



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 15-376

- 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Repealed: WAC 220-33-01000B
 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: Sets an additional mainstem commercial fishing period during the late fall season. Select Area sites remain open. Chinook and Coho remain 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 October 7, 2015. There is insufficient time to adopt permanent rules.

Date adopted: October 8, 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: October 08, 2015

TIME: 2:26 PM

WSR 15-21-003

**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 220-33-01000C 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: 8:00 PM Thursday October 8, to 6:00 AM Friday October 9, 2015.
- (b) AREA: SMCRA 1A, 1B, 1C, 1D, and 1E.
- (c) SANCTUARIES: Elokomina-A, Cowlitz, Kalama-A, Lewis-A, Washougal and Sandy.
- (d) GEAR: Drift nets only. Minimum mesh size is 8 inches.

(2) Mainstem Columbia River

- (a) SEASON: 6:00 AM to 6:00 PM Monday October 12, 2015.
- (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: Unslackened floater drift nets only. Maximum mesh size is 6 inches.

(3) Deep River Select Area.

- (a) SEASON: Open hours 6:00 PM to 9:00 AM.
 - (i) Monday, Tuesday, Wednesday, and Thursday 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.

(4) 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

(5) 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.

(6) ADDITIONAL REQUIREMENTS:

- (a) ALLOWABLE POSSESSION: Coho, Chinook, Sockeye, and Pink salmon and shad. It is unlawful to possess or sell white sturgeon and chum salmon.
- (b) 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.
- (c) 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.
- (d) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000B Columbia River season below Bonneville. (15-369)

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: Sets an additional mainstem commercial fishing period during the late fall season. Select Area sites remain open. Chinook and Coho remain 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 October 7, 2015. There is insufficient time to adopt permanent rules. **(15-366, 10/8/2015)**

