

Summary Sheet

Meeting dates: November 3, 2018

Agenda item: Columbia River Fisheries above Bonneville Dam

Presenter(s): Jeff Wickersham, Captain WDFW Police
Bill Tweit, Special Assistant

Background summary: Staff will provide the Fish and Wildlife Commission a briefing and request approval of changes to rules regarding Columbia River Fisheries for white sturgeon, gear identification and personal identification requirements above Bonneville Dam. Changes to existing rules were made pursuant to efforts at US v. Oregon aimed at creating consistent rules between the State of Washington, Oregon and the four Columbia River Treaty Tribes. Additional changes were made in an effort to remove or clean-up pre-merger language.

Staff recommendation:
Amend rules as proposed by staff.

Policy issue(s) and expected outcome:
Joint State and Tribal concurrency, proposed language will enhance consistency and assist with enforceability.

Fiscal impacts of agency implementation:
None.

Public involvement process used and what you learned:
WDFW held a rules hearing on November 1 at the Ridgefield office and the Commission took public comment on November 2 in Vancouver. US v. Oregon parties negotiated and agreed to language. State of Oregon and Columbia River Treaty tribes have already implemented proposed rules.

Action requested and/or proposed next steps:
Amend rules proposed.

Draft motion language:
I move to amend the proposed sections in WAC 220-359 regarding Columbia River Fisheries for white sturgeon, gear identification and personal identification requirements above Bonneville Dam as presented by staff to be consistent with Oregon rules.

Post decision communications plan:
Communicate Commission decision to US v. Oregon parties.



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 17, 2018

TIME: 12:59 PM

WSR 18-17-125

Agency: Washington Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-19-109 on September 20, 2017 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

WAC 220-359 Commercial Fisheries - Columbia River above Bonneville Dam

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 1, 2018	8:00 am	WDFW Region 5 Office 5525 S 11 th St, Ridgefield, WA 98642	

Date of intended adoption: November 3, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Scott Bird, WDFW Rules Coordinator

Address: 43200, MS 43153, Olympia, WA 98504

Email: Rules.Coordinator@dfw.wa.gov

Fax: 360-902-2155

Other:

By (date)

Assistance for persons with disabilities:

Contact Dolores Noyes

Phone: (360) 902-2349

Fax: (360) 902-2179

TTY:

Email: dolores.noyes@dfw.wa.gov

Other:

By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department needs to amend sections in WAC chapter 220-359 in order to make them more consistent with Oregon rules concerning the concurrent jurisdiction of the Columbia River. These changes will clarify the rules in the area for the public and allow the rules to be more enforceable for the department.

Reasons supporting proposal: Parties have agreed through the U.S. v. Oregon Fish Management Process and the Regulatory Consistency Committee to amend inconsistent rules to ensure uniformity, to provide clarity, and to increase enforceability of regulations in waters of concurrent jurisdiction. Portions of Title 220 in the Washington Administrative Code require amendments to reflect changes already implemented by Oregon and tribal governments concerning this federal case

Statutory authority for adoption: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047

Statute being implemented: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Washington Department of Fish & Wildlife Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Captain Jeff Wickersham	5525 S 11th St., Ridgefield, WA	360-906-6714
Implementation:	Captain Jeff Wickersham	5525 S 11th St., Ridgefield, WA	360-906-6714
Enforcement:	Chief Steve Bear	1111 Washington St SE, Olympia WA	360-902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: This rule proposal does not affect hydraulics

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

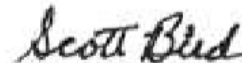
- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: August 17, 2018

Name: Scott Bird

Title: Rules Coordinator, WDFW

Signature:



AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-359-010 Indian fishery—Area and qualification. (1) It is unlawful for any person to take, fish for or possess ((food)) fish for treaty related ceremonial, subsistence or commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, 1H, and 1E1 ((except that it is permissible for individuals possessing treaty fishing rights pursuant to the Yakima Treaty (12 Stat. 951), the Warm Springs Treaty (12 Stat. 963), the Umatilla Treaty (12 Stat. 945), and the Nez Perce Treaty (12 Stat. 957), while having on his or her person his or her Federal Tribal Identification Card to take, fish for and possess food fish for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, 1H, and 1E1 in accordance with the rules in this chapter)) unless:

(a) The person has in possession a valid identification card issued by the tribal registrar showing the person to be a duly enrolled member of the Nez Perce, Umatilla, Warm Springs, or Yakama tribes who can lawfully exercise treaty fishing rights;

(b) The person submits the valid identification card to any federal, state, or local tribal officer upon request; and

(c) The commercial or subsistence fishing season is open by department rule or the ceremonial fishing is authorized by a valid permit issued by the treaty fishers tribe.

(2) Violation of this section is punishable as a gross misdemeanor or felony crime under RCW 77.15.550.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-359-020 Commercial seasons—((Salmon)) Fish. (1) It shall be ((lawful)) unlawful to take, fish for and possess ((salmon)) fish for commercial purposes ((taken with drift gillnets and set nets not exceeding 300 feet in length, and with dip nets and hoop nets)) in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H ((during the following season:

No open season)) except as allowed in this chapter or by emergency regulation.

(2) Violation of this section is punishable as a gross misdemeanor or felony crime under RCW 77.15.550.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-359-040 Lawful ((salmon)) fishing gear—Mesh. (1) It shall be unlawful to take, fish for or possess ((salmon)) fish taken for commercial purposes with any net in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H ((containing gillnet mesh larger than 4 1/2 inches stretch measure during the period 12

~~noon June 28 to 12 noon July 2; and containing mesh smaller than 7 1/4 inches stretch measure during the period 12 noon August 9 to 12 noon August 20)) except as provided for in emergency regulation.~~

~~(2) Violation of this section is punishable as a gross misdemeanor under RCW 77.15.520.~~

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-359-060 Off-reservation Indian subsistence fishing. (1)

It is unlawful for any person(~~, including treaty Indian fishermen,~~) to take, fish for, or possess (~~salmon or other food~~) fish for subsistence purposes (~~except in accordance with the provisions of this section.~~

~~(2) It is lawful for individuals possessing)) in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, 1H, and 1E1 unless:~~

~~(a) The person possesses treaty fishing rights pursuant to the Yakima Treaty, the Warm Springs Treaty, the Umatilla Treaty, and the Nez Perce Treaty to fish (~~for food fish for subsistence family use purposes subject to the following provisions:~~~~

~~(a))~~; and

~~(b) Such fishing (~~is permitted year round~~) occurs in the following areas:~~

~~(i) That area of the mainstem Columbia River from a line between a marker on the Washington shore and a marker on the Oregon shore, such line located approximately one-half mile upstream from the mouth of Eagle Creek, upstream to a point at the four-second flashing light #67 approximately 1/2 mile downstream of the Dalles Bridge; that area of the mainstem Columbia River from a point 200 feet above the Dalles Dam fishway exit upstream to a point 600 feet downstream of the John Day Dam fishway entrance; and~~

~~(ii) That area of the mainstem Columbia River from a point 200 feet above the John Day Dam fishway exit upstream to a point at the downstream end of the wingwall of the McNary Dam boat lock; that area of Columbia River from a point 200 feet above the McNary Dam fishway exit upstream to the Highway 12 bridge; excluding those areas within 1/4 mile radius of the mouth of Wind River, Little White Salmon River (Drano Lake), Klickitat River, and Spring Creek Hatchery fishway entrance.~~

~~((~~(b) Lawful fishing gear by treaty Indians in the above designated area includes~~)) (c) The fishing gear used is limited to dip nets and bag nets of a mesh size not exceeding 5 inches attached to a hoop 24 feet or less in circumference, spear, gaff, and club, (~~and foul hook.~~~~

~~(e)) except it is lawful to use sport angling gear in places and at times allowed under chapter 220-310 WAC (~~series~~) for treaty Indian subsistence purposes.~~

~~(d) (~~It is unlawful to use drift gillnets or set gillnets for treaty Indian subsistence fishing in the mainstem of the Columbia River except as authorized by the director of the department of fish and wildlife under the provisions of WAC 220-359-110.~~~~

~~(e) It is unlawful to use gillnets, set nets, hoop nets, dip or bag nets with a mesh size exceeding 5 inches, set lines, or any other~~

~~type of fishing gear not otherwise specifically authorized except during times and in areas where such gear is authorized for commercial fishing purposes.~~

~~(3))~~ The owner's tribal affiliation and enrollment number is either placed on the upper side of the hoop, or on a tag attached to the hoop, pole, or cable.

(e) The fishing is authorized by tribal regulation.

~~(2) In accordance with RCW 77.12.453, it is lawful for ((the following)) Wanapum Indians to take, fish for, and possess food fish for subsistence purposes in the vicinity of Priest Rapids Dam ((in specified areas at specified times using specified gear authorized)) provided that a permit has been issued by the director of the department of fish and wildlife and all conditions followed. ((The)) Individuals will be designated ((below may be revised from time to time)) by agreement between the Wanapum Indians and the director of the department of fish and wildlife((+~~

Frank Buck	Jade Buck
Stanley Buck	Robert S. Tomanawash, Sr.
Willie Buck	Lester Umtuch
Harry Buck	Grant Wyena
Ken Buck	Jerry Wyena
Rex Buck, Jr.	Douglas Wyena
Phillip Buck	Jimmy Wyena
Richard Buck	Patrick Wyena))

or the director's designee.

The following provisions apply to this fishery:

~~(a) ((It is unlawful to fish at any time, place, or using gear other than that designated by the director of the department of fish and wildlife and authorized by regulation.~~

~~(b))~~ It is unlawful for Wanapum Indian fishermen to fail to report, in writing, their total catch to the department of fish and wildlife within five days of the end of fishing activity under this subsection ((3)(a) of this section)).

~~((e))~~ (b) Should any Wanapum Indian be convicted of violating the provisions of this section, or sell, barter, or attempt or sell or barter any fish taken in this fishery or any treaty Indian fishery, that fishermen will be ineligible to further participate in the Wanapum Indian subsistence fishery unless otherwise determined by the director of the department of fish and wildlife.

~~((4))~~ (3) It is unlawful to sell, barter, or offer for sale or barter, buy, or for a ((commercially licensed fish dealer or)) person acting in the capacity of a wholesale fish buyer to have in possession ((food)) fish taken in an Indian subsistence fishery ((under the provisions of subsections (2) and (3) of this section.

~~(5))~~ unless authorized by department rule.

(4) It is unlawful for fishermen participating in an Indian subsistence fishery to fail to submit their catch to department of fish and wildlife employees for the conduct of biological sampling or to fail to allow necessary biological samples to be taken.

(5) Violation of this section is punishable as:

(a) A gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times;

(b) A gross misdemeanor under RCW 77.15.520 regarding gear; and

(c) A felony crime under RCW 77.15.260 regarding trafficking of fish not allowed by department rule.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-359-070 Season and gear—Shad. (1) It shall be lawful to take, fish for and possess shad taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H ((with single wall floater gillnet and set net gear containing mesh of a size not less than 5-3/8 inches or larger than 6-1/4 inches stretch measure and said mesh webbing shall be of a breaking strength not greater than a 10 pound pull from 12 noon July 4 to 12 noon July 11. It shall be unlawful to sell any salmon taken during this lawful shad fishery)) during the times and with the gear types as prescribed by emergency rule.

(2) It is unlawful to sell any salmon, steelhead or sturgeon taken during a lawful shad fishery except as allowed by department rule.

(3) It is unlawful to set or operate set net, drift net, or set lines for shad unless the owner's tribal affiliation and enrollment number is placed upon or adjacent to the end corks or set nets and drift nets, on the anchored ends of setlines and submerged nets, and on the anchor floats to which any of these gears are attached.

(4) Violation of this section is punishable as:

(a) A gross misdemeanor or felony under RCW 77.15.550 regarding seasons; and

(b) A gross misdemeanor under RCW 77.15.520 regarding gear.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-359-080 Season—Sturgeon. (1) It is unlawful to take, fish for or possess sturgeon taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H except individuals possessing treaty fishing rights pursuant to the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with setline gear from January 1 through January 31, and during seasons opened under emergency rule by the department and as provided in this section.

(2) During the open season, it is unlawful to:

(a) Retain for commercial or subsistence purposes sturgeon less than 38 inches in fork length or greater than 54 inches in fork length in Columbia River Salmon Management and Catch Reporting Area (SMCRA) 1F. It is unlawful to retain for commercial or subsistence purposes sturgeon less than 43 inches in fork length or greater than 54 inches in fork length in Columbia River SMCRA 1G and 1H;

(b) Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to the sale of the sturgeon to anyone acting in the capacity of a wholesale fish

buyer (~~endorsed under chapter 77.65 RCW,~~) or to sell or barter sturgeon eggs at retail; or

(c) Deliver to anyone acting in the capacity of a wholesale fish buyer (~~endorsed under chapter 77.65 RCW~~) any sturgeon that are not in the round with the head and tail intact.

(3) (~~Gear:~~

~~(a) Maximum~~) It is unlawful to deploy or operate fishing gear except as follows:

(a) Not to exceed maximum 100 hooks per setline;

(b) Minimum hook size may not be less than 9/0;

(c) Treble hooks prohibited; (~~and~~)

(d) (~~Visible buoys required, with operator name and tribal identification clearly marked on the buoy~~) Buoys must be visible; and

(e) The owner's tribal affiliation and enrollment number must be placed upon or adjacent to the end corks of set nets and drift nets, on the anchored ends of setlines and submerged nets, and on the anchor floats to which any of these gears are attached.

(4) All sturgeon not of legal size shall be released to the water unharmed. Sturgeon not captured for legal harvest shall not be possessed on land. For purposes of this section, docks and boat ramps are not considered land.

(5) Violation of this section is punishable as follows:

(a) A gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times;

(b) A gross misdemeanor under RCW 77.15.520 regarding gear; and

(c) A felony crime under RCW 77.15.260 regarding trafficking of fish not allowed by department rule.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-359-090 Closed areas (~~(salmon)~~)—River mouths. It shall be unlawful to take, fish for or possess (~~(salmon)~~) fish taken for commercial purposes in or from the following designated closed waters adjacent to the mouths of streams tributary to Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H during the time periods specified.

(1) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline of the mouths of Hood River, Deschutes River, and Umatilla River are closed the entire year.

(2) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to three-quarters mile downstream from the western shoreline of the mouth of the Little White Salmon River are closed the entire year.

(3) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline of the mouths of Herman Creek and the Big White Salmon River are closed from August 1 to November 1 of each year.

(4) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one- and one-half miles downstream from the western shoreline of the mouths of the Klickitat River and Wind River are closed the entire year.

(5) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one- and one-half miles downstream from the western shoreline of the mouth of Spring Creek are closed from August 1 to November 1 of each year.

(6) Violation of this section is punishable as a gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-359-110 Columbia River—Columbia River off-reservation treaty Indian ceremonial fishing.

(1) It shall be unlawful for any Indian to conduct ceremonial fishing on the Washington side of the Columbia River or in Washington Columbia River tributaries outside of an Indian reservation without first providing at least one week advance written notification to the director of the Washington state department of fish and wildlife, including all of the following information:

(a) Name, place, and time of ceremony for which fish will be used.

(b) Name of individuals and helpers who will be fishing and transporting fish. Only these individuals will be allowed to fish on the occasion covered by the notice.

(c) Exact location(s) of fishing and the amount of gear to be used at each location.

(d) Exact beginning and ending dates of ceremonial fishing.

(e) Type of gear to be used in ceremonial fishing.

(f) Estimated number of pounds of fish needed for ceremonial fishing.

(g) If fish are to be stored prior to a ceremony, the location of storage must be identified. If they are not to be stored, it must be so indicated.

(h) The signature of the designated tribal official certified to the Washington department of fish and wildlife in advance.

(2) It shall be unlawful to:

(a) Fish for ceremonial purposes with commercial fishing gear except in those areas where such fishing gear is authorized for commercial fishing(~~(-)~~);

(b) Deploy or operate fishing gear unless the owner's tribal affiliation and enrollment number is placed upon or adjacent to the end corks of set nets and drift nets, on the anchored ends of setlines and submerged nets, and on the anchor floats to which any of these gears are attached;

(c) Engage in ceremonial fishing during any portion of a week within a commercial fishing season which is closed to commercial fishing(~~(-~~

(e~~-~~));

~~(d) Sell or barter, offer for sale or barter, buy, or for a ((commercial)) person acting in the capacity of a wholesale fish buyer ((or fish dealer)) to have in his possession fish taken for ceremonial purposes((-~~
~~(d+));~~

(e) Engage in ceremonial fishing unless done in compliance with all provisions contained in the advance notice to the department of fish and wildlife of the state of Washington.

~~(3) ((Any individual engaged in ceremonial fishing must have in his)) It is unlawful for any person engaged in ceremonial fishing to fail to have in possession a signed copy or duplicate copy of the written tribal notification to the director of the Washington state department of fish and wildlife that such fishing is to be conducted.~~

~~(4) ((All fishing gear shall be marked and identified at all times while fishing for ceremonial purposes.~~

~~(5))~~ A record of the numbers of fish taken for ceremonial purposes will be made and sent promptly to the director of the Washington state department of fish and wildlife upon conclusion of each ceremonial fishing activity.

(5) Violation of this section is punishable as:

(a) A gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times;

(b) A gross misdemeanor under RCW 77.15.520 regarding gear; and

(c) A felony crime under RCW 77.15.260 regarding trafficking of fish not allowed by department rule.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-359-030	Weekly open fishing periods—Salmon.
WAC 220-359-050	Open area salmon—Lone Pine.
WAC 220-359-100	Unlawful provision—Salmon.