

**WSR 20-06-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-32—Filed February 19, 2020, 12:33 p.m., effective March 1, 2020]

Effective Date of Rule: March 1, 2020.

Purpose: Amends recreational fishing rules for the Columbia River.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This rule is needed to require the use of barbless hooks in waters of the Columbia River from the mouth upstream to the Washington/Oregon border at Hwy. 730. Recent director agreements between Washington department of fish and wildlife and Oregon department of fish and wildlife align the two states' regulations on barbless hooks when fishing for salmon and steelhead. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 18, 2020.

Kelly Susewind  
 Director

NEW SECTION

**WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia** Notwithstanding the provisions of WAC 220-312-060, effective March 1, 2020 until further notice:

From the mouth to Hwy. 730 at the Washington/Oregon Border: It is unlawful to use barbed hooks when fishing for salmon or steelhead.

**WSR 20-06-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-33—Filed February 19, 2020, 4:57 p.m., effective February 19, 2020, 4:57 p.m.]

Effective Date of Rule: Immediately upon filing.

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 (ESA). 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: Repealing WAC 220-359-02000U; and amending WAC 220-359-020.

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).

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.

Reasons for this Finding: This rule sets the first treaty winter commercial fishery in the John Day pool. This rule is consistent with actions of the Columbia River Compact on February 19, 2020. Conforms state rules with tribal rules. 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 ESA. 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 ESA guidelines. Because conditions change rapidly, the fisheries are managed

almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 19, 2020.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000V 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 IH (The John Day pool)

(a) Season: 6 AM Wednesday, February 20 to 6 PM Monday, February 24, 2020.

(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 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.

(2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately to 6 PM Saturday, March 21, 2020.

(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 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.

(3) 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).

(4) Fish caught during the open period may be sold after the period concludes.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000U Columbia River salmon seasons above Bonneville Dam. (20-25)

#### **WSR 20-06-015 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 20-34—Filed February 20, 2020, 5:15 p.m., effective February 26, 2020, 8:00 a.m.]

Effective Date of Rule: February 26, 2020, 8:00 a.m.

Purpose: Amend recreational smelt rules.

Citation of Rules Affected by this Order: Repealing WAC 220-315-03000B; and amending WAC 220-315-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This rule sets a limited Columbia River recreational fishery for eulachon smelt. The regulation is consistent with a conservative research-level fishery, reduced from the Level-One fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. The expected return of eulachon to the Columbia River in 2020 is expected to be similar in magnitude to the run in 2019. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. NOAA Fisheries concurs that a limited fishery is consistent with recovery of eulachon smelt. There is insufficient time to adopt permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 20, 2020.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-315-03000B Smelt—Areas and seasons**  
Notwithstanding the provisions of WAC 220-315-030, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

**Open Dates:** Wednesday February 26, 2020.  
8:00 a.m. to 1:00 p.m. (5-hour period).

**Open Area:** Cowlitz River (bank only) from the HWY 432 Bridge upstream to the Al Helenberg Memorial Boat Ramp located approximately 1,300 feet upstream of the HWY 411/A Street Bridge in Castle Rock.

**Daily Limit:** 10 pounds. Possession limit equal to one daily limit.

**Gear:** Dip net.

#### REPEALER

The following section of Washington Administrative Code is repealed effective 1:01 p.m. February 26, 2020:

WAC 220-315-03000B Smelt—Areas and seasons

**WSR 20-06-017**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-35—Filed February 21, 2020, 9:38 a.m., effective March 1, 2020]

Effective Date of Rule: March 1, 2020.

Purpose: Amends recreational fishing rules for southwest rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This rule is needed to close salmon fishing for the Cowlitz River, Lewis River, Cispus River and Lake Scanewa, reduce the daily adult salmon limit for the Kalama River.

The 2020 Cowlitz River spring Chinook run forecast is one thousand four hundred adult fish. Based on this forecast, the Cowlitz Salmon Hatchery is not expected to meet its broodstock goals. Closing the Chinook salmon fishing season in the lower Cowlitz River will increase the number of hatchery fish available for broodstock and help ensure future hatchery returns. Based on the forecast, we do not expect to have hatchery Chinook to transport above Cowlitz Falls Dam to support an upper Cowlitz River salmon fishery.

The 2020 Kalama River spring Chinook forecast is one thousand adult fish. Managers need to reduce the adult salmon daily limit to one adult Chinook in order to ensure hatchery broodstock goals are achieved. Reducing the adult salmon daily limit will provide continued opportunity for anglers to harvest spring Chinook and help ensure future hatchery returns. The 2020 Lewis River spring Chinook run forecast is one thousand three hundred adult fish. Based on this forecast, the Lewis Hatchery is not expected to meet its broodstock goals. Closing the salmon fishing season in the Lewis River will increase the number of hatchery fish available for broodstock and help ensure future hatchery returns. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 21, 2020.

Amy H. Windrope  
for Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-03000I Freshwater exceptions to statewide rules—Southwest.** Notwithstanding the provisions of WAC 220-312-030, effective March 1, 2020 until further notice:

(1) **Cispus River (Lewis Co.):** Chinook Salmon: closed.

(2) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Chinook Salmon: closed.

(3) **Cowlitz River (Cowlitz Co.):** Chinook Salmon: closed.

(4) **Kalama River (Cowlitz Co.):** From the mouth upstream to 1000 feet below the fishway at the upper salmon hatchery: Salmon: Daily limit 6; up to 1 may be an adult. Release all salmon other than hatchery Chinook and hatchery coho.

(5) **Lewis River (Clark/Cowlitz Co.):** Salmon: closed.

**WSR 20-06-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-36—Filed February 21, 2020, 10:15 a.m., effective March 1, 2020]

Effective Date of Rule: March 1, 2020.

Purpose: Amends recreational fishing rules for the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000F; and amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: Sets the 2020 spring recreational salmon season in the Columbia River in the area upstream of the Lewis River to the Oregon/Washington border, including shad and hatchery steelhead. The Endangered Species Act (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 February 19, 2020.

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 ESA. 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 fed-

eral ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 21, 2020.

Amy H. Windrope  
for Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia** Notwithstanding the provisions of WAC 220-312-060:

**(1) From a true north-south line through Buoy 10, upstream to a line from the Warrior Rock lighthouse on the Oregon shore to red USCG buoy #4, then to the piling dolphin on the lower end of Bachelor Island (Warrior Rock line):** Salmon and steelhead: Effective March 1, 2020 until further notice: Closed.

**(2) From a line from the Warrior Rock lighthouse on the Oregon shore to red USCG buoy #4, then to the piling dolphin on the lower end of Bachelor Island (Warrior Rock line) to 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:**

a. Salmon and steelhead:

i. Effective March 1 through March 31, 2020: 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 wild Chinook and wild coho.

ii. Effective April 1 until further notice:

A. Open Thursday through Saturday each week: 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 wild Chinook and wild coho.

B. Closed Sunday through Wednesday each week.

b. Shad: Effective April 1, 2020 until further notice:

i. No min. size. No daily limit.

ii. Open days when salmon and steelhead are open.

**(3) 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 to Bonneville Dam:**

a. Effective March 1 until further notice: Closed to angling from a floating device or by any method except hand-cast lines from shore.

b. Salmon and steelhead:

i. Effective March 1 through March 31, 2020: 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 wild Chinook and wild coho.

ii. Effective April 2 until further notice:

A. Open Thursday through Saturday each week: 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 wild Chinook and wild coho.

B. Closed Sunday through Wednesday each week.

c. Shad: Effective April 1, 2020 until further notice:

i. No minimum size. No daily limit.

ii. Open days when salmon and steelhead are open.

**(4) From Bonneville Dam to John Day Dam:**

a. Salmon and steelhead: Effective April 1 through May 5, 2020: 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 wild Chinook and wild coho.

b. Sturgeon: Effective immediately through April 30, 2020: Retention is prohibited.

**(5) Adjacent tributaries From Bonneville Dam to John Day Dam:** Sturgeon: Effective immediately through April 30, 2020: Retention is prohibited.

**(6) From John Day Dam to McNary Dam:** Salmon and steelhead: Effective April 1 through May 5, 2020: 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 wild Chinook and wild coho.

**(7) From McNary Dam upstream to Hwy. 730 at the Washington/Oregon border:**

a. Steelhead: Effective immediately through March 31, 2020: Closed to angling for and retention of steelhead.

b. Salmon and steelhead: Effective April 1 through May 5, 2020: 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 wild Chinook and wild coho.

c. Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

**(8) From the Washington/Oregon border to the Hwy. 395 Bridge (Pasco/Kennewick):**

a. Steelhead: Effective immediately through March 31, 2020: Closed to angling for and retention of steelhead.

b. Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

**(9) From the Hwy. 395 Bridge (Pasco/Kennewick) to Old Hanford townsite powerline crossing:**

a. Steelhead: Effective immediately through April 15, 2020: Closed to angling for and retention of steelhead.

b. Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

**(10) From the Old Hanford townsite powerline crossing to boundary markers 650 feet downstream of the fish ladders Priest Rapids Dam:** Sturgeon: Effective immediately through March 8, 2020: Retention is prohibited.

### REPEALER

The following section of the Washington Administrative Code is repealed effective March 1, 2020:

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia (20-26)

### **WSR 20-06-033**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 20-38—Filed February 26, 2020, 4:47 p.m., effective February 27, 2020, 6:00 a.m.]

Effective Date of Rule: February 27, 2020, 6:00 a.m.

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 (ESA). 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: Repealing WAC 220-359-02000V; and amending WAC 220-359-020.

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).

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.

Reasons for this Finding: The treaty harvest guideline for sturgeon in Bonneville pool has not been met, and this rule allows additional opportunity. This rule is consistent with actions of [the] Columbia River Compacts on January 28 and February 19, and February 26, 2020. Conforms state rules

with tribal rules. 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 ESA. 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 ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 26, 2020.

Amy H. Windrope  
for Kelly Susewind  
Director

## NEW SECTION

**WAC 220-359-02000W 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)

(a) Season: 6 AM Thursday, February 27 to 6 PM Saturday, March 7, 2020

(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 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 1F, 1G, 1H (Zone 6)

(a) Season: Immediately through 6 PM Saturday, March 21, 2020.

(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 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.

(3) 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).

(4) Fish caught during the open period may be sold after the period concludes.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. February 27, 2020:

WAC 220-359-02000V Columbia River salmon seasons above Bonneville Dam. (20-33)

**WSR 20-06-041**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-39—Filed February 27, 2020, 3:26 p.m., effective March 6, 2020]

Effective Date of Rule: March 6, 2020.

Purpose: Amends recreational razor clam rules.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000R; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 27, 2020.

Amy H. Windrope  
for Kelly Susewind  
Director

NEW SECTION

**WAC 220-330-16000R Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. March 6, 2020 through 11:59 p.m. March 11, 2020, and 12:01 p.m., razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. March 6, 2020 through 11:59 p.m. March 11, 2020, and 2:01 p.m., razor clam digging is

permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. March 7, 2020 through 11:59 p.m. March 7, 2020, and 12:01 p.m. March 9, 2020 through 11:59 p.m. March 9, 2020, and 12:01 p.m. March 11, 2020 through 11:59 p.m. March 11, 2020, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. March 6, 2020 through 11:59 p.m. March 6, 2020, and 12:01 p.m. March 8, 2020 through 11:59 p.m. March 8, 2020, and 12:01 p.m. March 10, 2020 through 11:59 p.m. March 10, 2020, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) It is unlawful to dig for razor clams at any time in the Long Beach, Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m., March 12, 2020:

WAC 220-330-16000R Razor clams—Areas and seasons.

**WSR 20-06-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed February 28, 2020, 9:39 a.m., effective March 1, 2020]

Effective Date of Rule: March 1, 2020.

Purpose: This emergency rule making amends Chapter 296-127 WAC, Prevailing wage, to provide a new scope of work specific to landscape maintenance that is separate and unique from landscape construction. Under the emergency rule, the landscape maintenance worker scope of work description is work involved in the tending to and maintenance of a previously beautified plot of land. A description of specific activities that may be within the scope and activities that are not included in the scope are listed in the rule.

An initial emergency rule (WSR 19-07-014) and CR-101 Preproposal statement of inquiry (WSR 19-07-015) for permanent rule making were filed on March 8, 2019. Subsequent emergency rule making was filed on July 5 (WSR 19-15-004) and November 1, 2019 (WSR 19-22-041). The CR-102 proposed rules for the permanent rule was filed on January 2, 2020 (WSR 20-02-113). The comment period for the proposed rule ended on February 10, 2020. A renewal of the current emergency rules, which expire on February 29, is needed while the prevailing wage program considers the comments received and finalizes the adoption of the permanent rules.

Citation of Rules Affected by this Order: New WAC 296-127-01345.

Statutory Authority for Adoption: Chapter 39.12 RCW.

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.

Reasons for this Finding: 2018's SSB 5493, effective June 7, 2018, revised RCW 39.12.015. Under the new law, the department is directed to "establish the prevailing rate of wage... established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements." Where no collective bargaining agreement (CBA) exists, the department is to conduct wage and hour surveys. Other methods may be used where a survey is not sufficient.

The department implemented SSB 5493 in the prevailing rates published on August 1, 2018. As a result of the new law, the rates for landscape construction (landscape laborer) significantly increased. On February 25, 2019, the department received a petition from the Association of Washington Cities (AWC) to create a separate landscape maintenance scope of work. Due to the increase in costs, cities are deferring or eliminating necessary maintenance to keep public areas safe, including: Preparing parks, athletic fields, trails and other recreational facilities for the spring and summer season; maintenance of critical vegetation on stormwater facilities like retention ponds; and storm related clean-up to remove dangerous debris from public spaces. Lack of adequate maintenance will result in unsafe facilities creating risks to the public and liability concerns for cities. The department has also heard from companies who contract with cities to do landscape maintenance work with concerns that contracts are not being renewed and workers will be laid off as [a] result.

Under WAC 296-127-013 Scope of work descriptions may be issued by the director or designee to determine the applicable prevailing wage and are created using authoritative sources including: Apprenticeship standards; CBAs; dictionaries of occupational titles; experts from organized labor, licensed contractors, and contractors' associations; and recognized labor and management industry practice. Under WAC 296-127-01346, the introductory paragraph of the landscape construction scope of work description is work involved in the beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc. Upon review of the scope of the work, the department determined that the separate scope for landscape maintenance worker is appropriate. Based on information from the AWC and contractors, the rules meet the criteria for emergency rules as needed for the preservation of public health, safety, or general welfare.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 28, 2020.

Joel Sacks  
Director

#### NEW SECTION

**WAC 296-127-01345 Landscape maintenance workers.** For the purpose of the Washington state public works law, chapter 39.12 RCW, landscape maintenance involves the tending to and maintenance of a previously beautified plot of land.

(1) Landscape maintenance includes:

(a) Mowing, weeding, and maintaining of lawns, yards, gardens, athletic fields, golf courses, parks, trails or other previously landscaped surfaces;

(b) Pruning, trimming, mulching and composting;

(c) Maintaining decorative rock including adding material to existing areas;

(d) Incidental hauling or placing of top soil, plants or other landscaping materials in trucks with only one rear axle;

(e) Reseeding, resodding, replanting, top dressing, aerification, and applying chemicals, fertilizers and soil amendments;

(f) Use of power tools with up to twenty horsepower such as line trimmers, edgers, mowers, leaf and snow blowers;

(g) Rehydroseeding using equipment up to one hundred gallon capacity;

(h) Use of riding mowers up to fifty horsepower;

(i) Irrigation system repair and maintenance on existing systems;

(j) Storm drain and catch pond maintenance, including minor debris removal, and clearing of drain grates.

(2) Landscape maintenance does not include:

(a) Any landscape or nonlandscape construction activity or work, other than incidental maintenance and repairs mentioned in subsection (1) of this section;

(b) Power line clearance tree trimming or clearing;

(c) Construction of irrigation systems other than incidental repairs mentioned in subsection (1) of this section;

(d) Tree falling or bucking;

(e) The use of power tools over twenty horsepower except riding mowers;

(f) The use of riding mowers over fifty horsepower;

(g) The use of any other riding equipment, other than riding mowers up to fifty horsepower;

(h) Rehydroseeding using equipment with more than one hundred gallon capacity;

(i) Inspection, service, maintenance or repair of a back-flow protection device connected to a potable water system.



**WSR 20-06-044**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-40—Filed February 28, 2020, 3:09 p.m., effective March 2, 2020]

Effective Date of Rule: March 2, 2020.

Purpose: Closes the Puget Sound commercial sea urchin fishery for the 2019-2020 season.

Citation of Rules Affected by this Order: Repealed WAC 220-340-750000W.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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.

Reasons for this Finding: This emergency rule is needed to close the 2019-20 commercial sea urchin season because the quota for red sea urchins in Sea Urchin District 4 will be reached by the end of Sunday, March 1, 2020. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 28, 2020.

Kelly Susewind  
 Director

**REPEALER**

The following section of the Washington Administrative Code is repealed effective March 2, 2020:

WAC 220-340-75000W Commercial sea urchin fishery.  
 (20-22)

**WSR 20-06-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-37—Filed February 28, 2020, 3:26 p.m., effective March 2, 2020]

Effective Date of Rule: March 2, 2020.

Purpose: Amends recreational fishing rules for Willapa Bay tributaries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000A, 220-312-02000B; and amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047

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.

Reasons for this Finding: This rule is needed to close fishing on all Willapa Bay tributaries. The preseason forecasted return of wild steelhead in these waters is projected to be below escapement goals. Concerns of meeting escapement goals have elevated due to potential increased pressure as anglers shift from the Chehalis Basin to other open waters. All waters within the Chehalis Basin closed to fishing February 17, 2020. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 28, 2020.

Kelly Susewind  
 Director

**NEW SECTION**

**WAC 220-312-02000B Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-312-020:

a. Effective immediately through May 22, 2020, the following waters are closed to all fishing: Chehalis, Elk, Johns, Hoquiam, Newaukum, Satsop, Skookumchuck, Wishkah, and Wynoochee rivers and their tributaries, and Cloquallum and Elk creeks and their tributaries.

b. Effective March 2 through May 22, 2020, the following waters are closed all fishing: Willapa River; Forks Creek; Palix River and all forks; Nemah River North, South, and Middle; Naselle River and Bear River.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 2, 2020:

WAC 220-312-02000A Freshwater exceptions to statewide rules—Coastal. (20-30)

The following section of the Washington Administrative Code is repealed effective May 23, 2020:

WAC 220-312-02000B Freshwater exceptions to statewide rules—Coastal.

**WSR 20-06-064**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-41—Filed March 3, 2020, 12:18 p.m., effective March 3, 2020, 12:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational salmon fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000Q; and amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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.

Reasons for this Finding: This emergency rule opens salmon season in Bellingham Bay. This is to correct closure dates for this area in the permanent rule and allow recreational salmon fishing in Bellingham Bay during the month of March, consistent with the fishery plans developed during the 2019 North of Falcon process. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 3, 2020.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000Q Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 220-313-060 and WAC 220-313-020, effective immediately through March 31, 2020:

**Catch Record Card Area 7:** Waters of Bellingham Bay described in WAC 220-313-020(1): Daily limit of 1 salmon. Release coho and wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 1, 2020:

WAC 220-313-06000Q Puget Sound salmon—Saltwater seasons and daily limits.