



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: August 16, 2018

TIME: 4:20 PM

WSR 18-17-113

Agency: Washington Department of Fish and Wildlife (18-201)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) 9:00 p.m. August 21, 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- Repealed: WAC 220-358-03000S
- 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 fall commercial seasons in Zone 4 and 5 and continues the Select Area fisheries previously set. In Select Area fisheries, 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 the Compact Action of July 26 and August 14, 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	1
Federal rules or standards:	New	<u>1</u>	Amended	_____	Repealed	1
Recently enacted state statutes:	New	<u>1</u>	Amended	_____	Repealed	1

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	1
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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 _____

Date Adopted: August 16, 2018	Signature: 
Name: Joe Stohr for Kelly Susewind	
Title: Director	

NEW SECTION

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

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, 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) Zones 4-5

(a) **Dates:** 9 PM Tuesday August 21 to 6 AM Wednesday August 22, 2018

9 PM Thursday August 23 to 6 AM Friday August 24, 2018

9 PM Sunday August 26 to 6 AM Monday August 27

(b) **Area:** The deadline at the lower end of Zone 4 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. Washougal and Sandy River sanctuaries are in effect.

(c) **Gear:** Gillnets with a 9-inch minimum mesh size. Multiple net rule NOT in effect, which means nets not authorized for this fishery may not be onboard. Lighted buoys required.

(d) **Allowable Sales:** Chinook, Coho, Pink, and Sockeye salmon, shad, and white sturgeon. A maximum of six white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to mainstem fisheries only.

(e) **Miscellaneous:** 24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-315.

(2) Tongue Point/South Channel

(a) **Dates:** Monday and Wednesday nights during August 27 through 30, 2018.

Monday, Tuesday, Wednesday and Thursday nights September 3 – October 26, 2018

Open Hours: 7 PM – 7 AM through September 7 and 4 PM – 10 AM thereafter

(b) **Area:** The Tongue Point Area is defined as those waters of the Columbia River bounded by a line from a regulatory marker (46.20863 degrees N, -123.75944 degrees W) on the eastern shore of Tongue Point to the flashing green USCG light “3” on the rock jetty at the northwest tip 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 (46.18270 degrees N, -123.74313 degrees W) located on the Oregon shore 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

The South Channel 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 projecting westerly to the eastern tip of Burnside Island.

(c) **Gear:** Gillnets with a 6-inch maximum mesh size. Maximum net length of 250 fathoms.

In the 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 their fishing vessel.

In the South Channel fishing area: 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 this fishery may be onboard the 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. 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) **Allowable Sales:** Chinook, coho, pink, and sockeye salmon, white sturgeon, and shad. A maximum of **four** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(e) **Miscellaneous:** Permanent transportation rules in effect.

(3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday and Wednesday nights August 27–30, 2018.

Monday, Tuesday, Wednesday, and Thursday nights September 3 – October 26, 2018

Open hours: 7 PM – 7 AM through September 7 and 6 PM – 10 AM thereafter.

(b) Area:

The Blind Slough 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 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 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.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(c) Gear:

Gillnets. Maximum mesh size restriction is 9¾-inch through September 7, and 6-inch thereafter. Maximum net length of 100 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 this fishery may be onboard the 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. 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) **Allowable sales:** Chinook, coho, pink, and sockeye salmon, white sturgeon, and shad. A maximum of **four** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(e) **Miscellaneous:** Permanent transportation rules in effect.

(4) Deep River Select Area

(a) **Dates:** Monday and Wednesday nights during August 27–30, 2018.

Monday, Tuesday, Wednesday, Thursday, and Friday nights September 3–September 22, 2018

Monday, Tuesday, Wednesday, and Thursday nights September 24–October 12, 2018

Open hours: 7 PM–7 AM during August 27–30, and 6 PM–9 AM thereafter.

(b) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9³/₄-inch through September 8, and 6-inch thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can 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 with 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 shall supersede the permanent regulation and all other regulations that conflict with it.

Nets not specifically authorized for use in this fishery may be onboard the 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. 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) **Allowable sales:** Chinook, coho, pink, and sockeye salmon, white sturgeon, and shad. A maximum of four white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(e) **Miscellaneous:** Permanent transportation rules in effect.

(5) **24-hour** quick reporting is in effect for Washington buyers WAC 220-352-315. 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 220-358-010(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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. August 21, 2018:

WAC 220-358-03000S Columbia River seasons below Bonneville. (18-177)

