

WSR 23-12-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-89—Filed May 31, 2023, 5:41 p.m., effective June 1, 2023]

Effective Date of Rule: June 1, 2023.

Purpose: The purpose of this emergency rule is to close salmon and steelhead fisheries in the Columbia River downstream of Bonneville Dam and return Deep River salmon and steelhead fisheries to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000C and 220-312-06000N; 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: On May 30, 2023, the *U.S. v. Oregon* technical advisory committee (TAC) updated the Columbia River upriver spring Chinook return to 143,000 compared to a preseason forecast of 198,600 and the previous week's inseason 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 percent and the nontreaty fisheries are allowed a harvest rate of 1.6 percent with the total allowable harvest rate on Endangered Species Act (ESA)-listed spring/summer Snake River Chinook and Upper Columbia spring Chinook both at 9.0 percent. As of May 31, the treaty harvest rate is 8.38 percent and the nontreaty harvest rate is 0.71 percent, which results into a combined 9.09 percent which is over the allowable ESA impact rate. Given the current run size and estimated ESA impacts to date for combined treaty and nontreaty 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 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 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 Nongovernmental 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: May 31, 2023.

Kelly Susewind
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.

[]

REPEALER

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)