RULE-MAKING ORDER  
EMERGENCY RULE ONLY

CR-103E (December 2017)  
(Implements RCW 34.05.350 and 34.05.360)

Agency: Washington Department of Fish and Wildlife (21-17)

Effective date of rule:

☐ Immediately upon filing.
☒ Later (specify) 6:00 a.m. February 24, 2021

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 provide for Treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington’s relationship with Oregon.

Citation of rules affected by this order:

New:

Repealed: WAC 220-359-02000L
Amended: WAC 220-359-020
Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047


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: This rule is consistent with actions of Columbia River Compact Hearings on January 26, 2021 and February 23, 2021. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington and Oregon Departments of Fish and Wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. 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: 1
  - Amended: ___
  - Repealed: 1

- **Federal rules or standards:**
  - New: 1
  - Amended: ___
  - Repealed: 1

- **Recently enacted state statutes:**
  - New: 1
  - Amended: ___
  - Repealed: 1

### 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: 1
- Amended: ___
- Repealed: 1

### 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 23, 2021  
**Name:** Amy Windrope for Kelly Susewind  
**Title:** Director  
**Signature:**
NEW SECTION

WAC 220-359-02000M Columbia River salmon seasons above Bonneville Dam.
Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F (Bonneville pool only)
   (a) Season: 6 AM Monday, March 1, 2021 to 6 PM Friday, March 5, 2021
   (b) Gear: Gillnets with no minimum mesh size restriction.
   (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in Bonneville pool may be sold or kept for subsistence purposes.
   (d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1H (John Day pool only)
   (a) Season: 6 AM Wednesday, February 24, 2021 to 6 PM Friday, February 26, 2021
   (b) Gear: Gillnets with no minimum mesh size restriction.
   (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length in John Day pool may be sold or kept for subsistence purposes.
   (d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(3) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)
   (a) Season: Immediately to 6 PM Friday, March 19, 2021.
   (b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.
   (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be sold or kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery.
   (d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Fish caught during the open period may be sold after the period concludes.
R E P E A L E R

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. February 24, 2021:

WAC 220-359-02000L Columbia River salmon seasons above Bonneville Dam. (21-12)