



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, 2020

TIME: 10:15 AM

WSR 20-06-018

Agency: Department of Fish and Wildlife (Order20-36)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) March 1, 2020

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: Amends recreational fishing rules for the Columbia River.

Citation of rules affected by this order:

- New:
- Repealed: WAC 220-312-06000F
- 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 2020 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 19, 2020.

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. 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	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	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	<u>1</u>
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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 21, 2020

Name: Amy Windrope for Kelly Susewind

Title: Director

Signature:



NEW SECTION

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia

Notwithstanding the provisions of WAC 220-312-060:

- (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, 2020 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 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:**

 - a. Salmon and steelhead:
 - i. Effective March 1 through March 31, 2020: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.
 - ii. Effective April 1 until further notice:
 - A. Open Thursday through Saturday each week: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.
 - B. Closed Sunday through Wednesday each week.
 - b. Shad: Effective April 1, 2020 until further notice:
 - i. No min. size. No daily limit.
 - ii. Open days when salmon and steelhead are open.
- (3) From 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 to Bonneville Dam:**

 - a. Effective March 1 until further notice: Closed to angling from a floating device or by any method except hand-cast lines from shore.
 - b. Salmon and steelhead:
 - i. Effective March 1 through March 31, 2020: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.
 - ii. Effective April 2 until further notice:
 - A. Open Thursday through Saturday each week: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.
 - B. Closed Sunday through Wednesday each week.

- c. Shad: Effective April 1, 2020 until further notice:
 - i. No minimum size. No daily limit.
 - ii. Open days when salmon and steelhead are open.

(4) From Bonneville Dam to John Day Dam:

- a. Salmon and steelhead: Effective April 1 through May 5, 2020: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.
- b. Sturgeon: Effective immediately through April 30, 2020: Retention is prohibited.

(5) Adjacent tributaries From Bonneville Dam to John Day Dam: Sturgeon: Effective immediately through April 30, 2020: Retention is prohibited.

(6) From John Day Dam to McNary Dam: Salmon and steelhead: Effective April 1 through May 5, 2020: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.

(7) From McNary Dam upstream to Hwy. 730 at the Washington/Oregon border:

- a. Steelhead: Effective immediately through March 31, 2020: Closed to angling for and retention of steelhead.
- b. Salmon and steelhead: Effective April 1 through May 5, 2020: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.
- c. Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

(8) From the Washington/Oregon border to the Hwy. 395 Bridge (Pasco/Kennewick):

- a. Steelhead: Effective immediately through March 31, 2020: Closed to angling for and retention of steelhead.
- b. Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

(9) From the Hwy. 395 Bridge (Pasco/Kennewick) to Old Hanford townsite powerline crossing:

- a. Steelhead: Effective immediately through April 15, 2020: Closed to angling for and retention of steelhead.
- b. Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

(10) From the Old Hanford townsite powerline crossing to boundary markers 650 feet downstream of the fish ladders Priest Rapids Dam: Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 1, 2020:

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia (20-26)