



# 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 31, 2023

TIME: 5:41 PM

WSR 23-12-047

**Agency:** Department of Fish and Wildlife (Order 23-89)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) June 1, 2023

**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 emergency rule is to close salmon and steelhead fisheries in the Columbia River downstream of Bonneville Dam and returns Deep River salmon and steelhead fisheries to permanent rules.

**Citation of rules affected by this order:**

- New:
- Repealed: WAC 220-312-03000C; WAC 220-312-06000N
- 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:** On May 30, 2023, the U.S. v. OR Technical Advisory Committee (TAC) updated the Columbia River upriver spring Chinook return to 143,000 compared to a pre-season forecast of 198,600 and the previous week's in-season run size estimate of 153,000. Based on TAC's current abundance expectation of 143,000 fish, treaty fisheries are allowed a harvest rate of 7.4% and the non-treaty fisheries are allowed a harvest rate of 1.6% with the total allowable harvest rate on ESA-listed spring/summer Snake River Chinook and Upper Columbia spring Chinook both at 9.0%. As of May 31, the treaty harvest rate is 8.38% and the non-treaty harvest rate is 0.71%, which results into a combined 9.09% which is over the allowable ESA impact rate. Given the current run size and estimated ESA impacts to-date for combined treaty and non-treaty fisheries, remaining fisheries expected to accrue additional upriver spring Chinook ESA impacts must close.

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. The regulation is consistent with the Compact Actions of February 22, April 4, May 17, May 24 and May 31, 2023. The general public welfare is protected with the immediate closure of recreational salmon and steelhead fishing below Bonneville Dam. This closure protects the resource and provides sustainability to future fisheries.

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>2</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	___

<b>Date Adopted:</b> May 31, 2023	<b>Signature:</b> 
<b>Name:</b> Kelly Susewind	
<b>Title:</b> Director	

## NEW SECTION

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

Effective June 1 through June 15, 2023, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Rocky Point/Tongue Point line upstream to the I-5 Bridge shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**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 (Rocky Point/Tongue Point line) upstream to Interstate 5 Bridge:**

Salmon and steelhead: June 1 through June 15, 2023: Closed to angling for and retention of salmon and steelhead.

## REPEALERS

The following sections of the Washington Administrative Code are repealed, effective June 1, 2023:

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia River. (23-85)

WAC 220-312-03000C Freshwater exceptions to statewide rules—Southwest. (23-85)