



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: January 30, 2019

TIME: 1:55 PM

WSR 19-04-059

Agency: Washington Department of Fish and Wildlife (19-20)

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: 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Repealed: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 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: Sets the 2019 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 29, 2019. 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 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. Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. 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 1 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 <u> </u>	Amended <u> </u>	Repealed <u> </u>
Pilot rule making:	New <u> </u>	Amended <u> </u>	Repealed <u> </u>
Other alternative rule making:	New <u> </u>	Amended <u> </u>	Repealed <u> </u>

Date Adopted: January 30, 2019

Name: Kelly Susewind

Title: Director

Signature:



NEW SECTION

WAC 220-358-03000X 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:

Monday, Wednesday, and Thursday nights (7 PM to 7 AM) from February 4 through February 28,

Monday and Thursday nights (7 PM to 7 AM) from March 4 through March 8, and

Monday night March 11 from 10 PM to 2 AM (4 hours).

Spring/Summer Season:

Thursday night April 18 from 7 PM to 11 PM (4 hours),

Tuesday night April 23 from 10 PM to 2 AM (4 hours),

Friday April 26 from midnight to 4 AM (4 hours), and

Monday and Thursday nights (7 PM to 7 AM) from April 29 through May 29

South Channel open:

Winter Season:

Monday and Thursday nights (7 PM to 7 AM) from March 14-22,

Monday night (11 PM to 3 AM) March 25,

Friday (2 AM – 6 AM) March 29,

Monday (6 PM – 10PM) April 1,

Thursday night April 4 from 8 PM to midnight (4 hours),

Monday night April 8 from 10 PM to 2 AM (4 hours), and

Friday April 12 from midnight to 4 AM (4 hours)

(b) Area:

The Tongue Point Winter-Spring Subarea is defined as waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line 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 on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

The South Channel Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a

regulatory marker on the southwest shore of 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.

Winter season: 7-inch minimum mesh size restriction

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

The maximum net length is 1,500 feet (250 fathoms).

In the Tongue Point winter-spring subarea the lead line weight may not exceed two pounds per any one fathom;

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use may be onboard a vessel if properly stored, however, unstored gillnets legal for use in South Channel may be onboard. 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) Allowable sales: Salmon (except Chum) and shad. Retention and sale of sturgeon is prohibited

(e) **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 220-352-315.

Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:**

Winter Season:

Monday, Wednesday, and Thursday nights (7 PM to 7 AM) from February 4 through March 22,

Monday night March 25 from 11 PM to 3 AM (4 hours),

Friday March 29 from 2 AM to 6 AM (4 hours), and

Monday night April 1 from 6 PM to 10 PM (4 hours).

Spring Season:

Tuesday and Thursday nights (7 PM to 7 AM) from April 18-26, and

Monday, Wednesday, and Thursday nights (7 PM to 7 AM) from April 29 through May 29.

Blind Slough only

Thursday night April 4 from 8 PM to midnight (4 hours),

Monday night April 8 from 10 PM to 2 AM (4 hours), and

Friday April 12 from midnight to 4 AM (4 hours).

(b) **Area:**

The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream 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 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 regulatory 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.

Prior to May 6, the downstream (western) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(c) Gear: Gillnets.

Winter season: 7-inch minimum mesh size restriction.

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

The maximum net length is 600 feet (100 fathoms).

There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(d) Miscellaneous: Permanent transportation rules in effect. In accordance with WACs 220-69-230(1)(i) and 220-22-010(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 (except chum) and shad. Retention and sale of sturgeon is prohibited.

(4) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315)).

Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries.

(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.

