



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: February 01, 2018

TIME: 2:59 PM

WSR 18-04-064

Agency: Washington Department of Fish and Wildlife (18-17)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) February 5, 2018

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 rules affected by this order:

New:
Repealed:
Amended: WAC 220-358-030
Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 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.

Reasons for this finding: Sets the 2018 winter, spring, and summer Select Area commercial seasons. Impacts to non-local stocks are expected to be minimal and local Chinook stocks reared for the Select Area sites are available for harvest. 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 30, 2018. 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.

**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	___
Federal rules or standards:	New	<u>1</u>	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>1</u>	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 on the agency's own initiative:

New	<u>1</u>	Amended	___	Repealed	___
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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: February 1, 2018

Name: J W Unsworth

Title: Director

Signature:



NEW SECTION

WAC 220-358-03000L Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point/South Channel

(a) Dates:

Tongue Point and South Channel open:

Winter Season: 7 PM to 7 AM Monday and Thursday nights from February 5 through March 9, 2018; and 5 PM to 9 PM Monday, March 12, 2018.

Spring Season: 10 PM to 2 AM Thursday night April 19, 2018; and 3 PM to 7 PM Tuesday April 24, 2018; and 5 PM to 9 PM Thursday April 26, 2018; and 7 AM to 7 PM Monday and Thursday nights April 30, 2018 until further notice.

South Channel open:

Winter Season: 7 PM to 7 AM from March 15-23, 2018

(b) Area:

The winter-spring-summer season Tongue Point Select Area is defined as those waters of the Columbia River bounded by a line from a point at the end of the southern-most (upstream) pier (Pier #1) at the Tongue Point Job Corps facility projecting in a straight line from through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker (located at 46.18270 degrees N, -123.74313 degrees W) on the Oregon shore 500 feet north of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

The South Channel Select Area is defined as those waters of South Channel bounded by a line from a regulatory marker on the Oregon shore at John Day point projecting northeasterly to a regulatory marker on Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then westerly to the eastern tip of Burnside Island..

(c) Gear: Gillnets.

Winter season: 7-inch minimum mesh size restriction

Spring and Summer seasons: 9¾-inch maximum mesh size restriction

In Tongue Point, gear is restricted to a maximum net length of 250 fathoms and weight not to exceed two pounds on any one fathom.

In South Channel, gear is restricted to a maximum net length of 250 fathoms and no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(d) Miscellaneous:

Permanent regulations including rules related to transportation and lighted buoys remain in effect.

24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-180.

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Winter Season: Open Monday, Wednesday, and Thursday nights 7 PM to 7 AM February 5 thru March 23; and 6 PM to 10 PM Monday March 26; and 7 PM to 11 PM Thursday March 29; and 10 PM to 2 AM Monday night April 2.

Spring Season: Open 7 PM to 7 AM Tuesday and Thursday nights from April 19-27; and 7 PM to 7 AM Monday, Wednesday, and Thursday nights from April 30, 2018, until further notice.

(b) **Area:** Winter season:

The Blind Slough Select Area is defined as those waters of Blind Slough and Gnat Creek from a north-south line formed by regulatory markers at the mouth of Blind Slough to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

The Knappa Slough Select Area is defined as those waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a north-south line projecting through the easternmost tip of Minaker Island and markers on Karlson Island the Oregon shore. The area within a 100-foot radius of the mouth of Big Creek is closed.

Beginning April 30, the lower boundary of the Knappa Slough Select Area is extended downstream to a boundary line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through markers on the western tips of Minaker Island to a marker on the Oregon shore (fall boundary).

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season:

Nets restricted to 100 fathoms in length with no weight restriction on headline. Use of additional weights and/or anchors attached directly to the headline is allowed. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. .

(d) **Miscellaneous:** Permanent transportation rules in effect. In accordance with WACs 220-352-040(1)(i) and 220-301-010(9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) Allowable Possession: Salmon and shad. Retention and sale of sturgeon is prohibited.

(4) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-180)). Permanent transportation rules in effect.

(5) Multi- Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-030(2)).

(6) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

