



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 18, 2023

TIME: 2:52 PM

WSR 24-01-105

Agency: Department of Fish and Wildlife (Order 23-270)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

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

Citation of rules affected by this order:

- New:
- Repealed: WAC 220-312-06000Y
- Amended: WAC 220-312-060
- Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.12.045 and 77.12.047

Other authority:

EMERGENCY RULE

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.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

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, non-treaty harvest and projections indicate that sufficient steelhead 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 the federal Endangered Species Act. 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 non-treaty fisheries.

Columbia River non-treaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and Commission guidelines. Because conditions change rapidly, the fisheries are managed almost

exclusively by emergency rule. Representatives from the Washington and Oregon 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.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	1	Amended	___	Repealed	1
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: December 18, 2023

Name: Kelly Susewind

Title: Director

Signature:



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.

R E P E A L E R

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)

Reasons for this finding: TAC's 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, non-treaty harvest and projections indicate that sufficient steelhead 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.

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There is insufficient time to promulgate permanent rules. **(23-222, 12/18/2023)**