

Buying or Selling Game-Farmed Meat – Rule Briefing

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“GREEN SHEET”

Meeting: February 4-5, 2011

Agenda Item #5: Buying or Selling Game-Farmed Meat – Rule Briefing and Public Hearing
([WAC 232-12-071](#))

Prepared By: Deputy Chief Mike Cenci, Enforcement Program

Presented By: Deputy Chief Mike Cenci

Background: Investigations into high-profile wildlife trafficking cases over the past two years identified shortcomings in the current Department rule regulating the buying and selling of game animal parts:

1. Trafficking in “edible” parts is not specifically prohibited as a provision of the rule, except in the rule’s title;
 2. There is no “stand-alone” violation if a person is trafficking in nonedible parts of wild animals, game birds, or game fish that were poached during a closed season and the person knows the wild animals, game birds, or game fish were taken illegally;
 3. The list of valuable nonedible parts is not all inclusive;
 4. “Nonedible parts” is not defined;
 5. There is no set definition or standard for “proof of origin” for game-farmed meat; and
 6. There is no process in the rule for permit denials under the Administrative Procedure Act.
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Policy Issue(s) you are bringing to the Commission for consideration:

Does the Commission want to:

1. Clarify the prohibition on trafficking in “edible” parts of wild animals and game birds (and game fish except pursuant to RCW 77.65.480)?
 2. Provide for a “stand-alone” violation if a person is trafficking in poached nonedible wild animal parts, game birds, or game fish and knows the wildlife, game birds, or game fish were taken illegally?
 3. Add moose antlers in velvet as a valuable nonedible wildlife part that cannot be sold, purchased, or bartered without a department permit?
 4. Define “nonedible parts”?
 5. Provide a set definition and standard for “proof of origin” for game-farmed meat?
 6. Provide a process in the rule for permit denials under the Administrative Procedure Act?
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Public involvement process used and what you learned:

Deputy Chief Cenci presented this rule at the December 2010 Commission meeting. No members of the public offered comments. Enforcement had made additional amendments to the WAC after the original CR-102 filing in an effort to further improve enforceability. In order to limit confusion by the public or the commission, Director Anderson asked Enforcement to file a new and comprehensive CR-102 and offer a new briefing and public comment period. Enforcement filed a Supplemental CR-102 on December 21, 2010. No members of the public have submitted comments on this rule.

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

Receive the staff presentation and any comments from the public. Formal rule action is planned for the March 4-5, 2011, Commission meeting in Spokane.

Draft motion language:

N/A

Justification for Commission action:

Unlike the current rule, the proposed changes make it clear that:

1. It is illegal to sell, purchase, or barter edible parts of wild animals, game birds, or game fish unless allowed under RCW 77.65.480;
 2. It is illegal to sell, purchase, or barter parts of wild animals, game birds, or game fish if prohibited by federal regulation or if the animals or fish were taken in violation of any law or regulation in any jurisdiction. In order for this to be a violation, law enforcement has to prove knowledge of the illegal take;
 3. Proof of the source of game-farmed meat must include specific information; and
 4. If a person is denied a permit to sell, purchase, or trade nonedible parts of big horn sheep or mountain goat; gall bladders, claws, or teeth of bear that are not permanently attached to a full bear skin or mounted bear; or velvet antlers of deer, elk, or moose, he or she may request an administrative hearing to contest the permit denial.
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Communications plan:

The Department's proposed changes are on the Department's "current rule making activity" page of its website. The Enforcement Program will work with Public Affairs to send out a press release on the proposed changes and the outcome of the February 2011 Commission meeting.



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 09-01-024 on 12/08/08;
 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 10-21-119
 filed on 10/20/10
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
 WAC 232-12-071 Buying or selling game unlawful – Game-farmed meat exception.

Hearing location(s):
 Natural Resources Building, Room 172
 1111 Washington St SE
 Olympia WA 98501

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 (date) January 27, 2011

Date: February 4-5, 2011 Time: 8:30 a.m.

Assistance for persons with disabilities: Contact
Susan Galloway by January 27, 2011
 at (360) 902-2267 or at TTY at 1-800-833-6388

Date of intended adoption: On or after March 4, 2011
 (Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposed version of WAC 232-12-071 is similar to the version filed with the original CR-102 on October 20, 2010, as WSR 10-21-119, with a few exceptions. The language in this supplemental filing is clearer and easier to understand. Also, we added a knowledge element to subsection (2)(b), selling, purchasing, or bartering wild animals, game birds, or game fish taken in violation of any law or regulation in any jurisdiction; and to subsection (4), buying, selling, or otherwise exchanging the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap. This means a person has to know or be aware that he/she is dealing with an unlawfully taken wild animal, game bird, or game fish, or an illegally trapped wild animal, to be in violation of subsections (2)(b) or (4) of this rule. Lastly, we clarified that all of the animal parts referenced in subsection (2)(c) are considered "nonedible" even if they are used for human consumption. This will aid in enforcing the rule.

Reasons supporting proposal: The changes will reduce poaching by prohibiting the sale, purchase, and trade of unlawfully taken wildlife. The changes also will provide clearer guidance to people who want to buy, sell, or trade game-farm raised deer and elk, or who want to contest a denial of a permit to sell, purchase, or trade nonedible parts of wild animals, game birds, or game fish.

Statutory authority for adoption: RCW 77.04.012, 77.12.047, 77.12.590, and 77.12.600

Statute being implemented: RCW 77.04.012, 77.12.047, 77.12.590, and 77.12.600

Is rule necessary because of a:

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

DATE
 December 21, 2010

NAME (type or print)
 Lori Preuss

SIGNATURE

TITLE
 Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: December 21, 2010

TIME: 10:37 AM

WSR 11-01-135

(COMPLETE REVERSE SIDE)

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

The department is presenting this at the February 2011 commission meeting pursuant to the commission's request.

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	1111 Washington Street, SE, Olympia	(360) 902-2930
Implementation....	Mike Cenci	1111 Washington Street, SE, Olympia	(360) 902-2938
Enforcement.....	Bruce Bjork	1111 Washington Street, SE, Olympia	(360) 902-2373

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

Yes. For a copy, please see the CR-102 filed as WSR 10-21-119 on October 20, 2010.

A copy of the statement may be obtained by contacting:

- Name:
- Address:
- Phone:
- Fax:
- E-mail:

No. Explain why no statement was prepared.

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 involve hydraulics.

AMENDATORY SECTION (Amending Order 06-209, filed 8/16/06, effective 9/16/06)

WAC 232-12-071 Buying or selling game unlawful--Game-farmed meat exception. (1) ~~((Unless prohibited by federal regulations,))~~ It is unlawful to offer for sale, sell, purchase, or barter edible parts of wild animals or game birds. It is unlawful to offer for sale, sell, purchase, or barter edible parts of game fish, except pursuant to RCW 77.65.480.

(2) It is unlawful to offer for sale, sell, purchase, or barter the nonedible parts of wild animals, game birds, or game fish ((lawfully taken may be offered for sale, sold, purchased or traded, except it is unlawful to offer for sale, sell, purchase or trade the following unless authorized by a written permit issued by the director)) if:

(a) The possession, sale, selling, purchase, or barter is prohibited by federal regulations;

(b) The wild animals, game birds, or game fish were taken in violation of any law or regulation in any jurisdiction, and the seller, purchaser, or person bartering knew the animal, bird, or fish was illegally taken; or

(c) The nonedible parts are of bighorn sheep or mountain goat ~~((~~

~~(b))~~; bear gall bladders; claws or teeth of bear that are not permanently attached to a full bear skin or mounted bear; or velvet antlers of deer ((or)), ~~elk~~ ~~((~~

~~(c) Gall bladder, claws, or teeth of bear, except those claws or teeth permanently attached to a full bear skin or mounted bear.~~

(2) ~~It is unlawful to knowingly buy, sell, or otherwise exchange, or offer to buy, sell, or otherwise exchange the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not pursuant to permit.~~

~~(3))~~, or moose; and a permit has not been granted by the department allowing for the sale, purchase, or barter of any of the animal parts listed in this subsection (2)(c).

(3) For purposes of subsection (2)(c) of this section, all of those parts are considered "nonedible" even if they are used for human consumption.

(4) Under RCW 77.15.194, it is unlawful to knowingly buy, sell, or otherwise exchange, or to offer to buy, sell, or otherwise exchange, the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not the animal is trapped pursuant to a permit.

(5) It is ((lawful)) unlawful to offer for sale, sell, purchase ((and sell the meat of)), or barter game-farm raised deer and elk, ((provided)) unless the following conditions have been met:

(a) Proof of the source of the game-farmed meat is maintained with the meat until the meat is consumed or exported. Qualifying proof includes sales or purchase invoices or receipts containing the following information in the English language:

- (i) Name of seller or importer;
- (ii) Name of the company selling the meat;
- (iii) The date of sale;
- (iv) The quantity of meat sold; and
- (v) The species of the meat sold.

(b) The meat is imported from a U.S. licensed game farm, or a game farm in another ((state or)) country((7)).

(c) The meat is boned, and only the meat is imported ((for sale, and)).

(d) The meat is packaged for retail sale prior to ((import)) importation into this state. ((It is unlawful to fail to maintain proof of the source of the game-farmed meat together with the meat until the meat is consumed or exported:))

(6) A violation of subsection (4) of this section is punishable under RCW 77.15.194. The remaining subsections in this section are punishable under RCW 77.15.260.

(7) If you request a written permit to offer for sale, sell, purchase, or barter the nonedible parts of wild animals listed in subsection (2)(c) of this section, and your request is denied, you have a right to a hearing under the provisions of chapter 34.05 RCW. In order to obtain a hearing, you must notify the department, in writing, within forty-five days of the date of the letter denying your permit. The address to send hearing requests to is:

The Washington Department of Fish and Wildlife
Legal Affairs - Office of the Director
Post Office Box 43137
Olympia, Washington 98504-3137

If you do not request a hearing to contest denial of the permit, the permit denial will become effective forty-five days following the denial.