

WSR 22-12-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-77—Filed May 19, 2022, 4:40 p.m., effective May 24, 2022]

Effective Date of Rule: May 24, 2022.

Purpose: The purpose of this emergency rule is to open additional spring Chinook fisheries downstream of Highway 730 at the Washington/Oregon Border.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000Q; 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: The *U.S. v. Oregon* technical advisory committee recently updated the 2022 upriver spring Chinook return to 180,000. Additional spring Chinook directed angling opportunities are available. This rule modification reopens 2022 spring recreational salmon seasons in the Columbia River from the Rocky Point/Tongue Point line upstream to Bonneville Dam, and from Bonneville Dam to Highway 730 at the Washington/Oregon border, including hatchery steelhead. 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 May 11 and 18, 2022. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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 federal 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 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: May 19, 2022.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia. Effective May 24 through June 15, 2022, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Rocky Point/Tongue Point line to Hwy. 730 at the Washington/Oregon border, and shad seasons from the mouth to the Bonneville Dam, shall be modified as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) 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) to a deadline marker on the Washington bank at Beacon Rock:

Salmon and steelhead: Effective May 24 through June 15, 2022: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(2) 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 upstream to Bonneville Dam:

(a) All species: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Salmon and steelhead: Effective May 24 through June 15, 2022: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(3) From Bonneville Dam to The Dalles Dam:

Salmon and steelhead: Effective May 26 and May 28, 2022 only: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(4) From a line drawn from a fishing boundary sign located on the Washington bank approximately 1000' upstream of the Dalles Dam boat ramp projected easterly across the Columbia River to a boundary sign located on the Oregon bank approximately 200' above The Dalles Dam fish ladder exit to Highway 730 at the Washington/Oregon border:

Salmon and steelhead: Effective May 26 and May 28, 2022 only: 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 salmon and steelhead other than hatchery Chinook and hatchery steelhead.

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REPEALER

The following section of Washington Administrative Code is repealed, effective May 24, 2022:

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia.