

WSR 24-22-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-249—Filed October 30, 2024, 3:53 p.m., effective November 1, 2024]

Effective Date of Rule: November 1, 2024.

Purpose: This emergency rule opens hatchery steelhead retention in the Columbia River from The Dalles Dam to Highway 395 at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000Z; 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: The Columbia River technical advisory committee (TAC) provided in-season run size updates for the upriver summer steelhead return to Bonneville Dam. Sufficient steelhead Endangered Species Act (ESA) impacts remain available which allows for hatchery steelhead retention from The Dalles Dam upstream to Highway 395 Bridge in Pasco. Staff will continue to monitor progress of ongoing fisheries. This rule conforms Washington state rules with Oregon state rules and is consistent with compact action on September 10, September 18, September 25, and October 10, and joint state action on October 30, 2024.

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: October 30, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000B Freshwater exceptions to statewide rules—Columbia River. Effective November 1 through December 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:

(1) From a true north-south line through Buoy 10 upstream to Beacon Rock:

Effective immediately through December 31, 2024: 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, hatchery coho and hatchery steelhead.

(2) From Beacon Rock upstream to 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:

Closed to salmon and steelhead angling.

(3) 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 fish ladder at the new Bonneville Dam Powerhouse:

Effective immediately through December 31, 2024: 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, hatchery coho and hatchery steelhead.

(4) From Bonneville Dam upstream to Hood River Bridge:

Effective immediately through December 31, 2024: 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, hatchery coho and hatchery steelhead.

(5) From Hood River Bridge upstream to Highway 395 Bridge at Pasco:

Effective immediately through December 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chi-

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

REPEALER

The following section of Washington Administrative Code is repealed, effective November 1, 2024:

WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia River. (24-231)