

WSR 22-21-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-226—Filed October 5, 2022, 6:15 p.m., effective October 8, 2022]

Effective Date of Rule: October 8, 2022.

Purpose: The purpose of this emergency rule is to modify recreational salmon seasons for the Columbia River downstream of the Hwy. 395 Bridge at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000D; 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: This rule is necessary to close Chinook retention in the Columbia River from Buoy 10 to the Hwy. 395 Bridge at Pasco beginning October 8, 2022.

The upriver bright fall Chinook runsize has been updated, resulting in a lower runsize projection. Chinook retention in the lower river is being closed to stay within the allowable upriver bright fall Chinook harvest sharing agreement, and within allowable Endangered Species Act (ESA) impact limits. These fisheries are opened under a joint-state agreement. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable ESA impact rates, *United States v. Oregon* Management Agreement, 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 13 and 28, and October 5, 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 carries forward Columbia River salmon seasons upstream of Priest Rapids dam previously set by WSR 22-20-005, filed September 21.

There is insufficient time to adopt 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: October 5, 2022.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000E Freshwater exceptions to statewide rules—Columbia River. Effective October 8, 2022, through December 31, 2022, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from Buoy 10 to the Hwy. 395 Bridge at Pasco and from Priest Rapids 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 and south line through Buoy 10 to a line drawn 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):

(a) Effective October 8 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 may be retained, including no more than 2 hatchery steelhead. Release all salmon and steelhead other than hatchery coho and hatchery steelhead.

(2) From the Rocky Point/Tongue Point line) to Beacon Rock:

(c) Effective October 8 through October 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho.

(d) Effective November 1 through December 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho and hatchery steelhead.

(3) From Beacon Rock to a line projected from the Hamilton Island boat ramp to an Oregon boundary marker on the westernmost point of Robins Island to a marker on the Oregon mainland shore:

Effective October 8 through October 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho.

(4) From a line projected from the Hamilton Island boat ramp to an Oregon boundary marker on the westernmost point of Robins Island to a marker on the Oregon mainland shore to a point 600 feet below the fish ladder at the new Bonneville Dam Powerhouse:

(a) Effective October 8 through October 31, 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 November 1 through December 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho and hatchery steelhead.

(5) From Bonneville Dam to the Hood River Bridge:

(a) Effective October 8 through October 15, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho.

(c) Effective November 1 through December 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than hatchery coho and hatchery steelhead.

(6) From Hood River Bridge to the upstream side of the Interstate (Hwy. 197) Bridge and the Washington shore from the upstream side of the Interstate (Hwy. 197) Bridge to the navigation lock wall:

(a) Effective October 8 through October 15, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than coho.

(c) Effective November 1 through December 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than coho and hatchery steelhead.

(7) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1300 feet upstream of the Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200 feet above the fish ladder exit to the Hwy. 395 Bridge at Pasco:

(a) Effective October 8 through October 15, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through December 31, 2022: Salmon and steelhead: Daily limit 6. Up to 2 adults may be retained. Release all salmon and steelhead other than coho.

(8) From Priest Rapids Dam to Rock Island Dam:

Effective immediately, through October 15, 2022: Salmon: Daily limit 6, including no more than 2 adult Chinook and no more than 2 coho.

(9) 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):

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

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

Effective immediately, through October 15, 2022: Salmon: 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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Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of Washington Administrative Code are repealed, effective October 8, 2022:

WAC 220-312-06000D Freshwater exceptions to statewide rules—Columbia River. (22-222)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.