

**WSR 22-18-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-186—Filed August 30, 2022, 12:54 p.m., effective August 31, 2022]

Effective Date of Rule: August 31, 2022.

Purpose: The purpose of this emergency rule is to close Chinook retention in the Columbia River, from Buoy 10 to the west end of Puget Island.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000W; 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 Buoy 10 lower river 'tule' Chinook mortalities have exceeded preseason expectations through the Chinook retention season. Due to higher-than-expected Endangered Species Act (ESA) impacts from the Buoy 10 fishery, joint state action was necessary to limit additional Chinook impacts and allow the hatchery coho retention fishery to remain open. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowed 38 percent ESA impact rate. This rule conforms Washington state rules with Oregon state rules.

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 *United States v. Oregon* Management Agreement. 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.

This rule also carries forward Columbia River salmon seasons previously set in WSR 22-15-033, filed July 13, 2022.

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: August 30, 2022.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000Y Freshwater exceptions to statewide rules—Columbia River.** Effective August 3, 2022, until further notice, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 to Chief Joseph Dam, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) From a true north-south line through Buoy 10 upstream to a 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 (the Rocky Point/Tongue Point line), and including Youngs Bay:**

(a) Effective August 31 through September 7, 2022: Salmon and steelhead: Daily limit 2. Coho minimum size 16 inches. Release all salmon and steelhead other than hatchery coho.

(b) Effective September 8 through September 30, 2022: Salmon and steelhead: Daily limit 3. Coho minimum size 16 inches. Release all salmon and steelhead other than hatchery coho.

(c) Effective October 1 through October 31, 2022: Salmon and steelhead: Daily limit 6. Up to 3 adults may be retained. Release all salmon and steelhead other than hatchery coho.

(d) Effective November 1, 2022, until further notice: Salmon and steelhead: Daily limit 6. Up to 3 adults, including no more than 2 hatchery steelhead, may be retained. Release all salmon and steelhead other than hatchery coho and hatchery steelhead.

**(2) From the Rocky Point/Tongue Point line upstream to a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank:**

(a) Effective August 31 through September 7, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho.

(b) Effective September 8 through September 30, 2022: Salmon and steelhead: Daily limit 6. Up to 3 adults may be retained. Release all salmon and steelhead other than hatchery coho.

(c) Effective October 1 through October 31, 2022: Salmon and steelhead: Daily limit 6. Up to 3 adults may be retained. Release all salmon and steelhead other than hatchery coho.

(d) Effective November 1, 2022, until further notice: Salmon and steelhead: Daily limit 6. Up to 3 adults, including no more than 2 hatchery steelhead, may be retained. Release all salmon and steelhead other than hatchery coho and hatchery steelhead.

**(3) From Priest Rapids Dam to boundary markers 400 feet downstream of the fish ladders at Rock Island Dam:** Salmon:

Effective immediately, through August 31, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

**(4) From Rock Island Dam to Boundary 400 feet below the Wells Dam spawning channel discharge (on Chelan County side) and fish ladder (on Douglas County side):** Salmon:

Effective immediately, through October 15, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

**(5) From Wells Dam to Hwy. 173 Bridge at Brewster:** Salmon:

Effective immediately, through September 30, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

**(6) From Hwy. 173 Bridge at Brewster to the rock jetty at the upstream shoreline of Foster Creek (Douglas County side):** Salmon:

Effective immediately, through October 15, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

[]

#### REPEALER

The following section of Washington Administrative Code is repealed, effective August 31, 2022:

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia. (22-136)