

WSR 23-14-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-107—Filed June 29, 2023, 7:59 a.m., effective June 29, 2023, 7:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close adult summer Chinook retention in the Columbia River, from the Megler-Astoria Bridge to Priest Rapids Dam.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000Q; 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 emergency action closes mainstem recreational adult summer Chinook retention downstream of Priest Rapids Dam. The technical advisory committee (TAC) met on June 26 but did not provide an in-season abundance projection for the summer Chinook return. TAC concurred that the summer Chinook return was tracking less than forecasted and expects to downgrade the return on June 29. The states utilized a 30 percent run size reduction in order to calculate potential in-season harvest allocations which indicated that recreational summer Chinook fisheries downstream of Priest Rapids Dam have achieved (111 percent) the area-specific summer Chinook allocation at this reduced abundance. The fishery is consistent with Washington's Upper Columbia Management Agreement and the *U.S. v. Oregon* Management Agreement, associated biological opinion and compact action of June 28, 2023. Conforms Washington state rules with Oregon state rules. The general public welfare is protected with the immediate closure of recreational Chinook retention downstream of Priest Rapids Dam. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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 ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the imple-

mentation 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 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: June 28, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia River. Effective immediately, through July 31, 2023, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge to Priest Rapids Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From the Megler-Astoria Bridge upstream to The Dalles Dam:

Salmon and steelhead:

(a) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(b) Effective July 1 through July 31, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a hatchery steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye and hatchery steelhead.

(2) From The Dalles Dam upstream to a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington south-

ern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective immediately, until further notice: Closed to fishing for and retention of salmon and steelhead.

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

(a) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye and hatchery steelhead.

(b) Effective July 1 through July 31, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a hatchery steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye and hatchery steelhead.

(4) From Columbia Point (approximately 1/3 mile downstream of I-182 Bridge) upstream to I-182 Bridge: Salmon:

(a) Effective immediately through July 15, 2023: Closed to angling from a floating device or by any method except hand-cast lines from the west shore (Richland side of the river).

(b) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon other than hatchery adult Chinook, chinook jacks, and sockeye.

(c) Effective July 1 through July 15, 2023: Daily limit 6, no more than 2 sockeye salmon may be retained. Release all salmon other than jack Chinook and sockeye.

(5) From I-182 Bridge upstream to Priest Rapids Dam: Salmon:

(a) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon and steelhead other than hatchery adult Chinook, jack Chinook, and sockeye.

(b) Effective July 1 through August 15, 2023: Daily limit 6, no more than 2 adult sockeye salmon may be retained. Release all salmon and steelhead other than jack Chinook and sockeye.

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REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia River. (23-93)