



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 21, 2025

TIME: 4:46 PM

WSR 25-12-010

Agency: Washington Department of Fish and Wildlife (25-90)

Effective date of rule:

Emergency Rules

- ☐ Immediately upon filing.
☒ Later (specify) May 22, 2025

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Repealed: WAC 220-359-02000R
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

Other authority: *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). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington Fish and Wildlife Commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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 sets a treaty spring season research commercial fishery targeting carp in specific areas of John Day Pool which allows for treaty commercial sales to non-treaty buyers in 2025. This rule is consistent with actions of the Columbia River Compact on May 20, 2025. 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 adopt 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. Shappy, 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	<u>1</u>	Amended	___	Repealed	1
Federal rules or standards:	New	<u>1</u>	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	___
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The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	___	Repealed	1
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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: May 21, 2025

Name: Kelly Susewind

Title: Director

Signature:



NEW SECTION

WAC 220-359-02000S 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, effective May 22 through June 14, 2025, 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 (SMRCA) 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for carp, catfish, walleye, bass, yellow perch, or northern pikeminnow under the following provisions:

- (1) Open Areas: SMCRA 1H (John Day Pool):
 - Railroad Island slough (45.72504, -120.69580)- only the slough side waters up from the railroad tracks.
 - Paterson Slough (45.70664, -120.46430)- only the slough side to the north of Hwy 14.
 - Sundale slough (45.72008, -120.31364)- only the slough side waters up from the railroad tracks.
 - Jones Canyon slough (45.71576, -121.24522)- only the slough south of the railroad tracks.
 - Willow Creek slough (45.79306, -120.01470)- only waters south of the eastbound lanes of I-84.
 - Alderdale slough (45.83741, -119.92876)- only waters north of Hwy 14.
 - (a) Season: 6AM Thursday, May 22, 2025, until 6 PM Saturday, June 14, 2025.
 - (b) Gear: Gillnets only.
 - (c) Allowable sales: Yellow perch, bass, walleye, catfish, carp, and northern pikeminnow may be sold. These species may be sold after the permit fishing period concludes. All other species including salmon, steelhead and sturgeon must be released.
 - (d) These areas do not include any standard closed areas applicable to gillnet gear.
- (2) 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).
- (3) Fish caught during the open period may be sold after the period concludes.

REPEALER

The following section of the Washington Administration Code is repealed, effective May 22, 2025:

WAC 220-359-02000R Columbia River salmon seasons above Bonneville Dam. (25-38)

