

6. PUBLIC CONDUCT ON PRIVATE LANDS UNDER COOPERATIVE AGREEMENT – UNLAWFUL ACTS – RULE ACTION

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“GREEN SHEET”

Meeting: April 8-9, 2011

Agenda Item 6: Public Conduct on Private Lands Under Cooperative Agreement with the Department –Unlawful Acts – **Rule Action**

Prepared By: Mick Cope

Presented By: Mick Cope, Upland Game Section Manager, Wildlife Program

Background:

The Commission will consider adoption of a proposed rule regulating public conduct on private lands under cooperative agreement with the Department (WAC 232-13-160).

When the Fish and Wildlife Commission adopted WAC 232.13, the definition of “department land” was modified to exclude private lands. While this change was necessary to effectively implement 232-13, the unintended consequence was that the Department lost its ability to enforce public access and conduct on private lands under agreement. As a result, a new rule addressing the use of private lands under agreement is needed.

The Department is recommending creation of a new WAC that will regulate public conduct on lands under cooperative agreement. Examples of regulated activities include violating posted safety zones and, or quality hunting site rules, and driving vehicles in areas that have been posted closed to motorized vehicle travel. The new rule will allow enforcement of private lands access rules that are mutually agreed to by the landowner and the Department.

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

Public conduct on private lands that are enrolled in a Department access program.

Public involvement process used and what you learned:

This issue was discussed at the December 2010 Game Management Advisory Council meeting where members voted to support the Department in requesting this rule. These proposed recommendations were sent to approximately 450 organizations and individuals in January for their review and consideration. These organizations and individuals were also informed of the opportunity to provide public testimony at the March Commission meeting in Spokane. No comments have been received since the March Commission meeting.

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

Adopt WAC 232-13-160 Public conduct on private lands under cooperative agreement with the department – Unlawful acts, as proposed.

Draft motion language:

I move to adopt WAC 232-13-160 Public conduct on private lands under cooperative agreement with the department – Unlawful acts, as proposed.

Justification for Commission action:

These changes meet the approved criteria established by OFM as a result of the Governor's Executive Order 10-06 Suspending Non-Critical Rule Development and Adoption because they are necessary to protect public safety and welfare (3d).

Communications plan:

- News Release
 - Hunting Pamphlet
 - Website
-

NEW SECTION

WAC 232-13-160 Public conduct on private lands under cooperative agreement with the department--Unlawful acts. (1)

It is unlawful to discharge firearms or archery equipment within a posted safety zone on department controlled lands. Violating this subsection is a misdemeanor, pursuant to RCW 77.15.230.

(2) It is unlawful to disobey posted notices or signs on department controlled lands. Violating this subsection is an infraction, pursuant to RCW 77.15.160.

(3) For purposes of this section, "department controlled lands" means land, water, and access areas, such as boat ramps and trail heads, which are privately owned and under cooperative agreement with the department.

(4) For purposes of this section, "under cooperative agreement with the department" means a legal, binding contract allowing public access to specified lands has been signed by the department and the landholder.

[]

WAC 232-13-160 Public conduct on private lands under cooperative agreement with the department – Unlawful acts

RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR 102) filing and include additional adjustments since the March 2011 Commission Meeting. These changes are included in your notebook language.

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- WAC 232-12-424 is changed to WAC 232-13-160 so public conduct rules on department owned and controlled lands are within the same chapter.
- “Public conduct on lands under cooperative agreement with the department--Unlawful acts” is changed to “Public conduct on private lands under cooperative agreement with the department--Unlawful acts,” to clarify that the lands affected by the rule are private.
- Section 4 is amended to read “For purposes of this section,” to clarify that the definition relates to all of WAC 232-13-160, not a subsection of the rule.

SUMMARY OF WRITTEN PUBLIC INPUT
 Fish and Wildlife Commission Meeting
 WAC 232-13-160

COMMENTS	AGENCY RESPONSE
<p>The State of Washington needs to address the use of motorized vehicles on private property. Landowners are using vehicles to unfairly herd or access animals on their property and charging hunters. I propose a rule change that any person driving off road with any vehicle may not shoot within 1 hour of stopping or getting out of or off of their vehicle.</p>	<p>Proposed WAC 232-13-160 will help regulate vehicle use on private lands under agreement with WDFW. It is already illegal to hunt wildlife from a vehicle except as authorized by a permit issued by the director, and it is unlawful to use a vehicle (or aircraft, or motor-propelled boat) for the purpose of pursuing, concentrating, or harassing wildlife (WAC 232-12-057).</p>



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 10-24-087 ; 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)
Hunting Rules – See Attachment A

Hearing location(s):
Spokane Convention Center
334 West Spokane Falls Boulevard
Spokane, WA 99201
509-279-7000

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

Date of intended adoption: April 8-9, 2011
(Note: This is **NOT** the effective date)

Submit written comments to:
Name: Wildlife Program Commission Meeting Public Comments
Address: 600 Capitol Way North, Olympia WA 98501-1091
e-mail Wildthing@dfw.wa.gov
fax (360) 902-2162

By: Wednesday, February 9, 2011

Assistance for persons with disabilities:
Contact: Susan Galloway by February 28, 2011
TTY (800) 833-6388 or (360) 902-2267

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

See Attachment A

Reasons supporting proposal:

See Attachment A

Statutory authority for adoption: 77.12.047

Statute being implemented: 77.12.047

Is rule necessary because of a:

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

DATE
January 19, 2011

NAME
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 19, 2011
TIME: 9:17 AM

WSR 11-03-089

(COMPLETE REVERSE SIDE)

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

None

Name of proponent: (person or organization)

Washington Fish and Wildlife Commission

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Nate Pamplin	Natural Resources Building, Olympia	(306) 902-2693
Implementation.....Nate Pamplin	Natural Resources Building, Olympia	(360) 902-2693
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:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.
These rules do not directly regulate small business.

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: Not hydraulics rules.

ATTACHMENT A

WAC 232-12-424 Public conduct on lands under cooperative agreement with the department – Unlawful Acts

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Department is recommending creation of a new WAC that will regulate public conduct on lands under cooperative agreement. Examples of regulated activities include violating posted safety zones, quality hunting site rules, and driving vehicles in areas that have been posted closed to motorized vehicle travel. The new rule will allow enforcement of private lands access rules that are mutually agreed to by the landowner and the Department.

Reasons supporting proposal:

When the Fish and Wildlife Commission adopted WAC 232.13, the definition of “department land” was modified to exclude private lands. While this change was necessary to effectively implement 232-13, the unintended consequence was that the Department lost its ability to enforce public access and conduct on private lands under agreement. As a result, a new rule addressing the use of private lands under agreement is needed.

WAC 232-28-273 2009-2011 Moose, bighorn sheep, and mountain goat seasons and permit quotas

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposed WAC amends seasons for moose, bighorn sheep, and mountain goat. Winter surveys indicate moose populations are stable. The Department recommends minor permit level adjustments in two moose hunt areas based on recent survey results. All bighorn sheep populations that currently are hunted either meet or exceed population objectives. The Department recommends minor permit level changes (from 41 to 48) based on the population thresholds in the Game Management Plan (2008). Mountain goat populations are stable in all hunted populations. Changes in permit levels are based on annual survey counts and tend to be conservative given the sensitivity of goats to over harvesting. The Department recommends status quo permit levels in all areas, except reducing the permit level from 5 to 3 in the Goat Rocks-Tieton River population management unit due to recent survey counts.

Reasons supporting proposal:

Permit level changes are based on the population thresholds in the 2009-2015 Game Management Plan.

WAC 232-28-286 2010, 2011, and 2012 Spring black bear seasons and regulations

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

To expand the benefit of the spring seasons in northeastern Washington, the Department is recommending increasing permit levels and season length. The anticipated effect is a slight increase in total harvest and reduced bear nuisance activity.

For westside spring bear hunts, the Department is recommending increasing the season length in the Kapowsin Tree Farm unit from April 15-May 15 to April 15-June 15 based on discussions with the landowners. There is a slight anticipated increase to the number of hunter days.

Reasons supporting proposal:

The objectives for spring bear hunting seasons are to reduce timber damage by bears (western Washington), reduce nuisance bear activity (northeastern Washington), and to divert harvest away from adult females and toward adult males (southeastern Washington).

WAC 232-28-295 Landowner hunting permits

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Landowner Hunting Permit (LHP) program is designed to increase hunter access to private lands and to help some landowners address long-standing elk damage issues. The Department recommends adding one new LHP cooperator in Asotin County – Grande Ronde Vista. The Grande Ronde Vista LHP is a consortium of landowners that includes the owner of a previous LHP, the 4-O Ranch.

Proposed deer and elk hunting on the Grande Ronde Vista LHP include:

Landowner permits: seven deer permits (three point minimum) and 23 elk permits (11 bull and 12 antlerless)

Public Special Permits: three 3-pt minimum deer permits, six youth only antlerless deer permits, six bull elk permits, and 20 antlerless only elk permits

The split of landowner and public deer and elk hunting opportunity is within the guidelines established in Commission Policy C6002.

Reasons supporting proposal:

This proposal increases public deer and elk hunting access to private land in Asotin County.

WAC 232-28-331 Game management units (GMUs) boundary descriptions – Region one

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Game management units are used to help distribute hunters and manage segments of deer and elk populations. This proposal will clarify game management unit boundaries for hunters and reduce space required for publicizing the rules, thereby reducing expenditures.

Reasons supporting proposal:

Simplifies and clarifies unit boundaries for deer and elk hunting.

WAC 232-28-332 Game management units (GMUs) boundary descriptions – Region two

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Game management units are used to help distribute hunters and manage segments of deer and elk populations. This proposal will clarify game management unit boundaries for hunters and reduce space required for publicizing the rules, thereby reducing expenditures.

Reasons supporting proposal:

Simplifies and clarifies unit boundaries for deer and elk hunting.

WAC 232-28-333 Game management units (GMUs) boundary descriptions – Region three

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Game management units are used to help distribute hunters and manage segments of deer and elk populations. This proposal will clarify game management unit boundaries for hunters and reduce space required for publicizing the rules, thereby reducing expenditures.

Reasons supporting proposal:

Simplifies and clarifies unit boundaries for deer and elk hunting.

WAC 232-28-334 Game management units (GMUs) boundary descriptions – Region four

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Game management units are used to help distribute hunters and manage segments of deer and elk populations. This proposal will clarify game management unit boundaries for hunters and reduce space required for publicizing the rules, thereby reducing expenditures.

Reasons supporting proposal:

Simplifies and clarifies unit boundaries for deer and elk hunting.

WAC 232-28-335 Game management units (GMUs) boundary descriptions – Region five

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Game management units are used to help distribute hunters and manage segments of deer and elk populations. This proposal will clarify game management unit boundaries for hunters and reduce space required for publicizing the rules, thereby reducing expenditures.

Reasons supporting proposal:

Simplifies and clarifies unit boundaries for deer and elk hunting.

WAC 232-28-336 Game management units (GMUs) boundary descriptions – Region six

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Game management units are used to help distribute hunters and manage segments of deer and elk populations. This proposal will clarify game management unit boundaries for hunters and reduce space required for publicizing the rules, thereby reducing expenditures.

Reasons supporting proposal:

Simplifies and clarifies unit boundaries for deer and elk hunting.

WAC 232-28-337 Deer and elk area descriptions

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Boundary adjustments are being proposed to better address current deer and elk damage issues.

Reasons supporting proposal:

The proposed rule amendment provides the means to reduce wildlife damage issues and direct deer and elk damage hunts by adjusting elk area boundaries.

WAC 232-28-351 2009-2011 Deer general seasons and definitions

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

This is the third year of the 2009-11 hunting season “rule-package” and as such, few changes are recommended. Changes during “off-years” are mainly to address crop and property damage problems; changes in population levels due to environmental conditions or disease outbreaks; and to balance harvest levels with established population objectives.

The major issue and purpose for recommending changes to the deer general season rules are to address the white-tailed deer declines in northeast Washington caused by the harsh winters of 2008 and 2009. The Commission is being asked to consider:

- Reducing the archery antlerless opportunity during the late season in northeast Washington to address the decline and hasten population expansion;
- Retaining a four day youth, senior, and hunters with disability antlerless white-tail season in northeast Washington to maintain some limited antlerless opportunity for these hunters; and
- Re-considering a four point white-tailed deer antler restriction for GMUs 117 and 121. The Steven’s County Commissioners and the Steven’s County Fish and Wildlife Advisory Committee formally petitioned the Fish and Wildlife Commission to adopt a four point antler restriction for GMUs 117 & 121. It is their belief that an antler point restriction would hasten population expansion and improve the general health of the deer population.

Reasons supporting proposal:

The proposal provides general season hunting opportunity for deer consistent with population and harvest objectives while addressing property damage concerns.

WAC 232-28-355 2010 Deer special permits

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

This is the third year of the 2009-11 hunting season “rule-package” and as such, few changes are recommended. Changes during “off-years” are mainly to address crop and property damage problems; changes in population levels due to environmental conditions or disease outbreaks; and to balance harvest levels with established population objectives.

The major changes in the recommended deer permit levels are to address:

- Calendar date adjustments;
- White-tailed deer declines in northeast Washington GMUs 101-121;
- Mitigation of property damage situations;
- Add some quality mule deer permits in northeast Washington GMUs; and
- Add antlerless deer permits in the Mission and Satsop GMUs (251 & 651) consistent with population objectives for those areas.

Reasons supporting proposal:

The proposal provides special hunting permit opportunity for deer and elk consistent with population and harvest objectives while addressing property damage concerns.

WAC 232-28-356 2010 Elk special permits

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

This is the third year of the 2009-11 hunting season “rule-package” and as such, few changes are recommended. Changes during “off-years” are mainly to address crop and property damage problems; changes in population levels due to environmental conditions or disease outbreaks; and to balance harvest levels with established population objectives.

The major changes in the recommended elk permit levels are to address:

- Calendar date adjustments;
- Mitigation of property damage situations;
- Increase bull permits in the Blue Mountains consistent with population objectives; and
- Provide additional antlerless elk permits for senior hunters.

Reasons supporting proposal:

The proposal provides special hunting permit opportunity for deer and elk consistent with population and harvest objectives while addressing property damage concerns.