

WSR 24-19-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-183—Filed September 11, 2024, 1:02 p.m., effective September 12, 2024]

Effective Date of Rule: September 12, 2024.

Purpose: This emergency rule will open Chinook retention and increase the coho portion of the salmon and steelhead daily limit in the Columbia River from Buoy 10 to the west end of Puget Island. Chinook and coho retention seasons will also be extended from Warrior Rock to the Highway 395 Bridge at Pasco.

Citation of Rules Affected by this Order: 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 Columbia River Technical Advisory Committee (TAC) recently updated the upriver Chinook return to the Columbia River mouth. Current inseason catch and stock composition projections indicate that sufficient Chinook Endangered Species Act (ESA) impacts remain available which allows for additional Chinook retention in these areas. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable 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 10, 2024.

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 *U.S. 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.

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 0.

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 11, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia River. Effective September 12 through October 31, 2024, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 upstream to Highway 395 Bridge at Pasco, 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 red navigation marker 2 at Tongue Point on the Oregon bank.

(a) Effective September 12 through September 22, 2024: Salmon and steelhead: Daily limit 3 including no more than 1 Chinook. Chinook minimum size 24 inches. Coho minimum size 16 inches. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective September 23 through September 30, 2024: 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, 2024: Salmon and steelhead. Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

(2) From a line from Rocky Point on the Washington Bank through red buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank 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 September 12 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 3 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective September 23 through October 31, 2024: Salmon and steelhead: Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

(3) From a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line) upstream to a point 600 feet below the fish ladder at the new Bonneville Dam Powerhouse:

Effective September 16 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(4) From Bonneville Dam upstream to the Hood River Bridge:

Effective September 16 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(5) From Hood River Bridge upstream to the Highway 395 Bridge at Pasco:

Effective September 16 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho.