



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 05, 2020

TIME: 10:08 AM

WSR 20-07-010

Agency: Washington Department of Fish and Wildlife (20-42)

Effective date of rule:

Emergency Rules

- 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 rulemaking 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 rulemaking implements federal court orders governing Washington’s relationship with Treaty Indian Tribes and federal law governing Washington’s relationship with Oregon.

Citation of rules affected by this order:

- New:
- Repealed: WAC 220-359-02000W; WAC 220-359-02000X; WAC 220-359-06000A
- Amended: WAC 220-359-020; WAC 220-359-060
- 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 2018-2027 United States v. Oregon Management Agreement (February 26, 2018) (Doc. No. 2607-1). *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.

Reasons for this finding: As a precautionary measure in anticipation of meeting the treaty harvest guideline for sturgeon in Bonneville pool this rule closes treaty commercial fisheries for sale of all fish in SMCRA 1F, 1G, and 1H at 6PM on Thursday, March 5, 2020. This rule is consistent with actions of Columbia River the Compacts on January 28, February 19 and 26, and March 4, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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 regulations 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 (D. Or.), Order Adopting 2018-2027 United States v. Oregon Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. On February 23, 2018, 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 the fisheries as described in the 2018-2027 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.

**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	2	Amended	___	Repealed	3
Federal rules or standards:	New	2	Amended	___	Repealed	3
Recently enacted state statutes:	New	2	Amended	___	Repealed	3

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

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	2	Amended	___	Repealed	3
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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	___

Date Adopted: March 5, 2020

Name: Nate Pamplin for Kelly Susewind

Title: Director

Signature:



NEW SECTION

WAC 220-359-02000X Columbia River salmon seasons above Bonneville Dam.

Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090:

- 1) Open Areas: SMCRA 1F (Bonneville Pool)
 - (a) Season: Immediately to 6 PM Thursday, March 5, 2020
 - (b) Gear: Gillnets with no minimum mesh size restriction.
 - (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length may be sold or kept for subsistence purposes.
 - (d) Standard river mouth and dam sanctuary closures remain in place for this gear.

- 2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)
 - (a) Season: Immediately through 6 PM Thursday, March 5, 2020.
 - (b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.
 - (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery.
 - (d) Standard river mouth and dam sanctuary closures remain in place for this gear.

- 3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, 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).

- 4) Fish caught during the open period may be sold after the period concludes.

NEW SECTION

WAC 220-359-06000A Columbia River above Bonneville Dam—Off-reservation Indian subsistence fishing.

Notwithstanding the provisions of WAC 220-359-010 and WAC 220-359-060:

- Open Areas: SMCRA 1F, 1G, 1H (Zone 6):
- (a) Season: 6PM Thursday March 5 through 6 PM Saturday, March 21, 2020.
 - (b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.
 - (c) Allowable Harvest: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be retained for subsistence purposes only. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes only.
 - (d) Standard river mouth and dam sanctuary closures remain in place for this gear.

REPEALERS

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000W Columbia River salmon seasons above Bonneville Dam—Commercial seasons. (20-38)

The following section of the Washington Administrative Code is repealed, effective 6PM March 5, 2020:

WAC 220-359-02000X Columbia River salmon seasons above Bonneville Dam—Commercial seasons. (20-42)

The following section of the Washington Administrative Code is repealed, effective 6PM March 21, 2020:

WAC 220-359-06000A Columbia River salmon seasons above Bonneville Dam—Off-reservation Indian subsistence fishing.