

WSR 24-11-156
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-76—Filed May 22, 2024, 10:21 a.m., effective May 22, 2024, 10:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to correct a previous filing (WSR 24-11-093) in order to allow fishing from a vessel for species other than salmon and steelhead in the Columbia River from Beacon Rock to the Hamilton Island boat ramp.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000N and 220-312-06000I; 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: This filing corrects the previous filing of WSR 24-11-093 that inadvertently closed fishing from a vessel, only hand-cast lines from shore allowed for all species from Beacon Rock to Bonneville Dam rather than specifically salmon and steelhead. The intent is to specifically close fishing for salmon and steelhead from a vessel, hand-cast lines from shore only. This will affect the section of river from Beacon Rock to Hamilton Island boat ramp, as fishing from a vessel is closed for all species by permanent rule from Hamilton Island boat ramp to Bonneville Dam (WAC 220-312-060 (m)(i)). All other rules from WSR 24-11-093 are carried forward.

The *U.S. v. Oregon* technical advisory committee (TAC) met most recently on Monday, May 13 to review the upriver spring Chinook return and upgraded the forecast to 122,400 adults at the Columbia River mouth compared to the preseason forecast of 121,000 adults. Additionally, the run-size preupdate buffer of 30 percent has been lifted. This rule extends the 2024 spring recreational salmon and steelhead season in the mainstem Columbia River from the Rocky Point/Tongue Point line upstream to Bonneville Dam. Additionally, this rule aligns the Deep River salmon and steelhead daily bag limit with the mainstem lower Columbia River when the mainstem is open. The Endangered Species Act (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. This regulation is consistent with compact/joint state actions of February 21, April 4, April 9, and May 15, 2024. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. 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 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 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 2, Amended 0, Repealed 2.

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: May 22, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000P Freshwater exceptions to statewide rules—Southwest. Effective May 25 through May 27, and June 12 through June 15, 2024, 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: 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.

NEW SECTION

WAC 220-312-06000J Freshwater exceptions to statewide rules—Columbia. Effective May 25 through May 27 and June 12 through June 15, 2024, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Rocky Point/Tongue Point line upstream to Bonneville 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 a projected line from Rocky Point on the Washington bank through red buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank 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.

Salmon and steelhead: Effective May 25 through May 27, and June 12 through June 15, 2024: 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.

(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:

Salmon and steelhead: Effective May 25 through May 27, and June 12 through June 15, 2024: 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. Closed to angling from a floating device or by any method except hand-cast lines from shore.

REPEALER

The following sections of the Washington Administrative Code are repealed, effective immediately:

WAC 220-312-03000N Freshwater exceptions to statewide rules—Southwest. (24-69)

WAC 220-312-06000I Freshwater exceptions to statewide rules—Columbia. (24-69)