



# 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: May 11, 2022

TIME: 3:51 PM

WSR 22-11-037

**Agency:** Washington Department of Fish and Wildlife (22-73)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.  
 Later (specify) May 12, 2022

**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Repealed:  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, 77.04.130, 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:** The U.S. v. Oregon Technical Advisory Committee recently updated the 2022 upriver spring Chinook return to 161,800. Additional spring Chinook directed angling opportunities are available. This rule modification re-opens the 2022 spring recreational salmon season in the Columbia River from the Rocky Point/Tongue Point line upstream to Bonneville Dam, 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 May 11, 2022. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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	<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 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	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

**Date Adopted:** May 11, 2022

**Name:** Kelly Susewind

**Title:** Director

**Signature:**



## NEW SECTION

### **WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia.**

Effective May 12 through June 15, 2022, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to Hwy. 730 at the Washington/Oregon border, and shad seasons from the mouth to the Bonneville Dam, shall be modified as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon bank to a deadline marker on the Washington bank at Beacon Rock:**

- (a) Salmon and steelhead: Effective May 12 through May 22, 2022: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.
- (b) Salmon and steelhead: Effective June 4 through June 15, 2022: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.
- (c) Shad: Effective May 12 through May 15, 2022: No min. size. No daily limit.

**(2) 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 upstream to Bonneville Dam:**

- (a) Closed to angling from a floating device or by any method except hand-cast lines from shore.
- (b) Salmon and steelhead: Effective May 12 through May 22, 2022: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.
- (c) Salmon and steelhead: Effective June 4 through June 15, 2022: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.
- (d) Shad: Effective May 12 through May 15, 2022: No min. size. No daily limit.