

WSR 22-21-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-222—Filed October 6, 2022, 8:13 a.m., effective October 6, 2022, 8:13 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000C; 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 Bonneville Dam and allows Chinook and hatchery coho retention effective immediately, with most areas reverting to permanent regulations. 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 1, 13, and 28, 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 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: September 29, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000D Freshwater exceptions to statewide rules—Columbia River. Effective immediately, until further notice, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Rocky Point/Tongue Point line to the west end of Puget Island 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 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) 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 immediately, 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.

(b) Effective November 1 through December 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, hatchery coho and hatchery steelhead.

(2) 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.

(3) 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.

(4) 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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REPEALER

The following sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-312-06000C Freshwater exceptions to statewide rules—Columbia River. (22-197)