

WSR 21-06-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-19—Filed February 25, 2021, 1:12 p.m., effective March 1, 2021]

Effective Date of Rule: March 1, 2021.

Purpose: The purpose of this emergency rule is to set initial recreational spring Chinook seasons for the Columbia River, from the mouth to the Hwy. 395 Bridge at Pasco. This rule also aligns salmon and steelhead daily limits in Deep River (Wahkiakum Co.) with adjacent waters of the mainstem Columbia when recreational salmon seasons are open in those adjacent waters.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000D; and amending WAC 220-312-030 and 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: Sets the 2021 spring recreational salmon season in the Columbia River from Buoy 10 upstream to the Oregon/Washington border, including shad and hatchery steelhead. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 23, 2021.

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 the federal Endangered Species Act (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.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. 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, the 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 2, 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: February 24, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia. Effective March 1 through May 5, 2021, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Hwy. 395 Bridge at Pasco, and shad seasons from the mouth to the Bonneville Dam, shall be modified as described below. All 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 deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

a. Fishing for salmon or steelhead from a vessel is prohibited in the area of the mainstem Columbia River between boundary lines as described and includes all of Carrolls Channel: Downstream boundary is defined as from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9), southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon. Upstream boundary is defined as from a point on the Washington Shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a deadline marker on the Oregon shore. Carrolls Channel is defined as waters beginning at the upstream end of Cottonwood Island downstream to the Cowlitz and Columbia River confluence

b. Salmon and steelhead: Effective March 1 through April 4, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

c. Shad: Effective March 1 through April 4, 2021: No min. size. No daily limit.

(2) From a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam:

- a. Closed to angling from a floating device or by any method except hand-cast lines from shore.
- b. Salmon and steelhead: Effective March 1 through April 4, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.
- c. Shad: Effective March 1 through April 4, 2021: No minimum size. No daily limit.

(3) From Bonneville Dam to The Dalles Dam: Salmon and steelhead:

- a. Effective March 1 through March 15, 2021: Daily limit is 2. Release all salmon.
- b. Effective March 16 through May 5, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(4) From The Dalles Dam to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

- a. Effective March 1 through March 15, 2021: Daily limit is 1. Release all salmon. Release wild steelhead.
- b. Effective March 16 through May 5, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(5) From Hwy. 730 at the Washington/Oregon border to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

Effective March 1 through March 31, 2021: Daily limit is 1. Release all salmon.

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NEW SECTION

WAC 220-312-03000V Freshwater exceptions to statewide rules—Southwest. Effective March 1 through April 4, 2021, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Deep River (Wahkiakum Co.): Salmon and steelhead:

Effective March 1 through April 4, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

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REPEALER

The following section of the Washington Administrative Code is repealed effective March 1, 2021:

WAC 220-312-06000D Freshwater exceptions to statewide
rules—Columbia (20-259)