

WSR 23-09-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-49—Filed April 5, 2023, 3:04 p.m., effective April 6, 2023]

Effective Date of Rule: April 6, 2023.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000T; and amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *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). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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: Modifies the previously adopted 2023 winter select area commercial seasons with an expansion of fishing area and time in the winter season. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. Preseason modeling results in a select area commercial fisheries allocation of ≤ 675 upriver spring Chinook. The fishery is consistent with the *United States v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. The regulation is consistent with the compact actions of February 14 and April 4, 2023. The general public welfare is protected with the immediate expansion of nontreaty select area fisheries. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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 un-

der 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.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under 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, 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

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: April 5, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000U Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point and South Channel areas:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 27 - May 5	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	4 nights
May 8 - Jun 9	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	20 nights
Jun 12 - Jun 15	Mon, Tue, Wed (nights)	7:00 pm - 7:00 am	3 nights
Jun 19 - Jul 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	12 nights

South Channel Area only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 6 - Apr 7	Thu (night)	7:00 pm - 7:00 am	1 night

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 10 - Apr 11	Mon (night)	7:00 pm - 7:00 am	1 night
Apr 13 - Apr14	Thu (night)	7:00 pm - 7:00 am	1 night
Apr 17	Mon (night)	5:30 pm - 9:30 pm	4 hrs
Apr 20	Thu (night)	7:30 pm - 11:30 pm	4 hrs
Apr 25 - Apr 26	Tue (night)	7:00 pm - 7:00 am	1 night

(a) Area definitions:

(i) Immediately through June 15, 2023:

(A) Tongue Point: Waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(ii) June 19 through July 14, 2023:

(A) Tongue Point: Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) Gear: Gillnets:

(i) Immediately through April 14, 2023: 7-inch minimum mesh size.

(ii) April 17 through July 14, 2023: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 1,500 feet (250 fathoms).

(iv) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(v) In the South Channel Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(2) Blind Slough and Knappa Slough areas:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 17 - Apr 20	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 25 - Apr 28	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
May 1 - May 5	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 8 - Jun 9	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	20 nights
Jun 12 - Jun 15	Mon, Tue, Wed (nights)	7:00 pm - 7:00 am	3 nights
Jun 19 - Jul 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	12 nights

Blind Slough Area only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Immediately - Apr 14	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights

Knappa Slough Area only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 6 - Apr 7	Thu (night)	7:00 pm - 7:00 am	1 night
Apr 10 - Apr 11	Mon (night)	7:00 pm - 7:00 am	1 night
Apr 13 - Apr 14	Thu (night)	7:00 pm - 7:00 am	1 night

(a) Areas:

(i) The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

(ii) The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 6, 2023, the western (downstream) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

(i) Immediately through April 14, 2023: 7-inch minimum mesh size.

(ii) April 17 through Jul 14, 2023: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(c) Miscellaneous: Permanent transportation rules in effect. In accordance with WACs 220-352-040 (1)(i) and 220-301-010 (11)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) Deep River Select Area:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 6 - Apr 7	Thu (night)	7:00 pm - 10:00 am	15 hours
Apr 10 - Apr 11	Mon (night)	7:00 pm - 10:00 am	15 hours

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 13 - Apr 14	Thu (night)	7:00 pm - 10:00 am	15 hours
Apr 17 - Apr 21	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 25 - Apr 28	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
May 1 - May 5	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 8 - Jun 9	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	20 nights
Jun 12 - Jun 15	Mon, Tue, Wed (nights)	7:00 pm - 7:00 am	3 nights

(a) Area: From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(b) Gear: Gillnets:

(i) Immediately through April 14, 2023: 7-inch minimum mesh size.

(ii) April 17 through June 15, 2023: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(v) Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-354-010(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided by department rule (WAC 220-353-060(1)).

(c) Miscellaneous:

(i) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

(ii) Immediately through June 15, 2023: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.

(iii) April 18 through June 14, 2022: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

(4) Allowable Sales: Salmon (except Chum) and shad.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

(7) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is at-

tached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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REPEALER

The following section of the Washington Administrative Code is repealed April 6, 2023:

WAC 220-358-03000T Columbia River seasons below
Bonneville. (23-27)