

WSR 24-01-105
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-270—Filed December 18, 2023, 2:52 p.m., effective December 18, 2023, 2:52 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open hatchery steelhead retention from the Dalles Dam upstream to the Washington/Oregon (WA/OR) border.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000Y; 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 rule is necessary because the Columbia River technical advisory committee's (TAC) most recent runsize update of the 2023 upriver summer steelhead (A-, B- Index) total return was 112,500 at Bonneville Dam which is greater than the preseason forecast of 67,800. Current stock abundances, nontreaty harvest, and projections indicate that sufficient steelhead Endangered Species Act (ESA) impacts remain available which allows for recreational hatchery steelhead retention in this area (The Dalles Dam to WA/OR border) from January 1 through March 31, 2024. Staff will continue to assess the fisheries, with an expectation to manage within the allowable ESA impact rate. This rule conforms Washington state rules with Oregon state rules and is consistent with compact and joint state action on September 7, September 13, September 20, October 4, and December 15, 2023.

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 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: December 18, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000B Freshwater exceptions to statewide rules—Columbia River. Effective immediately through March 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:

From a true north-south line through Buoy 10 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:

Immediately through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 3 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

From 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 upstream to Beacon Rock:

Immediately through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

From a line from the Hamilton Island boat ramp to an Oregon boundary marker on the westernmost point of Robins Island to a marker on the Oregon mainland shore upstream to a point 600 feet below the new Bonneville Dam Powerhouse:

Immediately through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and no

more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

From Bonneville Dam upstream to Hood River Bridge:

Immediately through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

From Hood River Bridge upstream to The Dalles Dam:

Immediately through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, coho and hatchery steelhead.

From The Dalles Dam upstream to Highway 730 at the Washington/Oregon Border:

(a) Immediately through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho.

(b) Effective January 1 through March 31, 2024: Salmon and steelhead: Daily limit 2 hatchery steelhead. Release all salmon and steelhead other than hatchery steelhead.

From Highway 730 at the Washington/Oregon Border upstream to Highway 395 Bridge at Pasco:

Immediately through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho.

REPEALER

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

WAC 220-312-06000Y Freshwater exceptions to statewide rules—Columbia River. (23-222)