

WSR 15-20-044

(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	<u>1</u>	Amended	_____	Repealed	<u>1</u>
Federal rules or standards:	New	<u>1</u>	Amended	_____	Repealed	<u>1</u>
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 220-33-01000A Columbia River season below Bonneville.

Notwithstanding the provisions of WAC 220-33-010, it is unlawful for a person to take or possess salmon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in this section.

(1) Mainstem Columbia River

- (a) **SEASON:** Open October 1, October 5, and October 7, 2015. Open hours are 6:00 AM to 6:00 PM.
- (b) **AREA:** SMCRA 1A, 1B and 1C. The deadline at the upper end of SMCRA 1C 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.
- (c) **SANCTUARIES:** Elokomina-A, Cowlitz, Kalama-A and Lewis-A.
- (d) **GEAR:** Drift nets only. Maximum mesh size is 3-3/4 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms.
 - (i) A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.
 - (ii) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.
 - (iii) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact
- (e) **ALLOWABLE POSSESSION:** Adipose fin-clipped Coho salmon, Chinook, Sockeye, and Pink salmon and shad. It is unlawful to possess or sell white sturgeon and chum salmon.
- (f) **ADDITIONAL REGULATIONS:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.
 - (i) Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water and must not exceed 30 minutes.
 - (ii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.
 - (iii) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data

for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

- (iv) Live Capture workshop: Licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(2) Deep River Select Area.

- (a) SEASON: Open hours 6:00 PM to 9:00 AM.
 - (i) Monday, Tuesday, Wednesday, Thursday and Friday nights effective immediately through October 16, 2015
 - (ii) 6:00 PM Monday October 19, to 9:00 AM Tuesday October 20, 2015
- (b) AREA: The Deep River Select Area. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.
- (c) GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. Net length: 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision supersedes the permanent rule and all other rules that conflict with it.

(3) Tongue Point/South Channel Select Area.

- (a) SEASON: Open hours 4:00 PM to 10:00 AM. Open days are Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2015.
- (b) AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent-jurisdiction waters.
- (c) GEAR: Gillnet; 6-inch maximum mesh. Net length: 250 fathoms maximum.
 - (i) Tongue Point fishing area: weight not to exceed two pounds in any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel.
 - (ii) South Channel area: no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed

(4) Blind Slough/Knappa Slough Select Area.

- (a) SEASON: Open hours are: 6:00 PM to 10:00 AM. Open days are: Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2015.
- (b) AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.
- (c) GEAR: Gillnet. Monofilament gear is allowed. 9¾-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

(5) ALLOWABLE POSSESSION for Select Areas: Chinook, Coho, pink and sockeye salmon and shad.

(6) ADDITIONAL REQUIREMENTS:

- (a) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.
- (b) Quick Reporting: 24-hour quick reporting is required for Washington wholesale dealers for all seasons in this section, as provided in WAC 220-69-240. Columbia River reports must be submitted within 24 hours of the closure of each fishing period.
- (c) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.
- (d) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001

R E P E A L E R

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Z Columbia River season below Bonneville. (15-359)

Attachment

Sets three Coho-directed mainstem commercial fishing periods using tanglenet gear. Select Area sites remain open. Chinook and Coho remain available for commercial harvest. Coho are available for commercial harvest, and harvest estimates are within ESA limits and sharing guidelines. 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 July 29 and September 28, 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.