

WSR 22-19-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-201—Filed September 14, 2022, 10:05 a.m., effective September 15, 2022]

Effective Date of Rule: September 15, 2022.

Purpose: The purpose of this emergency rule is to open recreational salmon seasons for the Columbia River below Bonneville Dam.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000Z; 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: Current in-season catch projections indicate that minimal Endangered Species Act (ESA)-listed lower river tule Chinook are expected to be handled downstream of the Rocky Point line and allows hatchery coho retention under permanent regulations. This rule also reopens Chinook retention in a portion of the mainstem located upstream of ESA-listed tule Chinook bound tributaries. Historical coded wire tag data indicate a zero-handle expectation of lower river tule Chinook. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowed 38 percent ESA impact rate and per Washington fish and wildlife Policy C-3630. This rule conforms Washington state rules with Oregon state rules and is consistent with compact action on September 1 and 13, 2022.

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: September 14, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000A Freshwater exceptions to statewide rules—Columbia River. Effective September 15, 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 Bonneville Dam and from Rock Island Dam 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 September 15 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.

(b) Effective November 1 through December 31, 2022: 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 straight line from a fishing boundary sign on the Oregon shore near the old Corbett boat ramp through the eastern tip of Reed Island (East Reed Island line) to the Washington shore, including Camas Slough:

Immediately, until further notice: Salmon and steelhead: Closed.

(3) From the East Reed Island line upstream to a point 600 feet below the new Bonneville Dam Powerhouse:

Effective September 15 through October 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained, including no more than 1 Chinook. Release all salmon and steelhead other than Chinook and hatchery 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.

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REPEALER

The following section of the Washington Administrative Code is repealed, effective September 15, 2022:

WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia. (22-188)