



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 17-66

- 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: The purpose of this rule-making is to allow non-treaty recreational fishing opportunity in the Columbia River while protecting fish 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, 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Repealed: WAC 220-310-2000K, WAC 220-312-06000C
 Amended: WAC 220-312-060
 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: March 31, 2017

NAME (TYPE OR PRINT)

J W Unsworth

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 31, 2017

TIME: 9:12 AM

WSR 17-08-053

(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>2</u> |
| Federal rules or standards: | New | <u>1</u> | Amended | _____ | Repealed | <u>2</u> |
| Recently enacted state statutes: | New | <u>1</u> | Amended | _____ | Repealed | <u>2</u> |

The number of sections adopted at the request of a nongovernmental entity:

| | | | | | | |
|--|-----|----------|---------|-------|----------|----------|
| | New | <u>1</u> | Amended | _____ | Repealed | <u>2</u> |
|--|-----|----------|---------|-------|----------|----------|

The number of sections adopted in the agency's own initiative:

| | | | | | | |
|--|-----|-------|---------|-------|----------|-------|
| | New | _____ | Amended | _____ | Repealed | _____ |
|--|-----|-------|---------|-------|----------|-------|

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 220-312-06000C Freshwater exceptions to statewide rules—Columbia River.

Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Open effective immediately through April 10, 2017 in waters of the Columbia River from Buoy 10 upstream to Bonneville Dam:

(a) The hatchery salmonid daily limit is 6 fish of which no more than 2 may be adults and no more than 1 may be a hatchery adult Chinook. Only adipose fin-clipped fish may be retained.

(b) Closed to fishing for salmonids and shad from boats between Beacon Rock and Bonneville Dam (bank fishing only). The legal upstream boat boundary is defined as: “A deadline marker on the Oregon bank (approximately 4 miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.”

(c) No angling is allowed within the Lewis River sanctuary. This area is defined as: “A line from marker on the lower end of Bachelor Island through USCG buoy Red #4 to the Oregon shore, downstream to a line from the lower (north) end of Sauvie Island across the Columbia River to the downstream range marker (0.7 miles downstream of the Lewis River) and continuing along the wing jetty to the Washington shore.”

(2) Effective through May 15, the Columbia River is open for retention of adipose fin-clipped steelhead from Buoy 10 upstream to the Highway 395 Bridge and shad from Buoy 10 upstream to Bonneville Dam during days and areas open for retention of adipose fin-clipped spring Chinook.

(3) Effective immediately through May 5, 2017:

(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.

REPEALERS

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000K Freshwater exceptions to statewide rules—Columbia River.

The following section of the Washington Administrative Code is repealed effective May 15, 2017.

WAC 220-312-06000C Freshwater exceptions to statewide rules—Columbia River. (17-36)

Attachment

Extends the 2017 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to the Oregon/Washington border. The Regulation allows for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery Chinook. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. 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 March 30, 2017.

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. There is insufficient time to promulgate permanent rules.