



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 21, 2019

TIME: 8:28 AM

WSR 19-06-005

Agency: Department of Fish and Wildlife (Order 19-33)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) March 1, 2019

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 rules affected by this order:

New:
Repealed:
Amended: WAC 220-312-060
Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.12.045 and 77.12.047

Other authority:

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 spring recreational salmon season in the Columbia River in the area upstream of the Lewis River to the Oregon/Washington border, including shad and hatchery steelhead. 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 February 20, 2019.

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 2008-2017 Management Agreement (MA) and Biological Opinion (BO) have been extended through February 2018 while the MA and BO covering 2018-2027 are finalized. 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.

**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	___
-----	-----	---------	-----	----------	-----

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

New	<u>1</u>	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	___

Date Adopted: February 20, 2019

Name: Nate Pamplin for Kelly Susewind

Title: Director

Signature:



NEW SECTION

WAC 220-312-06000E Exceptions to statewide rules—Columbia River.

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

(1) **From a true north-south line through Buoy 10, upstream to a line from the Warrior Rock lighthouse on the Oregon shore to red USCG buoy #4, then to the piling dolphin on the lower end of Bachelor Island (Warrior Rock line):** Salmon and steelhead: Effective March 1, 2019 until further notice: Closed.

(2) **From a line from the Warrior Rock lighthouse on the Oregon shore to red USCG buoy #4, then to the piling dolphin on the lower end of Bachelor Island (Warrior Rock line) to Beacon Rock:**

(a) Salmon and steelhead:

(i) Effective March 1 through April 10, 2019:

(A) Open for boat and bank fishing for salmon and steelhead from a line from the Warrior Rock lighthouse on the Oregon shore to red USCG buoy #4, then to the piling dolphin on the lower end of Bachelor Island (Warrior Rock line) to Beacon Rock.

(B) Legal upstream boat boundary defined as: A deadline marker on the Oregon bank (approximately four 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) Daily limit is 6 adipose fin clipped salmonids, no more than 2 adults of which no more than 1 may be an adult Chinook.

(D) Release all wild Chinook, wild coho and wild steelhead.

(E) Salmon minimum size is 12 inches.

(ii) Effective April 11 through May 15, 2019: Closed.

(b) Shad: Effective March 1 through May 15, 2019: On days open to fishing for salmon; fishing for shad is allowed.

(3) **From Beacon Rock to Bonneville Dam deadline:**

(a) Salmon and steelhead:

(i) Effective March 1 through April 10, 2019:

(A) Open for bank fishing only.

(B) Daily limit is 6 adipose fin clipped salmonids, no more than 2 adults of which no more than 1 may be an adult Chinook.

(C) Release all wild Chinook, wild coho and wild steelhead.

(D) Salmon minimum size is 12 inches.

(ii) Effective April 11 through May 15, 2019: Closed.

(b) Shad: Effective March 1 through May 15, 2019: On days open to fishing for salmon; fishing for shad is allowed.

(4) 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 water closed under permanent rule): Effective April 1 through May 5, 2019:

- (a) Open to fishing for salmon and steelhead.
- (b) Daily limit is 6 adipose fin clipped salmonids, no more than 2 adults of which no more than 1 may be an adult Chinook.
- (c) Release all wild Chinook, wild coho and wild steelhead.
- (d) Salmon minimum size is 12 inches.