RULE-MAKING ORDER
EMERGENCY RULE ONLY

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

Agency: Department of Fish and Wildlife (Order 22-19)

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: 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: WAC 220-359-02000X
Repealed: WAC 220-359-02000X
Amended: WAC 220-359-020
Suspended: ______

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 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 extends the tribal winter gillnet fishery in The Dalles and John Day pools. This rule is consistent with actions of the Columbia River Compact on February 9, and January 25, 2022. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of non-treaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian Tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the Congressionally-ratified Columbia River Compact. Sohappy v. Smith, 302 F. Supp. 899 (D. Or. 1969). The Tribes and the States adopt parallel regulations for Treaty Indian fisheries under the supervision of the federal courts. 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.

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.

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**Date Adopted:** February 10, 2022

**Signature:**

**Name:** Kelly Susewind

**Title:** Director
NEW SECTION

WAC 220-359-02000Y 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 1G (The Dalles Pool)
   (a) Season: 6 AM Thursday, February 10, 2022, until 6 PM Saturday, February 12, 2022.
   (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 caught in The Dalles 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)
   (a) Season: Immediately through 6 PM Saturday, February 19, 2022.
   (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 caught in the 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 through 6 PM Saturday, March 19, 2022.
   (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 caught in the Bonneville Pool and sturgeon from 43 to 54 inches fork length caught 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.
The following section of Washington Administrative Code is repealed, effective immediately: WAC 220-359-02000X Columbia River salmon seasons above Bonneville Dam. (22-12)