

“GREEN SHEET”

Meeting: November 5, 2010, conference call

Agenda Item: Proposed Housekeeping Amendments, Wildlife Conflict Regulations – Rule Briefing, Public Hearing and Rule Action

Prepared By: Lori Preuss, Rules Coordinator, Enforcement Program

Presented By: Lori Preuss, Rules Coordinator, Enforcement Program

Background:

When the Wildlife Program filed its CR-102 for the new damage-claim and wildlife-conflict rules in March 2010, they forgot to repeal two Washington Administrative Code (WAC) sections that the new rules supersede: WAC 232-12-086, Director or his designee is empowered to issue nuisance wildlife control operator certification to control nuisance or problem wildlife; and WAC 232-12-423, Public hunting defined and access contracts.

Also, after they filed the CR-102, they split WAC 232-36-050 into two, 232-36-050 and -051. In the new 232-36-051, they refer to subsection (7), even though there are only six subsections. It is important to correct this reference because the correct subsection, (6), states that people are subject to the state’s laws and rules, unless they have a department permit or there is a commission rule otherwise, when killing wildlife causing damage to private property.

Policy Issue(s) you are bringing to the Commission for consideration:

Does the Washington Fish and Wildlife Commission want to repeal two rules that are obsolete and correct an important subsection reference in rules related to property damage and wildlife conflicts?

Public involvement process used and what you learned:

WDFW received no comments following the CR-102 rule filing.

Action requested (identify the specific Commission decisions you are seeking):

Repeal WAC 232-12-086 and 232-12-423, and amend WAC 232-36-051, as presented.

Draft motion language:

“I move to repeal WAC 232-12-086 and 232-12-423, and to amend WAC 232-36-051, as proposed.”

Justification for Commission action:

The Wildlife Program is not planning to make changes to its damage-claim and wildlife-conflict rules until 2012, if at all. This housekeeping proposal will repeal two obsolete rules and correct an inaccurate subsection reference, thereby strengthening enforceability of the damage-claim and wildlife-conflict rules package.

Communications plan:

This housekeeping action will be posted on the agency's rule-making page.



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 10-14-028 on 6/28/10, and WSR 10-15-051 on 7/14/10; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
Wildlife Interaction Rules, chapter 323-36 WAC.

Hearing location(s):
Natural Resources Building, 5th Floor Commission Office
1111 Washington St., SE
Olympia, WA 98504

Date: November 5, 2010 Time: 8:30 am

Date of intended adoption: November 5, 2010
(Note: This is **NOT** the effective date)

Submit written comments to:
Name: Lori Preuss, Rules Coordinator
Address: 600 Capitol Way, N.
Olympia, WA 98501-1091

E-mail: Lori.Preuss@dfw.wa.gov
Fax: (360) 902-2155 by 10/26/2010

Assistance for persons with disabilities:

Contact: Susan Yeager by 10/26/10
TTY (800) 833-6388 or (360) 902-2267

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
Amends WAC 232-36-051, which was filed on June 23, 2010, as part of WSR 10-13-182, and contains a reference to a nonexistent subsection of that same rule. Also repeals two rules that have been replaced by WACs filed on June 23, 2010, as part of WSR 10-13-182.

Reasons supporting proposal:
Corrects an error in WAC 232-36-051. Repeals two WAC sections, 232-12-086 and 232-12-423, that have been replaced by new rules.

Statutory authority for adoption: 77.04.012; 77.04.020; 77.04.055;

Statute being implemented: 77.04.012; 77.04.020; 77.04.055

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
September 22, 2010

NAME
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **September 22, 2010**

TIME: **10:42 AM**

WSR 10-19-143

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife

- Private
- Public
- Governmental

Name of agency personnel responsible for:

| Name | Office Location | Phone |
|----------------------------------|-------------------------------------|----------------|
| Drafting..... Lori Preuss | Natural Resources Building, Olympia | (306) 902-2930 |
| Implementation.... Dave Brittell | Natural Resources Building, Olympia | (360) 902-2504 |
| Enforcement..... Bruce Bjork | Natural Resources Building, Olympia | (360) 902-2373 |

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Lori Preuss

Address: WDFW Enforcement, 600 Capitol Way, N., Olympia, WA 98501-1091

phone (360) 902-2930

fax (360) 902-2155

e-mail lori.preuss@dfw.wa.gov

No. Explain why no statement was prepared. This rule proposal is technical rather than substantive. It corrects an error in one WAC and repeals two others that were replaced in June 2010. An SBEIS was prepared as part of the June 2010 rule package. This proposal has no effect on small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: This proposal does not affect hydraulics.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|---|
| WAC 232-12-086 | Director or his designee is empowered to issue nuisance wildlife control operator certifications to control nuisance or problem wildlife. |
| WAC 232-12-423 | Public hunting defined and access contracts. |

AMENDATORY SECTION (Amending Order 10-156, filed 6/23/10, effective 7/24/10)

WAC 232-36-051 Killing wildlife causing private property damage. The fish and wildlife commission is authorized to classify wildlife as game, as endangered or protected species, or as a predatory bird consistent with RCW 77.08.010 and 77.12.020. The commission is also authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing property damage.

The conditions for killing wildlife vary, based primarily on the classification of the wildlife species, the imminent nature of the threat to damage private property, the type of private property damage, and the preventive and nonlethal methods employed by the person prior to the damage event. Additional conditions defined by the department may also be important, depending on individual situations. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) Killing wildlife causing damage to a commercial crop or commercial livestock.

(a) It is permissible to kill unclassified wildlife, predatory birds, and big game animals that are in the act of damaging commercial crops or livestock, under the following conditions:

(i) Predatory birds (defined in RCW 77.08.010(39)) and unclassified wildlife that are in the act of damaging commercial crops or livestock may be killed with the express permission of the owner at any time on private property, to protect commercial crops or livestock.

(ii) An owner with a valid, written damage prevention agreement with the department may kill an individual (one) big game animal while it is in the act of damaging commercial crops.

(iii) An individual (one) big game animal may be killed during the physical act of attacking livestock or pets.

(iv) Multiple big game animals may be killed while they are in the act of damaging commercial crops or livestock if the owner is issued a kill permit by the department.

(v) A damage prevention agreement or kill permit must include: An approved checklist of the reasonable preventative and nonlethal means that must be employed prior to lethal removal; a description of the properties where lethal removal is allowed; the species and sex of the animal that may be killed; the terms of the agreement/permit; the dates when lethal removal is authorized; who may kill the animal(s); and other conditions developed within department procedural documents.

(b) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-

014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:

(i) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.

(ii) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.

(2) Killing wildlife causing damage or killing wildlife to prevent private property damage.

(a) Predatory birds (as defined in RCW 77.08.010(39)), unclassified wildlife, and eastern gray squirrels may be killed with the express permission of the property owner at any time, to prevent private property damage on private real property.

(b) Subject to subsection (~~(7)~~) (6) of this section, the following list of wildlife species may be killed with the express permission of the owner, when causing damage to private property: Raccoon, fox, bobcat, beaver, muskrat, mink, river otter, weasel, hare, and cottontail rabbits.

(c) The department may make agreements with landowners to prevent private property damage by wildlife. The agreements may include special hunting season permits such as: Landowner damage prevention permits, spring black bear hunting permits, permits issued through the landowner hunting permit program, kill permits, and Master Hunter permits.

(d) Landowners are encouraged to allow general season hunters during established hunting seasons on their property to help minimize damage potential and concerns.

(3) Wildlife control operators may assist property owners under the conditions of their permit, as established in WAC 232-36-060 and 232-36-065.

(4) Tribal members may assist property owners under the conditions of valid comanagement agreements between tribes and the department. Tribes must be in compliance with the agreements including, but not limited to, adhering to reporting requirements and harvest restrictions.

(5) Hunting licenses and tags are not required to kill wildlife under this section, unless the killing is pursuant to subsections (2)(c) and (d) of this section. Tribal members operating under subsection (4) of this section are required to meet tribal hunting license, tag, and permit requirements.

(6) Except as specifically provided in a permit from the department or a rule of the commission, people taking wildlife under this rule are subject to the laws and rules of the state including, but not limited to, those found in Titles 77 RCW and 220 and 232 WAC.