Agenda Item 5

Please insert this document after page 65.

REPEALER

The following sections of the Washington Administrative Code are repealed:

~~WAC 232-12-064~~	~~Live wildlife.~~
~~WAC 232-12-066~~	~~Revocation, modification, or suspension of a permit to hold wild animals, wild birds, or game fish in captivity.~~
WAC 232-12-101	Falconry and captive propagation of raptors permitted.
WAC 232-12-104	Falconry definitions.
WAC 232-12-106	Provisions for accidental take by falconers.
WAC 232-12-107	Falconry permit license required.
WAC 232-12-114	Permit required for capture of raptors.
WAC 232-12-117	Marking and identification of raptors required.
WAC 232-12-121	Reporting requirements for capture, importation, exportation, transfer, or other disposal of raptors.
WAC 232-12-124	Methods of capture and prohibitions in taking raptors.

WAC 232-12-127	Revocation, modifications or suspension of falconry permits.
WAC 232-12-129	Captive propagation of raptors--Sale, records, reports and inspection.

Agenda Item 5

Please insert this document after page 68.

WAC 232-12-064, 066

SUPPLEMENTAL RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR 102) filing and are NOT included in your notebook.

Page 65a

- **WAC 232-12-064. Live wildlife.**

  A clerical error included this WAC in the Repealer List. There is no request by the Department to repeal it.

- **WAC 232-12-066. Revocation, modification, or suspension of a permit to hold wild animals, wild birds, or game fish in captivity.**

  A clerical error included this WAC in the Repealer List. There is no request by the Department to repeal it.

Agenda Item 5

Please insert this document after page 68a.

SUMMARY OF WRITTEN PUBLIC INPUT

New Chapter
WAC 232-30-100:580 "Falconry Regulations"

COMMENTS	AGENCY RESPONSE
The new proposed regulations are well thought out and would simplify many administratively expensive requirements in the current regulations which don't add any protection to wild or captive raptors. The new regulations are a major improvement and should be adopted with minor revisions to the adjusted proposed draft.	Thank you.
We urge this Commission to pass adoption of the new federal regulations in favor of the falconry community of the state.	Parts of the new U. S. Fish and Wildlife Service (USFWS) regulations are not appropriate for Washington, both in content, language, administrative relevance, and state specific needs. A state may promulgate its own falconry rules; however, they must be consistent with federal regulations minimum standards. State regulations may be more restrictive than federal regulations. Other members of the public, non-governmental organizations, and constituents have strong vested interests and opinions in raptor conservation that also need consideration in regard to favoring the falconry community.

Falconry has great historical relevance and its practice should be preserved for those that love it and the falcons. Please ensure that new regulations are passed that are favorable as possible to falconry that has special meaning and historical use for Washington falconers.	The Washington Department of Fish and Wildlife (WDFW) has historically supported the sport of falconry. Development of the new falconry rules has been a process of crafting rules to conform with the new 2008 USFWS federal falconry regulations, resource concerns, input from the falconry and environmental communities, agency policies, and administrative needs.
In the new Washington rules, it is an excellent step in the right direction to clarify that the temporary possession and short-term handling of a raptor, such as letting any other person hold a raptor possessed under a Washington falconry permit, or an agent of the falconer, is not possession for the purposes of this section if the handler is under the permitted falconer's supervision. Falconry observers are not required to possess a falconry permit or a hunting license.	The WDFW and the Washington Falconers Association worked together to craft WAC 232-30-130.
The requirement for a health certificate to import a raptor from out of state is onerous.	Proposed new falconry WAC 232-30-172(2) is linked to WAC 232-12-064 Live Wildlife. This WAC is applicable to a wide range of wildlife and is not proposed for revision. Establishment and enforcement of this WAC has helped to prevent serious wildlife disease from entering the state. Subsection (3) for health certificates to import raptors is a requirement under Washington Department of Agriculture WAC 16-54-030. In the 1980's, the WDFW completed a major series of initiatives and rule making to regulate possession of live wildlife, with an emphasis to prevent wildlife disease to become established in the state. This has withstood court challenges and has led to more commission restrictions for wildlife health concerns.

The USFWS defines a “hybrid” as the offspring of one, not two, federally protected species.	The WDFW acknowledged this input and corrected 232-30-120(5) in the adjusted proposed draft.
WAC 232-30-460(2) would effectively limit travel away from the licensed falconer’s approved facilities to approximately 4 months. This is probably practically reasonable, but is also unnecessarily restrictive.	This subsection is part of the new federal regulations that the WDFW must adopt.
The federal regulations do not prohibit sale of propagated progeny from legally taken wild raptors if that is not prohibited by the state. The WDFW has not permitted that. Most falconers disagree with the WDFW position. Ultimately, resolving disagreement on this issue with the WDFW should not delay adoption of the revised regulations in August 2010; it can be considered in the future.	WDFW does not support a proposal to take wild raptors in Washington for the purpose of captive propagation. This is consistent with department and commission policies prohibiting the commercialization of wildlife and the history of legislative statute and commission rules that address taking of live wildlife and commercialization. WDFW regulatory policies incorporate the basic wildlife management principle that live wildlife may not be taken for personal commercial use and become personal property. Wildlife in Washington is managed for population maintenance, intrinsic value, and recreation – not commercialization. Wildlife belongs to the people of the state. When a falconer captures a wild raptor, it does not become his/her property.
The USFWS allows for take of a broad range of species of hawks, falcons, and owls for falconry but allows for the states to manage species.	Falconry and management of birds of prey, raptors, are jointly regulated by the USFWS and the WDFW. A state may promulgate its own falconry rules; however, they must be consistent with federal regulations minimum standards. State rules may be more restrictive than federal regulations.

The 2007 Environmental Assessment published by the U.S. Fish and Wildlife Service (*Final Environmental Assessment on Take of Raptors from the Wild for Falconry and Raptor Propagation; Federal Register / Vol. 72, No. 108 / Wednesday, June 6, 2007 / Proposed Rules*) found that there was no significant impact on wild raptor populations from falconry and raptor propagation.	This document analyzes raptor populations at a national / range wide scale and does not address the Washington specific statewide population status of raptors. Certain raptor species in Washington may be rare, have limited distribution, or specialized habitats experiencing environmental impacts.
Falconers should be allowed to take the same species allowed by the federal guidelines provided there are no concerns with the populations in Washington.	In addition to potential concerns on the biological status of many Washington raptors, and the lack of biological information, there are also public opinion and social considerations regarding raptor species allowed for falconry take. The falconry community wants to take snowy owls. This is unacceptable to much of the public.
Although the USFWS regulations allow for the possession of all owls, except listed threatened and endangered species, I see no biological justification for not allowing of all owls, for all but a few species, for take from the wild in Washington for falconry purposes.	The WDFW has state level concerns for many of the owl species permitted by the USFWS for falconry take nationwide. There is a void of information on species status and trends, especially for the small forest dwelling owls. Examples include the hawk owl, flammulated owl, pygmy owl, screech owl, and burrowing owl. Again, biological concerns are not the sole justification for species allowed for take. Examples in this case include ospreys, turkey vultures, and northern harriers. There are inappropriate raptor species for falconry relative to their use in falconry hunting legal quarry. Most of the owl species are examples. The WDFW opposes raptor take for what can be assessed as novelty use or pet keeping.
Operating with a “white list” approach of species allowed for take, rather than a “black list” approach of species prohibited for capture creates a much more complicated framework for falconry management.	The WDFW disagrees. To the contrary, a smaller list of permitted species is a simpler approach administratively and is simpler for a falconer to use.

Possession regulations are completely separate from the take from the wild regulations. WDFW is responsible for the ***take*** of ***wild*** populations of raptors within the state. Raptors bred in captivity or taken in other states are outside the focus of the WDFW and should not be restricted. The ***possession*** of raptors by apprentice falconers from out of state wild take and/or captive bred sources from anywhere should be allowed and exactly match the federal guidelines for possession.	The WDFW proposed possession rules WAC 232-30-151(8) for species that Apprentice class falconers are allowed to ***possess*** and fly was based on falconer input to the WDFW at the first falconry rules workshop on May 5,2010. The WDFW is neutral on this issue and would concur to permit ***possession*** of any species the USFWS allows an Apprentice to lawfully possess.
The proposed WAC 232-30-175 states that a resident Washington falconer may take a falconry raptor out-of-state or to another state or country. If the raptor dies or is lost, the falconer must report the loss to the department immediately upon return to Washington. There is no reason to include this explicitly in the regulations.	This subsection incorporates components of the new federal regulations that the WDFW must adopt.
Delete the requirement that if the accidentally killed quarry is a species identified on the Washington candidate species list (for endangered, threatened, or sensitive status), the falconer shall, before leaving the site of the kill, record the falconer's name, falconry permit number, date, species, and sex (if known) of the quarry, and the exact location of the kill. The falconer shall submit the information to the department. A falconer must also report take of any federally listed species to the USFWS.	This subsection incorporates components of the new federal regulations that the WDFW must adopt and existing state rules. It is an existing state rule. Take of state listed threatened, endangered, or sensitive species is prohibited by other RCW's and WAC's that are not part of the new proposed state falconry regulations.
There is absolutely no biological justification for banning either breeding or sale of progeny from wild caught raptors.	The WDFW does not permit take from the wild and subsequent captive propagation and sale of other wildlife species such as waterfowl, furbearers, small game, and ungulates, as per WAC 232-12-064. Making the exception for the take of wild raptors by falconers for propagation sets the precedent of opening the door for user groups of many other species to pursue exemptions.

Current language in the repealed WAC 232-12-129 (5) reads: "*Wild-caught raptors taken in Washington may be used for propagation purposes, progeny shall not be offered for sale or trade.*" This creates an impossible to enforce scenario. After a few successive generations, it becomes nearly impossible to determine all the ancestors of a captive bred raptor.	The WDFW agrees regarding the problems that WAC 232-12-129 (5) creates and that it is basically unworkable. This WAC was established in 2004 as a compromise to the falconry community to engage in recreational propagation. Prior to 2004, the WDFW Raptor Propagation Permits prohibited the use of wild taken raptors for propagation, thereby not creating progeny of wild raptors. The sale of progeny of wild taken raptors was prevented. Captive propagation with wild raptors will lead to sale of their progeny.
We recommend that the language be altered as follows: *"Wild-caught raptors taken in Washington may be used for propagation purposes."*	The WDFW strongly opposes commercial uses of wild taken raptors such as breeding them to sell their progeny. Federal raptor propagation regulations do allow propagators to sell captive produced raptors, including progeny from wild taken raptors, if it is permitted by the state. Federal regulations require that all captive produced raptors be permanently banded. Once banded, they can be sold.
The falconry community does not advocate sale of any wild taken raptor, we do want the ability breed them and sell their progeny.	Sale of progeny of wild caught raptors is unlawful commercialization of wild animals except as provide by rule of the commission WAC 232-12-064.
The WDFW contends that allowing sale of the progeny of Washington-taken wild raptors will somehow constitute "commercialization" of native Washington wildlife. Captive breeding is not a big money venture considering the price most captive bred birds brings. Being allowed to sell the progeny simply allows breeders to recoup some of their considerable expenses.	In the 1980s, when commercialization of captive bred origin raptors was permitted by revised federal and state regulations, the WDFW specifically prohibited the take of wild taken raptors for propagation as a propagation permit condition. Propagation permits restricted the permittee from offering for sale or trade captive bred raptors.

If there was no take of wild raptors for breeding, and for example a Washington population of a raptor became imperiled due to habitat loss or other malady, there will be no genetic stock to replenish them. It wasn't scientists, or biologists or any state or government entity that was responsible for the successful return of the peregrine falcon. It was dedicated falconers that had these birds in captivity and learned how to breed them that were responsible for their recovery.	The WDFW would detect a significant drop in a population and would initiate recovery efforts. As was the case with peregrine falcons, reintroduction was one tool. Reintroduction stock and actions would more likely take place from birds taken from the wild, zoos, universities, or a professional raptor restoration and research institutes where the genetic breeding line and health could be more closely tracked. Reintroduction has played a lesser role in Washington and was not the sole recovery of the peregrine falcon. A surviving population core and the reduction of environmental contaminants strongly enabled the natural recovery of the species.
Progeny of all captive bred raptors can be transferred to out of state falconers and breeders. Once those raptors are in their hands, the WDFW cannot enforce this philosophy to prohibit commercialization of progeny from wild raptors. However, when a breeder from another state produces offspring from such birds and then attempts to sell said offspring to a Washington falconer, it again enters the arena of "once wild, always wild" Washington genetics of progeny. It also puts breeders into a position that such progeny would "taint" their breeding project and any offspring then becomes suspect of containing Washington wild raptor genetics.	The WDFW sees this as yet another reason why allowing any propagation of wild raptors, especially under the guise for recreational use to be problematic.
The WDFW sells permits to commercial fishermen, not only for profit to the state, but allows commercial fishermen to profit personally from the fish, shellfish, and marine invertebrate resources.	Commercial fishing has a long history as an accepted resource management practice in Washington. These animals are not classified as wildlife. By state enabling RCW's and WAC's, these groups may be managed for commercial use. There is no institutionalized commercialization of wildlife.