PROSECUTORS’ MANUAL
FOR
FISH AND WILDLIFE VIOLATIONS

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I. ABOUT THIS MANUAL

This Prosecutors’ Manual for Fish and Wildlife Violations is designed to assist prosecutors in appropriately resolving fish and wildlife violations in a manner consistent with the statutory mission of the Fish and Wildlife Commission (Commission) and the Department of Fish and Wildlife (WDFW or Department). Fish and wildlife are an important part of the history and culture of Washington state. Approximately 410,000 people annually participate in fish and wildlife related activities, including fishing, hunting, and wildlife viewing, and industries related to fish and wildlife contribute approximately $210 million annually to the state economy, much of it in rural areas. Appropriate enforcement and prosecution of fish and wildlife violations helps insure the continued viability of fish and wildlife species in the state and the culture, activities, and economies that depend on them.

This manual is designed to provide a basic introduction and overview of WDFW’s management of fish and wildlife in the state and laws related to fish and wildlife. Sample documents, modelled from documents used in successful prosecution of fish and wildlife crimes are provided (appendices) Persons using this manual should take care to verify that the information provided is current and accurate.

II. OVERVIEW OF THE WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE

A. General Statutory Authority

RCW Title 77 confers upon the Commission and the Department the duty to preserve, protect, perpetuate, and manage wildlife and fish, including fish in state waters and offshore waters, and shellfish. RCW 77.04.012. In general, the Commission sets policy and adopts the basic rules regarding the management of fish, shellfish, and wildlife, and governing the time, place, manner, and methods for harvesting or taking fish, shellfish and wildlife. RCW 77.12.047. The Department also possesses some limited rulemaking authority. E.g. RCW 77.12.150. Pursuant to these rules, the Department regulates recreational (sport) hunting, fishing, and shellfish harvest, commercial fishing and shellfish harvest, and hydraulic projects (i.e. construction work in state waters). WDFW rules are located in WAC Chapter 220, with fish-related rules at WAC 220-300 through -370, wildlife related rules at 220-400 through -450, and hydraulic code rules at 220-660.

B. Organization

The Department is organized into programs: the Fish Program, the Wildlife Program, the Habitat Program, Enforcement, and Technology and Financial Management (TFM).

• The Fish Program includes hatcheries, science, and fish management divisions.
• The Wildlife Program includes wildlife diversity, game, lands, and science divisions.
• The Habitat Program is responsible, among other things, for granting or denying Hydraulic Project Approval (“HPA”) permits.
• The TFM Program includes the IT department, marketing division, business technical unit as well as the Licensing Division, which is responsible for; selling, hunting and fishing licenses, Discover passes, special permits, and, as necessary suspending or revoking, those sport and commercial licenses.
• The Enforcement Program consists of Fish and Wildlife enforcement officers (FWOs) who are general authority law enforcement officers focused on fish and wildlife violations, and administrative staff who support them. Fish and Wildlife officers are responsible for investigating and citing fish and wildlife enforcement code (RCW 77.15) violators, as well as other general crimes, and for controlling problem wildlife.
The Department’s main administrative office is in Olympia at the Natural Resources Building, and there are six regional offices. Regional program staff include fish and wildlife officers, field and habitat biologists, and fish and wildlife managers. Contact information for the WDFW Headquarters, including each of WDFW’s five programs, as well as each of the regional and field offices can be found at http://wdfw.wa.gov/about/contact/.

C. WDFW’s Enforcement Program

The Enforcement Program has approximately 130 commissioned law enforcement personnel statewide. Fish and Wildlife Officers (FWOs) are deployed to six regions throughout the state, and a Marine Division. FWOs are responsible for enforcing a myriad of laws and regulations related to health and public safety, dangerous wildlife/human conflicts, fish and wildlife protection, hunting and fishing license regulations, habitat protection, and commercial fish and shellfish harvest. In addition, they enforce federal laws, Oregon state statutes (within the Columbia River between Washington and Oregon), and sometimes county ordinances through memorandums of agreement. Recently, FWOs are conducting more boating law enforcement on state and federal waters, and law enforcement in state and federal parks and forest lands. FWOs also conduct search and rescue operations on both land and waters across the state.

Fish and Wildlife officers are general authority law enforcement officers, with the same state-wide law enforcement powers conferred on state patrol troopers. Consequently, FWOs are often called upon to assist local city, county, and other state law enforcement agencies, tribal authorities, and federal agencies. On average, officers make more than 225,000 enforcement contacts annually. In addition, fish and wildlife officers are conferred by law with certain specific authority to investigate and interdict fish and wildlife violations. See RCW 77.15.080-.096. Some of these specific powers are also conferred on “ex officio fish and wildlife officers.” Ex officio fish and wildlife officers include all general authority law enforcement officers from jurisdictions within Washington (state patrol troopers, city police officers, county sheriffs and deputies), when they are acting within the jurisdiction of their commissioning agency. Ex officio fish and wildlife officers also include state limited authority law enforcement officers, some federal law enforcement officers, and some out-of-state law enforcement officers if their employing agencies have mutual law enforcement assistance agreements with WDFW. The fish and wildlife officer specific authorities are as follows:

- The power to stop persons engaged in fishing/harvesting/hunting to check for licenses (also conferred on ex officio FWOs). See RCW 77.15.080.
- The power to seize without warrant wildlife, fish, shellfish, and covered animal species taken, transported, or possessed in violation of fish and wildlife laws/rules (also conferred on ex officio FWOs). See RCW 77.15.085.
- The power to execute arrest and search warrants based on suspected violations of fish and wildlife laws. See RCW 77.15.090.
- The power to arrest without warrant persons found violating “the law” or fish and wildlife rules (also conferred on ex officio FWOs). See RCW 77.15.092.
- The power to search without warrant vessels, vehicles, containers, etc., that contain evidence of violations of “the law” or fish and wildlife rules (also conferred on ex officio FWOs). See RCW 77.15.094.
- The power to inspect without warrant certain locations and items of commercial fishers, wholesale dealers, or fish buyers. See RCW 77.15.096.

Fish and wildlife officers’ inspection authority is discussed in greater detail below.
FWOs also hold federal U.S. Fish and Wildlife and National Marine Fisheries Service (NMFS) commissions, and have jurisdiction over federal violations, the most important of which are the Endangered Species Act and the Lacey Act. Officers collaborate and coordinate with these agencies and the U.S. Coast Guard.

D. Legal Counsel

The Fish, Wildlife and Parks Division of the Attorney General’s Office (“AGO”) acts as legal counsel to WDFW. Attorneys in the Division may be available to help prosecutors pursue fish and wildlife enforcement code violations in several ways, including consultation, legal research, and briefing, depending on workload. Here is how you can contact the AGO:

Attorney General of Washington  
Fish, Wildlife and Parks Division  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, Washington 98504-0100  
(360) 753-6200

E. Fish and Wildlife law generally

Wildlife, fish, and shellfish are defined by RCW 77.08.010 as follows:

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

"Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

Note: fish classified as “game fish” are listed in RCW 77.08.020 and WAC 220-300-380; fish classified as “food fish” are listed in RCW 77.08.022 and WAC 220-300-370.

"Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken or possessed except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

Note: classified shellfish are listed in WAC 220-320-010.

Wildlife, fish, and shellfish, in the wild are the property of the state. Except shellfish in naturally occurring shellfish beds on private tidelands belong to the owner of the private tidelands. State v. Longshore, 141 Wn.2d 414, 422, 5 P.3d 1256, 1260 (2000) (“naturally occurring clams on private tidelands are the exclusive property of the tideland owner.”).

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wildlife, fish, and shellfish in a wild state (ferae naturea) “in its sovereign capacity . . . in trust for the peoples’ use and benefit.” Citizens for Responsible Wildlife Mgmt. v. State, 124 Wn. App. 566, 569–70, 103 P.3d 203 (2004); State v. Longshore, 97 Wn. App. 144, 150, 982 P.2d 1191, 1195 (1999), aff’d, 141 Wn.2d 414, 5 P.3d 1256 (2000). The Department has the authority to adopt rules regulating the taking or possession of wildlife, fish, and shellfish. RCW 77.12.047(1)(i). Fish and wildlife remain the property of the state, as animal ferae naturea, until lawfully captured; lawfully captured fish and wildlife become the property of the captor. Longshore, 97 Wn. App. At 150.

Both hunting of wildlife and fishing (including harvesting shellfish) are heavily regulated by WDFW. WDFW’s regulation takes the form of restrictions on who is permitted to hunt or fish, where an individual may hunt or fish, when an individual may hunt or fish, what an individual may hunt or fish for, how an individual may hunt of fish, and how many animals an individual may take at a time. These restriction are generally set forth in WACs and also published in a series of “pamphlets” that provide the rules and other information; there is one pamphlet published for fishing/shellfish harvest and several for hunting (one for big game hunting, one for migratory and upland game hunting, and one for turkey hunting).

- **Who** may hunt is generally based on license/permit requirements. With rare exceptions, the proper hunting license is required for persons engaged in hunting and the proper fishing license in required for persons engaged in fishing. Hunting licenses are divided into big game and small game licenses. Hunting for certain species also requires the hunter to possess the proper tag or stamp (or both). To be eligible for a hunting license, persons under 18 are required to complete a hunter education course. Fishing licenses are divided into commercial and recreational. Commercial licenses are specific to the fishery (e.g. salmon, Dungeness crab). Recreational licenses are further divided into saltwater, freshwater, or combination (salt- and freshwater). Persons with disabilities may be granted certain special accommodations to facilitate their participation in hunting/fish activities.

- **Where** an individual may hunt is generally based on established “game management units” (GMUs) that are established in WAC. Where an individual may fish is generally based on fish management and catch reporting areas established in WAC.

- **When** an individual may hunt or fish is based on hunting/fishing seasons set by WDFW in WAC. As necessary for species management, WDFW may adjust hunting/fishing seasons by emergency rule. In addition, hunting is generally restricted to certain hours of the day, or daylight hours.

- **What** an individual may hunt or fish for includes restrictions on species (i.e. white tail deer, chinook salmon, razor clams), size, sex, and other characteristics (e.g., number of antler points for deer).

- **How** an individual may hunt or fish includes gear and method restrictions. For hunting, methods include archery and modern and muzzle load firearms. For fishing, hooks, nets, and other gear characteristics may be limited for certain fisheries. For shellfish harvest, crab and shrimp pots must conform to certain standards.

- **How many** of a given species an individual may take in a given time, also known as a “bag limit,” may be by day (e.g. 15 razor clams per-person/per-day), by season (e.g. one elk per season) or lifetime (e.g. one moose per lifetime). Many hunting and fishing activities require catch or harvest reporting, in the form of a requirement to complete a catch record card for fishing, or the requirement to complete and attach a “tag” to hunted big game species. Commercial fishers are required to complete “fish tickets” and in some cases “harvest or location log books” that document their catch, area, time, etc..

Both hunting and fishing are activities “involving effort,” State v. Walsh, 123 Wn.2d 741, 748, 870 P.2d 974, 977 (1994), not successful catch or harvest. So an individual engaged in “an effort to kill, injure, harass, harvest, or capture a wild animal or wild bird,” RCW 77.08.010(62) is hunting, whether or not the individual actually kills an animal. And an individual engaged in “an
effort to kill, injure, harass, harvest, or capture a fish or shellfish,” RCW 77.08.010(61) is fishing, whether or not the individual actually catches a fish or harvests shellfish. Walsh, 123 Wn.2d at 748.

III. CRIMINAL AND CIVIL ENFORCEMENT AUTHORITY

A. Generally

As noted above, hunting and fishing (both commercial and recreational) in Washington are closely regulated activities. The Fish and Wildlife Enforcement Code, RCW 77.15, contains the criminal code applicable to fish and wildlife violations and fishing/hunting privilege and license suspension provisions. For many fish and wildlife crimes, the violation of a fish or wildlife rule (a WAC) is an element of the crime. As indicated above, rules governing recreational and commercial fishing are found at WAC 220-300 through -370, while rules governing wildlife, including, hunting, are at WAC 220-400 through -450.

Fish and Wildlife rules are frequently amended by the Department or the Commission to respond to fisheries and wildlife management needs. Therefore, it is important to refer back to the rule and determine which version of the rule was in effect at the time of the violation. This is particularly important in prosecuting violations involving hunting or fishing when the season is designated as closed for that species or area.

B. Search and Seizure Authorities

WDFW officers are, of course, bound by the general legal authorities on search and seizure. But WDFW officers also have additional search and seizure authorities. By statute, WDFW enforcement officers are authorized to stop and inspect persons engaged in hunting, harvesting, or fishing activities, and can request photo identification or signature verification. RCW 77.15.080. Officers may seize evidence without a warrant if they have probable cause to believe that fish, wildlife, or shellfish have been taken, transported, or possessed in violation of the law. RCW 77.15.085. While a court must issue search warrants upon a showing of probable cause, fish and wildlife officers may also make a reasonable warrantless search of broadly-defined “receptacles for fish, seaweed, shellfish, and wildlife” that they have reason to believe contain evidence of a violation of fish and wildlife laws or rules. They may also seize evidence as necessary for law enforcement. RCW 77.15.090, .094. WDFW enforcement officers may also inspect without warrant the premises, containers, records, and other items as authorized by the statute, of any commercial fisher, fish or fur buyer, fish dealer, taxidermist, shipping agent, or any retail outlet selling fish, shellfish or wildlife. RCW 77.15.096. Any authority granted under RCW 77.15.094 and RCW 77.15.096 does not extend to quarters in a boat, building, or other property used exclusively as a private domicile; does not extend to transitory residences in which a person has a reasonable expectation of privacy; and does not allow search and seizure without a warrant in violation of Article I, section 7 of the State Constitution. RCW 77.15.094, .096.

Based on Tarobochia v. Adkins, 766 F.3d 1115 (2014), and Schlegel v. DOL, 137 Wn. App. 364, (2007), WDFW enforcement officers’ search and seizure authority must be read as being limited to those engaged in fishing or hunting activities at locations where fishing or hunting occurs, or commercial fish facilities. Officers may conduct inspections of fishers engaged in fishing activities at locations where fishing occurs. Officers may stop and conduct inspections of

hunters engaged in hunting activities at locations where hunting occurs. And officers may conduct inspections of facilities used in commercial fishing.

Check Stations(?)

C. Civil Forfeiture

Separate and apart from criminal sanctions for fish and wildlife code violations, Fish and Wildlife Officers and ex officio Fish and Wildlife Officers have the authority to seize for forfeiture certain kinds of property used in the commission of a fish and wildlife code violation. In addition, illegally harvested fish, shellfish, and wildlife, or animals protected under the Washington Animal Trafficking Act (WATA) (see RCW 77.15.135 and section _____ of this Manual), taken or possessed in violation of Title 77 or department rule are automatically forfeited to WDFW upon conviction for such violation.

1. Forfeiture of property used in the commission of fish and wildlife violations

Boats, airplanes, vehicles, motorized implements, conveyances, gear, appliances, or other articles are subject to civil forfeiture regardless of whether they have been seized as evidence. WDFW enforcement officers may seize these items without warrant if they have probable cause to believe the items were held with intent to violate, or were used in violation of RCW Title 77 or the Department’s rules. RCW 77.15.070. A conviction is not required for this type of civil forfeiture. The Legislature intended civil forfeiture to be a remedial civil sanction. Civil forfeiture does not constitute “punishment” for purposes of the double jeopardy clause of either the Washington or U.S. Constitutions. Thus, double jeopardy does not preclude criminal prosecution for the same offense that triggered the civil forfeiture.

Property seized is subject to forfeiture to the state regardless of ownership. Persons claiming rights of ownership or possession of seized property are entitled to an administrative hearing to contest forfeiture. However, if the aggregate value of the property seized is more than five thousand dollars, the claimant may remove the matter from the administrative tribunal to “a court of competent jurisdiction,” RCW 77.15.070(4), which is the county superior court. RCW 4.92.010.

An individual whose property is seized for forfeiture is provided notice of WDFW’s intent to forfeit the property and has the opportunity to appeal the forfeiture. At a hearing to contest forfeiture, the burden is on WDFW to demonstrate that it had reason to believe the property was held with intent to violate or used in violation of fish and wildlife laws. Persons contesting forfeiture have the burden of proof by a preponderance of evidence that they own or have a right to possess the property, and (a) that the property was not held with intent to violate or used in violation of RCW Title 77; or (b) if the property is a boat, airplane, or vehicle, that the illegal use or planned illegal use of the boat, airplane, or vehicle occurred without the owner’s knowledge or consent, and that the owner acted reasonably to prevent illegal uses of such boat, airplane, or vehicle. RCW 77.15.070(5). Because these are civil proceedings, the AGO represents WDFW if necessary.

Note: the civil forfeiture authority in RCW 77.15.070 is the exclusive authority by which property used in the commission of fish and wildlife violations may be forfeited. Courts lack any inherent authority to order the forfeiture of property used in the commission of fish and wildlife violations. See State v. Alaway, 64 Wn.App 796 (1992). Prosecutors should take care to insure

that forfeiture of property is not included as part of the resolution of any criminal matter related to a fish and wildlife violation.

Seizure of property for forfeiture is distinct from seizure of property for evidence, although property may be seized for both purposes. Property may be seized for evidence and then later seized for forfeiture. See State, Dep’t of Fish & Wildlife v. One 1999 Ford F350 Diesel Pickup Truck, 182 Wn. App. 469, 474, 331 P.3d 102 (2014). And property subject to seizure for forfeiture should not be returned to its owner after its use as evidence is complete.

2. Seizure of illegally taken or possessed fish, shellfish, wildlife, or covered animal species

RCW 77.15.100(3) provides that “fish, shellfish, wildlife, or any covered animal species part or product taken or possessed in violation of this title or department rule shall be forfeited to the state upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions.” Under this provision, forfeiture occurs automatically upon conviction or other negative disposition, without the need for further proceedings. Because the forfeiture occurs automatically by operation of law, a court is without authority to order any deviation from the forfeiture.

D. License Revocation and Hunting/Fishing Privilege Suspension

The commission of a fish or wildlife violation in Washington may, in certain circumstances, lead to revocation of the violator’s Washington hunting or fishing license and suspension of his/her privileges to hunt or fish in Washington (or both). In addition, the commission of a fish or wildlife violation in Washington may lead to revocation of the violator’s hunting or fishing licenses in other states pursuant to the Interstate Wildlife Violator Compact (IWVC). And under the IWVC, the commission of a fish or wildlife violation in another state may lead to revocation of Washington hunting or fishing licenses and suspension the violator’s Washington hunting or fishing privileges, as if the violation had been committed in Washington.

Engaging in hunting or fishing while one’s privilege to do so is suspended is a violation of RCW 77.15.670 and, depending on the circumstance, a gross misdemeanor (if second degree) or class C felony (if first degree).

Revocation of licenses and suspension of hunting/fishing privileges is a civil sanction imposed by the agency. As with the administrative suspension of driving privileges in a DUI case, WDFW license revocations and privilege suspensions cannot be waived or reduced as part of the criminal case.

1. Revocations/suspensions for Washington violations

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4 Generally, hunting and fishing licenses (and tags, stamps, or permits) are subject to revocation; a revoked license is void. RCW 77.15.690. Hunting and fishing privileges are subject to suspension for a specified period; a person whose hunting/fishing privileges are suspended may not lawfully participate in the activity for which he/she is suspended, RCW 77.15.670, and WDFW may not issue a license to him/her for that activity. RCW 77.15.680. Whether a person’s hunting or fishing license is revoked, or the person’s hunting or fishing privileges are suspended, the result is the same: he/or she may not lawfully engage in the activity.
a. Revocations/suspensions imposed by WDFW

Under certain circumstances, WDFW is mandated to, or has the discretion to, revoke a person’s hunting or fishing license or suspend a person’s hunting or fishing privileges, or both suspend and revoke. Certain statutes mandate revocation of the violator’s license and suspension of the violator’s privileges (or both suspension and revocation) upon conviction of the specified crime. A list of violations for which WDFW is required to revoke licenses/suspend privileges is provided in Appendix __.

In addition, the Department is mandated to revoke and suspend under the following circumstances:

- Upon conviction or other negative disposition for a fish and wildlife crime, “if the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife.”\(^5\) The duration of such suspension is discretionary with the Department and may be for life. RCW 77.15.700(1)(b).
- Upon conviction or other negative disposition for a violation involving unlawful hunting, killing, or possessing big game, twice within ten years. The duration of such revocation/suspension is for two years. RCW 77.15.700(1)(c).
- Upon conviction or other negative disposition for a violation of recreational hunting or fishing law or rules, where the violation was the third in a ten-year period. The duration of such revocation/suspension is for two years. RCW 77.15.700(1)(d).
- Upon conviction for assault on a fish and wildlife officer, ex officio officer, employee, agent, or personnel acting for the department, if the employee assaulted was on duty at the time of the assault and carrying out the provisions of this title. The duration of such revocation/suspension is for ten years (or longer if damages to the victim have not been paid). RCW 77.15.710.\(^6\)
- If a person discharges a firearm, bow, or crossbow while hunting and in a manner that injures, or that a reasonable person would believe is likely to injure, another person. The duration of such revocation is three years, except that if the shooting kills or results in the death of another person, the duration of such revocation/suspension is ten years. The suspension/revocation period continues past the three or ten year period if damages to the victim have not been paid. RCW 77.15.720(1)(a).
- If a person, with malice, discharges a firearm, bow, or crossbow while hunting and in a manner that kills or causes substantial bodily harm to livestock belonging to another person. The duration of such suspension/revocation is three years. RCW 77.15.720(1)(b).

In addition to these mandatory suspension, WDFW may revoke a person’s hunting/fishing licenses involved in the violation upon any conviction of any violation of Chapter 77.15 RCW. RCW 77.15.690(1).

b. Court-ordered revocations/suspensions

In addition to the authority of WDFW to suspend/revoke a person’s hunting or fishing licenses/privileges, RCW 77.15.680(2) states that a court may order suspension of fishing and hunting privileges, but only if grounds are provided by statute. WDFW’s view is that where a statute mandates that WDFW revoke/suspend for a violation, the court may exercise discretion to impose a revocation or suspension. Where a court imposes a suspension or revocation under this

\(^5\) Such “negative dispositions” are “failure to appear at a hearing to contest an infraction or criminal charge, or an unvacated payment of a fine or a finding of committed as a final disposition for any infraction.”

\(^6\) “Assault” for purpose of this provision means murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, assault in the first degree, assault in the second degree, or assault in the third degree. RCW 77.15.710(2).
authority, prosecutors are asked to promptly inform WDFW so that the suspension/revocation may be imposed.

2. **Suspensions for out-of-state violations:**

   Washington is a party to IWVC, the Interstate Wildlife Violator Compact; nearly every other state is also a party. IWVC is codified at RCW 77.75.070. Under IWVC, all party states are to reciprocally suspend the hunting or fishing privileges of an individual whose privileges are suspended by any party state. This means that illegal activities in one state can affect a person’s hunting or fishing privileges in all participating states. Any person whose license privileges are suspended in a member state may also be suspended in Washington. If a person’s hunting, fishing or trapping privileges are suspended in Washington they may be suspended in member states as well. The Interstate Wildlife Violator Compact also establishes a process whereby fish and wildlife law violations by a nonresident from a member state are handled as if the person were a resident, meaning they can be served a ticket rather than being arrested, booked, and bonded. WDFW suspends recreational hunting and fishing licenses based on this Compact.

**IV. VENUE AND JURISDICTION**

The rules of venue and jurisdiction that apply to general crimes are typically applicable to cases involving fish and wildlife crimes. However, there are some special rules applicable to certain fish and wildlife crimes.

A. **Venue**

   Venue for offenses occurring in ocean waters within 3 miles of shore is in the county bordering that part of the Pacific Ocean where the offenses took place. This is so because the western boundaries of each of the counties on the Pacific Ocean are the same as the western boundary of the state: 3 miles off shore. See RCW 34.04.050 (Clallam County); RCW 36.04.160 (Jefferson County); RCW 36.04.140 (Grays Harbor County); and RCW 36.04.250 (Pacific County). For offenses occurring in offshore waters, meaning waters outside of the territorial boundaries of the state (3 miles from shore or greater, including marine waters of other states and countries, RCW 77.08.010(42), venue is in any county bordering the Pacific Ocean in Washington, or the county where fish or wildlife from the offense are landed. RCW 77.15.040. For proceedings related to natural resource infractions issued for violations occurring in offshore waters, venue is any county bordering the Pacific Ocean. RCW 7.84.040.

B. **Jurisdiction**

   1. **Personal Jurisdiction**

      District courts have jurisdiction concurrent with superior courts for misdemeanor and gross misdemeanor violations of the fish and wildlife enforcement code. RCW 77.15.040; see also RCW 3.66.060. Superior courts have jurisdiction over felony violations. RCW 77.15.040.

   2. **Juvenile Jurisdiction RCW 13.04.030 (1)(e)(iii) ???

   3. **Columbia River Compact**
The Columbia River Compact, codified at RCW 77.75.010, .020, and relevant case law, govern the enforcement of state fishing laws on the Columbia River where it forms the border between Washington and Oregon. Under the Compact, a Washington officer may, in some limited circumstances, enforce Washington fishing laws or regulations against a person acting on the Columbia River on the Oregon side of the boundary. For purposes of the Compact, the states of Washington and Oregon have “concurrent jurisdiction in the concurrent waters of the Columbia river.” RCW 77.75.020. “Concurrent waters” are those that coincide with the Washington-Oregon boundary. RCW 77.08.010(10).

The Washington Supreme Court explained this concurrent jurisdiction in *State v. Svenson*: 7

The Compact permits the States to enact legislation which limits fishing activity but it does not permit enforcement by one state of its own laws in the physical territory of the other absent similar legislation by the other state.[8] Thus, Washington may enforce a particular Washington fishing law against a person fishing on the Oregon side of the river if there exists a similar Oregon fishing law. The prosecution bears the burden of establishing the existence of a similar Oregon law.9 Specifically, the State must prove that:

1. Oregon has a similar criminal statute prohibiting the act prohibited by Washington; or
2. Oregon has not acted; or
3. Washington and Oregon always acted in conjunction when enacting legislation with respect to fishing on the river.10

While the states are thus limited in their enforcement authority on the other state’s side of the river, each may fully enforce its own laws on its own side of the river.11 The boundary line in the river is set forth in RCW 43.58.060.

4. **Offshore Waters**

Consistent with federal law, the Department’s’ authority extends to fishing by state residents in offshore waters. RCW 77.12.045. “Offshore waters” means “marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.” RCW 77.08.010(42). Washington has primary jurisdiction over the management of coastal and ocean natural resources within three miles of the coastline. RCW 43.143.005(4). From three miles out to the boundary of the 200-mile exclusive economic zone, the federal government has primary jurisdiction. RCW 43.143.005(4).

The relevant federal law, the Magnuson-Stevens Fishery Conservation Management Act, provides that a state may regulate a fishing vessel outside state boundaries when:

1. The vessel is registered under state law; and (i) there are no federal fishing regulations or management plans for the relevant fishery where the vessel is

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7 104 Wn.2d 533, 707 P.2d 120 (1985).
8 *Svenson*, 104 Wn.2d at 543.
9 *Svenson*, 104 Wn.2d at 542.
10 *Svenson*, 104 Wn.2d. at 542.
11 *Svenson*, 104 Wn.2d at 541-42.
operating; or (ii) state law is consistent with any applicable federal management
plan or regulations for the fishery where the vessel is operating; or

(2) The applicable federal fishery plan delegates management to state law.


State jurisdiction under the Act may be limited under certain circumstances following a
hearing under the federal APA. 16 U.S.C. § 1856(b). The statute specifies these circumstances.
16 U.S.C § 1856(b).

Several cases discuss the limits of state enforcement authority in extraterritorial waters.\(^{12}\) However, it should be noted that 16 U.S.C. § 1856(a) has been amended significantly since these
cases were decided. See Pub. L. 104-297 § 112 (1996). These amendments have led to some
additional limitations on state authority.\(^{13}\) Nonetheless, since the amendments to 16 U.S.C. §
1856(a), most courts have found that state laws are not preempted by the Act.\(^{14}\)

5. Federal Lands

State enforcement authority varies with state law and the degree of federal control over a
particular area.

a. National parks

Washington has conceded exclusive jurisdiction in Mount Rainier National Park and
Olympic National Park to the United States. RCW 37.08.200, .210; 16 U.S.C. § 95; 256. However,

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\(^{12}\) Livings v. Davis, 465 So.2d 507, 10 Fla.L.Weekly 129 (Fla. 1985) (state shrimping statute in effect at time
of alleged extraterritorial violations and prior to passage of conflicting federal law was not preempted); Anderson
Seafoods, Inc. v. Graham, 529 F. Supp. 512 (N.D. Fla. 1982) (a court would not likely find federal preemption of a
state statute prohibiting the taking of food fish by purse seine outside state waters); State v. F/V Baranof, 677 P.2d
1245 (Alaska 1984), cert. denied by 469 U.S. 823 (1984) (federal law did not preempt state regulation of king crab
outside state waters, nor did the federal district court have exclusive jurisdiction to enforce the state’s regulatory
authority); State v. Hayes, 603 A.2d 869 (Me. 1992) (less restrictive federal law in exclusive economic zone did not
preempt Maine from enforcing more restrictive state fishing laws); Southeastern Fisheries Ass’n, Inc. v. Mosbacher,
773 F. Supp. 435 (D.D.C. 1991) (federal regulations, as well as statutes, could have preemptive effect); State v.
Sterling, 448 A.2d 785 (R.I. 1982) (although state had sufficient interest in preserving yellowtail flounder stocks
to justify state regulation, federal policy governing the fish preempted state law).

\(^{13}\) See South Carolina v. Fisherman’s Bets, Inc., 310 F.3d 155 (4th Cir. 2002) (city resolution barring use of
maritime center to fishing vessels utilizing pelagic longline tackle was preempted).

\(^{14}\) See Louisiana Seafood Management Council, Inc. v. Foster, 917 F. Supp. 439 (E.D. La 1996) (state
marine resources conservation act prohibiting landing certain finfish in state waters was not preempted); State v.
Kalve, 9 P.3d 291, 294 (Alaska Ct App. 2000) (state’s emergency regulation closing sablefish season was not
preempted, holding, “federal regulations are not intended to supplant applicable state regulations”); Chinatown
Neighborhood Ass’n v. Harris, 794 F.3d 1136 (9th Cir. 2015) (California’s Shark Fin Law, making it unlawful to
possess, sell, offer for sale, trade, or distribute a shark fin in California, was not preempted); State v. Dupier, 118
P.3d 1039 (Alaska 2005) (federal law does not preempt commission from requiring permits of federal sablefish or
halibut fishers, reasoning that program did not thwart the goals of the act); Roche v. Director of Div. of Marine
Fisheries, 926 N.E.2d 559 (Mass. App. Ct. 2010) (federal law does not preempt state’s ability to regulate
fishing by requiring that fishers choose to fish in state waters under either their federal permits or state permits and
obey applicable conservation limits).
the State retains the right to serve civil or criminal process on persons inside the parks for acts committed outside the park boundaries. *Id.*

Washington has never ceded jurisdiction over the territory within North Cascades National Park, which was established in 1968. *See* 16 U.S.C. § 90 et seq. (establishing the park and related wilderness areas, but assuming no jurisdiction). Most of the land within the park boundaries is federally owned, however. Whether Washington has concurrent jurisdiction depends on whether the land was federally owned prior to the park’s establishment or whether the federal government purchased the land subsequently. *See* “National forests” and “Federally leased or purchased lands” below.

b. National forests

Washington and the federal government have concurrent jurisdiction in the national forests. RCW 37.08.220; 16 U.S.C. §§ 480, 528.

c. Migratory bird preserves

Washington retains full jurisdiction over federally established preserves where that jurisdiction is not incompatible with federal administration of the preserves. RCW 37.08.230.

d. Federally leased or purchased lands.

RCW 36.34.240 cedes jurisdiction over any lands leased or conveyed directly to the federal government under authority of RCW 36.34.220, .230, except that process may be served for civil actions and criminal offenses.

e. Military bases

Under Article 1 section 8 clause 17 of the U.S. Constitution, the federal government has exclusive jurisdiction over all land purchased by consent of the legislature of the state “for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.” Furthermore, under RCW 37.16.180, Washington State cedes jurisdiction to the federal government for lands acquired for permanent military installations. However, the extent of federal jurisdiction depends on the method by which the federal government acquired the state’s land.15

- If the land is acquired for a purpose stated under Clause 17 (i.e. “for the erection of forts, magazines, arsenals, dockyards, and other needful buildings”), then federal jurisdiction is exclusive in such areas used for all purposes.16 Most major military facilities in Washington (including Joint Base Lewis-McCord) fall within this category

- If the land is acquired for a purpose set forth in Clause 17, but is not purchased with consent of the state, then federal jurisdiction is exclusive only for the purpose for which the land is held.17 For example, the Court of Appeals upheld convictions for over-limit clam harvest on Indian Island, which was acquired by the federal government by condemnation for purposes of an ammunition storage facility. The court held: “[s]ince Indian Island was acquired by condemnation rather than purchase, federal jurisdiction over the island is

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17 *Id.*
exclusive only for the stated federal purpose of “establishing additional ammunition storage facilities,” and not for purposes of managing shellfish.”

- If the land is purchased for a purpose not within Clause 17 but with the consent of the state, then the federal jurisdiction must be ceded by the state for federal jurisdiction to exist.

- If the land is acquired for a purpose not within the clause by any manner other than purchase with consent of the state, then the United States holds the land just as any other proprietor, except that the state may not tax the land.

In some cases, the state and federal government may have concurrent jurisdiction, which allows law enforcement from either government to enforce criminal offenses.

State fish and wildlife laws are applicable on military bases, and military personnel are subject to state licensing requirements for fishing and hunting. 10 U.S.C. § 2671(a). The Secretary of Defense may waive or modify the fish and game laws of a State only if the application of such laws could result in adverse health or safety outcomes at a military installation. 10 U.S.C. § 2671(b)(1). Enforcement procedures and conservation measures are subject to cooperative agreements between the Department of Defense and federal and state fish and wildlife agencies; the agreements are incorporated into each installation’s natural resource management plan. See 16 U.S.C. § 670a(1)(B)(ii).

V. GENERAL DEFENSES AND CHALLENGES

A. Rule Challenge

Defendants have occasionally challenged agency rules during criminal prosecutions where the defendant was charged with violating the rules. This raises the question of whether the rule challenge is valid, as the APA, RCW 34.05, does not specifically authorize rule challenges in the context of criminal proceedings. Despite the APA provision (RCW 34.05 510) that it establishes the exclusive means of judicial review of agency action (including rules), in several cases the courts have allowed a rule challenge by a criminal defendant to proceed and have decided the validity of agency rules challenged.

While it does not appear that the validity of challenging an administrative rule in the context of a criminal case was raised by the prosecution in any of the cases cited, the court in Ford commented that:

We note that this case is not a contested case within the purview of [former version of] the administrative procedure act, RCW 34.04, but that the statutory procedures therein provide an analogous methodology of review. In any event, the courts have

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18 Id.
19 Id.
20 Id.
21 See State v. Dodson 143 Wn. App. 872 (2008), 182 P.3d 436 (holding that state and federal government have concurrent jurisdiction to enforce a DWI offense occurring on an I-5 off ramp over Fort Lewis property).
inherent power to review an administrative action to assure that it was not arbitrary and capricious. [23]

It appears that the court was referring to the constitutional writ of certiorari, described in the state constitution, article IV, section 6. [24] This basis for the court’s inherent authority to review rules outside of the APA is arguably flawed. The constitutional writ of certiorari is generally only available where an adequate remedy at law is not available and “the decision below is arbitrary, capricious, or contrary to law.” [25] Where the APA provides avenues for a rule challenge, the constitutional writ should not be relied upon. RCW 34.05 in particular provides such avenues and indicates legislative intent that these should be used. It is not clear whether a court would consider judicial review proceedings under the APA to provide an adequate remedy in the case of a criminal defendant attempting to challenge the validity of a rule as a defense.

The courts have made it relatively clear that even outside of an APA proceeding, the APA governs challenges to agency rules where those challenges are not based on alleged constitutional defects. In *City of Bremerton v. Spears*, [26] the court applied APA provisions in considering a challenge to a rule promulgated by the State Patrol. The court declined to consider the rule challenge because the State Patrol was not a party, citing RCW 34.05.570(2)(a) and stating that “[n]o facts regarding the rule-making procedures are before this Court.” [27] On this basis, prosecutors may argue not only that the rulemaking agency must be made a party where either the substance or procedure of the rulemaking process is at issue, but also that other APA provisions should be applied. For example, the rulemaking record should be brought before the court and the admission of new evidence should be limited.

Based on *Spears* and *City of Bremerton v. Widell*, [28] purely legal challenges to rules on constitutional grounds will likely be allowed without application of APA provisions. The rationale for this distinction between constitutional and similar purely legal challenges to a rule and challenges to the agency’s rulemaking process is presumably that the purely legal challenges can be resolved by the court without any inquiry into the agency’s decision-making process and without access to the agency’s rulemaking record.

**B. Lack of Mens Rea**

Many fish and wildlife offenses lack an express *mens rea* element. There is a long-accepted practice in Washington of prosecuting regulatory offenses, such as those in the fish and wildlife enforcement code, without proof of the defendant’s mental state when the statutory text does not include *mens rea* as an element. [29]

The feature that has traditionally distinguished offenses that require a *mens rea* element from those that do not is their classification as either *mala in se* (moral wrongs) or *mala prohibita*


24 See Pierce County Sheriff, 98 Wn.2d at 693 (referring to the court’s “inherent constitutional power to review ‘illegal or manifestly arbitrary and capricious action violative of fundamental rights’”).


27 Spears, 134 Wn.2d at 164.


29 See, e.g., State v. Lindberg, 125 Wash. 51, 215 P. 41 (1923) (a police regulation enacted for protection of health and welfare may impose penalties without regard to wrongful intent); State v. Cherry Point Fish Co., 72 Wash. 420, 130 P. 499 (1913) (no intent was necessary to violate a fish-trap regulatory statute that did not contain language of intent).
(acts that are wrong because they are prohibited.). On one hand, if the prohibited act is one involving moral turpitude, the courts have generally held that mental culpability is a necessary element and have implied it where the statute does not expressly eliminate it. On the other hand, mala prohibita are usually regulatory offenses enacted for protection of public welfare and interests. Such statutes have traditionally been held not to require proof of a mental state as an element of the crime unless the Legislature has expressly or impliedly included mens rea in the statute.

Based in part on criteria suggested in Staples v. US, the Washington Supreme Court has developed criteria for determining whether or not the Legislature intended to dispense with a mens rea element and create a strict liability crime:

1. A statute’s silence on a mental element is not dispositive of legislative intent; the statute must be construed in light of the background rules of the common law, and its conventional mens rea element;
2. Whether the crime is a “public welfare offense” created by the Legislature;
3. The extent to which conduct that seems entirely innocent might be subject to strict liability;
4. The harshness of the penalty;
5. The seriousness of the harm to the public;
6. The ease or difficulty of the defendant ascertaining the true facts;
7. Whether the Legislature thought stamping out the harmful conduct important enough to relieve the prosecution of difficult and time-consuming proof of fault even at the cost of convicting innocent-minded and blameless people; and
8. The number of prosecutions expected.

Under the Bash criteria, it is reasonable to argue that the Legislature intended to dispense with the mens rea element and create a strict liability crime for many fish and wildlife offenses that lack an express mens rea element. In general, these offenses have relatively light penalties (misdemeanors or gross misdemeanors), are not common law crimes, but instead are offenses created by the Legislature to deter conduct that harms a public resource that is commonly regulated, and are clearly defined in the statutes and rules.

In State v. Mertens the Supreme Court upheld the Legislature’s authority to create strict liability crimes for fisheries violations, even where the crime was designated as a class C felony. The Mertens Court held that the statutory scheme established by the Legislature for the crime of commercial fishing without a license created a strict liability crime and was a valid exercise of the Legislature’s authority.

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34 148 Wn.2d 820, 64 P.3d 633 (2003).
E. Necessity

Under *State v. Vander Houwen*, a property owner has a constitutional right to kill wildlife to protect him/herself or his/her property if it is reasonably necessary to do so. “Reasonable necessity” is therefore a defense to unlawful killing of animals. Before the Supreme Court, Vander Houwen challenged convictions for unlawful big game hunting and waste based on his assertion of a necessity defense. Citing *State v. Burk*, Vander Houwen asserted that he had an absolute right to defend his property from depredating elk by killing them. At trial, Vander Houwen was allowed to present his theory of defense, and the jury was instructed on necessity as provided in WPIC 18.02. Vander Houwen also challenged WPIC 18.02 as an improper shifting of the burden of proof. The trial court rejected Vander Houwen’s proffered instruction based on *Burk* that would have required the State to prove a lack of necessity as an element of the offense.

The Supreme Court overturned Vander Houwen’s convictions, ruling based on *Burk* that Vander Houwen had a constitutional right to use lethal means to protect his property from depredating wildlife, if reasonably necessary to do so.

The Court held, however, that the availability of measures provided by WDFW to prevent wildlife damage would factor into the reasonableness of a property owners’ use of lethal means to prevent property damage by wildlife. The Court recognized that RCW Chapter 77.36 “includes provisions that seek to minimize and resolve conflicts between humans and wildlife by authorizing the Department to provide assistance in dealing with wildlife and compensation for damage caused by wildlife.” The Court held that “[t]hese provisions do not abrogate a property owner's constitutional right to protect his property, but they could reduce the likelihood that resorting to lethal means to protect property is ‘reasonably necessary.’ A property owner need not demonstrate exhaustion of every remedy, but a fact finder may take into consideration the measures provided by the wildlife code and the Department when determining what is ‘reasonably necessary.’”

The Department has a wildlife conflict program, staffed by wildlife conflict specialists. The program may be contacted at 360-902-2515 or specialtrapping@dfw.wa.gov. Rules related to wildlife conflicts are located at WAC Chapter 220-440.

With respect to the burden of proof as to reasonable necessity, the Court in *Vander Houwen* held: “Once a property owner charged with unlawful hunting or waste of wildlife presents sufficient evidence to support a justification instruction for protection of property, the burden of persuasion to prove beyond a reasonable doubt the absence of this justification shifts to the State.”

VI. LOOKING BEYOND RCW TITLE 77 IN THE FISH AND WILDLIFE CONTEXT

A. The Basic Idea

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36 114 Wash. 370, 195 P. 16 (1921)
37 *Id.* at 33-34.
38 *Id.*
39 *Id.* at 35.
As noted above, hunting and fishing (both commercial and recreational) are closely regulated activities in Washington. The bulk of this manual addresses the prosecution of violations of RCW Title 77. However, just because an activity involves fish, shellfish, wildlife, or hydraulic projects, it does not mean that Title 77 is the only title of the RCWs that applies. Indeed:

- A defendant who is violating a provision of RCW Title 77 is often also committing more “traditional” crimes in violation of other provisions—particularly those in RCW Titles 9 and 9A.
- While a given defendant may be engaged in activities that involve fish, shellfish, wildlife, or hydraulic projects, often the true gravamen of his or her “bad act” is the commission of another more “traditional” crime.

Either way, a judicious prosecutor can and should consider pursuing such charges either in addition to, or instead of, charges under RCW Title 77.40 Similarly, even when prosecuting charges solely under RCW Chapter 77.15, there are times when it is appropriate to consider adding an aggravating factor from RCW 9.94A.535.

B. Types Of “Traditional” Crimes That May Occur In The Fish And Wildlife Context

For purposes of this analysis, it is helpful to break down the non-Title 77 crimes that may be applicable into types and to discuss each type separately.

1. Crimes Related To Property
   a. Basic Principle

In Washington, fish, shellfish, and wildlife are considered to be property that belongs to some person or entity. Sedentary shellfish (e.g. clams, geoduck, mussels, and oysters) are the property of the owner of the land on which they are growing.41 Fish, wildlife, and non-sedentary shellfish in their natural state are the property of the State of Washington. RCW 77.04.012.42 In this context, the Washington laws and rules that govern how and when persons can take wildlife, fish, and shellfish serve to govern how and when a private individual can legally convert ownership of an animal from the state to him or herself.43 As a result, an individual who kills a deer in violation of state hunting regulations (for example) has obtained physical possession of the animal but not legal possession.

These facts carry with them a very important implication—a person who is hunting, fishing, or harvesting shellfish in violation of relevant laws or regulations, or who is buying, selling, or storing meat, fish, or shellfish taken in violation of relevant laws or regulations, is almost always also committing one or more “traditional” property crimes. For example, an individual who takes

40 As with many of the issues arising in this area of law, special care must be taken in applying these principles to a Native American hunter or fisher exercising tribal treaty rights.
41 State v. Longshore, 141 Wn.2d 414, 5 P.3d 1256 (2000)
42 See, also, Wash. Kelpers Assn v. State, 81 Wn.2d 410, 415, 505 P.2d 1170 (1972) (“[T]he state, in its sovereign capacity, owns the fish in the waters of the state.”); State v. Moses, 79 Wn.2d 104, 113, 483 P.2d 832 (1971) (“This state has affirmed the rule of state sovereign ownership over wild animals, wild birds, and fish freely swimming in this state’s waters.”)
43 Wash. Kelpers Assn, 81 Wn.2d at 415 (“Fisherman have no private property rights in taking salmon. In regulating the fisheries, the state is merely enacting legislation concern its own property and prescribing the methods which may be used in acquiring it by private persons.”).
a geoduck from privately owned tidelands out of season has also stolen the shellfish if he or she did so without the permission of the owner of the property. Similarly, a person who poaches an elk and then sells meat from the animal to another person has trafficked in stolen property.

b. Potential Crimes

RCW Titles 9 and 9A (particularly the latter) include many “traditional” crimes where the gravamen of the offense is one person taking or doing something to the property of another. Examples include:

- Theft (RCW 9A.56.020 - .050)
- Possession of Stolen Property (RCW 9A.56.140 - .170)
- Trafficking in Stolen Property (RCW 9A.82.050 - .055)
- Malicious Mischief (RCW 9A.48.070 - .090)

2. Crimes Related To Identity Theft And Fraud

a. Basic Principle

Many of the provisions of RCW Title 77 and WAC Title 220 require individuals to fill out documents and sign them, often under penalty of perjury. For example, a fish dealer or buyer who first takes possession of fish from a commercial fisher must complete a Fish Receiving Ticket. The dealer/buyer and the fisher both then sign the ticket to certify, under penalty of perjury, that the information on the document is true and complete. Relatedly, many of the provisions of RCW Title 77 and WAC Title 220 confer specific rights, privileges, and/or responsibilities on some certain individuals, but not on others. Recreational hunting and fishing licenses, for example, are issued to specific individuals and cannot be used by others.

In this context, a person who provides false or misleading information on required paperwork or to a WDFW officer or employee is almost always also committing one or more “traditional” crimes involving fraud. Similarly, a person who pretends to be someone else—whether to access a right or privilege they are not entitled to or to avoid a responsibility incumbent upon them—is almost always also committing one or more “traditional” crimes related to identity theft and criminal impersonation.

b. Potential Crimes

RCW Titles 9 and 9A include many “traditional” crimes where the gravamen of the offense is lying to law enforcement or other government officials and/or providing false or misleading information on official documents. Similarly, these titles also include many crimes where the gravamen of the offense is one individual pretending to be another. Examples include:

- Identity Theft (RCW 9.35.020)
- Criminal Impersonation (RCW 9A.60.040-.050)
- Forgery (RCW 9A.60.020)
- False Or Misleading Statement To A Public Servant (RCW 9A.76.175)
- Obstructing (RCW 9A.76.020)
• False Swearing (RCW 9A.72.040)

Note that many potential factual scenarios could involve violation of more than one of the above crimes. (For example, an individual who provides a false name to a WDFW officer in order to attempt to avoid a criminal citation may be both lying to the officer and stealing the identity of another.)

3. Crimes Related To Area
   a. Basic Principle

By their very nature, many of the activities regulated by RCW Title 77 and WAC Title 220 require people to be in specific areas (e.g. in the habitat of the wildlife being hunted or at the bank of the river being fished). In this context, it is not uncommon for an individual who is hunting, fishing, or harvesting shellfish in violation of applicable laws and regulations to also be in the relevant area without permission or where their presence is specifically prohibited.

   b. Potential Crimes

RCW Title 9A includes several “traditional” crimes where the gravamen of the offense is someone unlawfully entering or remaining in a given area. Examples include:

• Criminal Trespass (RCW 9A.52.070-.080)
• Burglary (RCW 9A.52.020-.030)

4. Crimes Related To Public Safety
   a. Basic Principle

Many of the law and regulations in RCW Title 77, RCW Chapter 69.30, and WAC Title 220 are intended—among other things—to protect individuals and public safety. In this context, is not uncommon for a person who is hunting, fishing, or harvesting shellfish in violation of applicable laws and regulations, or who is buying, selling, or storing meat, fish, or shellfish taken in violation of relevant laws or regulations, to also be acting in a way that threatens the health and safety of the public at large. For example, a commercial shellfisher who knowingly harvests oysters from an area that is closed to harvest due to contamination is likely also recklessly endangering the eventual consumers if he or she sells the shellfish to a restaurant. Similarly, a person who intentionally feeds a large wild carnivore in order to attract it towards a building is potentially both violating RCW 77.15.792 and recklessly endangering others who live nearby.

   b. Potential Crimes

Reckless Endangerment (RCW 9A.36.050) is the catchall provision that applies to virtually any situation in which a person recklessly engages in conduct that creates a risk of substantial death or serious physical injury to another person.

5. Crimes Common To Larger Criminal Enterprises
   a. Basic Principle

It is not uncommon for a given violation of the laws and regulations in RCW Title 77, RCW Chapter 69.30, and WAC Title 220 to involve two or more persons working in concert. That is
particularly the case when the violation involves a commercial enterprise and/or is motivated by financial gain. Any such group is similar to any larger scale criminal operation in that it will likely have some level of organization and will face the same challenges of providing a legitimate appearing explanation for its source of money and/or product.

As a result, such a group—and individuals within the group—will likely commit the same types of illegal acts that are committed by larger scale criminal organizations in other contexts. For example, certain individuals within the group will likely take the lead in organizing or directing the group’s activities and/or in asking or telling other individuals to do things. Similarly, if the group is operating for commercial purposes or financial gain, the group and/or individuals within the group will likely receive money obtained via illegal means and either spend it or engage in financial transactions designed to disguise its source. Moreover, if the group wants or needs to sell in the legitimate market, steps will likely be taken to forge or falsify documents in order to make illegally acquired product appear to have been legally obtained.

b. Potential Crimes

RCW Titles 9 and 9A include several “traditional” crimes that are commonly committed by groups or individuals within groups in the context of any larger scale criminal enterprise. Examples include:

- Leading Organized Crime (RCW 9A.82.060)
- Criminal Solicitation (RCW 9A.28.030)
- Criminal Conspiracy (RCW 9A.28.040)
- Money Laundering (RCW 9A.83.020)
- Many of the crimes related to identity theft and fraud (listed above)

6. Aggravators

a. Basic Principle

Many of the bases for an exceptional sentence above the standard range can and should be applied to RCW Title 77 felonies just as they can be applied to felonies under any other provision of the RCW.

b. Potential Aggravators

Several of the Aggravating Circumstances set forth in RCW 9.94A.535 deal with issues that can arise in the context of Title 77 felonies. Examples include:

- “Free Crimes” (RCW 9.94A.535(2)(c))
- “Major Economic Offense” (RCW 9.94A.535(3)(d))
- “Egregious Lack of Remorse” (RCW 9.94A.535(3)(q))
- “Rapid Recidivism” (RCW 9.94A.535(3)(t))
C. Reasons To Look Beyond RCW Title 77 In The Fish And Wildlife Context

There are a number of different situations in which it may make sense to prosecute crimes under other RCW Titles either instead of, or in addition to, those in Title 77. Note that many of the reasons listed below will overlap in many cases.

1. When Necessary To Prosecute The True Nature Of The Defendant’s Bad Acts

There can be circumstances in which a given defendant’s actions involve a minor crime or even an infraction under RCW Chapter 77.15, but a more serious offense under other provisions of the RCW. Similarly, there are occasionally circumstances where a given defendant’s activities involving fish, shellfish, wildlife, or hydraulic projects seem “wrong,” but the “wrongness” is not easily captured under RCW Chapter 77.15 for prosecutorial purposes. This is often a sign that the “true nature” of the criminal act committed by the defendant involved a violation of some other provision of the RCW and simply took place in a “fish and wildlife” context. In either situation, pursuing relevant non-Title 77 crimes may be appropriate to ensure the prosecution of the real gravamen of the defendant’s actions.

2. When Necessary To Appropriately Capture The Full Range Of The Defendant’s Criminal Activity

When a given defendant’s actions constitute a significant violation of non-Title 77 statutes (in terms of the seriousness of the crime, the number of crimes, or both), it may be appropriate to prosecute those crimes either in addition to, or instead of, violations under Title 77. This is particularly the case when the failure to prosecute these acts either: 1) results in the limiting of evidence before the judge or jury in a way that mischaracterizes or understates the defendant’s criminal actions; and/or 2) creates a record that misleads an officer, prosecutor, or judge looking back at the case later as to the true nature and extent of the defendant’s criminal actions and history.

3. When It Simplifies The Proof

Due to the nature of the laws and regulations in RCW Title 77 and WAC Title 220, it can sometimes be easier and more straightforward to prove—particularly to a jury—the elements of a “traditional” crime under RCW Titles 9 and 9A rather than a crime under RCW 77.15.

4. When It Helps Address Judge And/Or Jury Issues

Unfortunately, it is not uncommon for judges and juries to discount the seriousness and importance of RCW Title 77 crimes and/or to overinflate the complexity of applicable WDFW regulations. In either context, prosecuting a more “traditional” crime can help address these potential issues.

For example, for better or worse, a jury may take a charge of Trafficking in Stolen Property more seriously than a charge of Unlawful Trafficking in Wildlife, even if both are applicable to a given defendant’s actions in selling poached deer meat. Along the same lines, adding and proving a charge of Reckless Endangerment to RCW Title 77 charges based on a defendant harvesting oysters in a closed area can help a judge or jury grasp why the underlying WDFW regulations exist and what harm may result when they are violated. Similarly, a judge who may cut a defendant a break because the judge thinks the regulations governing fishing season are overly complicated will likely have less sympathy for the fact that the defendant was also trespassing on the property of another at the time.
D. Words Of Caution

There is no “one size fits all” approach to prosecuting crimes in the fish and wildlife context. In some cases it may make sense to prosecute a defendant for violating a statute in Title 9A (for example) rather than one in Title 77. In other cases, the opposite may be true. In still other cases, it may make sense to prosecute under both. There are a number of areas of potential concern that should be considered and taken into account in deciding whether to prosecute “traditional” crimes in addition to, or instead of, Title 77 crimes in the “fish and wildlife” context.

1. Ethical Considerations

Nothing in this manual is intended to suggest that certain charges should or should not be pursued in any particular case. Moreover, just because a charge legally could be prosecuted does not necessarily mean that it should be. As described in RCW 9.94A.411(2)(a), “the prosecutor should file charges which adequately describe the nature of the defendant’s conduct.” In that context, other charges should be pursued “only if there are necessary to ensure that the charges: (A) Will significantly enhance the strength of the state’s case at trial; or (B) Will result in restitution to all victims.” Id. A prosecutor should not overcharge a defendant for the purposes of obtaining a guilty plea. Id.

Every defendant is different and every case presents its own unique set of facts and potential legal issues. A judicious and ethical prosecutor must take these factors into account and make prosecutorial decisions consistent with the law, his or her ethical obligations, and the relevant policies of his or her office or agency.

2. Potential Legal Issues

a. Proof Of Another Crime

Several of the potential non-Title 77 crimes identified above require proof that the defendant committed or intended to commit another crime (e.g. Leading Organized Crime, Money Laundering, Identity Theft). This must be kept in mind, particularly if the prosecution of a non-Title 77 crime is being considered due to perceived proof problems with a Title 77 one.

b. The “General-Specific Rule”

It is well-established rule of statutory construction that when a defendant’s actions violate both a specific and a general statute, the defendant should generally be prosecuted under the former rather than the latter. See State v. Shriner, 101 Wn.2d 576, 580, 681 P.2d 237 (1984). This is commonly referred to as the “General-Specific Rule.” This rule, however, applies only when the two statutes at issue are actually “concurrent.” Shriner, 101 Wn.2d at 580. Statutes are concurrent when "the general statute will be violated in each instance in which the special statute has been violated." Id. As a result, the test for concurrency requires an examination “to determine whether a person can violate the special statute without necessarily violating the general statute.” State v. Heffner, 126 Wn. App. 803, 808, 110 P.3d 219 (2005). If it is possible to violate the “specific” statute without violating the “general” one, the two statutes are not concurrent and the “general-specific rule” does not apply. In this context, whether the defendant’s actions in a specific case violate both statues is irrelevant. Rather, the question is whether each and every violations of the “specific” statute will necessarily also violate the “general” one. State v. Chase, 134 Wn. App. 792, 802-03, 142 P.3d 630 (2006); Heffner, 126 Wn. App. at 808.

For many of the above referenced “traditional” crimes from RCW Titles 9 and 9A, there is often a crime in RCW Chapter 77.15 that could also be charged and that appears—at least on a surface level—to potentially implicate this rule. In the vast majority of circumstances, however, when the
appropriate legal analysis is conducted it is apparent that the statutes are not actually concurrent and that the rule, therefore, does not apply. Having said that, it is important to be familiar with the rule and to take it into account when considering prosecuting a non-Title 77 crime in the fish and wildlife context.

3. Practical Considerations

Violations of many of the laws and rules set forth in RCW Title 77 and WAC Title 220 carry specific legal consequences and/or special penalties. For example, as addressed elsewhere in this manual, convictions for certain crimes under RCW 77.15: 1) authorize or mandate the WDFW to revoke or suspend certain of the defendant’s privileges, licenses, permits, tags, and/or stamps; and 2) require the court to impose special financial penalties. These special consequences and penalties are generally not available following a conviction for a more “traditional” crime.

VII. OFF-RESERVATION INDIAN TREATY FISHING AND HUNTING RIGHTS IN WASHINGTON STATE

Some Indian tribes in Washington and neighboring states have treaty fishing and hunting rights, allowing members of the tribes to engage in hunting and fishing in Washington that would otherwise be illegal under state law. Members of treaty tribes with fishing/hunting rights who are engaging in treaty fishing/hunting are subject to their own tribe’s laws and regulations, but generally not state law (although, as discussed below, some state laws do apply to tribal members engaged in treaty hunting/fishing). Generally members of treaty tribes may exercise treaty fishing rights at their tribes’ “usual and accustom” fishing sites (sometimes referred to as “U&As”), which have been established by federal case law. And members of treaty tribes may be exercise treaty hunting rights on “open and unclaimed” lands within their tribes’ ceded area or traditional hunting grounds. Tribal members are not exercising treating fishing rights if they are fishing outside their tribes’ usual and accustom fishing areas. Tribal members are not exercising treating hunting rights if they are hunting on land not open and unclaimed or not within their tribes’ ceded area or traditional hunting grounds. Tribal members not exercising treaty fishing/hunting rights are subject to general state law and state officers have the same authority vis-à-vis such individuals as they do to any other person.

A. Background - Execution of the “Stevens” and “Palmer” Treaties

The Indian bands whose ancestral lands lie within what is now Washington State depended on fishing, gathering, trading, and hunting for their livelihood. Groups migrated between summer camps, where they gathered wild plants on the mountain slopes, and winter villages along rivers and shores. Fish, especially salmon, sustained the people. Large fisheries occurred where the salmon had to overcome obstacles in their upstream migrations, such as at Celilo and Kettle Falls on the Columbia River.

Congress created Washington Territory in 1853 out of a portion of Oregon Territory. It encompassed what is now Washington and parts of Idaho and Montana. Most of the people who lived in the area were Indians. But federal policy-makers wished to clear the way for settlement. To that end, Congress authorized the executive to negotiate with Indian tribes.
Isaac Stevens was appointed Superintendent of Indian Affairs for Washington Territory. In 1854-55, at the direction of the Indian Office in Washington, D.C., he and Joel Palmer, his Oregon counterpart, concluded eleven treaties with Indian tribes in Washington Territory and adjacent parts of Oregon Territory. Stevens was instructed to clear title to the lands, and to collect the Indians on reservations, where they would be taught farming and trades.

The Indians insisted that they be able to continue traditional food-gathering practices outside the reservations, and Stevens and his advisors agreed that was best. Ten of the treaties he and Palmer concluded contain a provision substantially similar to the following:

The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands:

Medicine Creek Treaty, art. III, 10 Stat. at 1133.

Some Indian groups in Washington Territory did not sign treaties, but obtained reservations through other federal actions. One group, the Colville Tribes, has off-reservation hunting and fishing rights in an area that was once part of the Colville Indian Reservation (the “North Half”), under a Congressionally-ratified agreement. The Colville and Spokane Tribes have statutory fishing, hunting, and boating rights in a portion of Lake Roosevelt, the reservoir behind Grand Coulee Dam. No other non-treaty tribe has off-reservation rights in Washington that are different from those of the general public at this time.


B. Court Interpretation of the Treaties: Key Concepts and Cases

Dozens of court decisions have interpreted the treaty “right of taking fish.” A few have interpreted the treaty hunting right.

1. The Treaties Secure Rights That are Different From Those of the General Public.

Outside of Indian reservations, Indians are presumed to be subject to nondiscriminatory state law absent express federal law to the contrary. A treaty or statute may be such express federal law. “An ethnic Indian who is not a member of a tribe with reserved fishing rights is in the same position with respect to Washington fish and game laws as any other citizen of the state.”

The first published court decision construing the treaty “right of taking fish” in the Stevens/Palmer treaties was an 1887 decision of the Washington Territorial Supreme Court. The United States sought to enjoin a settler who was restricting Yakama Indians’ use of a traditional fishing site on his land. The Court rejected the settler’s argument that, because Indians were not then citizens of the United States, the treaty language securing rights “in common with citizens” meant that Indians were guaranteed the same rights as citizens. The Court held that the Yakama Treaty preserved rights that the Indians had exercised before the treaty was executed, rights that were different from those of citizens. Most courts since then have applied the same principle.

2. Tribes and Non-Indian Sovereigns Hold the Treaty Rights. The Rights are Not the Property of Individuals.

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47 See Who’s In Charge of Fishing?, 106 OREGON HISTORICAL QUARTERLY 412 (Fall 2005), http://www.historycooperative.org/journals/ohq/106.3/woods.html.
The Indians’ rights under the treaties belong to tribal groups, not to individual persons of Indian ancestry. Only tribal members may exercise treaty rights; others may not exercise a treaty right on a tribal member’s behalf.

As the holders of the treaty rights, Tribes have authority to regulate their members’ exercise of the rights. Tribes do not have authority to regulate fishing by non-members outside the Tribe’s reservation.

The State and the Tribes have overlapping authority to regulate fishing by tribal members. Tribal regulations do not preempt state law, though, as discussed below, the treaties do preempt state law to a large extent. Because they are separate sovereigns, it does not constitute double jeopardy to prosecute an Indian for violating state law when the defendant’s tribe has already prosecuted under tribal law.

Non-Indians’ rights under the treaties belong to non-Indian sovereigns, not to individual persons. Non-Indians may take fish only to the extent state law allows it. Because the State

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56 See United States v. Washington, 384 F. Supp. 312, 410 (W.D. Wash. 1974), aff’d, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976). It is possible that tribes may have authority to regulate off-reservation fishing by Indians who are members of other tribes. See United States v. Lara, 541 U.S. 193, 204 (2004); 25 U.S.C. § 1301(2). In western Washington, however, the cited order in United States v. Washington precludes enforcement of such regulations.


60 Puget Sound Gillnetters Ass’n v. U.S. District Court, 573 F.2d 1123, 1132 (9th Cir. 1978), vacated on other grounds, 443 U.S. 658 (1979); Puget Sound Gillnetters Ass’n v. Moos, 92 Wn.2d 939, 947-48, 603 P.2d 819, 824 (1979); Purse Seine Vessel Owners Ass’n v. State, 92 Wn. App. 381, 393-94, 966 P.2d 928, 935
regulates fishing by non-Indians, and because the Tribes regulate fishing by tribal members on the same stocks of fish, the State and the Tribes are sometimes referred to as “co-managers” of the fisheries. 61

3. The Treaty Hunting Right Applies to “Open and Unclaimed Lands:” Ceded Lands and Lands Where Indians Traditionally Hunted, Which Have not Been Put to a Use Inconsistent With Hunting

The treaty rights of hunting, gathering, and grazing apply only to “open and unclaimed” lands. A tribal member hunting in an area that is not “open and unclaimed” is not exercising a treaty right and is subject to state laws regulating hunting. 62

Public lands not put to a use inconsistent with hunting, such as National Forest lands where active logging is not occurring, may be “open and unclaimed.” 63 Public land used in a manner inconsistent with hunting, such as a National Park, however, may not be “open and unclaimed.” 64 Private homesteads are not “open and unclaimed.” 65

The Idaho Court of Appeals has held that private commercial timber land is, as a matter of law, not “open and unclaimed.” 66 The Oregon Court of Appeals has held that private commercial timber land that was gated, included cabins, was posted with signs, and had cattle guards, roads, and drift fences, was not “open and unclaimed.” 67 No appellate court in Washington has decided the issue. County district courts have issued conflicting decisions. 68
Only lands within the area ceded in a tribe’s treaty and lands where the tribe traditionally hunted may be subject to that tribe’s treaty hunting right. A tribal member hunting outside his or her tribe’s ceded area or traditional hunting ground is not exercising a treaty right, even if the place is “open and unclaimed.”

The southern boundary of the lands ceded in the Medicine Creek Treaty, which defines where the Medicine Creek Treaty Tribes (Puyallup, Nisqually, Muckleshoot and Squaxin Island) may exercise the treaty hunting right, has been a subject of contention. In 2001, WDFW, prosecutors in five southwest Washington counties, and the Medicine Creek Treaty Tribes concluded mediation and agreed to use the mediators’ line. The Fish and Wildlife Commission adopted a rule describing WDFW’s hunting enforcement policy regarding Medicine Creek Treaty tribal members in WAC 220-413-170.

Tribes have authority to regulate their members’ exercise of the treaty hunting right. Though the treaties preempt state law to a certain extent, tribal law, by itself, does not. Under Washington law, it is not double jeopardy to prosecute an Indian for violating state hunting laws after the tribe has prosecuted for the same conduct.


The treaty “right of taking fish” applies only to “usual and accustomed” grounds and stations or places. A tribal member fishing at a place that is not a usual and accustomed fishing place of his or her tribe is not exercising a treaty right and is subject to state laws regulating fishing.

The Washington Territorial Supreme Court held in 1887 that “usual and accustomed” places are particular places where Indians traditionally fished before the treaties were executed.

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70 See Buchanan, 138 Wn.2d at 207-08.

71 See Settler v. Lameer, 507 F.2d 231 (9th Cir. 1974) (treaty reserved to tribe the authority to regulate its members’ exercise of off-reservation treaty fishing right); State v. Moses, 104 Wn. App. 153, 158-59, 15 P.3d 1058, 1061 (2001) (assuming that tribe had authority to prosecute member for violating off-reservation hunting laws on “open and unclaimed lands” within tribe’s aboriginal hunting grounds), aff’d on other grounds, 145 Wn.2d 370, 37 P.3d 1216 (2002).


Other courts have followed that interpretation.76 “Usual and accustomed grounds” may include depths to which humans did not have access until modern technology became available, however.77

A party seeking to establish that a place is a tribe’s “usual and accustomed place” must show the “tribe’s (or its predecessors’) regular and frequent treaty-time use of that area for fishing purposes.”78 Evidence that individual tribal members may have used a place at treaty time by virtue of marriage into other tribes does not establish that a place was a usual and accustomed place of the Tribe itself.79 A place that was an “unfamiliar location,” or “used infrequently or at long intervals and extraordinary occasions,” or “where use was occasional or incidental,” is not a usual and accustomed place.80

The testimony of an expert anthropologist, based on documentary evidence, can establish that a place was a tribe’s treaty-time usual and accustomed fishing place. Tribal elder testimony may bolster such evidence, but may be insufficient by itself.81 The testimony of a few tribal members that they fished at a place during the twentieth century is not enough to show that the place was a usual and accustomed fishing place of their tribe in 1855.82

In Western Washington, treaty tribes’ usual and accustomed grounds and stations have been specifically determined in the “Boldt decision” and subsequent litigation.

<table>
<thead>
<tr>
<th>Tribe</th>
<th>U&amp;A Findings</th>
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82 United States v. Washington, 764 F.2d 670, 674 (9th Cir. 1985) (tribal elder testimony about fishing activity in early 1900s could not support finding about treaty time fishing places); United States v. Washington, 730 F.2d 1314, 1315, 1318 (9th Cir. 1984) (discounting elder testimony about fishing during the 1900s); see State v. Petit, 88 Wn.2d 267, 272-73, 558 P.2d 796, 798-99 (1977) (Utter, J., dissenting) (describing testimony majority had held insufficient to show that a place was a usual and accustomed place).
<table>
<thead>
<tr>
<th>Tribe</th>
<th>Citations</th>
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<tr>
<td>Lummi</td>
<td>U.S. v. Washington, 384 F. Supp. at 360; Muckleshoot Tribe v. Lummi Indian Nation, 234 F.3d 1099 (9th Cir. 2000); United States v. Lummi Indian Tribe, 235 F.3d 443 (9th Cir. 2000)</td>
</tr>
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<td>Quinault</td>
<td>U.S. v. Washington, 384 F. Supp. at 374-75. See also United States v. McGowan, 62 F.2d 955 (9th Cir.) (no U&amp;As in Columbia River estuary), aff'd mem., 290 U.S. 592 (1993) [Add western boundary decision]</td>
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<td>Sauk-Suiaitle</td>
<td>U.S. v. Washington, 384 F. Supp. at 376</td>
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<td>Swinomish</td>
<td>U.S. v. Washington, 459 F. Supp. 1020, 1049 (W.D. Wash. 1975); Muckleshoot Indian Tribe v. Lummi Indian Tribe, 141 F.3d 1355 (9th Cir. 1998)</td>
</tr>
</tbody>
</table>
By contrast, little litigation has occurred regarding the locations of “usual and accustomed places” in the Columbia Basin. The federal government has set aside specific “in-lieu” treaty fishing sites along the Columbia River to substitute for traditional Indian fishing sites inundated by dams. Washington and Oregon recognize the mainstem Columbia River from just above Bonneville Dam upstream to the Snake River mouth as an area where mid-Columbia treaty tribes are entitled to exercise treaty fishing rights. The status of other places may be unclear, however.


The right of taking fish at usual and accustomed places preserves to the Indians an easement in land to get to, use traditional fishing places for taking fish, and the associated activities mentioned in the treaties. Settlers acquired the land subject to the Indians’ preexisting treaty rights. The easement may be conditioned to protect landowners. For example, before a Tribe may exercise treaty shellfishing rights on a private beach, the Tribe must pay for a survey to estimate the quantity of shellfish present, and must notify the property owner well in advance of any survey or harvest.

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85 See WAC 220-22-010(6), (7), (8) (defining fishing areas); WAC 220-32-050(2)(a) (Indian commercial fishing areas); WAC 220-32-055 & OAR 635-041-0015 (Indian subsistence fishing areas); OAR 635-041-0005 (Indian fishing areas). This area is sometimes called “Zone 6.” See OAR 635-042-0001.


The treaty-secured easement of access to usual and accustomed fishing grounds and stations is a property right for which just compensation must be paid if taken.  

The treaty rights to hunt, gather, and graze on “open and unclaimed lands” does not secure an easement across private lands to get to “open and unclaimed lands.” But Tribes may acquire such an easement by prescription.


The State may regulate the exercise of off-reservation treaty fishing and hunting rights where reasonable and necessary for the conservation of fish or game. “Conservation” means “perpetuation of the species.” “[R]easonable’ means that a specifically identified conservation measure is appropriate to its purpose; and ‘necessary’ means that such purpose in addition to being reasonable must be essential to conservation.” To be “reasonable and necessary for conservation,” a regulation “must, when considered in the context of the total regulatory plan, be designed to preserve or maintain the resource.” State regulations must also be nondiscriminatory and must meet appropriate procedural standards. The treaties preempt state regulation of treaty fishing and hunting that is discriminatory or not “necessary for conservation.”

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93 United States v. Washington, 384 F. Supp. 312, 333 (W.D. Wash. 1974), aff’d, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976); see id. at 342, 415.
95 United States v. Washington, 384 F. Supp. 312, 333 (W.D. Wash. 1974), aff’d, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976); see id. at 342, 415.
Laws prohibiting sale of fish are not “reasonable and necessary for conservation” (unless the tribe in question has a similar prohibition). The treaty right of taking fish includes the right to sell the fish. There is no treaty right to be a fish buyer, however.

State health and safety laws that are generally applicable, and not limited to hunting and hunting-related activities, may apply to tribal treaty hunters outside of the reservation. In State v. Olney, 117 Wn. App. 524, 72 P.3d 235 (2003), the state appeals court was confronted with the question of whether RCW 77.15.460, which prohibits the possession of a loaded gun in a vehicle, applied to tribal members who were exercising their treaty hunting right. The court decided that because the statute was generally applicable and did not pertain specially to hunting, it was not a law regulating tribal hunting contrary to the treaty right. It noted that: “[t]he plain language of RCW 77.15.460 indicates the Legislature intended this statute to be of general application and not limited to hunters . . . a person can violate RCW 77.15.460 by possessing a loaded shotgun in their vehicle while hunting or driving to a football game.” Olney, 117 Wn. App. at 529.

However, a federal court later determined that the Olney decision “contravenes U.S. Supreme Court treaty-interpretation principles” and declined to adopt state arguments based on the case. Confederated Tribes of the Colville Reservation v. Anderson, 761 F.Supp. 2d 1101 (E.D. Wash. 2011). The issue before the federal court was “what legal standard applies to determine whether the state’s hunting-safety laws apply to tribal members exercising ‘in common’ hunting rights on the North Half” of the Colville Reservation. Id. at 1113. The court determined that the following standard applied:

In order to regulate a tribal member’s exercise of his “in common” hunting rights for public-safety purposes, the State must establish that its law(‘s):

(a) reasonably prevents a public-safety threat;

(b) is necessary to prevent the identified public-safety threat;

(c) does not discriminate against Indians; and

(d) application to the Tribe is necessary in the interest of public safety.

This case was eventually settled through an agreement to refer these public safety cases to the tribal authorities.

In the case of treaty shellfishing in Washington, the parties worked out a consent decree addressing food safety regulation.100

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98 U.S. v. Washington, 384 F. Supp. at 343 n.29; see id at 418 (Inj. ¶ 21).
100 United States v. Washington, Civil No. 70-9213 Phase I, Subproceeding No. 89-3, Consent Decree Regarding Shellfish Sanitation Issues (W.D. Wash. May 4, 1994). See WAC ch. 246-282; Lummi Nation Code of Laws ch. 10.15 (2004). The State had contended in the shellfish case that “commercial disposition of shellfish by the plaintiff tribes and their members is subject to reasonable, nondiscriminatory regulation by the state, under the exercise of the state’s police power in the interest of protecting human health, safety and welfare.” United States v. Washington, Civil No C70-9213, Subproceeding 89-3, Pretrial Order at 11 (W.D. Wash. May 4, 1994). The issue was not litigated because the parties agreed to the Shellfish Sanitation consent decree.
Where state license fees are involved, the treaties preempt state law to a somewhat greater extent than they preempt state laws regulating the time, place, and manner of fishing: The treaty right of taking fish preempts state fishing license fees where such fees are “not indispensable to the effectiveness of a state conservation program.”

In Western Washington, licensing of vessels used in treaty fisheries is governed by a consent decree. In general, Tribes license their members’ vessels used in treaty fisheries.


By the late 1960s, the demand for salmon had outstripped the supply in the Pacific Northwest. Tribal fisheries were at a disadvantage because of their location. Non-Indian fisheries in marine areas and in the lower Columbia River intercepted salmon migrating to spawning grounds before the salmon reached tribal usual and accustomed fishing places upstream. By the time the salmon reached tribal fisheries, few remained, and state regulators often sought to restrict tribal fishing to conserve the runs. The situation led the United States to sue the State of Oregon on behalf of four Columbia River treaty tribes in 1968. The United States contended that the “in common with” language of the treaties meant the Indians were entitled to a fair share of the harvest, and that state regulations that denied a fair share to the Indians were discriminatory and therefore preempted. The court agreed, and declared that Oregon must regulate its fisheries so as to pass a “fair share” of fish to tribal fishing places. Washington, which shares authority with Oregon over Columbia River fisheries downstream of the Wallula Gap, intervened in the case in 1974 and became bound by the decision.

In 1970, the United States filed a similar lawsuit against the State of Washington concerning fisheries on salmon runs from most of the watersheds in western Washington. In 1974, the court issued the “Boldt decision,” holding that, under the treaties, the Tribes and non-Indians are each entitled to a fair share of fish. The court rejected the Tribes’ interpretation that the treaties entitled them to as many fish as they needed for a livelihood. The United States Supreme Court upheld the “fair share” interpretation in 1979.

In crafting an equitable remedy, Judge Boldt decided that equal shares of the harvestable salmon available in Washington and closely adjacent marine waters from each run that passed through tribal fishing grounds would be “fair.” Though altering some of the details, the Supreme Court approved this as a fair division.

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103 See, e.g., Lummi Nation Code of Laws ch. 10.05 (2004)
Seven weeks after the “Boldt decision,” the court in the Oregon case amended its 1969 judgment, concluding that equal shares of harvestable salmon destined for tribal fishing places were “fair” for Columbia River fisheries, as well.\textsuperscript{109} The 1969 Sohappy decree assumed that the geographic area within which treaty and non-treaty fisheries fairly share the harvest—the area within which catches “count” for harvest allocation—is the mainstem Columbia River between its mouth and McNary Dam. The court’s Order of August 20, 1975 extended the area downstream to include non-Indian catches in the ocean off Oregon and Washington as well.

Fifty percent of the harvestable fish remains the presumptive “fair share” absent equitable factors suggesting another division.\textsuperscript{110}

Hatchery fish are included in the allocation of “fair shares.” The rationale is that hatchery fish replace fish lost to habitat degradation caused by dams and development.\textsuperscript{111}

The treaties secure a right to take any species of fish found at usual and accustomed places, including species to which Indians did not have access at the time the treaties were executed.\textsuperscript{112}

Shellfish from artificial beds are not included in the allocation of “fair shares” because of a limitation in the Western Washington treaties that Indians “shall not take shell fish from any beds staked or cultivated by citizens.”\textsuperscript{115}

C. Burdens of Proof in State-Court Prosecutions

Treaty rights constitute an affirmative defense which must be proved by the one who asserts it.\textsuperscript{114}

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\text{\textsuperscript{109} United States v. Oregon, Order Amending Judgment of October 10, 1969 (May 10, 1974), aff'd & remanded, 529 F.2d 570, 573-74 (9th Cir. 1976).}
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\text{\textsuperscript{110} See Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 685 (1979); Puyallup Tribe v. Wash. Dep't of Game (Puyallup III), 433 U.S. 165, 177 (1977); United States v. Washington, 157 F.2d 630, 631 (9th Cir. 1998), cert. denied, 526 U.S. 1060 (1999) (shellfish). It is not correct to say that the Tribes have a treaty right to half the fish, or that the phrase “in common with” in the treaties means half. The legal right that the treaties secure is a right to a fair share of fish. The equitable remedy that the courts have ordered to implement that right is half the harvestable fish within a defined geographic area. The court may modify the remedy should circumstances change or the equities dictate. Fishing Vessel, 443 U.S. at 686-88; see United States v. Washington, 157 F.3d 630, 652-53 (9th Cir. 1998) (Tribes not entitled to 50% of shellfish growers’ production); United States v. Washington, Civil No. 9213-Phase I, Subproceedings 83-6/90-1, Order Re: Status Conference (W.D. Wash. May 2, 1996) (whether geographic area of 50/50 sharing should be extended to Alaska involves issue of whether “there are changed circumstances that might require an adjustment or modification of Judge Boldt’s decision”).}
\]
\[
\text{\textsuperscript{111} United States v. Washington, 759 F.2d 1353, 1358-60 (9th Cir. 1985) (en banc), cert. denied, 474 U.S. 994 (1985).}
\]
\[
\text{\textsuperscript{112} United States v. Washington, 157 F.2d 630, 643-44 (9th Cir. 1998), cert. denied, 526 U.S. 1060 (1999) (shellfish).}
\]
\[
\text{\textsuperscript{113} United States v. Washington, 157 F.2d 630, 653 (9th Cir. 1998), cert. denied, 526 U.S. 1060 (1999); Medicine Creek Treaty, Art. III, 10 Stat. at 1133.}
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\[
\]
First, a defendant must show that he or she is a member of a Tribe entitled to exercise treaty rights. Because treaty rights are held by Tribes, not individuals, the fact that a defendant has an ancestor who signed a treaty does not entitle the defendant to exercise treaty rights. If federal court orders do not already recognize the defendant’s Tribe as a treaty Tribe, the defendant must demonstrate that the Tribe has maintained an organized tribal structure and political and cultural cohesion with a treaty signatory band. A defendant who fails to show that he or she is a member of a Tribe entitled to exercise treaty rights is subject to state law to the same extent as other citizens.

Next, a defendant seeking to establish that he or she was exercising a treaty fishing right must show by a preponderance of the evidence that the place where he or she was fishing was a usual and accustomed fishing place of the Tribe of which the defendant is a member. A defendant seeking to establish that he or she was exercising a treaty hunting right must show by a preponderance of the evidence that the place where he or she was hunting was within the ceded area or traditional hunting grounds of the Tribe of which the defendant is a member.

If the defendant demonstrates that he or she was exercising a treaty right, the burden shifts to the State to show that the state regulation can validly be enforced against Indians exercising treaty rights. To show that a state regulation can be so enforced, the State must “introduce clear and convincing evidence that the regulation was reasonable and necessary for conservation purposes.” The State meets that standard by showing that the conservation measure chosen “was appropriate to the conservation goal and necessary to protect the native [salmon] run from serious harm.” The fact that a federal court has approved the regulation is evidence of conservation necessity. The State may meet its burden of establishing that a state law is necessary for conservation by showing that a...
defendant’s tribal law contains a similar provision. The “conservation necessity” showing may be made at a pretrial hearing after the citation has been issued but before the trial on the merits.

In addition, in a hunting case, the State has the burden to show that the land on which the defendant was hunting had outward indications, observable to a reasonable person (fences, buildings, or “No Trespassing” signs), that the land was not “open and unclaimed.”

The meaning of treaty language is a question of law for the court, not a question of fact for a fact finder.

D. Treaty Status of Indian Tribes in Washington and Adjacent Areas

TREATY TRIBES (entitled to exercise treaty rights)

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Treaty</th>
<th>Authority for Tribe’s Treaty Status</th>
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<tr>
<td>Lummi</td>
<td>Point Elliott</td>
<td>384 F. Supp. at 360</td>
</tr>
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<td>Makah</td>
<td>Neah Bay</td>
<td>384 F. Supp. at 363</td>
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<tr>
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<td>Medicine Creek, Point</td>
<td>384 F. Supp. at 365, aff’d, 520 F.2d 676, 692 (9th Cir. 1975)</td>
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<td>384 F. Supp. at 367</td>
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<td>Point Elliott</td>
<td>459 F. Supp. at 1040-41</td>
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<td>Point No Point</td>
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<td>384 F. Supp. at 375-76</td>
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<td>Hell Gate</td>
<td>Moe v. Confederated Salish &amp; Kootenai Tribes, 425 U.S. 463, 466 (1976)</td>
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123 State v. Peterson, 297 N.W.2d 52 (Wis. 1980).
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<td>384 F. Supp. at 376</td>
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<td>Point Elliott</td>
<td>459 F. Supp. at 1040</td>
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<tr>
<td>Swinomish</td>
<td>Point Elliott</td>
<td>459 F. Supp. at 1039</td>
</tr>
<tr>
<td>Tulalip</td>
<td>Point Elliott</td>
<td>459 F. Supp. at 1039</td>
</tr>
<tr>
<td>Umatilla (OR)</td>
<td>Walla Walla</td>
<td>302 F. Supp. at 904</td>
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<tr>
<td>Upper Skagit</td>
<td>Point Elliott</td>
<td>384 F. Supp. at 379, <em>aff’d</em>, 520 F.2d 676, 692-93 (<em>9th Cir. 1975</em>)</td>
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<td>Warm Springs (OR)</td>
<td>Middle Oregon</td>
<td>302 F. Supp. at 904</td>
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<tr>
<td>Yakama</td>
<td>Yakama</td>
<td>384 F. Supp. at 380</td>
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<tr>
<td>Chehalis</td>
<td></td>
<td><em>Confederated Tribes of Chehalis Indian Reservation v. Washington</em>, 96 F.3d 334, 340-41 (<em>9th Cir. 1996</em>)</td>
</tr>
<tr>
<td>Colville (have off-reservation rights in former north half of Colville Reservation per <em>Antoine v. Washington</em>, 420 U.S. 194 (1975) and in part of Lake Roosevelt per 16 U.S.C. § 835d)</td>
<td><em>United States v. Oregon</em>, 29 F.3d 481 (<em>9th Cir. 1994</em>)</td>
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<tr>
<td>Kalispel</td>
<td></td>
<td><em>United States v. Pend Oreille Pub. Util. Dist.</em>, 926 F.2d 1502, 1508 n.6 (<em>9th Cir. 1991</em>)</td>
</tr>
<tr>
<td>Samish</td>
<td></td>
<td><em>United States v. Washington</em>, 641 F.2d 1368 (<em>9th Cir. 1981</em>). Whether the Samish Tribe can prove it is a party to the Point Elliott Treaty is currently before the court in <em>United States v. Washington</em>, Civil No. 70-9213, Subproceeding 01-2 (W.D. Wash.).</td>
</tr>
<tr>
<td>Shoalwater Bay</td>
<td></td>
<td><em>Confederated Tribes of Chehalis Indian Reservation v. Washington</em>, 96 F.3d 334, 340-41 (<em>9th Cir. 1996</em>)</td>
</tr>
<tr>
<td>Snoqualmie</td>
<td></td>
<td><em>United States v. Washington</em>, 641 F.2d 1368 (<em>9th Cir. 1981</em>)</td>
</tr>
<tr>
<td>Spokane (have off-reservation rights in part of Lake Roosevelt per 16 U.S.C. § 835d)</td>
<td><em>Spokane Tribe of Indians v. United States</em>, 163 Ct. Cl. 58 (1963)</td>
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NON-TREATY ORGANIZATIONS OF PERSONS WITH INDIAN ANCESTRY (NOT FEDERALLY RECOGNIZED)

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Authority for Group’s Non-Treaty Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kikiallus</td>
<td></td>
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<tr>
<td>Marietta Band of Nooksack</td>
<td></td>
</tr>
<tr>
<td>Wanapum</td>
<td>See RCW 77.12.453. Many members of the Wanapum Band are enrolled in the Yakama Nation.</td>
</tr>
</tbody>
</table>

VIII. HYDRAULIC CODE AUTHORITY

A. Background

In 1949 the Legislature passed a law governing construction projects in state waters, commonly referred to as the Hydraulic Code. RCW 77.55; see also WAC 220-660. Although the law has been amended, the basic authority of WDFW remains the same. See Attorney General Opinion 2016 No. 6 (“AGO 2016-6”)126. Somewhat uniquely among environmental protection programs, the main enforcement mechanism for HPA violations is criminal in nature.

The Habitat Program is a critical part of the overall conservation mission of the department. The ability of salmon and steelhead to swim upstream to their traditional spawning grounds is vital to their recovery across Washington. Over the years, deteriorating culverts, outdated bridges, and other barriers block fish passage in many streams and undermine the state’s recovery efforts.

The Habitat Program resolves fish passage barrier problems, and is an active partner in supporting the public, state, and local agencies, and restoration groups with their efforts to locate, prioritize and fund fish passage barrier repairs across Washington State.

B. HPA Requirements

The Hydraulic Code requires that any person, organization, or government agency wishing to construct or perform work impacting the natural flow or bed of state waters must obtain a permit called a Hydraulic Project Approval (“HPA”) issued by WDFW. RCW 77.55.011(11); WAC 220-660-030(76), (77). An HPA may be required for projects above the “ordinary high water line”. See AGO 2016-6.

Some examples of projects in freshwater requiring an HPA include: streambank protection; shoreline stabilization; construction of bridges, piers, docks, boat ramps, and marinas; pile driving; channel changes; pipeline crossings; installation of culverts and utility crossings; dredging; sand and gravel removal; pond construction; log or debris placement or removal; beaver dam management; placement of outfall structures; water diversions, intakes, and outfalls; aquatic plant control; and mineral prospecting. See WAC 220-660-100 - -300.

Saltwater projects requiring an HPA include: construction of bulkheads; fills; boat launches; dry docks; artificial reefs; dock floats; marinas; placement of utility lines; dredging; tide and flood gates; test boring; and pile driving. See WAC 220-660-310 - -450.

Certain projects are exempt from the HPA requirement, including installing oyster stakes or property/boundary line markers by hand; driving over an established ford, performing remedial actions under an order, complying with approved landscape management plans, removing derelict fishing gear, crab pots, or other shellfish gear, removing or controlling Sparta\*na or purple loosestrife, installing or removing a portable boat hoist in a lake, scientific measurement devices, or commercial fish and shellfish culture facilities, and forest practices hydraulic projects. WAC 220-660-040(2), citing RCW 77.55.031, 77.55.061, 77.55.201, 77.55.041, 77.70.500, and 77.55.051. Further, projects in irrigation ditches, canals, stormwater run-off devices, or other artificial watercourses that are not located within natural watercourses may not require an HPA. RCW 77.55.011(1), WAC 220-660-030(14).

The above lists are not all-inclusive, and if there is any question as to whether an HPA is required for any particular activity, WDFW should be contacted directly.

If a project cannot be accomplished without significant unmitigated adverse impacts on fish, shellfish, or their habitat, the HPA may be denied. Alternatively, an HPA may be approved with conditions, such as specific timing and construction methods, and mitigation to prevent adverse impacts to fish life. Construction of a project affecting state waters without obtaining an HPA, or without abiding by the conditions of an HPA, constitutes a violation of the Hydraulic Code. RCW 77.15.300.

**C. Violations of the Hydraulic Code**

It is a gross misdemeanor for any person to construct or perform other work on a hydraulic project without an HPA or in violation of the terms of an HPA. RCW 77.15.300; WAC 220-660-480(6). A person may also be liable for civil penalties of up to one hundred dollars per day. RCW 77.55.291; WAC 220-660-480(4)). A person who violates the Hydraulic Code may also be civilly liable for any loss or damage to fish life or habitat that result from such violation.\(^\text{127}\)

Two other sections of RCW 77.15 specifically address fish passage and screening violations under the Hydraulic Code. RCW 77.15.310 makes it a gross misdemeanor to fail to use or maintain a fish guard where water is taken into a diversion device. Once the person is notified

by WDFW that there is a violation, each day of operation without an appropriate fish guard constitutes a separate offense. RCW 77.15.310(2). RCW 77.57.010 and RCW 77.57.070 allow WDFW to modify or close certain diversion devices if not properly equipped with a fish guard, depending on the date of construction.

RCW 77.15.320 likewise makes it a gross misdemeanor for failure to provide, maintain, or operate an effective fishway in a dam or other stream-obstructing structure. Depending on the date of construction, WDFW may construct a fishway, or remove the dam or obstruction, at either the agency’s or the owner’s expense. RCW 77.57.030(2)(a), 77.57.040. Alternatively, if within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner fails to do so, the dam or obstruction is considered a public nuisance and may be destroyed accordingly. RCW 77.57.030(2)(b). Note that under RCW 77.57.030, existing tide gates, floodgates, and associated man-made agricultural drainage facilities are not considered “obstructions” for purposes of requiring fishways. RCW 77.57.030(3).

D. Administrative Remedies Related to HPAs

Applicants and third parties may appeal an HPA. RCW 77.55.021(8)(b). Informal appeals are optional, and are heard by WDFW pursuant to the Administrative Procedure Act, RCW 34.05. WAC 220-660-460. Formal appeals are heard by the Pollution Control Hearings Board. WAC 220-660-470.

The Hydraulic Code does not allow operation without a permit or in violation of permit conditions pending an appeal. Because administrative remedies are available, the “unjustness” of a permit decision is not a defense to prosecution of a criminal violation of the Hydraulic Code.

It should be noted that there are several other state agencies that have legal authority related to work in state waters. They include department of ecology, department of natural resources, state department of archaeology and historic preservation and state environmental hearings office. Likewise, there federal agencies that have jurisdiction over HPAs including bureau of land management, FEMA, NOAA, US Army Corps of Engineers, US Fish and Wildlife Service, and US Forest Service.

IX. WASHINGTON ANIMAL TRAFFICKING ACT VIOLATIONS

Initiative 1401, passed by the voters in 2015, created the Washington Animal Trafficking Act (WATA) to prohibit trafficking in certain threatened or endangered species. RCW 77.15.135 creates two new crimes, Unlawful Trafficking in Species Threatened with Extinction in the First and Second Degrees. The crimes apply to (1) a person (2) who sells, offers to sell, purchases, trades, barters for, or distributes (3) any covered animal species part or product. “Covered animal species,” in turn, is defined as any species of elephant, rhinoceros, tiger, lion, leopard, cheetah, pangolin, marine turtle, shark, or ray either (a) listed in appendix I or appendix II of the convention on international trade in endangered species of wild flora and fauna; or (b) listed as critically endangered, endangered, or vulnerable on the international union for conservation of nature and natural resources red list of threatened species. “Covered animal species part or product” means any item that contains, or is wholly or partially made from, any covered animal species. RCW 77.08.010(12) and (13).

There are two degrees of this crime: If a person violates RCW 77.15.135 and the market value of the of the trafficked item is $250 or greater, if the defendant has a prior conviction under RCW
77.15.135, or a misdemeanor or felony conviction within five years under RCW 77.15, then the
person is guilty of Unlawful Trafficking in Species Threatened with Extinction in the First
Degree, a Class C felony. Otherwise, the conviction is in the Second Degree, a gross
misdemeanor.

The law also creates five exceptions that render the trafficking non-criminal:

1. If the animal product is a bona fide antique, established by the owner or seller with
historical documentation evidencing provenance and showing the antique to be 100 years old or
older, and that the animal part is less than 15% by volume of the antique. This is an affirmative
defense, and must be proven by the defendant.
2. If the animal product is exchanged for a bona fide educational or scientific purpose.
3. If the animal product is transferred through inheritance upon death.
4. If the animal product is part of a musical instrument, and also makes up less than 15% by
volume of the musical instrument
5. If the transfer was expressly authorized by federal law or permit.

X. AQUATIC INVASIVE SPECIES

WDFW has been vested with certain authority to prevent the spread of aquatic invasive
species, sometimes called “AIS.” Aquatic invasive species are aquatic plants and animals not
native to Washington waters that when introduced to Washington waters can spread quickly due
to the lack of natural enemies and other natural limitations; aquatic invasive species can cause
significant damage to the natural environment, including native fish, wildlife, and plant species,
and man-made infrastructure. Aquatic invasive species are often spread by boats, trailers, and
other means of transportation.

WDFW’s aquatic invasive species authority is set forth in RCW Chapter 77.135. Under that
authority, WDFW may classify non-native animal species into prohibited level 1, 2, 3 (with level
1 species posing a high invasiveness risk and which are high priority for control and
management and level three species posing relatively lower risk) and regulated type A, B, and C
species. WDFW has classified non-native species under this authority; the classifications can be
found at WAC 220-640-030 through -090.

It is illegal to possess, traffic, or “introduce” a prohibited level 1, 2, or 3 species, RCW
77.135.040(1), and it is illegal to “introduce” a regulated type A, B, or C species.128 RCW
77.135.040(2). Possession of a prohibited level 1 or 2 species without authorization is a
violation of RCW 77.15.809(1) and a gross misdemeanor (a subsequent violation within 5 years
is a violation of RCW 77.15.811 and a class C felony). Trafficking or introducing on or into a
waterbody a prohibited level 1 or 2 species without authorization is a violation of RCW
77.15.811, a class C felony. Possessing, trafficking, or introducing on or into a waterbody a
prohibited level 3 species, or a regulated type A, B, or C species, without authorization, is a
violation of RCW 77.15.809(1) and a gross misdemeanor. However, as discussed below,
compliance with WDFW check station requirements generally creates a safe harbor for first-time
violators of RCW 77.15.809 or .811.

To prevent the spread of AIS, WDFW is given certain authority over “aquatic conveyances.”
Aquatic conveyances are “transportable personal property having the potential to move an

128 “Introduce” is defined as “to intentionally or unintentionally release, place, or allow the escape,
dissemination, or establishment of an invasive species on or into a water body or property as a result of human
activity or a failure to act.” RCW 77.135.010(12).
aquatic invasive species from one aquatic environment to another,” such as boats and associated equipment, seaplanes, construction equipment, irrigation equipment, and fishing and hunting gear. RCW 77.135.010(1).

- A person entering Washington with an aquatic conveyance is required to have a certificate of inspection and must provide such certificate to a fish and wildlife officer or ex officio fish and wildlife officer upon request. RCW 77.135.100. Failure to meet these certification requirements is an infraction under RCW 77.15.160(4).
- A person transporting an aquatic conveyance after use in a waterbody must meet “clean and drain requirements.” RCW 77.135.110. A fish and wildlife officer/ex officio fish and wildlife officer may order that a vessel be cleaned and drained if the vessel does not meet clean and drain requirements. Failure to meet clean and drain requirements, or to follow a clean and drain order, is an infraction under RCW 77.15.160(4).
- WDFW is authorized to establish check stations to inspect aquatic conveyances for compliance with clean and drain requirements and to detect and interdict aquatic invasive species. RCW 77.135.120. Persons transporting vessels are required to stop at such check stations and allow inspection of the vessel. Failure to stop at a check station, or to allow inspection at a check station, is a violation of RCW 77.15.809 and a gross misdemeanor.
- Upon discovery of an aquatic invasive species in or on an aquatic conveyance, a fish and wildlife officer/ex officio fish and wildlife officer may order decontamination of the aquatic conveyance and order certain other action to prevent the transmission of the species to a water body. Failure to comply with such an order is a violation of RCW 77.15.809, and a gross misdemeanor.

As noted above, a person complying with WDFW check station and inspection requirements in RCW 77.135.120 is not in violation of the provisions RCW 77.15.809 and .811 related to possession, trafficking, and introduction of aquatic invasive species (unless the person has a prior conviction for a violation of RCW 77.15.809 or .811 within the past five years). RCW 77.15.809(3)(a); .811(3)(a). This reflects that AIS checkpoints are designed primarily to prevent the spread of aquatic invasive species, not to enforce the criminal provisions of the AIS law. Furthermore, AIS checkpoint inspection authority is limited. At AIS checkpoints, officers are authorized only to inspect the outside and very limited interior spaces of vessels and other aquatic conveyances as necessary to detect prohibited aquatic invasive species. Inspection of interior spaces of vessels and conveyances is limited to only compartments that could contain raw water or equipment associated with raw water contact (i.e. bilge, ballast tanks/bags, live wells, sea strainers, anchor and anchor line, etc.).

**XI. COLLATERAL CRIMES**

Often, a prosecutor may find it easier to charge a standard fish and wildlife criminal violation as a collateral crime under RCW chapter 9 or 9a. While this may be an effective way to successfully prosecute a fish and wildlife offense, it should be noted that where a conviction is obtained for a crime other than a Title 77 violation, some other consequences of the conviction may not follow, such as hunting/fishing privilege suspension or hunting/fishing license revocation and automatic forfeiture of illegally taken fish or wildlife, all of which are premised on a conviction for a Title 77 offense.

The following is a list of the crimes that can be substituted for an associated fish and wildlife criminal violation under RCW chapter 77.15:
A. Crimes related to property

- Crimes related to identity theft and fraud
- Crimes related to area
- Crimes related to public safety
- Crimes common to larger criminal enterprises
- Aggravators

The majority of fish and wildlife crimes are crimes related to property—as noted above, fish and wildlife are property of the state— and can be charged that way. The state has ownership of all wildlife, fish, and shellfish under RCW 77.04.012. In 1972, the Washington state Supreme Court affirmed this principle in *Wash. Kelpers Assn. v. State*, 81 Wn. 2d 410, 505 P. 2d 1170 by stating:

The state, in its sovereign capacity, owns the fish in the waters of the state. Fishermen have no private property rights in taking salmon. In regulating the fisheries, the state is merely enacting legislation concerning its own property and prescribing the methods which may be used in acquiring it by private persons.

Based on the state’s ownership of natural resources, here is a list of potential property crimes that can be substituted for a fish and wildlife crime:

- Theft (9A.56.020-.050)
- Possession of Stolen Property (9A.56.140-.170)
- Trafficking in Stolen Property (9A.82.050-.055)
- Malicious Mischief (9A.48.070-.090)

Similarly, when an individual obtains a fishing or hunting license, he or she is also filing out or preparing a document and signing it under penalty of perjury. Furthermore, when an individual is conferred a fishing or hunting license, he or she is being conferred a right or privilege to fish or hunt. Consequently, there are a number of crimes that an individual can be charged with when they engage in theft or fraud in the commission of fish and wildlife criminal violation:

- Identity Theft (9.35.020)
- Criminal Impersonation (9A.60.040-.050)
- Forgery (9A.60.020)
- False or Misleading Statement To A Public Servant (9A.76.175)
- Obstructing (9A.76.020)
- False Swearing (9A.72.040)

When an individual is hunting or fishing in an area where hunting or fishing is closed, there are collateral crimes that can also be charged for basic trespass:

- Criminal Trespass (9A.52.070-080)
- Burglary (9A.52.020-030)

When an individual is hunting in a particular manner that would endanger the lives of the public (such as shooting across the roadway), that individual could also be charged with Reckless Endangerment (9A.36.050).
In many poaching cases involving large volumes of illegally harvested wildlife or fish, there are multiple individuals who participate in the crime from the actual collection of the fish or wildlife to the ultimate distributor of the stolen natural resources. By their very nature, these groups constitute a criminal enterprise that are organized and have to provide cover for a source of money and product. Here is a list of collateral crimes to charge in criminal enterprise cases:

- Leading Organized Crime (9A.82.060)
- Money Laundering (9A.83.020)

Last, here is a list of potential aggravators depending on the underlying facts of the case:

- Free Crimes (9.94A.535(2)(c))
- Major Economic Offense (9.94A.535(3)(d))
- Egregious Lack of Remorse (9.94A.535(3)(q))
APPENDIX A

COMMON OFFENSES – ELEMENTS, RELATED STATUTES AND RULES, APPLICABILITY, INTERPRETATION, SPECIAL PENALTIES

A. Unlawful Taking of Endangered Fish or Wildlife

RCW 77.15.120 Endangered fish or wildlife - Unlawful taking—Penalty

1. Elements

a. Second degree (gross misdemeanor, mandatory appearance)

1) On or about the _______ day of ___________, ________, in or offshore of the County of ________, State of Washington,

2) The above-named Defendant

(a) hunted for, fished for, possessed, maliciously harassed, or killed fish or wildlife; or
(b) possessed or intentionally destroyed the nests or eggs of fish or wildlife; and

3) The fish or wildlife is designated by the Fish and Wildlife Commission as endangered; and

4) The taking was not authorized by a rule of the Fish and Wildlife Commission or by a permit issued by the department or a permit issued pursuant to the federal endangered species act.

b. First degree (class C felony, mandatory appearance)

1) On or about the _______ day of ___________, ________, in or offshore of the County of ________, State of Washington,
2) The above-named Defendant

(a) hunted for, fished for, possessed, maliciously harassed, or killed fish or wildlife; or
(b) possessed or intentionally destroyed the nests or eggs of fish or wildlife; and

5) The fish or wildlife is designated by the Fish and Wildlife Commission as endangered; and

6) The taking was not authorized by a rule of the Fish and Wildlife Commission or by a permit issued by the department or a permit issued pursuant to the federal endangered species act; and

3) The Defendant was convicted within the last five years of the crime of unlawful taking of endangered fish or wildlife in the second degree or any other crime under RCW Title 77 involving the killing, possessing, malicious harassing, or harming of endangered fish or wildlife.

2. Related Statutes and Rules

- RCW 77.08.010: definitions of “department,” “endangered species,” “to fish,” “to hunt,” “to take,” “to trap.”
- WAC 220-610-010: Wildlife classified as endangered species
- Note: no fish are classified as endangered by the Fish and Wildlife Commission.

B. Unlawful Transportation of Fish, Shellfish, Wildlife

RCW 77.15.290 Unlawful transportation of fish or wildlife– Penalty.

1. Elements

a. Second degree (misdemeanor)

1) On or about the ______ day of ____________, ________, in the County of ____________, State of Washington,

2) The above-named Defendant did

3) Knowingly import, move within the state, or export fish, shellfish, or wildlife in violation of any department rule governing the transportation or movement of fish, shellfish, or wildlife, and the transportation did not involve big game, endangered fish or wildlife, deleterious exotic wildlife, fish, shellfish, or wildlife having a value greater than two hundred fifty dollars, or an invasive species; or

4) Possess but failed to affix or notch a big game transport tag as required by department rule

b. First degree (gross misdemeanor, mandatory appearance)
1) On or about the ________ day of ____________, ________, in the County of ________, State of Washington,

2) The above-named Defendant did

3) Knowingly import, move within the state, or export fish, shellfish or wildlife in violation of any department rule governing the transportation or movement of fish, shellfish, or wildlife and the transportation involved big game, endangered fish or wildlife, deleterious exotic wildlife, or fish, shellfish or wildlife with a value of two hundred fifty dollars or more, but not an invasive species; or

4) Knowingly transport shellfish, shellstock, or equipment used in commercial culturing, taking, handling, or processing shellfish without a permit required by authority of RCW Title 77.

2. Related Statutes and Rules

- RCW 9A.08.010(1)(b): definition of “knowledge” (see also, WPIC 10.02)
- RCW 77.08.010: definitions of “deleterious exotic wildlife,” “department,” “endangered species; “fish,” “shellfish,” “wildlife.”
- RCW 77.08.030: definition of “big game.”
- RCW 77.12.600 Game farms - Shipping of wildlife – Exemption
- WAC 220-352-230 Commercial food fish and shellfish transportation ticket
- WAC 220-640-030 Deleterious exotic wildlife
- WAC 220-413-020 Tagging requirements
- WAC 220-450-030 Live wildlife
- WAC 220-640-020 Aquatic nuisance species

C. Use of Barbed Hooks

RCW 77.15.160(1)(a) Infractions – Barbed Hooks

1. Elements (infraction, civil penalty)
   1) On or about the ________ day of ____________, ________, in the County of ________, State of Washington,

   2) The above-named Defendant did

   3) Use a barbed hook for personal use fishing.

2. Related Statutes and Rules

D. Offenses Trespass while hunting/Collecting Animal Parts
1. RCW 77.15.435 Unlawful hunting on, retrieving hunted wildlife from, or collecting wildlife parts from the property of another—Defense—Penalty—Forfeiture and disposition of wildlife.

2. Elements

1) On or about the ________ day of ____________, ________, in the County of ________, State of Washington,

2) The above-named Defendant did:

   A. Knowingly
   B. Enter or remain unlawfully in or on the premises of another
   C. For the purpose of:
      1. Hunting for wildlife;
      2. Retrieving hunted wildlife; or
      3. Collecting wildlife parts.

3. Related statute:

   • RCW 9A52.010(1) and (2) definitions of “enter” and “enters or remains unlawfully.”

E. Recreational Fishing Violations

RCW 77.15.380 Unlawful recreational fishing in the second degree - Penalty.

RCW 77.15.370 Unlawful recreational fishing in the first degree - Penalty.

1. Elements

a. Second degree (RCW 77.15.380) (misdemeanor)

1) On or about the ________ day of ____________, ________, in or offshore of the County of ________, State of Washington,

2) The above-named Defendant did

3) (a) Fish for fish or shellfish (whether or not the he/she possessed fish or shellfish) and had not purchased the appropriate fishing or shellfishing license and catch record card required by RCW 77.32 for such activity; or

   (b) Take or possess fish or shellfish; and
b. First degree (RCW 77.15.370) (gross misdemeanor-mandatory wildlife penalty assessment (subject to doubling), revocation of fishing license, suspension of fishing privileges)

1) On or about the ______ day of ____________, ________, in or offshore of the County of ________, State of Washington, 

2) The above-named Defendant did 

3) Take or possess two times or more than the bag limit or possession limit of fish or shellfish allowed by any rule of the Director of the Department of Fish and Wildlife or the Fish and Wildlife Commission setting the amount of food fish, game fish, or shellfish that can be taken or possessed for noncommercial use; or 

4) Fish in a fishway; or 

5) Shoot, gaff, snag, snare, spear, dipnet, or stone fish or shellfish in state waters, or possess fish or shellfish taken by such means, and such means were not authorized by express rule of the Department of Fish and Wildlife; or 

6) Fish for or possess a fish listed as threatened or endangered in 50 C.F.R. Sec. 223.102, and fishing for or possessing such fish was not specifically allowed under federal or state law; or 

7) Possess a white sturgeon measuring in excess of the maximum size limit as established by rules adopted by the Department of Fish and Wildlife; or 

8) Possess a green sturgeon of any size; or 

9) Possess a wild salmon or wild steelhead during a season closed for wild salmon or wild steelhead. 

2. Related Statutes and Rules 
   - RCW 77.15.370 (g)(ii): definitions of “wild Salmon,” “wild steelhead.” 
   - RCW 77.08.010: definitions of “bag limit,” “commercial,” “fish,” “shellfish,” “to fish.”
• RCW 77.08.020: definition of “game fish.”
• RCW 77.08.022: definition of “food fish.”
• RCW 77.15.120 Endangered fish or wildlife – Unlawful taking – Penalty (second degree: gross misdemeanor, mandatory appearance; first degree: class C felony, mandatory appearance)
• WAC 220-300-370 Food fish - Classification
• WAC 220-300-380 Game fish - Classification
• WAC 220-320-010 Shellfish - Classification

NOTE: The term “possessed” is not defined in RCW Title 77 or by rule. See WPIC 77.02, comment, and WPIC 50.03, comment, for a discussion of the definition of “possessed” in the context of the crime of “possessing stolen property” and “possession of a controlled substance,” respectively.

F. Unlawful Hunting of Big Game

RCW 77.15.410 Unlawful hunting of big game - Penalty.

1. Elements
   a. Second Degree (gross misdemeanor)
      1) On or about the ________ day of ____________, ________, in the County of ____________, State of Washington,
      2) The above-named Defendant did
         (a) hunt for, take, or possess big game and did not have and possess all licenses, tags, or permits required under RCW Title 77; or
         (b) violate any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; and/or
   b. First Degree (class C felony, mandatory appearance)
      1) On or about the ________ day of ____________, ________, in the County of ____________, State of Washington,
      2) The above-named Defendant did
         (a) (i) hunt for, take, or possess three or more big game and did not have and possess all licenses, tags, or permits required under RCW Title 77; or
         (ii) violate any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; and
(b) (i) hunt for, take, or possess three or more big game animals within the same course of events; or

(ii) had previously been convicted of any crime under RCW Title 77 involving hunting, killing, possessing, or taking big game within the five years of the Defendant committing one or both of the acts described in (a), above.

2. Special Penalties

RCW 77.15.410 mandates that the Department revoke all licenses and tags upon conviction of a crime under the statute and suspend such person’s hunting privileges for two years. In addition, RCW 77.15.420 lists mandatory fines—known as a Criminal Wildlife Penalty (CWP)—to be assessed by the court when a violation of RCW 77.15.410 results in the death of one or more of the animals listed RCW 77.15.420. RCW 77.15.420(4) provides that the amount of the CWP assessment for that animal, provided for under subsection (1) The CWP shall be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this title. A person assessed a CWP will have his or her hunting license revoked and all hunting privileges suspended until the CWP is paid through the registry of the court in which the CWP was assessed. RCW 77.15.420(7). CWPs are doubled for certain offenses. See RCW 77.15.420(7).

3. Related Statutes and Rules

- RCW 77.08.010: definitions of “closed area,” “game reserve,” “to hunt,” “to take.”
- RCW 77.08.030: definition of “big game.”
- RCW 77.32.450 Big game hunting licenses – Fees
- WAC Chapter 220-415 Wildlife – Hunting - Big Game
  - WAC 220-413-010 Hunting before or after hours
  - WAC 220-413-020 Tagging requirements
  - WAC 220-413-040 Party hunting(killing animals for another)
  - WAC 220-413-060 Hunting restrictions
  - WAC 220-413-070 Hunting with aid of aircraft, boats or other vehicles
  - WAC 220-413-080 Transmission lines – Unlawful hunting
  - WAC 220-413-110 Hunt of possess big game without an access permit
  - WAC 220-413-180 Special closures and firearm restriction areas
- WAC 232-12-077 Wildlife taken by another

NOTE: The term “possessed” is not defined in RCW Title 77 or by rule. See WPIC 77.02, comment, and WPIC 50.03, comment, for a discussion of the definition of “possessed” in the context of the crime of “possessing stolen property” and “possession of a controlled substance,” respectively.

G. Spotlighting Big Game

RCW 77.15.450 Spotlighting big game - Penalty.
1. **Elements**

   a. **Second degree (gross misdemeanor)**

   1) On or about the ________ day of ____________, ________, in the County of ____________, State of Washington,

   2) The above-named Defendant,

   3) While in possession or control of a firearm, bow and arrow, or cross bow,

   4) Did hunted big game with the aid of a spotlight or other artificial light, or night vision equipment.

   b. **First degree (class C felony, mandatory appearance)**

   1) On or about the ________ day of ____________, ________, in the County of ____________, State of Washington,

   2) The above-named Defendant,

   3) While in possession or control of a firearm, bow and arrow, or cross bow,

   4) Did hunt big game with the aid of a spotlight or other artificial light, or night vision equipment; and

   5) The Defendant was convicted within the previous ten years of a gross misdemeanor or felony under RCW Title 77 involving big game

2. **Related Statutes and Rules**

   - RCW 77.08.010: definitions of “to hunt.”
   - RCW 77.08.030: definition of “big game”

H. **Loaded Firearm in Vehicle and Unlawful Use or Possession of a Firearm**

   **RCW 77.15.460**  Loaded rifle or shotgun in vehicle - Unlawful use or possession - Unlawful use of a loaded firearm - Penalty.

1. **Elements**

   a. **Possession in a vehicle (misdemeanor)**

   1) On or about the ________ day of ____________, ________, in the County of ____________, State of Washington,

   2) The above-named Defendant did

   3) Carry, transport, convey, possess, or control a rifle or shotgun in a motor vehicle or upon an off-road vehicle; and

   4) The rifle or shotgun
(a) contained shells or cartridges in the magazine or chamber; or

(b) was a muzzle-loading firearm that was loaded and capped or primed

b. **Unlawful use (misdemeanor)**

1) On or about the ________ day of ______________, ________, in the County of __________, State of Washington,

2) The above-named Defendant did

3) Negligently discharge a firearm from, across, or along the maintained portion of a public highway; or

4) Discharge a firearm from within a moving motor vehicle or from upon a moving off-road vehicle.

2. **Applicability**

A firearm is not “loaded” if the detachable clip or magazine is not inserted in or attached to the firearm. RCW 77.15.460(5).

The section does not apply to a law enforcement officer who is authorized to carry a firearm and is on duty within the officer’s jurisdiction, nor to a person who has a disabled hunter’s permit authorized by RCW 77.32.237 and complies with the Department’s rules for disabled hunting.

The section does not apply to persons who discharge the rifle or shotgun upon a nonmoving motor vehicle, not to include off-road vehicles, as long as the engine is turned off and the motor vehicle is not parked on or beside the maintained portion of a public road, except as authorized by the commission by rule.

Negligence is the lowest level of culpability. Criminal negligence is established for purposes of RCW 77.15.460 if it is shown that a person acted with a higher level of culpability, that is, intentionally, knowingly, or recklessly. See RCW 9A.08.010(1)(d) and (2); WPIC 10.04. Therefore, even a person who acts intentionally and carefully may be convicted of negligently shooting across a road.

3. **Related Statutes and Rules**

RCW 9A.08.010(1)(d): Criminal negligence defined (see also WPIC 10.04)

**NOTE:** The term “possessed” is not defined in RCW Title 77 or by rule. See WPIC 77.02, comment, and WPIC 50.03, comment, for a discussion of the definition of “possessed” in the context of the crime of “possessing stolen property” or “possession of a controlled substance.”

I. **Violation of Commercial Fishing Area or Time**

RCW 77.15.550 Violation of commercial fishing area or time - Penalty.
1. **Elements**
   
a. **Second degree (gross misdemeanor)**
   
   1) On or about the ________ day of ____________, __________, in or offshore of the County of ____________, State of Washington,
   
   2) The above-named Defendant,
   
   3) Acting for a commercial purpose,
   
   4) Did take, fish for, possess, deliver, or receive fish or shellfish
      
      (a) at a time not authorized by statute or rule; or
      
      (b) from an area that was closed to the taking of such fish or shellfish for commercial purposes by statute or rule; or
      
      (c) that did not conform with the special restrictions or physical descriptions established by rule of the Department of Fish and Wildlife.

b. **First degree (class C felony, mandatory appearance)**
   
   1) On or about the ________ day of ____________, __________, in or offshore of the County of ____________, State of Washington,
   
   2) The above-named Defendant,
   
   3) Acting for a commercial purpose and with knowledge that the area or time was not open to the taking or fishing of fish or shellfish for commercial purposes,
   
   4) Did take, fish for, possess, deliver, or receive fish or shellfish
      
      (a) at a time not authorized by statute or rule; or
      
      (b) from an area that was closed to the taking of such fish or shellfish for commercial purposes by statute or rule; or
      
      (c) that did not conform to the special restrictions or physical descriptions established by rule of the Department of Fish and Wildlife; and
   
   5) The violation involved two hundred fifty dollars or more worth of fish or shellfish

2. **Related Statutes and Rules**
   
   - RCW 9A.08.010(1)(b): definition of “knowledge” *(see also, WPIC 10.02)*
   - RCW 77.08.010: definitions of “closed waters,” “commercial,” “fish,” “shellfish,” “to fish,” “to take.”
- RCW 77.15.110 Acting for commercial purposes – When – Proof (see also State v. Mertens, 64 P.3d 633 (2003)).
- WAC 220-340-020 Shellfish – Unlawful acts – Commercial
- WAC 220-340-110 Clams – Commercial harvest
- WAC 220-340-120 Clams – Coastal – Seasons and areas
- WAC 220-340-130 Oyster drill restricted shellfish areas – Puget Sound
- WAC 220-340-140 Oyster drill restricted shellfish areas – Willapa
- WAC 220-340-160 Denman Island Disease prohibited area
- WAC 220-340-320 Commercial geoduck harvest – Requirements and unlawful acts
- WAC 220-340-330 Commercial geoduck harvest – Time and area restrictions
- WAC 220-340-420 Commercial grab fishery – Unlawful acts
- WAC 220-340-450 Commercial crab fishery – Seasons and areas – Coastal
- WAC 220-340-455 Commercial crab fishery – Seasons and areas – Puget Sound
- WAC 220-340-500 Commercial pink shrimp trawl fishery – Coastal waters
- WAC 220-340-510 Commercial ocean spot shrimp pot fishery – Coastal waters
- WAC 220-340-520 Commercial shrimp fishery – Puget Sound
- WAC 220-340-600 Commercial scallop fishery – Coastal waters
- WAC 220-340-610 Commercial scallop fishery – Puget Sound
- WAC 220-340-700 Commercial crawfish fishery
- WAC 220-340-730 Commercial sea cucumber fishery
- WAC 220-340-750 Commercial sea urchin fisheries
- WAC 220-340-770 Commercial squid fishery
- WAC 220-353-030 General provisions – Lawful and unlawful acts – Food fish other than salmon (relating to the unlawful fishing or possessing for commercial purposes; mandatory appearance for violation related to oversized sturgeon)
- WAC 220-353-050 Possession of food fish and shellfish – Identification – Commercial
- WAC 220-353-070 Placing commercial gear in closed waters – Unlawful
- WAC 220-353-080 Testing commercial fishing gear
- WAC 220-353-110 Sale of commercially caught sturgeon, bottomfish and halibut
- WAC 220-354-010 Lawful and unlawful acts – salmon
- WAC 220-354-070 Closed areas - Grays Harbor and tributaries
- WAC 220-354-150 Puget Sound Salmon – Gillnet – Daily hours
- WAC 220-354-220 Willapa Bay salmon – Seasons and lawful gear
- WAC 220-354-240 Willapa Bay salmon – Summer Fishery
- WAC 220-354-250 Willapa Bay salmon fall fishery
- WAC 220-354-260 Grays Harbor salmon gear
- WAC 220-354-280 Grays Harbor salmon – Summery fishery
- WAC 220-354-290 Grays Harbor salmon fall fishery
- WAC 220-354-300 Coastal salmon troll seasons – Commercial
- WAC 220-355-020 Puget Sound bottomfish general provisions
- WAC 220-355-050 Puget Sound bottomfish – Drag seine requirements and seasons
- WAC 220-355-060 Puget Sound – Bottomfish pots
- WAC 220-355-090 Coastal bottomfishing areas and seasons
- WAC 220-355-100 Coastal bottomfish catch limits
- WAC 220-355-120 Bottomfish – Far offshore fishery
- WAC 220-356-010 Willapa Bay – Forage Fish
- WAC 220-356-020 Grays Harbor – Seasons and lawful gear – Forage fish
- WAC 220-356-030 Ocean forage fish
• WAC 220-356-040 Coastal sardine purse seine fishery – Harvest, landing, and reporting requirements – Gear
• WAC 220-356-110 Herring and anchovy – Seasons – Lawful gear – Purposes
• WAC 220-356-190 Puget Sound smelt commercial fishery – Seasons
• WAC 220-356-220 Puget Sound smelt commercial fishery – Weekly periods
• WAC 220-357-010 Willapa Bay – Seasons and gear – Sturgeon
• WAC 220-357-020 Grays Harbor – Seasons and gear – Sturgeon
• WAC 220-357-030 Commercial sturgeon fishery – Gillnet – Lower Columbia, Grays Harbor and Willapa Bay
• WAC 220-358-010 General provision – Commercial fishing regulated (Columbia River below Bonneville Dam)
• WAC 220-358-030 Salmon (Columbia River below Bonneville Dam)
• WAC 220-358-040 Sturgeon (Columbia River below Bonneville Dam)
• WAC 220-358-050 Shad (Columbia River below Bonneville Dam)
• WAC 220-358-060 Smelt (Columbia River below Bonneville Dam)
• WAC 220-358-070 Herring and anchovy (Columbia River below Bonneville Dam)
• WAC 220-359-010 Indian fishery – Area and qualification (Columbia River above Bonneville Dam)
• WAC 220-359-020 Seasons – Salmon (Columbia River above Bonneville Dam)
• WAC 220-359-030 Weekly open fishing period – Salmon (Columbia River above Bonneville Dam)
• WAC 220-359-050 Open area salmon – Lone pine (Columbia River above Bonneville Dam)
• WAC 220-359-060 Off-reservation Indian subsistence fishing (Columbia River above Bonneville Dam)
• WAC 220-359-070 Season and gear – Shad (Columbia River above Bonneville Dam)
• WAC 220-359-080 Season – Sturgeon (Columbia River above Bonneville Dam)
• WAC 220-359-090 Closed areas salmon – River mouths (Columbia River above Bonneville Dam)
• WAC 220-359-100 Unlawful provision – Salmon (Columbia River above Bonneville Dam)
• WAC 220-360-220 Hagfish pot trial fishery – Season and gear

NOTE: The term “possessed” is not defined in RCW Title 77 or by rule. See WPIC 77.02, comment, and WPIC 50.03, comment, for a discussion of the definition of “possessed” in the context of the crime of “possessing stolen property” or “possession of a controlled substance.”
Appendix B

Fish and Wildlife Violations Resulting in Suspension of Hunting or Fishing Privileges and/or Revocation of Hunting or Fishing Licenses

1. RCW 77.15.120 (3)(b) – Unlawful taking of endangered fish: (The Department shall revoke any licenses or tags used in connection with the crime of unlawful taking of endangered fish or wildlife in the first degree and shall order suspension of the person’s privileges to hunt, fish, trap, or obtain licenses under RCW Title 77 for two years.)

2. RCW 77.15.170(2) - (Upon conviction for waste of fish and wildlife the Department shall revoke any license or tag used in the crime and shall order suspension of the person’s privileges to engage in the activity in which the person committed the crime for a period of one year.)

3. RCW 77.15.198 (The Director shall revoke the trapping license of any person convicted of a violation of RCW 77.15.194 (related to unlawful traps) or RCW 77.15.196 (related to unlawful poison) and shall not issue the violator a trapping license for five years following the revocation. For a subsequent conviction for a violation of RCW 77.15.194 or 77.15.196, the Director shall not issue a trapping license to the person at any time.)

4. RCW 77.15.245(4) (The Department shall revoke the hunting license of a person who violates RCW 77.15.245(1) or (2) (prohibiting the baiting of black bear or the use of dogs to hunt black bear, cougar, bobcat, or lynx) and order the suspension of wildlife hunting privileges for a period of five years following the revocation. For a subsequent violation, a hunting license shall not be issued at any time.)

5. RCW 77.15.400(5)(b) (Upon conviction for violation of a rule requiring the use of nontoxic shot for hunting wild birds, the Department shall revoke the hunting license of the person and order a suspension of small game hunting privileges for two years.)

6. RCW 77.15.410(3)(a) - Unlawful hunting of big game, second degree: (Upon conviction for unlawful hunting of big game in the second degree, for an offense involving killing or possession of big game taken during a closed season, closed area, without the proper license, tag, or permit using an unlawful method, or in excess of the bag or possession limit, the department shall revoke all of the person's hunting licenses and tags and order a suspension of the person's hunting privileges for two years.)

7. RCW 77.15.410(3)(b) - Unlawful hunting of big game, first degree: (Upon conviction for unlawful hunting of big game in the first degree, the department shall revoke all of the person's hunting licenses or tags and order the person's hunting privileges suspended for ten years.)

8. RCW 77.15.435(4) - Unlawful hunting on, retrieving hunted wildlife from, or collecting wildlife parts from the property of another: (If a person unlawfully hunts and kills wildlife, or retrieves hunted wildlife that he or she has killed, on the property of another, then, upon conviction under RCW 77.15.435, the department shall revoke all hunting licenses and tags and order a suspension of the person's
hunting privileges for two years (not applicable to unlawful collection of wildlife parts).

9. RCW 77.15.450(3)(a) - Spotlighting big game, second degree: (Upon conviction for spotlighting big game in the second degree, the department shall revoke all hunting licenses and tags and order a suspension of the person's hunting privileges for two years.)

10. RCW 77.15.450(3)(b) – Spotlighting big game, first degree (Upon conviction for spotlighting big game in the first degree, the Department shall suspend all privileges to hunt wildlife for a period of ten years.)

11. RCW 77.15.530(4) - Unlawful use of a nondesignated vessel: (Upon conviction for the felony crime of using a nondesignated vessel, the Department shall revoke and suspend all commercial fishing privileges under chapter 77.65 for one year.)

12. RCW 77.15.580(3)(a) - Unlawful use of net to take fish, second degree: (Upon conviction for unlawful use of net to take fish in the second degree, the Department shall revoke any license held under RCW Title 77 allowing commercial net fishing used in connection with the crime.)

10. RCW 77.15.580(3)(b) - Unlawful use of net to take fish, first degree: (Upon conviction for unlawful use of a net to take fish in the first degree, the Department shall order a one-year suspension of all commercial fishing privileges requiring a license under RCW Title 77.)

11. RCW 77.15.630(3)(b) - Unlawful fish and shellfish catch accounting, first degree: (Upon conviction for unlawful fish and shellfish catch accounting in the first degree, the Department shall suspend all privileges to engage in wholesale fish buying or dealing for two years.)

12. RCW 77.15.650(3)(a) - Unlawful purchase or use of a license, second degree: (Upon conviction for unlawful purchase or use of a license in the second degree the Department shall revoke any unlawfully held or used licenses and order a two-year suspension of participation in the activities for which the person unlawfully obtained, held or used a license permit, tag, or approval.)

13. RCW 77.15.650(3)(b) - Unlawful purchase or use of a license, first degree: (Upon conviction for unlawful purchase or use of a license in the first degree the Department shall revoke any unlawfully held or used licenses and order a five-year suspension of participation in the activities for which the person unlawfully obtained, held or used a license, permit, tag, or approval.)

14. RCW 77.15.670(3)(a) - Suspension of department privileges, second degree: (Upon conviction for violating the suspension of Department privileges in the second degree, the Department shall order permanent suspension of the person’s privileges to engage in such hunting or fishing activities.)

15. RCW 77.15.670(3)(b) - Suspension of department privileges, first degree: (Upon conviction for violating the suspension of Department privileges in the first degree, the Department shall order permanent suspension of all privileges to hunt, fish, trap, or take wildlife, food fish, game fish, or shellfish.)
16. RCW 77.15.700(1)(b) (Upon a finding by the Department that the actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife, the Department shall impose revocation and suspension of privileges. Such suspension may be permanent. **This subsection does not apply to commercial fishing violations. See Notes.**)

17. RCW 77.15.700(1)(c) (Upon conviction twice within ten years for a violation involving unlawful hunting, killing, or possessing big game, the Department shall order revocation and suspension of all hunting privileges for two years.)

18. RCW 77.15.700(1)(d) (Upon third conviction within ten years of any violation of recreational hunting or fishing laws or rules, the Department shall order a revocation and suspension of all recreational hunting and fishing privileges for two years.)

19. RCW 77.15.710(1) - Conviction for assault: (Department shall revoke all hunting, fishing, or other licenses issued under RCW Title 77 and order a ten-year suspension of all privileges held under the Title, if a person is convicted of assault on a fish and wildlife officer, ex officio officer, employee, agent, or personnel acting for the Department and on duty and carrying out the provisions of Title 77 at the time of the assault.)

20. RCW 77.15.720(1)(a) (Requires the Department to revoke of all hunting licenses and suspend hunting privileges for three years if a person discharges a firearm, bow, or crossbow while hunting and in a manner that injures, or that a reasonable person would believe is likely to injure, another person. Requires the Department to revoke all hunting licenses and suspend of hunting privileges for ten years if a person discharges a firearm, bow, or crossbow while hunting and the shooting kills or results in the death of another person.)

21. RCW 77.15.720(1)(b) - Discharge of firearm, bow, or crossbow while hunting in a manner that injures a person or that kills or causes substantial bodily harm to livestock: (Department shall revoke all hunting licenses and suspend hunting privileges for three years if a person, with malice, discharges a firearm, bow, or crossbow while hunting and in a manner that kills or causes substantial bodily harm to livestock belonging to another person.)
Appendix B

PLEADING TEMPLATES IN WORD

1. Information documents on RCW chapter 77.15 violations
2. Defense against Motions in Limine, Motions to Dismiss, and Motions to Suppress Evidence
3. Trial Brief for Big Game Hunting case
4. Trial Brief for Poaching Salmon case
5. Trial Brief for Trespassing While Hunting case
6. Sentencing Brief
7. Jury Instructions for RCW chapter 77.15 violations
8. Answer to Motion for Discretionary Review in Court of Appeals

XII. APPENDIX

A. Jury Instructions for Prosecutors

1. Avoiding Check Stations: RCW 77.15.470 / WPIC 4.21 Unlawfully Avoiding Wildlife Check Stations or Field Inspections – Elements

   a. Definition: A person commits the crime of Unlawfully Avoiding Wildlife Check Stations or Field Inspections if the person fails to [obey check station signs] [stop and report at a check station if directed to do so by a uniformed fish and wildlife officer] [[produce for inspection upon request by a fish and wildlife officer [hunting or fishing equipment] [seaweed, fish, shellfish, or wildlife] [[licenses, permits, tags, stamps, or catch record cards required by this title]].

   b. To convict the defendant of the crime of Unlawfully Avoiding Wildlife Check Stations or Field Inspections, each of the following elements of the crime must be proved beyond a reasonable doubt:

      (1) That on or about __________, the defendant failed to:
      a. a) Obey check station signs;
      b. Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer; or
      c. Produce for inspection upon request by a fish and wildlife officer:
      i. Hunting or fishing equipment;
      ii. Seaweed, fish, shellfish, or wildlife; or
      iii. Licenses, permits, tags, stamps, or catch record cards required by this title; and
      (2) That any of these acts occurred in County of __________, Washington.
If you find from the evidence that elements (1)(a), (1)(b), (1)(c)(i), (1)(c)(ii), or (1)(c)(iii), and element (2), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

**RCW 77.15.470 / WPIC 4.21 Unlawfully Avoiding Wildlife Check Stations or Field Inspections – Elements**

2. **Big Game Hunt (before July 1, 2011): RCW 77.15.410(2) Unlawful Hunting of Big Game in the First Degree – Definition**

   a. Definition: *(For crimes occurring prior to July 1, 2011)* A person commits the crime of Unlawful Hunting of Big Game in the First Degree if he or she [hunts for, takes, or possesses big game and the person does not have and possess all required licenses, tags, or permits] [violates any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits, closed areas including game reserves, or closed times] [possesses big game taken during a closed season for that big game or taken from a closed area for that big game] and the act occurs within five years of a prior conviction for unlawful hunting, killing, possessing or taking big game.

   b. *(For crimes occurring prior to July 1, 2011)* To convict the defendant of Unlawful Hunting of Big Game in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

   1. That on or about __________, the defendant [hunted for, took, or possessed big game and did not have and possess all required licenses, tags, or permits] [violated any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits, closed areas including game reserves, or closed times] [possessed big game taken during a closed season for that big game or taken from a closed area for that big game]; and

   2. The act occurred within five years of a prior conviction for unlawful hunting, killing, possessing or taking big game; and

   3. That any of these acts occurred in the County of __________, Washington.

   If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

   On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

3. **Big Game Hunt (after June 7, 2012): RCW 77.15.410(2) Unlawful Hunting of Big Game in the First Degree – Definition**
a. **Definition: (For crimes occurring after June 7, 2012)** A person commits the crime of **Unlawful Hunting of Big Game in the First Degree** if he or she [[hunts for] [takes] [possesses] big game and the person does not have and possess all licenses, tags, or permits required under Title 77 RCW] or [violates any department rule regarding [seasons] [bag or possession limits] [closed areas including game reserves] [closed times] [any other rule governing the hunting, taking, or possession of big game]] and [[the person [hunts for] [takes] [possesses] three or more big game animals within the same course of events]] or [the act occurs within five years of the date of a prior conviction under Title 77 RCW involving unlawful hunting, killing, possessing, or taking big game].

b. (For crimes occurring after June 7, 2012) To convict the defendant of **Unlawful Hunting of Big Game in the First Degree**, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about __________, the defendant:
   
   a. [[hunted for] [took] [possessed] big game and the person does not have and possess all licenses, tags, or permits required under Title 77 RCW] or
   
   b. [violated any department rule regarding [seasons] [bag or possession limits] [closed areas including game reserves] [closed times] [any other rule governing the hunting, taking, or possession of big game]]; and

2. [[[The person [hunts for] [takes] [possesses] three or more big game animals within the same course of events]] or [The act occurs within five years of the date of a prior conviction under Title 77 RCW involving unlawful hunting, killing, possessing, or taking big game]]; and

3. That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

**RCW 77.15.410(2) Unlawful Hunting of Big Game in the First Degree – Elements**

4. **Commercial Fishing (first degree): RCW 77.15.550(2) Violating Commercial Fishing Area or Time in the First Degree – Definition**

a. **Definition:** A person is guilty of Violating Commercial Fishing Area or Time in the First Degree if the person acts for commercial purposes and takes, fishes for, possesses, delivers, or receives fish or shellfish: [At a time not authorized by statute or rule] [From an area that was closed to the taking of such fish or shellfish for commercial purposes by statute or rule] [If such fish or shellfish do not conform to the special restrictions or physical descriptions established by rule of the department] and [the
person acted with knowledge that the area or time was not open to the taking or fishing of fish or shellfish for commercial purposes and [the violation involved two hundred fifty dollars or more worth of fish or shellfish].

b. To convict the defendant of Violating Commercial Fishing Area or Time in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about _________________, the defendant acted for commercial purposes and took, fished for, possessed, delivered, or received fish or shellfish:
   a. At a time not authorized by statute or rule;
   b. From an area that was closed to the taking of such fish or shellfish for commercial purposes by statute or rule; or
   c. If such fish or shellfish do not conform to the special restrictions or physical descriptions established by rule of the department; and

(2) The person acted with knowledge that the area or time was not open to the taking or fishing of fish or shellfish for commercial purposes; and

(3) The violation involved two hundred fifty dollars or more worth of fish or shellfish; and

(4) Any of these acts occurred in the County of _____________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

5. Commercial Fishing second degree: RCW 77.15.550(1) Violating Commercial Fishing Area or Time in the Second Degree – Elements

a. Definition: A person is guilty of Violating Commercial Fishing Area or Time in the Second Degree if the person acts for commercial purposes and takes, fishes for, possesses, delivers, or receives fish or shellfish: [At a time not authorized by statute or rule] [From an area that was closed to the taking of such fish or shellfish for commercial purposes by statute or rule] [If such fish or shellfish do not conform to the special restrictions or physical descriptions established by rule of the department].

b. To convict the defendant of Violating Commercial Fishing Area or Time in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:
(1) That on or about _________________, the defendant acted for commercial purposes and took, fished for, possessed, delivered, or received fish or shellfish:
   a. *At a time not authorized by statute or rule*;
   b. *From an area that was closed to the taking of such fish or shellfish for commercial purposes by statute or rule*; or
   c. *If such fish or shellfish do not conform to the special restrictions or physical descriptions established by rule of the department*; and

(2) Any of these acts occurred in the County of _____________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

**RCW 77.15.550(1) Violating Commercial Fishing Area or Time in the Second Degree – Elements**

6. **Acts of Commercial Purposes:** RCW 77.15.110(1); RCW 77.15.570(2) Acting for Commercial Purposes – Definition
   
   a. Definition: A person acts for “commercial purposes” if the person engages in conduct that relates to commerce in fish, shellfish, or any parts thereof where there is present or future exchange of money, goods, or any valuable consideration. Commercial conduct may include taking, delivering, selling, buying, or trading fish, or shellfish. Commercial conduct may also include a payment for fishing assistance.

   b. **Evidence that a person acts for commercial purpose includes, but is not limited to, the following conduct:**

   (a) Using gear typical of that used in commercial fisheries;

   (b) Exceeding the bag or possession limits for personal use by taking or possessing more than three times the amount of fish, or shellfish allowed;

   (c) Delivering or attempting to deliver fish, or shellfish, to a person who sells or resells fish, or shellfish, including any licensed or unlicensed wholesaler;

   (d) Taking fish or shellfish using a vessel designated on a commercial fishery license or using gear not authorized in a personal use fishery;

**RCW 77.15.110(1) Evidence of Commercial Purposes – Definition; State v. Mertens, 148 Wn.2d 820, 64 P.3d 633 (2003).**
7. **Definitions pertaining to Commercial Fishing**

a. **Offshore waters: RCW 77.08.010(42) Offshore waters – Definition**

   “Offshore waters” means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

b. **Venue: RCW 77.15.040 Venue**

   Venue for offenses occurring in off-shore waters shall be in a county bordering on the Pacific Ocean, or the county where fish or wildlife from the offense are landed.

c. **Jurisdiction: RCW 43.143.005 Jurisdiction**

   The state of Washington has primary jurisdiction over the management of coastal and ocean natural resources within three miles of its coastline. From three miles seaward to the boundary of the two hundred mile exclusive economic zone, the United States federal government has primary jurisdiction. Since protection, conservation, and development of the natural resources in the exclusive economic zone directly affect Washington's economy and environment, the state has an inherent interest in how these resources are managed.

d. **Contracting Authority of Law Enforcement Agencies: RCW 10.93.130 Contracting authority of law enforcement agencies**

   Under the interlocal cooperation act, chapter 39.34 RCW, any law enforcement agency referred to by this chapter may contract with any other such agency and may also contract with any law enforcement agency of another state, or such state's political subdivision, to provide mutual law enforcement assistance. The agency with primary territorial jurisdiction may require that officers from participating agencies meet reasonable training or certification standards or other reasonable standards.

e. **Joint Powers: RCW 39.34.030(1) and (2) Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects**

   (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with
any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter, except that any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

   f. Territorial Authority of the Commission: RCW 77.12.045 Territorial authority of the commission—Adoption of federal regulations and rules of fisheries commissions and compacts

Consistent with federal law, the commission's authority extends to all areas and waters within the territorial boundaries of the state, to the offshore waters, and to the concurrent waters of the Columbia river. Consistent with federal law, the commission's authority extends to fishing in offshore waters by residents of this state. The commission may adopt rules consistent with the regulations adopted by the United States department of commerce for the offshore waters. The commission may adopt rules consistent with the recommendations or regulations of the Pacific marine fisheries commission, Columbia river compact, the Pacific salmon commission as provided in chapter 77.75 RCW, or the international Pacific halibut commission.

   g. General Provisions: WAC 220-20-010(15)(d) General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish

   It is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species, except as follows: A person may possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements. All halibut must be landed with the heads on.

   h. General Provisions (lawful and unlawful): WAC 220-20-010(12) General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish

   It shall be unlawful to take or possess, for any purpose, any fish or shellfish smaller or larger than the lawful minimum or maximum size limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

   i. Commission: RCW 77.08.010(11) Commission — Definition

   “Commission” means the state fish and wildlife commission.
j. **Director: RCW 77.08.010(16) Director — Definition**

“Director” means the director of fish and wildlife.

k. **Department: RCW 77.08.010(15) Department — Definition**

“Department” means the Department of Fish and Wildlife.

l. **Fish: RCW 77.08.010(19) Fish – Definition; Washington Department of Fish and Wildlife, Fishing in Washington: 2011/2012 Sport Fishing Rules Pamphlet, P. 18 / WAC 220-12-010 / RCW 77.08.022 Food Fish — Definition**

[“Fish” includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters.]

[The term “fish” includes all stages of development and the bodily parts of fish species.]

[“Food fish” means forage fish, halibut, bottomfish, common carp, shad, tuna, mackerel, salmon, and sturgeon.]

[The term “food fish” includes all stages of development and the bodily parts of food fish species.]

m. **Commercial Pacific halibut fishery: WAC 220-20-130 Commercial Pacific halibut fishery—Seasons, gear, possession, and landing requirements**

The commercial Pacific halibut fishery is jointly managed by the Washington department of fish and wildlife (WDFW), the National Marine Fisheries Service (NMFS), and the International Pacific Halibut Commission (IPHC). The Code of Federal Regulations (C.F.R.) 50 C.F.R. § 300. 60-300.67 and related appendices in Subpart E provide federal requirements for this fishery including, but not limited to, the time, place, and manner of taking Pacific halibut. This section adopts the federal regulations on Pacific halibut imposed by 50 C.F.R. § 300. 60-300.67 and the Federal Register, and it incorporates those federal regulations by reference. A copy of the federal regulations may be obtained by contacting the department at 360-902-2200, or accessing a copy on-line at www.pcouncil.org.

(1.) It is unlawful to take, fish for, possess, transport through the waters of the state, or land in any Washington state port Pacific halibut taken for commercial purposes in violation of the requirements published in 50 C.F.R. § 300. 60-300.67, Subpart E.

(2.) Where the federal regulations refer to the fishery management area, that area is extended to include Washington state waters adjacent to the Exclusive Economic Zone.
(3.) If state rules are more restrictive than federal regulations, the Washington Administrative Code takes precedence over the federal regulations.

(4.) Additional regulations on Pacific halibut may be listed in the Federal Register. Other regulations on Pacific halibut in the Federal Register take precedence over the Pacific halibut fishery regulations in 50 C.F.R. § 300. 60-300.67 if the regulations conflict. The department recommends that a person consult the Federal Register and the C.F.R. prior to participating in the commercial Pacific halibut fishery.

n. Fishing: RCW 77.08.010(52) Fishing – Definition

“To fish,” “to harvest,” and “to take,” and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

o. Commercial Purposes: RCW 77.15.110(1); RCW 77.15.570(2) Acting for Commercial Purposes – Definition

A person acts for “commercial purposes” if the person engages in conduct that relates to commerce in fish, shellfish, or any parts thereof where there is present or future exchange of money, goods, or any valuable consideration. Commercial conduct may include taking, delivering, selling, buying, or trading fish, or shellfish. Commercial conduct may also include a payment for fishing assistance.


Evidence that a person acts for commercial purposes includes, but is not limited to, the following conduct:

(a) Using gear typical of that used in commercial fisheries;

(b) Exceeding the bag or possession limits for personal use by taking or possessing more than three times the amount of fish, or shellfish allowed;

(c) Delivering or attempting to deliver fish, or shellfish, to a person who sells or resells fish, or shellfish, including any licensed or unlicensed wholesaler;

(d) Taking fish or shellfish using a vessel designated on a commercial fishery license or using gear not authorized in a personal use fishery;

q. License Requirement: RCW 77.65.010(1) License Requirement – Rule

A person must have a license or permit issued by the director in order to engage in any of the following activities:
(a) Commercially fish for or take food fish or shellfish;

(b) Deliver from a commercial fishing vessel food fish or shellfish taken for commercial purposes in offshore waters. As used in this subsection, "deliver" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals from state or offshore waters;

(c) Operate a charter boat or commercial fishing vessel engaged in a fishery; or

(d) Engage in processing or wholesaling food fish or shellfish;

8. **Commercial Fishing operating without license: RCW 77.15.500(2)**  
**Commercial Fishing Without a License in the First Degree – Definition and elements**

a. A person is guilty of Commercial Fishing Without a License in the First Degree if the person fishes for, takes, or delivers food fish, shellfish, or game fish while acting for commercial purposes, and [the person does not hold the required fishery license or delivery license for the food fish or shellfish] [the person is not a licensed operator designated as an alternate operator on a fishery or delivery license for the food fish or shellfish] and [the violation involves taking, delivery, or possession of fish or shellfish with a value of two hundred fifty dollars or more] [the violation involves taking, delivery, or possession of food fish or shellfish from an area that was closed to the taking of such food fish or shellfish by any statute or rule].

b. To convict the defendant of Commercial Fishing Without a License in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about ________________, the defendant fished for, took, or delivered food fish, shellfish, or game fish while acting for commercial purposes, and

2. [the person did not hold the required fishery license or delivery license for the food fish or shellfish] [the person was not a licensed operator designated as an alternate operator on a fishery or delivery license for the food fish or shellfish]; and

3. [the violation involved taking, delivery, or possession of fish or shellfish with a value of two hundred fifty dollars or more] [the violation involved taking, delivery, or possession of food fish or shellfish from an area that was closed to the taking of such food fish or shellfish by any statute or rule]; and

4. Any of these acts occurred in the County of ______________, Washington.

9. **Commercial fishing without in Second Degree: RCW 77.15.500(1)**  
**Commercial Fishing Without a License in the Second Degree – Definition**

a. A person is guilty of Commercial Fishing Without a License in the Second Degree if the person fishes for, takes, or delivers food fish,
shellfish, or game fish while acting for commercial purposes, and [the person does not hold the required fishery license or delivery license for the food fish or shellfish] [the person is not a licensed operator designated as an alternate operator on a required fishery or delivery license for the food fish or shellfish].

b. To convict the defendant of Commercial Fishing Without a License in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about _________________, the defendant fished for, took, or delivered food fish, shellfish, or game fish while acting for commercial purposes, and

(2) [the person did not hold the required fishery license or delivery license for the food fish or shellfish] [the person was not a licensed operator designated as an alternate operator on the required fishery or delivery license for the food fish or shellfish]; and

(3) Any of these acts occurred in the County of _____________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. For definitions:

For any definitions for commercial fishing, please reference section 7 of the Appendix.

10. Defense of Property or Person Big Game or Wild Animals:


It is a defense to a charge of Unlawful Hunting of Big Game or Wild Animals in the [First] [Second] Degree if the killing of a big game animal was reasonably necessary in defense of a person’s property or if the killing of a wild animal was reasonably necessary in defense of a person’s property.

The State has the burden of proving beyond a reasonable doubt that the killing of the big game animal or wild animal was not reasonably necessary. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.


It is a defense to a charge of Unlawful Hunting of Big Game in the [First][Second] Degree if the killing of a big game animal was reasonably necessary in defense of [his or her
person] [another person]. Or It is a defense to a charge of Unlawful Hunting of Wild Animals in the [First][Second] Degree if the killing of a wild animal was reasonably necessary in defense of [his or her person] [another person].

The State has the burden of proving beyond a reasonable doubt that the killing of the big game animal was not reasonably necessary. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

In determining whether lethal means were reasonably necessary, you may take into consideration the adequacy, availability, and use by the defendant of lethal and non-lethal remedies offered through the Department of Fish and Wildlife at the time of [and prior to] the incident.

Lethal remedies, may be authorized by the Department of Fish and Wildlife in the form of kill permits, special hunts, and damage prevention agreements.

In determining whether a non-lethal remedy is adequate, you may take into consideration the value of the property, the maximum allowable claim under the Department of Fish and Wildlife’s guidelines, whether damage to the property was imminent, and whether non-lethal alternatives, including but not limited to fencing, scaring, or hazing of wildlife, were used at the time of [and prior to] the incident.

Editor’s note: RCW 77.12.240, 77.36.030, 77.36.100, 77.36.110, 77.36.130, and chapter 232-36 WAC address lethal and non-lethal remedies sanctioned by the Department of Fish and Wildlife. These remedies are non-exhaustive and do not override Vander Houwen. Nonetheless, these remedies are relevant to the issue of whether lethal means are reasonably necessary. If you have a case involving defense of persons or property, please contact Lori Preuss for assistance.

**c. Act of damaging: WAC 232-36-030.**

“Act of damaging” means that private property is in the process of being damaged by wildlife, and the wildlife are on the private property, which contains commercial crops, pasture, or livestock.

**d. Commercial Crop: WAC 232-36-030**

“Commercial crop” means a commercially raised horticultural and/or agricultural product and includes the growing or harvested product, but does not include livestock, forest land, or rangeland. For the purposes of this chapter, Christmas trees and managed pasture grown using agricultural methods including one or more of the following: Seeding, planting, fertilizing, irrigating, and all parts of horticultural trees, are considered a commercial crop and are eligible for cash compensation.

**e. Commercial livestock: WAC 232-36-030**

“Commercial livestock” means cattle, sheep, and horses held or raised by a person for sale.
f. **Damage: WAC 232-36-030**

“Damage” means economic losses caused by wildlife interactions.

g. **Immediate threat of harm: WAC 232-36-030**

“Immediate threat of physical harm” means that animal-to-human bodily contact is imminent; and the animal is in attack posture/mode.

h. **Owner: WAC 232-36-030**

“Owner” means a person who has a legal right to commercial crops, commercial livestock, or other private property that was damaged during a wildlife interaction.

i. **Physical act of attacking: WAC 232-36-030**

“Physical act of attacking” means actual or imminent animal-to-human physical contact.

11. **Disabled Fisher Violation:**

a. **Persons with disability fishing: RCW 77.32.400 Persons with a disability – Designated harvester card – Fish and shellfish; WAC 220-55-065(3) Fishing for shellfish, freshwater fish or saltwater fish by persons of disability**

   It is unlawful for a designated harvester to fish for, take, or possess the personal-use daily bag limit of fish or shellfish for a person with a disability unless the designated harvester is licensed and has a designated harvester card on his or her person, and the person with a disability is participating in the fishing activity and possesses the appropriate fishing license issued under chapter 77.32 RCW.

   The person with a disability must be present at the location where the designated harvester is harvesting for the person with a disability, unless the designated harvester is harvesting shellfish for the person with a disability. If the designated harvester is harvesting shellfish for the person with a disability, the person with a disability is required to be in the direct line of sight of the designated harvester who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the person with a disability is required to be within one-quarter mile of the designated harvester who is harvesting shellfish for him or her.

b. **Designated harvester: WAC 220-55-065(1)(a) Fishing for shellfish, freshwater fish or saltwater fish by persons of disability -- Definitions.**

   "Designated harvester" means a licensed fisher who accompanies a disabled fisher and assists the disabled fisher in the taking of shellfish, game fish or food fish.
c. **Disabled fisher:** WAC 220-55-065(1)(b) Fishing for shellfish, freshwater fish or saltwater fish by persons of disability -- Definitions.

"Disabled fisher" means a person of disability who possesses a valid fishing license or shellfish license issued by the department. A disabled fisher must have all required licenses and catch record cards before fishing.

d. **Disabled harvester:** WAC 220-55-065(1)(c) Fishing for shellfish, freshwater fish or saltwater fish by persons of disability -- Definitions.

"Disabled harvester identification card" means a card issued by the department to any person of disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person of disability. Upon issuance of a disabled license, the department will also issue a designated harvester identification card.

e. **Person of Disability:** WAC 220-55-065(1)(d) Fishing for shellfish, freshwater fish or saltwater fish by persons of disability -- Definitions.

"Person of disability" means:

(i) A permanently disabled person who is not ambulatory over natural terrain without a prosthesis or assistive device; or

(ii) A permanently disabled person who is unable to hold or use any legal fishing or shell fishing device; or

(iii) A person who is totally blind or visually impaired.

This definition includes, but is not limited to, permanently disabled persons with upper or lower extremity impairments who have lost the use of one or both upper or lower extremities, or who have a significant limitation in the use of upper or lower extremities, or who have a diagnosed disease or disorder which substantially impairs or interferes with mobility of the use of upper extremities.

f. **Visually impaired:** WAC 220-55-065(1)(e) Fishing for shellfish, freshwater fish or saltwater fish by persons of disability -- Definitions.

"Visually impaired" means central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than 20 degrees.

g. **All fish harvested by a designated harvester:** WAC 220-55-065(5) Fishing for shellfish, freshwater fish or saltwater fish by persons of disability.
Shellfish, game fish or food fish harvested by a designated harvester on behalf of a disabled fisher become part of the disabled fisher's bag or possession limit, and must be kept separate from the designated harvester's bag or possession limit.

12. **Harvest Specialized Forest Products:**

   a. **Unlawful to harvest:** RCW 76.48.131 Unlawful harvest of specialized forest products – Definition

   A person commits the crime of Unlawful Harvest of Specialized Forest Products if he or she [harvested specialized forest products, without first obtaining a validated specialized forest products permit] [had a validated specialized forest products permit but engaged in activities or phases of harvesting specialized forest products not authorized by the permit] [harvested lesser quantities of specialized forest products without first obtaining permission from the landowner or his or her duly authorized agent or representative].

   b. **To convict the defendant of Unlawful Harvest of Specialized Forest Products:** RCW 76.48.131 Unlawful harvest of specialized forest products – Elements

   To convict the defendant of Unlawful Harvest of Specialized Forest Products, each of the following elements of the crime must be proved beyond a reasonable doubt:

   (1) That the defendant, on or about __________, [harvested specialized forest products, without first obtaining a validated specialized forest products permit] [had a validated specialized forest products permit but engaged in activities or phases of harvesting specialized forest products not authorized by the permit] [harvested lesser quantities of specialized forest products without first obtaining permission from the landowner or his or her duly authorized agent or representative]; and

   (2) That this act occurred in the County of __________, Washington.

   If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

   On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

   c. **Harvest:** RCW 76.48.021(10) Harvest – Definition

   “Harvest” means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product. “Harvest” includes both removing a specialized forest product from its original physical connection with the land and collecting a specialized forest product that has been previously separated from the land.
d. **Landowner:** RCW 76.48.021(13) Landowner – Definition

“Landowner” means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell the specialized forest products of the property. “Landowner” does not include the purchaser or successful high bidder at a public or private timber sale.

e. **Native ornamental trees and shrubs:** RCW 76.48.021(14) Native ornamental trees and shrubs – Definition

“Native ornamental trees and shrubs” means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

f. **Specialized forest products:** RCW 76.48.021(21) Specialized forest products – Definition

“Specialized forest products” means (a) specialty wood; (b) more than five Christmas trees; (c) more than five native ornamental trees and shrubs; (d) more than twenty pounds of cut or picked evergreen foliage; (e) more than five pounds of Cascara bark; and (f) more than five United States gallons of wild edible mushrooms.

g. **Specialized forest products permit:** RCW 76.48.021(22) Specialized forest products permit – Definition

“Specialized forest products permit” or “permit” means a printed document and all attachments completed in compliance with the requirements of chapter 76.48 RCW and includes both validated permits and verifiable permits.

h. **Specialty wood:** RCW 76.48.021(23) Specialty wood – Definition

“Specialty wood” means:

(a) A cedar product; or

(b) Englemann spruce, Sitka spruce, big leaf maple, or western red alder that:

   (i) Is in logs, chunks, slabs, stumps, or burls;

   (ii) Is capable of being cut into a segment that is without knots in a portion of the surface area at least nineteen inches long and seven and a [one-] quarter inches wide when measured from the outer surface toward the center;

   (iii) Measures:

      (A) Nineteen inches or longer;

      (B) Greater than one and three-quarter inches thick; and

      (C) Seven and one-quarter inches or greater in width; and

   (iv) Is being harvested or transported from areas not associated with the concurrent logging of timber stands:
(A) Under a forest practices application approval or notification received by the department under chapter 76.09 RCW; or
(B) Under a contract or permit issued by an agency of the United States government.

i. **Validated Permit:** RCW 76.48.021(27) Validated permit – Definition

“Verifiable permit” means a permit that contains the required information allowing a law enforcement officer to verify the validity of the information contained on the permit but that does not require validation prior to the harvest, transportation, or possession of specialized forest products.

j. **Wild edible mushrooms:** RCW 76.48.021(29) Wild edible mushrooms – Definition

“Wild edible mushrooms” means edible mushrooms not cultivated or propagated by domestic means.

13. **Hunting While License Suspended:**

a. **Hunting while license suspended or revoked:** RCW 77.15.670(2) Hunting While License Suspended or Revoked in the First Degree – Definition

A person commits the crime of Hunting While License Suspended or Revoked in the First Degree when he or she engages in any activity that is licensed by the department and the person’s privileges to engage in that activity was [permanently] revoked or suspended by any court or the department [the person [took or possessed more than two hundred fifty dollars worth of unlawfully taken [food fish] [wildlife] [game fish] [seaweed] [shellfish]][hunted, took, or possessed fish or wildlife classified as [endangered] [threatened][ big game]].

b. **To convict the defendant of Hunting While License Suspended:** RCW 77.15.670(2) Hunting While License Suspended or Revoked in the First Degree – Elements

To convict the defendant of Hunting While License Suspended in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant engaged in an activity licensed by the Department of Fish and Wildlife;
(2) At the time of said activity the defendant’s privilege to engage in that activity was revoked or suspended by any court or the Department of Fish and Wildlife; and
[The suspension of privileges was a permanent suspension] [the person
took or possessed more than two hundred fifty dollars worth of unlawfully taken [food
fish] [wildlife] [game fish] [seaweed] [shellfish]] [hunted, took, or possessed fish or
wildlife classified as [endangered] [threatened][ big game]].

(4) That any of these acts occurred in the County of __________.
Washington; and

If you find from the evidence that each of these elements has been proved beyond a
reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as
to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. **Hunting While License Suspended in Second Degree: RCW 77.15.670(1)**

To convict the defendant of Hunting While License is Suspended in the Second degree:

To convict the defendant of Hunting While License Suspended in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant engaged in an activity
licensed by the Department of Fish and Wildlife;

(2) At the time of said activity the defendant’s privilege to engage in that
activity was revoked or suspended by any court or the Department of Fish and Wildlife;
and

(3) That any of these acts occurred in the County of __________.

Washington.

If you find from the evidence that each of these elements has been proved beyond a
reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as
to any one of these elements, then it will be your duty to return a verdict of not guilty.

e. **Corresponding Definitions:**

(1) **Endangered: WAC 232-12-297 (2.4)**
“Endangered” means any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state.

(2) **Threatened: WAC 232-12-297 (2.5) Threatened — Definition**

“Threatened” means any wildlife species native to the state of Washington that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range within the state without cooperative management or removal of threats.

(3) **Species: WAC 232-12-297 (2.7) Species — Definition**

“Species” means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

(4) **Endangered/Threatened Species: WAC 232-12-011, WAC 232-12-014 Endangered or Threatened Species — Definition**

[Wildlife] is classified as [endangered][threatened].

(5) **Big Game: RCW 77.08.030 Big Game — Definition**

A [bear (black bear, grizzly bear)] [caribou] [cougar] [deer (blacktail deer, mule deer, whitetail deer)] [moose] [mountain goat] [mountain lion] [mountain sheep] [pronghorn antelope] [ elk] is “big game.”

(6) **To Hunt: RCW 77.08.010 (53)) To Hunt — Definition; RCW 77.15.670(4)**

“To hunt” or “to take” means an effort to kill, injure, capture, or harass a wild animal. Hunting includes trapping with a trapping license.

(7) **Possession: WPIC 133.52 Possession (modified) — Definition**

Possession means having a [item] in one's custody or control. [It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.] [Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.] [In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the [immediate] ability to take actual possession of the item,]
[whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.]

14. Hydraulic Projects:

a. Unlawful Undertaking Hydraulic Project Activities: RCW 77.15.300

Unlawfully Undertaking Hydraulic Project Activities – Definition

A person commits the crime of Unlawfully Undertaking Hydraulic Project Activities when he or she constructs any form of hydraulic project or performs other work on a hydraulic project and [fails to have the required hydraulic project approval for such construction or work] [violates any requirements or conditions of the hydraulic project approval for such construction or work].

b. To convict the defendant of the crime Unlawfully Undertaking Hydraulic Project activities: RCW 77.15.300 / WPIC 4.21 Unlawfully Undertaking Hydraulic Project Activities – Elements

To convict the defendant of the crime of Unlawfully Undertaking Hydraulic Project Activities, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant constructed any form of hydraulic project or performed other work on a hydraulic project and
(2) [failed to have the required hydraulic project approval for such construction or work] [violated any requirements or conditions of the hydraulic project approval for such construction or work]; and
(3) That any of these acts occurred in County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. Permit: RCW 77.55.021(1) Permit

Any person who desires to undertake a hydraulic project, shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

d. Small Scale Prospecting and Mining Rules: RCW 77.55.091 Small scale prospecting and mining – Rules

Persons conducting small-scale mineral prospecting and mining do not require a permit under chapter 77.55 RCW if the person conducts the prospecting in accordance with rules established by the department.
e. **Corresponding Definitions:**

(1) **Gold and Fish Pamphlet**: WAC 220-110-020(44) “Gold and Fish Pamphlet” – Definition

"Gold and Fish pamphlet" means a document that details the rules for conducting small-scale and other prospecting and mining activities, and which serves as the hydraulic project approval for certain mineral prospecting and mining activities in Washington state.

(2) **Hydraulic Project Approval Permit**: WAC 220-110-020(52) Hydraulic Project Approval Permit – Definition

A hydraulic project approval permit or “HPA” means:

(a) A written approval for a hydraulic project signed by the director of the department of fish and wildlife, or the director's designates; or

(b) A verbal approval for an emergency hydraulic project from the director of the department of fish and wildlife, or the director's designates; or

(c) The following printed pamphlet approvals and any supplemental approvals to them:

(i) A “Gold and Fish” pamphlet issued by the department which identifies and authorizes specific minor hydraulic project activities for mineral prospecting and placer mining; or

(ii) An “Irrigation and Fish” pamphlet issued by the department which identifies and authorizes specific minor hydraulic project activities; or

(iii) An “Aquatic Plants and Fish” pamphlet issued by the department which identifies and authorizes specific aquatic noxious weed and aquatic beneficial plant removal and control activities.

(3) **Hydraulic Project**: RCW 77.55.011(11) Hydraulic Project – Definition

“Hydraulic project” means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(4) **Bed**: RCW 77.55.011(1) Bed – Definition

“Bed” means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(5) **Ordinary High Water Line**: RCW 77.55.011(16) Ordinary High Water Line – Definition
“Ordinary high water line” means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

(6) **State Waters:** RCW 77.55.011(25) State Waters – Definition

“Waters of the state” and “state waters” means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

(7) **Person:** RCW 77.08.010(45)

“Person” means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

15. **Indian Hunting Defenses:**

Editor’s note: Due to the complexity of Indian hunting issues, Indian treaty-right defenses should be brought and argued in pretrial motions rather than at trial. However, if your judge disagrees, below are the jury instructions you should use.

a. **Affirmative defense to a charge of Unlawful Hunting:** Exercise of Treaty Right — Defense

It is an affirmative defense to a charge of Unlawful Hunting of [Big Game in the [Second Degree] [First Degree]] [Wild Birds in the [Second Degree] [First Degree]] [Wild Animals in the [Second Degree][First Degree]] if, at the time of the offense:

1. The defendant was a member of the [Hoh] [Jamestown S’Klallam] [Lower Elwha Klallam] [Lummi] [Makah] [Muckleshoot] [Nez Perce] [Nisqually] [Nooksack] [Port Gamble S’Klallam] [Puyallup] [Quileute] [Quinault] [Sauk-Suiattle] [Skokomish] [Squaxin Island] [Stillaguamish] [Suquamish] [Swinomish] [Tulalip] [Umatilla] [Upper Skagit] [Warm Springs] [Yakima] tribe; and
2. The area in which the defendant hunted was within the tribe’s traditional hunting area; and
3. The area in which the defendant hunted was open and unclaimed land.
The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true.

If the defendant has met the burden on the treaty defense, then the state must show by clear and convincing evidence that the state law at issue in the case is reasonable and necessary for conservation before that law can be used in regulating a treaty right. A state law is reasonable if it is appropriate to its conservation purpose. A state law is deemed necessary for conservation if it is required for the perpetuation of a species of wildlife within a specified area.

1. If you find that the defendant has not met the burden on the treaty defense and the state has proven all of the elements of the crime beyond a reasonable doubt, it will be your duty to return a verdict of guilty.

2. If you find that the defendant has met the burden on the treaty defense, but the state has met the “reasonable and necessary for conservation” burden, and the state has proven all of the elements of the crime beyond a reasonable doubt, it will be your duty to return a verdict of guilty.

3. If you find that the defendant has met the burden on the treaty defense, but the state has not met the “reasonable and necessary for conservation” burden, it will be your duty to return a verdict of not guilty.

b. Open and unclaimed lands definition:

“Open and unclaimed” land is defined to mean publicly-owned land which is not obviously occupied and which is put to a use compatible with hunting. Land in private ownership is not “open and unclaimed.” To find for the defendant on this element of a treaty rights defense, you would have to find that the defendant was engaged in a hunting activity on publicly-owned land which is not obviously occupied and which is put to a use compatible with hunting, or that defendant was engaged in a hunting activity on land in private ownership without any outward indications of such ownership observable to a reasonable person.

c. Traditional Hunting Area definition:

“Traditional hunting area” means lands that the tribe used, occupied, and actually hunted on, either exclusively or amicably with two or three other tribes, for an extended period of time before their treaty was signed.

16. **Loaded Firearm in Vehicle**

**a. Unlawful Possession of a Loaded Firearm in a Motor Vehicle: RCW 77.15.460(1)**

A person commits the crime of Unlawful Possession of a Loaded Firearm in a Motor Vehicle when he or she carries, transports, conveys, possesses, or controls a rifle, shotgun, or muzzleloader in or on a motor vehicle, and the rifle or shotgun [contains shells or cartridges in the magazine or chamber], [is a muzzle-loading firearm that is loaded and capped or primed].

**b. To convict the defendant of Unlawful Possession of a Loaded Firearm in a Motor Vehicle.**

To convict the defendant of Unlawful Possession of a Loaded Firearm in a Motor Vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant carried, transported, conveyed, possessed, or controlled a rifle, shotgun, or muzzleloader in or on a motor vehicle; and
(2) The rifle or shotgun [contains shells or cartridges in the magazine or chamber], [is a muzzle-loading firearm that is loaded and capped or primed]; and
(3) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

**c. Corresponding definitions:**

(1) **Possession:** WPIC 133.52 Possession—Weapon—Definition

Possession means having a [rifle][shotgun][muzzleloader] in one's custody or control. [It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.]

[Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.]
[In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the [immediate] ability to take actual possession of the item,] [whether the defendant had the capacity to exclude others from possession of the item,][and][whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.]

(2) **Motor Vehicle:** RCW 46.04.320; RCW 46.70.011(2) Motor Vehicle – Definition

“Motor vehicle” means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

d. **Defense to a charge of Unlawful Possession of a Loaded Firearm in a Motor Vehicle:** RCW 77.15.460(4)(b); WAC 232-12-828(5) and (6) Disabled Hunter Defense

It is a defense to a charge of Unlawful Possession of a Loaded Firearm in a Motor Vehicle if:

1. The defendant possessed a disabled hunter’s permit; and
2. The defendant displayed a vehicle identification placard on his or her vehicle that had the loaded firearm.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

17. **Negligent Shooting of Firearm**

a. **Unlawful Possession of a Loaded Rifle or Shotgun:** RCW 77.15.460(1) Unlawful Possession of a Loaded Rifle or Shotgun – Definition

A person commits the crime of Unlawful Possession of a Loaded Rifle or Shotgun in a Motor Vehicle or Upon an Off-road Vehicle if the person carries, transports, conveys, possesses, or controls a rifle or shotgun in a motor vehicle, or upon an off-road vehicle, except as allowed by department rule, and the rifle or shotgun contains shells or cartridges in the magazine or chamber, or is a muzzle-loading firearm that is loaded and capped or primed.

b. **To Convict the defendant of Unlawful Possession of a loaded Rifle or Shotgun:** RCW 77.15.460(1) Unlawful Possession of a Loaded Rifle or Shotgun – Elements
To convict the defendant of Unlawful Possession of a Loaded Rifle or Shotgun in a Motor Vehicle or Upon an Off-road Vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant:
   (a) Carried, transported, conveyed, possessed, or controlled a rifle or shotgun in a motor vehicle, or upon an off-road vehicle, in a manner not permissible by department rule; and
   (b) The rifle or shotgun contained shells or cartridges in the magazine or chamber, or was a muzzle-loading firearm that was loaded and capped or primed; and
(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. **Unlawful use of a Loaded Firearm:** RCW 77.15.460(2) Unlawful Use of a Loaded Firearm – Definition

A person commits the crime of Unlawful Use of a Loaded Firearm if [the person negligently discharges a firearm from, across, or along the maintained portion of a public highway] [the person discharges a firearm from within a moving motor vehicle or from upon a moving off-road vehicle].

d. **To convict the defendant of Unlawful Use of a Loaded Firearm:**
   RCW 77.15.460(2) Unlawful Use of a Loaded Firearm – Elements

To convict the defendant of Unlawful Use of a Loaded Firearm, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant negligently shot a firearm from, across, or along the maintained portion of a public highway; and
(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

e. **Exemptions: Disabled Hunter Defense:** RCW 77.15.460(4) Exemptions; WAC 232-12-828(5) Disabled Hunter Defense

It is a defense to a charge of Unlawful Possession of a Loaded Rifle or Shotgun in a Motor Vehicle or Upon an Off-road Vehicle, or Unlawful Use of a Loaded Firearm, if:
(1) The defendant is a law enforcement officer who is authorized to carry a firearm and is on duty within the officer’s respective jurisdiction;
(2) The defendant possesses a disabled hunter’s permit as provided by RCW 77.32.237 and complies with all rules of the department concerning hunting by persons with disabilities; or
(3) The defendant discharges the rifle or shotgun from upon a nonmoving motor vehicle or a nonmoving off-road vehicle, as long as the engine is turned off and the motor vehicle or off-road vehicle is not parked on or beside the maintained portion of a public road, except as authorized by the commission by rule.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

f. Corresponding Definitions:

(1) Unloaded rifle or shotgun: RCW 77.15.460(5) Definition of unloaded rifle or shotgun

For purposes of the crime of Unlawful Possession of a Loaded Rifle or Shotgun in a Motor Vehicle or Upon an Off-road Vehicle, a rifle or shotgun is not considered loaded if the detachable clip or magazine is not inserted in or attached to the rifle or shotgun.

(2) Public Highway: WAC 232-12-828(1)(i) Public Highway – Definition

“Public highway” means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(3) Negligence: WPIC 10.04 Negligence—Adult—Definition

A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and this failure constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation. [When criminal negligence [as to a particular result][fact]] is required to establish an element of a crime, the element is also established if a person acts [intentionally][or][knowingly][or][recklessly] [as to that [result][fact]].]

(4) Firearm: RCW 9.41.010(7) Firearm – Definition

“Firearm,” for purposes of the crime of Unlawful Use of a Loaded Firearm, means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.
18. Recreational Fishing

a. **Unlawful Recreational fishing in the First Degree:** RCW 77.15.370(1) / WAC 220-56-282(3)(c) Unlawful Recreational Fishing in the First Degree – Definition

A person commits the crime of Unlawful Recreational Fishing in the First Degree if he or she [takes, possesses, or retains two times or more than the bag limit or possession limit of [fish] [shellfish] allowed by any rule of the director or commission setting the amount of [food fish] [game fish] [shellfish] that can be taken, possessed, or retained for noncommercial purposes] [fished in a fishway] [sought] [gaffed] [snagged] [snared] [speared] [dipnetted] [stoned] [fish] [shellfish] in state waters or possesses [fish] [shellfish] taken by such means] [fished for or possesses a fish listed as threatened or endangered in 50 C.F.R. Sec. 17.11 (2002)] [possesses a sturgeon measuring in excess of 54 inches in fork length].

b. **To Convict the Defendant of Unlawful Recreational Fishing in the First Degree:** RCW 77.15.370(1) / WAC220-56-282(3) Unlawful Recreational Fishing in the First Degree – Elements

To convict the defendant of Unlawful Recreational Fishing in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That the defendant, on or about __________ [took, possessed, or retained two times or more than the bag limit or possession limit of [fish] [shellfish] allowed by any rule of the director or commission setting the amount of [food fish] [game fish] [shellfish] that can be taken, possessed, or retained for noncommercial purposes] [fished in a fishway] [sought] [gaffed] [snagged] [snared] [speared] [dipnetted] [stoned] [fish] [shellfish] in state waters or possesses [fish] [shellfish] taken by such means] [fished for or possesses a fish listed as threatened or endangered in 50 C.F.R. Sec. 17.11 (2002)] [possesses a sturgeon measuring in excess of 54 inches in fork length]; and

2. That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. **Unlawful Recreational Fishing in the Second Degree:** RCW 77.15.380(1) and (2), Unlawful Recreational Fishing in the Second Degree – Definition

A person commits the crime of Unlawful Recreational Fishing in the Second Degree if he or she:
(1) Fishes for [fish][shellfish] and, whether or not the person possesses [fish][shellfish], he or she has not purchased the appropriate [fishing][shellfishing] license and catch record card issued to Washington residents or nonresidents under chapter 77.32 RCW; or

(2) [[Takes] [Possesses] [Harvests]] [[fish][shellfish]] and:
   a. Owns, but does not have in his or her possession, the license or catch record card required by chapter 77.32 for such activity; or
   b. The action violates any department rule regarding [seasons] [bag or possession limits but less than two times the bag or possession limit] [closed areas] [closed times] [[any other rule addressing the manner or method of fishing] [the possession of fish]].

d. To convict the Defendant of Unlawful Recreational Fishing in the Second Degree: RCW 77.15.380(1) and (2), Unlawful Recreational Fishing in the Second Degree – Elements

To convict the defendant of Unlawful Recreational Fishing in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That the defendant, on or about __________,
   (a) Fished for [fish][shellfish] and, whether or not the person possessed [fish][shellfish], he or she had not purchased the appropriate [fishing][shellfishing] license and catch record card issued to Washington residents or nonresidents under chapter 77.32 RCW; or
   (b) [[Took] [Possessed] [Harvested]] [[fish][shellfish]] and:
      i. Owned, but did not have in his or her possession, the license or catch record card required by chapter 77.32 for such activity; or
      ii. The action violated any department rule regarding [seasons] [bag or possession limits but less than two times the bag or possession limit] [closed areas] [closed times] [[any other rule addressing the manner or method of fishing] [the possession of fish]]; and

(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that elements (1)(a), (1)(b)(i), or (1)(b)(ii), and element (2), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

e. Unlawful Recreational Fishing in the Second Degree (lesser-included offense): *Use this phrase only if it is a lesser-included offense of
Unlawful Rec Fishing, First Degree. RCW 77.15.380(1) Unlawful Recreational Fishing in the Second Degree – Definition.

A person commits the crime of Unlawful Recreational Fishing in the Second Degree if he or she fishes for, takes, possesses, or harvests [fish][shellfish] and [does not have and possess a [license] [catch record card]] [violates any rule of the commission or the director regarding [seasons] [less than two times*] the bag or possession limit] [closed areas] [closed times] [the manner or method of fishing] [the possession of fish]].

f. To convict the defendant of Unlawful Recreational Fishing in the second degree (lesser included offense) *Use this phrase only if it is a lesser-included offense of Unlawful Rec Fishing, First Degree. RCW 77.15.380(1) Unlawful Recreational Fishing in the Second Degree – Elements

To convict the defendant of Unlawful Recreational Fishing in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That the defendant, on or about __________ fished for, took, possessed, or harvested [fish][shellfish] and [did not have and possess a [license] [catch record card]] [violated any rule of the commission or the director regarding [seasons] [less than two times*] the bag or possession limit] [closed areas] [closed times] [the manner or method of fishing] [the possession of fish]]; and

(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

g. Corresponding definitions:

(1) Fish: RCW 77.08.010(17) Fish – Definition

[“Fish” includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters.]
[The term “fish” includes all stages of development and the bodily parts of fish species.]

“Endangered” means the classification provided to an animal or plant in danger of extinction within the foreseeable future throughout all or a significant portion of its range.


“Threatened” means the classification provided to an animal or plant likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

(4) Species: Federal Endangered Species Act, Section 3(15) Definition — Species

“Species” means any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. A population of individuals that are more or less alike, and that are able to breed and produce fertile offspring under natural conditions.

(5) Fork length: WAC 220-16-320 General definitions—Fish length measurement

[“Fork length” means the distance from the extreme tip of the snout to the center of the fork of the tail.]

(6) Fishway: WAC 220-11-020(37) Fishway – Definition

[“Fishway” means any facility or device that is designed to enable fish to effectively pass around or through an obstruction without undue stress or delay.]


[“To Gaff” means an attempt to take fish by impaling fish with a hook attached directly to a pole or other device.]

[“To Spear” means an attempt to take fish by impaling the fish on a shaft, arrow, or other device.]


[“To Snag” means an attempt to take fish with a hook and line in such a way that the fish does not voluntarily take the hook in its mouth.]

(10) To fish: RCW 77.08.010(52) To Fish – Definition

[“To fish” and “to take,” and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.]

(11) Food fish: Washington Department of Fish and Wildlife, Fishing in Washington: 2011/2012 Sport Fishing Rules Pamphlet, P. 18 / WAC 220-12-010 / RCW 77.08.022 Food Fish — Definition

[“Food fish” means forage fish, halibut, bottomfish, common carp, shad, tuna, mackerel, salmon, and sturgeon.]

[The term “food fish” includes all stages of development and the bodily parts of food fish species.]

(12) Game Fish: Washington Department of Fish and Wildlife, Fishing in Washington: 2011/2012 Sport Fishing Rules Pamphlet, P. 18 / RCW 77.08.020 / RCW 77.08.010(17) Game Fish — Definition

[“Game fish” means rock bass, lake white fish, blue catfish, black bullhead, yellow bullhead, brown bullhead, channel catfish, green sunfish, pumpkinseed, warmouth, bluegill,
burbot or fresh water ling, smallmouth bass, largemouth bass, Kokanee or silver trout in its
landlocked form, yellow perch, white crappie, black crappie, mountain white fish, golden trout,
cutthroat trout, rainbow or steelhead trout, Atlantic salmon in its landlocked form, brown trout,
eastern brook trout, Dolly Varden trout, lake trout, Walleye, and arctic grayling.]

[The term “game fish” includes all stages of development and the bodily parts of food fish
species.]

(13) Shell Fish: Washington Department of Fish and Wildlife,
Fishing in Washington: 2011/2012 Sport Fishing Rules
Pamphlet, P. 132-135 / WAC 220-56-310 / WAC 220-12-020 /
RCW 77.08.010(50) / Shell Fish — Definition

[“Shell fish” means abalone (pinto), mussel (blue, California, and Mediterranean), scallop
(Pacific pink, rock, spiny, and weathervane), clam (macoma, butter, common cockle, geoduck,
horse or gaper, mud or softshell, Manila, paddock, razor, rock or native little neck, varnish, and all
other marine clams existing in Washington in a wild state), oyster, squid, octopus, barnacles
(goose), shrimp (coonstripe, ghost or sand, humpy, mud, ocean pink, pink, sidestripe, and spot),
crab (Dungeness or Pacific, red rock, tanner, king, and box), crawfish, sea cucumber, and sea
urchin (green, red, and purple).]

[The term “shellfish” includes all stages of development and the bodily parts of shellfish
species.]

(14) Possession: WPIC 133.52 and 50.03 Possession (modified) —
Definition

Possession means having a [item] in one's custody or control. [It may be either actual or
constructive. Actual possession occurs when the item is in the actual physical custody of the person
charged with possession. Constructive possession occurs when there is no actual physical
possession but there is dominion and control over the item.]

[Proximity alone without proof of dominion and control is insufficient to establish
constructive possession. Dominion and control need not be exclusive to support a finding of
constructive possession.]

[In deciding whether the defendant had dominion and control over an item, you are to
consider all the relevant circumstances in the case. Factors that you may consider, among others,
include [whether the defendant had the [immediate] ability to take actual possession of the item,]
[whether the defendant had the capacity to exclude others from possession of the item,] [and]
[whether the defendant had dominion and control over the premises where the item was located].
No single one of these factors necessarily controls your decision.]

(15) Commission: RCW 77.08.010(9) Commission — Definition
“Commission” means the state fish and wildlife commission.

(16) Director: RCW 77.08.010(13) Director — Definition

“Director” means the director of fish and wildlife.


[The Fish and Wildlife Commission established a rule setting the bag limit/possession limit for name of fish or shellfish [use language of appropriate WACs]]

(18) Requirement and Possession of Recreational license and Catch Card: WAC 220-55-015 / WAC 220-56-175 / RCW 77.32.010 / RCW 77.32.520 / RCW 77.32.470 Requirement and Possession of Recreational License and Catch Card — Rule

[Any person aged 15 years or older, that takes/possess/fish/shellfish from state or offshore waters, is required to have their recreational license/catch card on his or her person.] [A recreational license only allows the holder to [fish/dig for] [take or possess] [food fish/game fish/shellfish] as specified in the license.]

(19) Closed Season: RCW 77.08.010(6) Closed Seasons — Definition

[“Closed seasons” means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. “Closed season” also means all fishing, taking, or possession of fish or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to take, or possess by rule of the commission as an open season.]
Open Season: RCW 77.08.010(34) Open Season — Definition

[“Open season” means those times, manners of taking, and places or waters established by rule of the commission for the lawful fishing, taking, or possession of fish or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to fish, take, harvest, or possess by rule of the commission. “Open season” includes the first and last days of the established time.]

Shellfish daily limit: WAC 220-56-310 Shellfish daily limit — Definition

[“Shellfish daily limit” means the number of shellfish any one person may lawfully take in any one day for personal use.]

Shellfish Possession Limit: WAC 220-56-312 Shellfish possession limit — Definition

[“Shellfish possession limit” means the number of daily limits of fresh shellfish that any one person may lawfully possess.]

[The shellfish possession limit in Washington for any one person is one daily limit of fresh shellfish.]

Butter Clam: WAC 220-56-310 Butter clams — Daily limit

[The butter clam daily limit in Washington is 40 clams in the aggregate, or 10 pounds, whichever is achieved first.]

Razor Clams: WAC 220-56-310 Razor clams — Daily limit

[The razor clam daily limit in Washington is 15 clams.]


[The Fish and Wildlife Commission established a rule designating the [Name of Fish or Shellfish] Season for [Year] was [Month Day through Month Day]].

[The Fish and Wildlife Commission established a rule designating the [bag limit] [possession limit] for [Name of fish or shellfish] [use language of appropriate WACs]]

[The Fish and Wildlife Commission established a rule designating the [Name of Fish or Shellfish] Season for [Year] was [Month Day through Month Day]].

[The Fish and Wildlife Commission established a rule designating the [Name of Fish or Shellfish] Season for [Year] was [Month Day through Month Day]].

[The Fish and Wildlife Commission established a rule prohibiting the [the name of the illicit manner or method of fishing] [in] [fishing or taking] [name of fish or shellfish]].

[The Fish and Wildlife Commission established a rule prohibiting the possession of [Name of Fish or Shellfish]].

19. **Spotlighting**

a. **The crime of Spotlighting Big Game in the First Degree: RCW 77.15.450(2) Spotlighting Big Game in the First Degree – Definition**

A person commits the crime of Spotlighting Big Game in the First Degree when he or she hunts big game with the aid of a spotlight, other artificial light, or night vision equipment while in possession or control of a firearm, bow and arrow, or cross bow, and the defendant has a prior conviction within the past ten years of a felony or gross misdemeanor crime under Title 77.15 RCW involving big game.

b. **To convict the defendant of Spotlighting Big Game in the First Degree: RCW 77.15.450(2) Spotlighting Big Game in the First Degree – Elements**

To convict the defendant of Spotlighting Big Game in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:
(1) That on or about __________, the defendant:
(2) Hunted for big game;
(3) With the aid of a spotlight, other artificial light, or night vision equipment;
(4) While in possession or control of a firearm, bow and arrow, or crossbow;
(5) That any of these acts occurred in the County of __________, Washington; and
(6) The defendant has a prior conviction within the past ten years of a felony or gross misdemeanor crime under Title 77.15 RCW involving big game.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. The Crime of Spotlighting in the Second Degree: RCW 77.15.450(1)
   Spotlighting Big Game in the Second Degree – Definition

A person commits the crime of Spotlighting Big Game in the Second Degree when he or she hunts big game with the aid of a spotlight, other artificial light, or night vision equipment while in possession or control of a firearm, bow and arrow, or crossbow.

d. To convict the defendant of Spotlighting Big Game in the Second Degree: RCW 77.15.450(1) Spotlighting Big Game in the Second Degree – Elements

e. Corresponding definitions:

   (1) Conviction: RCW 9.94A.030(9) / 77.15.050 Conviction – Definition

   A conviction means an adjudication of guilt and includes a verdict of guilty, a finding of guilty, acceptance of a plea of guilty and a forfeiture of bail as a final disposition.

   (2) To Hunt: RCW 77.08.010 (53)) To Hunt — Definition

   “To hunt” or “to take” means an effort to kill, injure, capture, or harass a wild animal.

   (3) Big Game: RCW 77.08.030 Big Game — Definition

   A [bear (black bear, grizzly bear)] [caribou] [cougar] [deer (blacktail deer, mule deer, whitetail deer)] [elk] [moose] [mountain goat] [mountain lion] [mountain sheep] [pronghorn antelope] is “big game.”
Possession: WPIC 133.52 Possession (modified) — Definition

Possession means having a [item] in one's custody or control. [It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.]

[Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.]

[In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the [immediate] ability to take actual possession of the item,] [whether the defendant had the capacity to exclude others from possession of the item,][and][whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.]

Night Vision: RCW 77.15.450(1) Night Vision Equipment — Definition

“Night vision equipment” means electronic light amplification devices, thermal imaging devices, and other comparable equipment used to enhance night vision.


It is not a defense to the crime of Spotlighting Big Game in the [First][Second] Degree if the defendant was charged for shooting a big game decoy rather than a real big game animal.

20. Trafficking

a. Unlawful Trafficking in Fish, Shellfish or Wildlife in the First Degree: RCW 77.15.260(2) Unlawful Trafficking in Fish, Shellfish or Wildlife in the First Degree — Definition

A person commits the crime of Unlawful Trafficking in Fish, Shellfish or Wildlife in the First Degree if he or she traffics in [fish][shellfish][wildlife] and the [fish][wildlife] is classified as [game][food fish][shellfish][game fish][protected wildlife] and the trafficking is not authorized by statute or rule of the department, or [fish][shellfish][wildlife] is unclassified and the trafficking violates any rule of the department, and the [fish][shellfish][wildlife] has a value of two hundred fifty dollars or more] [fish][shellfish][wildlife] is designated as an endangered species or
deleterious exotic wildlife and such trafficking is not authorized by any statute or rule of the department.

b. To convict the defendant of Unlawful Trafficking in Fish, Shellfish or Wildlife in the First Degree: RCW 77.15.260(2) Unlawful Trafficking in Fish, Shellfish or Wildlife in the First Degree – Elements

To convict the defendant of Unlawful Trafficking in Fish, Shellfish or Wildlife in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about __________, the defendant trafficked in [fish][shellfish][wildlife]; and
2. The [[fish][wildlife] is classified as [game][food fish][shellfish][game fish][protected wildlife] and the trafficking is not authorized by statute or rule of the department] [[fish][shellfish][wildlife] is unclassified and the trafficking violates any rule of the department]; and
3. The [[fish][shellfish][wildlife] had a value of two hundred fifty dollars or more] [[fish][shellfish][wildlife] was designated as an endangered species or deleterious exotic wildlife, and such trafficking is not authorized by any statute or rule of the department]; and
4. That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. Unlawful Trafficking in Fish, Shellfish or Wildlife in the Second Degree: RCW 77.15.260(1) Unlawful Trafficking in Fish, Shellfish or Wildlife in the Second Degree – Definition

A person commits the crime of Unlawful Trafficking in Fish, Shellfish or Wildlife in the Second Degree if he or she traffics in [fish][shellfish][wildlife] [with a wholesale value of less than two hundred fifty dollars*] and the [[fish][wildlife] is classified as [game][food fish][shellfish][game fish][protected wildlife] and the trafficking is not authorized by statute or rule of the department] [[fish][shellfish][wildlife] is unclassified and the trafficking violates any rule of the department]. The bracketed phrase, “with a wholesale value of less than two hundred fifty dollars,” should only be used if the crime is included as a lesser-included offense of Unlawful Trafficking in the First Degree.
d. To Convict the defendant of Unlawful Trafficking in Fish, Shellfish or Wildlife in the Second Degree: RCW 77.15.260(1) Unlawful Trafficking in Fish, Shellfish or Wildlife in the Second Degree – Elements

To convict the defendant of Unlawful Trafficking in Fish, Shellfish or Wildlife in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about ________, the defendant trafficked in [fish][shellfish][wildlife] [with a wholesale value of less than two hundred fifty dollars; and
2. the [[fish][wildlife] is classified as [game][food fish][shellfish][game fish][protected wildlife] and the trafficking is not authorized by statute or rule of the department] [[fish][shellfish][wildlife] is unclassified and the trafficking violates any rule of the department]; and
3. That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty. *The bracketed phrase, “with a wholesale value of less than two hundred fifty dollars,” should only be used if the crime is included as a lesser-included offense of Unlawful Trafficking in the First Degree.

e. Corresponding Definition:

1. Designated Wildlife: RCW 77.08.010(56) Trafficking – Definition

[Name of Wildlife] is designated as [endangered species][deleterious exotic wildlife].

2. Trafficking: RCW 77.08.010(56) Trafficking – Definition

“Trafficking” means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

3. Wildlife: WAC 232-12-071; RCW 77.08.010(63) Wildlife – Definition

[“Wildlife” means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates.]
The term wildlife includes [any edible bodily part of that wildlife] [any nonedible bodily part of [bighorn sheep] [mountain goat]] [velvet antlers of [deer] [elk]] [bear gall bladder] [bear claws] [teeth] that are not permanently attached to a full bear skin or mounted bear. [A nonedible party is still considered nonedible even if it is used for human consumption.]

Wildlife does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director.

(4) **Endangered Species: WAC 232-12-297(2.4) ; RCW 77.08.010**

(15) **Endangered Species — Definition**

[“Endangered [Fish][Wildlife]” means any [fish][wildlife] species native to the state of Washington that has been designated by the commission as seriously threatened with extinction throughout all or a significant portion of its range within the state of Washington.]

(5) **Deleterious Exotic Wildlife: RCW 77.08.010(12) Deleterious Exotic Wildlife — Definition**

[“Deleterious exotic wildlife” means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state of Washington.]

(6) **Value: WPIC 79.20 Value — Definition; RCW 77.15.110(2)**

**Acting for commercial purposes—When—Proof.**

“Value” means the wholesale market value of the [fish] [shellfish] [wildlife] at the time and in the approximate area of the act. If no wholesale value can be ascertained, then the value shall be the fair market value of the [fish] [shellfish] [wildlife] at the time and in the approximate area of the act.

(7) **Classified Wildlife: RCW 77.08.010(23); WAC 232-12-011; WAC 232-12-019; WAC 220-12-010; WAC 220-12-020**

**Classified Wildlife — Definition**

[Name of Fish, Shellfish or Wildlife] is [not] classified as [game] [food fish] [shellfish] [game fish] [protected wildlife].

21. **Unlawful Bear Baiting**

102
a. Unlawful Baiting of Black Bear: RCW 77.15.245(1) Unlawful Baiting of Black Bear—Definition

A person commits the crime of Unlawful Baiting of Black Bear when he or she takes, hunts, or attracts black bear with the aid of bait.

b. To Convict the defendant of Unlawful Baiting of Black Bear: RCW 77.15.245(1) Unlawful Baiting of Black Bear – Elements

To convict the defendant of Unlawful Baiting of Black Bear, each of the following elements of the crime must be proved beyond a reasonable doubt:

(4) That on or about __________, the defendant took, hunted, or attracted black bear with the aid of bait; and
(5) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. Corresponding Definition:

(1) To Hunt: RCW 77.08.010(53) To Hunt — Definition

“To hunt” and its derivatives, such as “to take,” means an effort to kill, injure, capture, or harass a black bear.

(2) Bait: RCW 77.15.245(1)(d) Bait – Definition

“Bait” means a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or intend to hunt them.

22. Unlawful Commercial Crab Gear:

a. Unlawful Use of Shellfish Gear for Commercial Purposes: RCW 77.15.522

The defendant, [DEFENDANT], is charged by Citation filed by the State of Washington with the
crime of Unlawful Use of Shellfish Gear for Commercial Purposes, RCW 77.15.522, alleged to have been committed as follows:

That [DEFENDANT], the said defendant, in the County of Grays Harbor, State of Washington, on or about [DATE], did possess unlawful shellfish gear for commercial purposes.

To this Complaint the defendant has entered a plea of not guilty, which puts in issue every material allegation contained therein.

b. **To convict the defendant of the crime of Unlawful Use of Shellfish Gear for Commercial Purposes: RCW 77.15.522**

To convict the defendant of the crime of Unlawful Use of Shellfish Gear for Commercial Purposes, the State must prove to you beyond a reasonable doubt the following:

1. That on or about [DATE] the defendant possessed, upon a vessel on the water, shellfish gear;

2. That the shellfish gear was constructed or altered in a manner that violated the rules of the Department of Fish and Wildlife; **and**

3. These events occurred in Grays Harbor County, Washington.

If you find from all the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty of as to the charge of Unlawful Use of Shellfish Gear for Commercial Purposes as alleged.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty as to the charge of Unlawful Use of Shellfish Gear for Commercial Purposes.
c. **Corresponding Definitions:**

1. **Possession: WPIC 133.52 and WPIC 50.03 Possession (modified) —Definition**

   Possession means having a *item* in one’s custody or control. *It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.*

   *Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.*

   *In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the *immediate* ability to take actual possession of the item,] [whether the defendant had the capacity to exclude others from possession of the item,] [and] [whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.*

2. **Commercial Purposes: WAC 220-16-305**

   “Commercial purposes” means taking, fishing for, handling, processing, or otherwise disposing of shellfish with the intent of disposing of such shellfish or parts thereof for profit or by sale, barter, trade or in commercial channels.

3. **Shellfish Gear: WAC 220-52-035**

   Shellfish gear is constructed or altered in a manner that violates the rules of the Department of Fish and Wildlife if it does not have either:

   1. Attachment of pot lid hooks or tie-down straps with a single strand or loop of untreated cotton twine or other natural fiber no larger than thread size 120 including a single strand of cotton twine or other natural fiber tied together at the ends so that it can be looped between the tie-down straps
and the lid hook to connect them together; or

(2) An opening in the pot mesh no less than three inches by five inches and laced or sewn closed with one single strand of untreated cotton twine or other natural fiber no larger than thread size 120 not wrapped multiple times or doubled in any way when lacing or sewing the wire mesh closed. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

23. Unlawful Hunting with Dogs:

a. Unlawful Hunting with Dogs: RCW 77.15.245(2) Unlawful Hunting with Dogs – Definition

A person commits the crime of Unlawful Hunting with Dogs when he or she hunts or pursues [black bear] [cougar] [bobcat] [lynx] with the aid of a dog or dogs.

b. To Convict the defendant of Unlawful Hunting with Dogs: RCW 77.15.245(2) Unlawful Hunting with Dogs – Elements

To convict the defendant of Unlawful Hunting with Dogs, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant hunted or pursued [black bear] [cougar] [bobcat] [lynx] with the aid of a dog or dogs; and

(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. Corresponding Definition:
(1) **Use of Dogs to Hunt: WAC 232-28-287 and WAC 232-28-272**

Use of Dogs Prohibited when Hunting for Cougar

The use of dogs to hunt cougar is prohibited except by a public safety cougar removal permit (WAC 232-12-243 or commission authorized hound permit (WAC 232-28-285)).

(2) **Bag Limit for Cougar: WAC 232-28-287 Bag Limit for Cougar – Definition**

The bag limit for cougar is one (1) cougar per license year, excluding public safety cougar removals.

(3) **Valid License: WAC 232-12-001(1) Valid License – Definition**

A “valid” license, tag or permit means a license, tag or permit that was issued to the bearer for the current season by the Department of Fish and Wildlife and is required to hunt or possess big game.

(4) **Tag Required to Hunt Cougar: WAC 232-28-287 Tag Required to Hunt Cougar – Definition**

One cougar transport tag is included with a big game license that has cougar as a species option.

(5) **To Hunt: RCW 77.08.010(53) To Hunt — Definition**

“To hunt” and its derivatives, such as “to pursue,” means an effort to kill, injure, capture, or harass a cougar.

(6) **Big Game: RCW 77.08.030 Big Game — Definition**

A cougar is “big game.”

(7) **GMU in which Offense was Committed: WAC 232-28-331 through 336 GMU in which Offense was Committed — Definition**

[Situs of offense] is located within Game Management Unit Number [GMU Number].

[Modern Firearm] [Archery] [Muzzleloader] Cougar Season for [Year] in Game Management Unit [GMU Number] was [Month Day through Month Day].


[A hunter, during modern firearm season, may hunt with a] [rifle] [handgun] [shotgun] [bow] [muzzleloader].

[A hunter, during archery season, may only hunt with archery equipment].

[A hunter, during muzzleloader season, may only hunt with muzzleloader equipment].

(10) Official Hunting Hours: WAC 232-12-289(8)-(10) Official Hunting Hours — Definition

The Fish and Wildlife Commission established a rule stating that the official hunting hours for game animals on [Date Month, Year] was from [Start] a.m. to [Close] p.m.

(11) Party Hunting: WAC 232-12-062 Party Hunting — Definition

The Fish and Wildlife Commission established a rule stating that it is unlawful to tag a big game animal that another person has killed.

(12) Commission: RCW 77.08.010(9)

“Commission” means the state fish and wildlife commission.

(13) Director: RCW 77.08.010(14)

“Director” means the director of fish and wildlife.
d. **Unlawful Hunting of Big Game in the Second Degree: RCW 77.15.410(1)(a) Unlawful Hunting of Big Game in the Second Degree – Definition/ RCW 77.15.410(1)(b) Unlawful Hunting of Big Game in the Second Degree – Definition**

(1) A person commits the crime of Unlawful Hunting of Big Game in the Second Degree when he or she hunts for, takes, or possesses big game and the person does not have and possess all required licenses, tags, or permits.

(2) A person commits the crime of Unlawful Hunting of Big Game in the Second Degree when he or she violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game.

e. **To Convict the defendant of Unlawful Hunting of Big Game in the Second Degree: RCW 77.15.410(1)(a) Unlawful Hunting of Big Game in the Second Degree – Elements/ RCW 77.15.410(1)(b) Unlawful Hunting of Big Game in the Second Degree – Elements**

(1) To convict the defendant of Unlawful Hunting of Big Game in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

   (1) That on or about __________, the defendant hunted for, took, or possessed big game and did not have and possess all required licenses, tags, or permits; and

   (2) That any of these acts occurred in the County of __________, Washington.

   If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

   On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

(2) To convict the defendant of Unlawful Hunting of Big Game in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

   (1) That on or about __________, the defendant violated any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possessing of big game; and
(2) That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

24. Unlawful Partic Non-Indian Fishing:

a. Unlawful Participation of a Non-Indian: RCW 77.15.570(2) Unlawful Participation of a Non-Indian in an Indian Fishery for Commercial Purposes – Definition

It is a crime for any person, with the intent of acting for a commercial purpose, to participate in the taking of fish or shellfish in a treaty Indian fishery, or being aboard a vessel, or associated equipment, operating in a treaty Indian fishery, unless the person is a treaty Indian fisherman.

b. To Convict the defendant of Unlawful Participation of Non-Indian in Indian Fishery for Commercial Purposes: RCW 77.15.570(2) Unlawful Participation of a Non-Indian in an Indian Fishery for Commercial Purposes – Elements

To convict the defendant of Unlawful Participation of a Non-Indian in Indian Fishery for Commercial Purposes, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant:
   (a) Participated in the taking of fish or shellfish in a treaty Indian fishery; or
   (b) Was aboard a vessel, or associated equipment, operating in a treaty Indian fishery; and

(2) That the defendant acted with intent for commercial purposes; and

(3) That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that elements (2), (3), and any of the alternative elements [(1)(a),] or [(1)(b),] have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of
alternatives [(1)(a),] or [(1)(b),] has been proved beyond a reasonable doubt, as long as each juror
finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to
any one of elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

c. **Unlawful Participation of a Non-Indian in an Indian Fishery: RCW 77.15.570(1)**

It is a crime for any person, to participate in the taking of fish or shellfish in a treaty Indian
fishery, or being aboard a vessel, or associated equipment, operating in a treaty Indian fishery,
unless the person is a treaty Indian fisherman.

d. **To Convict the Defendant of Unlawful Participation of a Non-Indian in Indian Fishery: RCW 77.15.570(2)**

To convict the defendant of Unlawful Participation of a Non-Indian in Indian Fishery, each
of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about __________, the defendant:
   a. Participated in the taking of fish or shellfish in a treaty Indian fishery; or
   b. Was aboard a vessel, or associated equipment, operating in a treaty Indian fishery; and
2. That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that element (2), and any of the alternative elements [(1)(a),]
or [(1)(b),] have been proved beyond a reasonable doubt, then it will be your duty to return a
verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of
alternatives [(1)(a),] or [(1)(b),] has been proved beyond a reasonable doubt, as long as each juror
finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to
any one of elements (1), or (2), then it will be your duty to return a verdict of not guilty.

e. **Corresponding definition:**
(1) **Treaty Indian Fisherman: RCW 77.15.570(4)(a) Treaty Indian Fisherman – Definition**

“Treaty Indian fisherman” means a person who is a member\(^{129}\) of the [Hoh] [Jamestown S’Klallam] [Lower Elwha Klallam] [Lummi] [Makah] [Muckleshoot] [Nez Perce] [Nisqually] [Nooksack] [Port Gamble S’Klallam] [Puyallup] [Quileute] [Quinault] [Sauk-Suiattle] [Skokomish] [Squaxin Island] [Stillaguamish] [Suquamish] [Swinomish] [Tulalip] [Umatilla] [Upper Skagit] [Warm Springs] [Yakima] treaty Indian tribe.

(2) **Unlawful Participation of a Non-Indian in an Indian Fishery: RCW 77.15.570(3)(a) Unlawful Participation of a Non-Indian in an Indian Fishery for Commercial Purposes Exception – Definition**


[The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisherman may assist the fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.]

(3) **Participation: RCW 77.15.570(4)(c) Participation – Definition**

“To participate” and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, to claim possession of a share of the catch, or to represent that the catch was lawfully taken in an Indian fishery.

(4) **Fishing: RCW 77.08.010(52) Fishing – Definition**

“To fish,” and “to take,” and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(5) **Commercial Purposes: RCW 77.15.110(1); RCW 77.15.570(2) Commercial Purposes – Definition**

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A person acts for “commercial purposes” if the person engages in conduct that relates to commerce in fish, or shellfish, or any parts thereof. Commercial conduct may include taking, controlling, delivering, selling, buying, or trading fish, or shellfish, where there is present or future exchange of money, goods, or any valuable consideration. Commercial conduct may also include a payment for fishing assistance.

(6) **Evidence of Commercial Purposes: RCW 77.15.110(1)**

Evidence of Commercial Purposes – Definition

Evidence that a person acts for commercial purposes includes, but is not limited to, the following conduct:

(a) Using gear typical of that used in commercial fisheries;

(b) Exceeding the bag or possession limits for personal use by taking or possessing more than three times the amount of fish, or shellfish allowed;

(c) Delivering or attempting to deliver fish, or shellfish, to a person who sells or resells fish, or shellfish, including any licensed or unlicensed wholesaler;

(d) Taking fish or shellfish using a vessel designated on a commercial fishery license or using gear not authorized in a personal use fishery;

(7) **Intent: WPIC 10.01 Intent–Intentionally – Definition**

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

(8) **Indian Treaty Fisherman: RCW 77.15.570 Indian Treaty Fisherman – Defense**

[A person is not guilty of the crime of Unlawful Participation in Indian Fishery if the person was a treaty Indian fisherman.

The defendant has the burden of proving by a preponderance of the evidence that he or she was a treaty Indian fisherman. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true.]

[A person is not guilty of the crime of Unlawful Participation in Indian Fishery if the person was the spouse, forbearer, sibling, child, and or grandchild of a treaty Indian fisherman who assisted the fisherman in exercising treaty Indian fishing rights and the treaty Indian fisherman was present at the fishing site.]

The defendant has the burden of proving by a preponderance of the evidence that he or she was the spouse, forbearer, sibling, child, and or grandchild of a treaty Indian fisherman who assisted the fisherman in exercising treaty Indian fishing rights and the treaty Indian fisherman
was present at the fishing site. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true.]

25. **Unlawful Transportations**

a. **Unlawful Transportation of Fish and Wildlife in the First Degree:**
   RCW 77.15.290(2) Unlawful Transportation of Fish or Wildlife in the First Degree – Definition

   A person commits the crime of Unlawful Transportation of Fish and Wildlife in the First Degree if he or she knowingly [imports, moves within the state, or exports [fish] [shellfish] [wildlife] in violation of any rule of the commission or the director governing the transportation or movement of [fish] [shellfish] [wildlife] and the transportation involves [big game] [endangered fish] [endangered wildlife] [deleterious exotic wildlife] or [fish] [shellfish] [wildlife] with a value of two hundred fifty dollars or more] [transports [shellfish] [shellstock] [equipment used in commercial culturing, taking, handling, or processing shellfish] without a required permit].

b. **To Convict the defendant of Unlawful Transportation of Fish and Wildlife in the First Degree:**
   RCW 77.15.290(2) Unlawful Transportation of Fish or Wildlife in the First Degree – Elements

   To convict the defendant of Unlawful Transportation of Fish and Wildlife in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

   1. That on or about __________, the defendant knowingly [imported, moved within the state, or exported [fish] [shellfish] [wildlife] in violation of any rule of the commission or the director governing the transportation or movement of [fish] [shellfish] [wildlife] and the transportation involved [big game] [endangered fish] [endangered wildlife] [deleterious exotic wildlife] or [fish] [shellfish] [wildlife] with a value of two hundred fifty dollars or more] [transports [shellfish] [shellstock] [equipment used in commercial culturing, taking, handling, or processing shellfish] without a required permit]; and

   2. That any of these acts occurred in the County of __________, Washington.

   If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

   On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.
c. **Unlawful Transportation of Fish and Wildlife in the Second Degree: RCW 77.15.290(1) Unlawful Transportation of Fish or Wildlife in the Second Degree – Definition**

A person commits the crime of Unlawful Transportation of Fish and Wildlife in the Second Degree if he or she [knowingly imports, moves within the state, or exports [fish] [shellfish] [wildlife] in violation of any rule of the commission or the director governing the transportation or movement of [fish] [shellfish] [wildlife] [and the transportation does not involve big game, endangered fish, endangered wildlife, deleterious exotic wildlife, or fish, shellfish, or wildlife having a value greater than two hundred fifty dollars*] [possesses but fails to affix or notch a big game transport tag as required by rule of the commission or director].

*This bracketed phrase should only be used if this is included as a lesser-included offense of Unlawful Transportation in the First Degree.*

d. **To convict the defendant of Unlawful Transport of Fish and Wildlife in the Second Degree: RCW 77.15.290(1) Unlawful Transportation of Fish or Wildlife in the Second Degree – Elements**

To convict the defendant of Unlawful Transport of Fish and Wildlife in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant [knowingly imported, moved within the state, or exported [fish] [shellfish] [wildlife] in violation of any rule of the commission or the director governing the transportation or movement of [fish] [shellfish] [wildlife] [and the transportation does not involve big game, endangered fish, endangered wildlife, deleterious exotic wildlife, or fish, shellfish, or wildlife having a value greater than two hundred fifty dollars*] [possessed but failed to affix or notch a big game transport tag as required by rule of the commission or director]; and

(2) That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty. *This bracketed phrase should only be used if this is included as a lesser-included offense of Unlawful Transportation in the First Degree.*

e. **Corresponding Definitions:**

   (1) **Big Game: RCW 77.08.030 Big Game — Definition**

   A [bear (black bear, grizzly bear)] [caribou] [cougar] [deer (blacktail deer, mule deer, whitetail deer)] [elk] [moose] [mountain goat] [mountain lion] [mountain sheep] [pronghorn antelope] is “big game.”
(2) **Endangered: WAC 232-12-297 (2.4); RCW 77.08.010 (15)**

*Endangered — Definition*

“Endangered [Fish]/[Wildlife]” means any [fish][wildlife] species native to the state of Washington that is designated by the commission as seriously threatened with extinction throughout all or a significant portion of its range within the state of Washington.

(3) **Deleterious Exotic Wildlife: RCW 77.08.010 (12) Deleterious Exotic Wildlife — Definition**

“Deleterious exotic wildlife” means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state of Washington.

(4) **Value: WPIC 79.20 Value – Definition; RCW 77.15.110(2)**

*Acting for commercial purposes—When—Proof.*

“Value” means the wholesale market value of the [fish][shellfish][wildlife] at the time and in the approximate area of the act. If no wholesale value can be ascertained, then the value shall be the fair market value of the [fish][shellfish][wildlife] at the time and in the approximate area of the act.

(5) **Knowledge: WPIC 10.02 Knowledge –Definition**

A person knows or acts knowingly or with knowledge with respect to a [fact], [circumstance] [or] [result] when he or she is aware of that [fact], [circumstance], [or] [result]. [It is not necessary that the person know that the [fact], [circumstance], [or] [result] is defined by law as being unlawful or an element of a crime]

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

[When acting knowingly [as to a particular fact] is required to establish an element of a crime, the element is also established if a person acts intentionally [as to that fact].]

(6) **Transport Tags: RCW 77.32.320 Transport tags — Rule**

Persons who kill deer, elk, bear, cougar, mountain goat, sheep, moose, or wild turkey shall immediately validate and attach their own transport tag to the carcass as provided by rule of the director.
(7) **Tagging Requirements: WAC 232-12-061 Tagging Requirements — Rule**

It is unlawful for a person who kills a big game animal or turkey to fail to immediately cut out and completely remove from his or her tag the designated notches corresponding to the day and month of the kill for that species (unless the tagging requirement is specifically exempted by the fish and wildlife commission), and to fail to immediately attach his or her notched tag to the carcass of such animal or bird. That tag must remain attached to the carcass while it is being transported and must remain with the wildlife during the period of retention of the edible parts.

(8) **Evidence of Sex of the Animal: WAC 232-12-267(2) Evidence of Sex of the Animal — Rule; WAC 232-12-267(2)(a) Evidence of Sex of the Animal — Definition**

[It is unlawful for a person to possess or transport big game unless evidence of the sex of the animal remains naturally attached to the carcass until the carcass is processed and or stored for consumption.]

[“Evidence of sex of the animal” means the head with antlers or horns attached or penis or testes of male big game animals or the head or udder of female big game animals, any of which must be naturally attached to at least one quarter of the carcass or to the largest portion of meat.]

(9) **Stored for Consumption: WAC 232-12-267(2)(b) Stored for Consumption — Definition**

[“Stored for consumption” means at the final point of storage prior to consumption of the meat.]

(10) **Attached to the Carcass: WAC 232-12-267 Attached to the Carcass — Definition**

[“Attached to the carcass” means evidence of the sex of the animal is to remain with the carcass until it has reached the point of processing or storage.]

(11) **Feathers are to be left: WAC 232-12-267(1) Feathers are to be left Attached to the Head of a Wild Turkey — Rule**

[It is unlawful for a person to possess or transport a wild turkey or other game birds unless the feathered heads are left attached to the carcass, until the carcass is processed and/or stored for consumption.]
(12) Horns and Antlers: WAC 232-12-267(3) Horns and Antlers are to be left Attached to the Head of the Animal — Rule

[It is unlawful for a person to possess or transport goat, sheep, moose, deer or elk taken in hunting areas which have horn or antler restrictions unless the head or skull plate, with both horns or both antlers naturally attached, accompanies the carcass.]

(13) Accompanies the Carcass: WAC 232-12-267(4) Accompanies the Carcass — Definition

[“Accompanies the carcass” means to remain with the carcass until it has reached the point of processing or storage.]

26. Unlawful Use of Department Permit:

a. Unlawful Use of a Department Permit: RCW 77.15.750(1) Unlawful Use of a Department Permit – Definition

A person commits the crime of Unlawful Use of a Department Permit if he or she violates any [terms or conditions of the permit issued by the department or director] [rule of the commission or the director applicable to the requirement for, issuance of, or use of the permit].

b. To Convict the Defendant of Unlawful Use of a Department Permit: RCW 77.15.750(1) Unlawful Use of a Department Permit – Elements

To convict the defendant of Unlawful Use of a Department Permit, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That the defendant, on or about __________ violated a [term or condition of the permit issued by the department or director] [rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife applicable to the requirement for, issuance of, or use of the permit]; and

(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Editor’s note: WDFW issues several types of permits. If you have questions or need additional information on a specific type of permit violation, please contact Lori Preuss for assistance.

c. Corresponding Definitions:

(1) **Falconry Requirements:** WAC 232-30-130(5) and (6) / WAC 232-30-100   Falconry Requirements – Rule

[A person is required to have a valid Washington falconry permit prior to the taking, or possessing a raptor or raptor eggs, or practicing falconry.]

[A person must have the permit or legible copies of the permit in their immediate possession if they are engaging in falconry.]

[A person is required to abide the terms and conditions of the falconry permit.]

(2) **Acquisition, Transfer, Release, Loss or Banding of a Raptor:** WAC 232-30-140 / WAC 232-30-230 Acquisition, Transfer, Release, Loss, or Banding of a Raptor and Documentation Thereof – Rule

A person is required to file a report to the Department of Fish and Wildlife within ten days any acquisition, banding (and rebanding), death, theft, escape, gifting, loss, microchipping, release, taking or transfer of a raptor.

[A person is required to keep records of the report for five years following the said occurrences.]

(3) **Falconry:** WAC 232-12--001(2) Falconry — Definition

“Falconry” means the possession, control or use of raptors for the purpose of hunting or free flight training.

(4) **Raptor:** WAC 232-30-120 Raptor — Definition; WAC 232-30-152 General falconer permits; WAC 232-30-153 Master falconer permit.
“Raptor” means a migratory bird of the Order Falconiformes or the Order Strigiformes, which includes the bald eagle and the golden eagle.

For use with General Falconer permit: [A person may possess any species of Falconiform or Strigiform except a golden eagle, a bald eagle, a white-tailed eagle, or a Steller’s sea-eagle, including captive-bred raptors or hybrids of the species the person is allowed to possess.] [A person may take the following species of raptors from the wild in Washington: Red-tailed hawk, kestrel, merlin, prairie falcon, gyrfalcon, sharp-shinned hawk, Cooper’s hawk, goshawk, great horned owl and barred owl.]

For use with Master Falconer permit: [A person may possess any species of Falconiform or Strigiform except a bald eagle including captive-bred raptors or hybrids of the species the person is allowed to possess.] [A person may take the following species of raptors from the wild in Washington: Red-tailed hawk, kestrel, merlin, prairie falcon, peregrine falcon, gyrfalcon, sharp-shinned hawk, Cooper’s hawk, goshawk, great horned owl and barred owl.

Editor’s note: WAC chapter 232-30 contains a comprehensive set of rules governing falconry and the associated permits. We have only included a sample of some of the rule requirements here.

(5) Commission: RCW 77.08.010(9)

“Commission” means the Washington State Fish and Wildlife Commission.

(6) Director: RCW 77.08.010(13)

“Director” means the director of the Washington Department of Fish and Wildlife.

(7) Possession: WPIC 133.52 and 50.03 Possession (modified) — Definition

Possession means having a [item] in one's custody or control. [It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.]

[Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.]

[In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the [immediate] ability to take actual possession of the item,] [whether the defendant had the capacity to exclude others from possession of the item,] [and]
[whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.]

27. **Unlawful Use of Dogs:**

   a. **Unlawful Use of Dogs: RCW 77.15.240(1) Unlawful Use of Dogs – Definition**

   A person commits the crime of Unlawful Use of Dogs when he or she [negligently fails to prevent a dog under the person’s control from pursuing or injuring deer, elk, or an animal classified as endangered] [uses the dog to hunt deer or elk] [negligently fails to prevent the dog from pursuing a game animal or destroying the nest of a game bird during the closed season for such species of game animal or game bird].

   b. **To Convict the Defendant of Unlawful Use of Dogs: RCW 77.15.240(1) Unlawful Use of Dogs -- Elements**

   To convict the defendant of Unlawful Use of Dogs, each of the following elements of the crime must be proved beyond a reasonable doubt:

   (1) That on or about __________, the defendant [negligently failed to prevent a dog under the person’s control from pursuing or injuring deer, elk, or an animal classified as endangered] [used the dog to hunt deer or elk] [negligently failed to prevent the dog from pursuing a game animal or destroying the nest of a game bird during the closed season for such species of game animal or game bird]; and

   (2) That this act occurred in the County of __________, Washington.

   If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

   On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

   c. **Corresponding Definitions:**

   (1) **Endangered: WAC 232-12-297 (2.4); RCW 77.08.010 (15) Endangered — Definition**

   “Endangered [Fish]/[Wildlife]” means any [fish]/[wildlife] species native to the state of Washington that is designated by the commission as seriously threatened with extinction throughout all or a significant portion of its range within the state of Washington.
(2) Wildlife Classified as Endangered Species: WAC 232-12-014
Wildlife Classified as Endangered Species – Rule

[Name of Wildlife] is classified as an endangered species.

(3) To Hunt: RCW 77.08.010(53) To Hunt — Definition

“To hunt” and its derivatives, such as “to pursue,” means an effort to kill, injure, capture, or harass a [deer] [elk].

(4) Game Birds: RCW 77.08.010(24) Game Birds – Definition

“Game birds” means wild birds that shall not be hunted except as authorized by the commission.

(5) Commission: RCW 77.08.010(9)

“Commission” means the state fish and wildlife commission.

28. Waste Fish Wildlife:

a. Waste of Fish and Wildlife in the First Degree: RCW 77.15.170(2)
Waste of Fish and Wildlife in the First Degree – Definition

A person commits the crime of Waste of Fish and Wildlife in the First Degree if he or she kills, takes, or possesses [fish] [shellfish] [wildlife] [having a value of two hundred fifty dollars or more] [wildlife classified as big game], and the person recklessly allows such [fish] [shellfish] [wildlife] to be wasted.

b. To Convict the Defendant of Waste of Fish and Wildlife in the First Degree: RCW 77.15.170(2) Waste of Fish and Wildlife in the First Degree – Elements

To convict the defendant of Waste of Fish and Wildlife in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:
(1) That on or about __________, the defendant killed, took, or possessed [fish][shellfish][wildlife][having a value of two hundred fifty dollars or more][wildlife classified as big game]; and
(2) Recklessly allowed such [fish][shellfish][wildlife] to be wasted; and
(3) That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. Waste of Fish and Wildlife in the Second Degree: RCW 77.15.170(1)
Waste of Fish and Wildlife in the Second Degree – Definition

A person commits the crime of Waste of Fish and Wildlife in the Second Degree if he or she kills, takes, or possesses [fish][shellfish][wildlife] and the value of the [fish][shellfish][wildlife] is greater than twenty dollars but less than two hundred fifty dollars, and the person recklessly allows such [fish][shellfish][wildlife] to be wasted.

d. To Convict the Defendant of Waste of Fish and Wildlife in the Second Degree: RCW 77.15.170(1) Waste of Fish and Wildlife in the Second Degree – Elements

To convict the defendant of Waste of Fish and Wildlife in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant killed, took, or possessed [fish][shellfish][wildlife] and the value of the [fish][shellfish][wildlife] is greater than twenty dollars but less than two hundred fifty dollars; and
(2) Recklessly allowed such [fish][shellfish][wildlife] to be wasted; and
(3) That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

e. Corresponding Definitions:

(1) To Hunt: RCW 77.08.010(53)) To Hunt — Definition

“To hunt” or “to take” means an effort to kill, injure, capture, or harass a wild animal.
(2) Possession: WPIC 133.52 and 50.03 Possession (modified) — Definition

Possession means having a [item] in one's custody or control. [It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.]

[Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.]

In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the [immediate] ability to take actual possession of the item,] [whether the defendant had the capacity to exclude others from possession of the item,] [and] [whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.

(3) Recklessness: WPIC 10.03 Recklessness – Definition

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that waste may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

[When recklessness [as to a particular result] is required to establish an element of a crime, the element is also established if a person acts [intentionally] [or] [knowingly] [as to that result].]

(4) Prima Facie Evidence of Waste of Fish and Wildlife: RCW 77.15.170(4)&(a)&(b) Prima Facie Evidence of Waste of Fish and Shellfish

A person may be inferred to have recklessly allowed [fish] [shellfish] to be wasted if he or she purchases or engages [fish] [shellfish] that cannot be processed within sixty hours after they are taken from the water, unless the [fish] [shellfish] are preserved in good marketable condition.

This inference is not binding upon you, and it is for you to determine what weight, if any, such inference is to be given.

A person may be inferred to have recklessly allowed a big game animal to be wasted if he or she brings a big game animal to a wildlife meat cutter and then abandons the animal. A big game animal is deemed to be abandoned when its carcass is placed in the custody of a wildlife meat cutter for butchering and processing and:

(i) Having been placed in such custody for an unspecified period of time, the meat is not removed within thirty days after the wildlife meat cutter gives notice to the person who brought in the carcass or, having been so notified, the person who brought in the carcass refuses or fails to pay the agreed upon or reasonable charges for the butchering or processing of the carcass; or

(ii) Having been placed in such custody for a specified period of time, the meat is not
removed at the end of the specified period or the person who brought in the carcass refuses to pay the agreed upon or reasonable charges for the butchering or processing of the carcass.

This inference is not binding upon you, and it is for you to determine what weight, if any, such inference is to be given.

(5) Value: WPIC 79.20 Value – Definition; RCW 77.15.110(2)
Acting for commercial purposes—When—Proof.

“Value” means the wholesale market value of the [fish] [shellfish] [wildlife] at the time and in the approximate area of the act. If no wholesale value can be ascertained, then the value shall be the fair market value of the [fish] [shellfish] [wildlife] at the time and in the approximate area of the act.

(6) Waste: Dictionary.com definition

“Waste” means to fail or neglect to use, or to destroy, devastate, or ruin.

29. Wild Animals Hunt:

a. Unlawful Hunting of Wild Animals in the First Degree: RCW 77.15.430(2) Unlawful Hunting of Wild Animals in the First Degree – Definition

A person commits the crime of Unlawful Hunting of Wild Animals in the First Degree when he or she takes or possesses at least twice the possession or bag limit for that wild animal as allowed by rule of the Commission or the Director.

b. To Convict the Defendant of Unlawful Hunting of Wild Animals in the First Degree: RCW 77.15.430(2) Unlawful Hunting of Wild Animals in the First Degree – Elements

To convict the defendant of Unlawful Hunting of Wild Animals in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant took or possessed at least twice the possession or bag limit for that wild animal as allowed by rule of the Commission or the Director; and
(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. **Unlawful Hunting of Wild Animals in the Second Degree: RCW 77.15.430(1)**

A person commits the crime of Unlawful Hunting of Wild Animals in the Second Degree when he or she [hunts for, takes, or possesses a wild animal and the person does not have and possess all required licenses, tags, or permits required ] [violates any rule of the commission or director regarding seasons, bag or possession limits [not exceeding twice the bag or possession limit] *, closed areas including game reserves, closed times, or any other rule addressing the manner or method of hunting, or possession of wild animals] [possesses a wild animal taken during a closed season for that wild animal or taken from a closed area for that wild animal].

*Use this italicized portion if you’re doing a lesser-included offense instruction.

d. **To Convict the Defendant of Unlawful Hunting of Wild Animals in the Second Degree: RCW 77.15.430(1)**

To convict the defendant of Unlawful Hunting of Wild Animals in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant [hunted for, took, or possessed a wild animal and did not have and possess all required licenses, tags, or permits] [violated any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits [not exceeding twice the bag or possession limit] *, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possessing of wild animals] [possessed big game taken during a closed season for that big game or taken from a closed area for that wild animal]; and

(2) That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

*Use this italicized portion if you’re doing a lesser-included offense instruction.
e. **Corresponding Definitions:**

1. **Wild Animals: RCW 77.08.010(61) Wild Animals in the Second Degree – Definition**

   “Wild animals” means those species of the class *Mammalia* whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog).

   The term “wild animal” does not include feral domestic mammals or old world rats and mice of the family *Muridae* of the order *Rodentia*.

2. **Bobcat, Coyote, Fox, Hare and Rabbit Possession Limit: WAC 232-28-342 Bobcat, Coyote, Fox, Hare, and Rabbit Possession Limits — Rule**

   The possession limit for [Bobcat] [Coyote] [Fox] [Hare (snowshoe hare and Washington hare)] [Rabbit (cottontail rabbit and jack rabbit)] for the [Year] Season was [[number][Bobcat] [Coyote] [Fox] [Hare (snowshoe hare and Washington hare)] [Rabbit (cottontail rabbit and jack rabbit)]] per day [with a total of [number] in possession at any time [straight or mixed bag]].

3. **Requirements of Small Game License: RCW 77.32.460(1) Requirement of Small Game License – Rule**

   A small game hunting license is required to hunt for all classified and unclassified wild animals.


   Classified wild animals include raccoon, bobcat, coyote, fox, hare (snowshoe hare and Washington hare), and rabbit (cottontail rabbit and jack rabbit).

5. **Valid License: WAC 232-12-001(1) Valid License – Definition**

   A “valid” license, tag or permit means a license, tag or permit that was issued to the bearer for the current season by the Department of Wildlife and is required to hunt or possess wild animals.

6. **To Hunt: RCW 77.08.010(53) To Hunt — Definition**
“To hunt” and its derivatives, such as “to take,” means an effort to kill, injure, capture, or harass a wild animal.

(7) **Bobcat, Coyote, Fox, Hare, Raccoon and Rabbit Season: WAC 232-28-342**

**Bobcat, Coyote, Fox, Hare, Raccoon and Rabbit Season — Rule**

[Bobcat] [Coyote] [Fox] [Raccoon] [Hare (snowshoe hare and Washington hare)]

[Rabbit (cottontail rabbit and jack rabbit] Season for [Year] was [Month Day through Month Day].

(8) **Possession: WPIC 133.52 and WPIC 50.03 Possession (modified) — Definition**

Possession means having a [item] in one's custody or control. [It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.]

[Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.]

[In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the [immediate] ability to take actual possession of the item,] [whether the defendant had the capacity to exclude others from possession of the item,][and][whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.]

(9) **Closed Area: RCW 77.08.010(5) Closed Area — Definition**

“Closed area” means a place where the hunting of some or all species of wild bird is prohibited.

(10) **Closed Season: RCW 77.08.010(6) Closed Seasons — Definition**

“Closed seasons” means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season.

“Closed season” also means all hunting, taking, or possession of wild bird that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, take, or possess by rule of the commission as an open season.
(11) Open Season: RCW 77.08.010(34) Open Season — Definition

“Open season” means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, taking, or possession of wild bird that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, take, or possess by rule of the commission.

“Open season” includes the first and last days of the established time.

(12) Official Hunting Hours: WAC 232-12-289(8)-(10) Official Hunting Hours — Definition

The Fish and Wildlife Commission established a rule stating that the official hunting hours for wild birds on [Date Month, Year] was from [Start] a.m. to [Close] p.m.

(13) Commission: RCW 77.08.010(9)

“Commission” means the state fish and wildlife commission.

(14) Director: RCW 77.08.010(14)

“Director” means the director of fish and wildlife.

30. Wild Birds Hunt:

a. Unlawful Hunting of Wild Birds in the First Degree: RCW 77.15.400(2) Unlawful Hunting of Wild Birds in the First Degree — Definition

A person commits the crime of Unlawful Hunting of Wild Birds in the First Degree when, he or she takes or possesses at least twice the possession or bag limit allowed by rule of the commission or director for that wild bird.

b. To Convict the Defendant of Unlawful Hunting of Wild Birds in the First Degree: RCW 77.15.400(2) Unlawful Hunting of Wild Birds in the First Degree – Elements

To convict the defendant of Unlawful Hunting of Wild Birds in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about __________, the defendant took or possessed at least twice the bag limit allowed by rule of the commission or director for that wild bird; and
(2) That this act occurred in the County of __________, Washington.
If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

c. **Unlawful Hunting of Wild Birds in the Second Degree: RCW 77.15.400(1) Unlawful Hunting of Wild Birds in the Second Degree – Definition**

A person commits the crime of Unlawful Hunting of Wild Birds in the Second Degree when, he or she [hunts for, takes, or possesses a wild bird and the person does not have and possess all licenses, tags, stamps, or permits required under this title] [maliciously destroys, takes, or harms the eggs or nests of a wild bird except when authorized by permit] [violates any rule of the commission or director regarding seasons, bag or possession limits [not exceeding twice the bag or possession limit]*, closed areas, closed times, or any other rule governing the manner or method of hunting, or possession of wild birds] [possesses a wild bird taken during a closed season for that wild bird or taken from a closed area for that wild bird].

*Use this italicized portion if you’re doing a lesser-included offense instruction.

d. **To Convict the Defendant of Unlawful Hunting of Wild Birds in the Second Degree: RCW 77.15.400(1) Unlawful Hunting of Wild Birds in the Second Degree – Elements**

To convict the defendant of Unlawful Hunting of Wild Birds in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about __________, the defendant [hunted for, took, or possessed a wild bird and did not have and possess all required licenses, tags, stamps, or permits] [maliciously destroyed, took, or harmed the eggs or nests of a wild bird except when authorized by permit] [violated any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits [not exceeding twice the bag or possession limit]*, closed areas, closed times, or any other rule governing the manner or method of hunting, or possession of wild birds] [possessed a wild bird taken during a closed season for that wild bird or taken from a closed area for that wild bird]; and

2. That this act occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

*Use this italicized portion if you’re doing a lesser-included offense instruction.
e. Corresponding Definitions:

(1) **Wild Birds: RCW 77.08.010(62) Wild Birds – Definition**

“Wild birds” means those species of the class *Aves* whose members exist in Washington in a wild state.

(2) **Wild Birds Possession Limits: WAC 232-28-342 Band Tailed Pigeon, Canadian Goose, Chukar, Crow, Forest Grouse, Gray Partridge, Northern Bobwhite, Mourning Dove, Quail (California Quail, Mountain Quail), Ring Necked Pheasant, Turkey (Beardless Turkey, Wild Turkey) Possession Limits — Rule**

The [possession][bag] limit for [Band Tailed Pigeon][Canadian Goose][Chukar][Forest Grouse][Gray Partridge][Northern Bobwhite][Mourning Dove][Quail (California Quail, Mountain Quail)][Ring Necked Pheasant][Turkey (Beardless Turkey, Wild Turkey)] for the [Year] Season was [[Limit][Band Tailed Pigeon][Canadian Goose][Chukar][Forest Grouse][Gray Partridge][Mourning Dove] [Northern Bobwhite][Quail (California Quail, Mountain Quail)][Ring Necked Pheasant] per day, with a total of [limit] in possession at any time, [straight or mixed bag][turkeys].

(3) **Wild Birds Season Possession Limits: WAC 232-28-434 Brant, Coot, Duck (Canvasback, Goldeneye, Harlequin, Long-tailed, Mallard, Pintail, Redhead, Scaup, Scoter), Goose (Aleutian Goose, Cackling Goose, Canadian Goose, Blue Goose, Snow Goose, Ross Goose), and Snipe Season Possession Limits — Rule**

The [daily possession][daily bag][season] limit for [Brant][Coot][Duck (Canvasback, Goldeneye, Harlequin, Long-tailed, Mallard, Pintail, Redhead, Scaup, Scoter)][Goose (Aleutian Goose, Cackling Goose, Canadian Goose, Blue Goose, Snow Goose, Ross Goose)][Snipe] for the [Year] Season was [Limit][wild birds].


Classified wild birds include Band Tailed Pigeon, Brant, Coot, Duck (Canvasback, Goldeneye, Harlequin, Long-tailed, Mallard, Pintail, Redhead, Scaup, Scoter), Goose (Aleutian Goose, Cackling Goose, Canadian Goose, Blue Goose, Snow Goose, Ross Goose), Chukar, Crow, Forest Grouse, Gray Partridge, Northern Bobwhite, Mourning Dove, Quail (California Quail,
Mountain Quail), Ring Necked Pheasant, Snipe, Swan, and Turkey (Beardless Turkey, Wild Turkey).

(5) Valid License: WAC 232-12-001(1) Valid License – Definition

A “valid” license means a license that was issued to the bearer for the current season by the Department of Wildlife and is required to hunt or possess wild birds.

(6) To Hunt: RCW 77.08.010(53) To Hunt — Definition

“To hunt” and its derivatives, such as “to take,” means an effort to kill, injure, capture, or harass a wild bird.

(7) Wild Birds Season: WAC 232-28-342 Band Tailed Pigeon, Canadian Goose, Chukar, Crow, Forest Grouse, Gray Partridge, Northern Bobwhite, Mourning Dove, Quail (California Quail, Mountain Quail), Ring Necked Pheasant, Turkey (Beardless Turkey, Wild Turkey) Season — Rule

(Band Tailed Pigeon)/[Canadian Goose]/[Chukar]/[Crow]/[Forest Grouse]/[Gray Partridge]/[Northern Bobwhite]/[Mourning Dove]/[Quail (California Quail, Mountain Quail)]/[Ring Necked Pheasant]/[Turkey (Beardless Turkey, Wild Turkey)] Season for [Year] was [Month Day through Month Day].

(8) Wild Birds Season: WAC 232-28-434 Brant, Coot, Duck (Canvasback, Goldeneye, Harlequin, Long-tailed, Mallard, Pintail, Redhead, Scaup, Scoter), Goose (Aleutian Goose, Cackling Goose, Canadian Goose, Blue Goose, Snow Goose, Ross Goose), and Snipe Season — Rule

[Brant]/[Coot]/[Duck (Canvasback, Goldeneye, Harlequin, Long-tailed, Mallard, Pintail, Redhead, Scaup, Scoter)]/[Goose (Aleutian Goose, Cackling Goose, Canadian Goose, Blue Goose, Snow Goose, Ross Goose)]/[Snipe] Season for [Year] was [Month Day through Month Day].

(9) Possession: WPIC 133.52 and WPIC 50.03 Possession (modified) — Definition

Possession means having a [item] in one's custody or control. [It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.]
[Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.]

[In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include [whether the defendant had the *immediate* ability to take actual possession of the item,] [whether the defendant had the capacity to exclude others from possession of the item,] [and] [whether the defendant had dominion and control over the premises where the item was located]. No single one of these factors necessarily controls your decision.]

(10) **Closed Area: RCW 77.08.010(5) Closed Area — Definition**

“Closed area” means a place where the hunting of some or all species of wild bird is prohibited.

(11) **Closed Season: RCW 77.08.010(6) Closed Seasons — Definition**

“Closed seasons” means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season.

“Closed season” also means all hunting, taking, or possession of wild bird that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, take, or possess by rule of the commission as an open season.

(12) **Open Season: RCW 77.08.010(34) Open Season — Definition**

“Open season” includes the first and last days of the established time.

(13) **Official Hunting Hours: WAC 232-12-289(8)-(10) Official Hunting Hours — Definition**

The Fish and Wildlife Commission established a rule stating that the official hunting hours for wild birds on [Date Month, Year] was from [Start] a.m. to [Close] p.m.

(14) **Commission: RCW 77.08.010(9)**

“Commission” means the state fish and wildlife commission.

(15) **Director: RCW 77.08.010(14)**
“Director” means the director of fish and wildlife.

B. JURY INSTRUCTIONS

1. Hydraulic Projects Case Example STATE v BEDNARIK, JEFFREY D:

   a. Plaintiff’s Proposed Jury Instructions:
GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1

STATE OF WASHINGTON,

Plaintiff,

v.

BEDNARIK, JEFFREY D.

Defendant.

No. CR44309

PLAINTIFF’S PROPOSED
JURY INSTRUCTIONS

DATED: ____________________

H. STEWARD MENEFEE
Prosecuting Attorney
For Grays Harbor County

BY: ________________________________
EDGAR M. KORZENIOWSKI
Deputy Prosecuting Attorney
WSBA #35118
b. **Verdict Form**
STATE OF WASHINGTON,

Plaintiff,

v.

BEDNARIK, JEFFREY D.

Defendant.

No. CR44309

VERDICT FORM

We, the jury in the above-entitled cause, do find the defendant, Jeffrey D. Bednarik, of Unlawfully Undertaking Hydraulic Project Activities.

__________________________
PRESIDING JUROR
c. Courts Instructions to the Jury:
Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.
d. **INSTRUCTION GUILTY PLEAS.**

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.
e. INSTRUCTION ON DELIBERATION.

When you begin deliberating, you should first select a presiding juror. The presiding juror’s duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the court clerk. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and a verdict form for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in the verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.
Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The presiding juror must sign the verdict form and notify the court clerk. The court clerk will bring you into court to declare your verdict.
f. INSTRUCTION AS JURORS. _____
As jurors, you have a duty to discuss the case with one another and to deliberate in an
effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after
you consider the evidence impartially with your fellow jurors. During your deliberations, you
should not hesitate to re-examine your own views and to change your opinion based upon further
review of the evidence and these instructions. You should not, however, surrender your honest
belief about the value or significance of evidence solely because of the opinions of your fellow
jurors. Nor should you change your mind just for the purpose of reaching a verdict.
g. **INSTRUCTION ON DECIDING ON FACTS.**

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.
You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.
You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.
h. INSTRUCTION ON CONVICTION. _____

To convict the defendant of the crime of Unlawfully Undertaking Hydraulic Project Activities, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about June 29, 2008, the defendant did construct any form of a hydraulic project or perform other work on a hydraulic project; and

(2) did fail to have a hydraulic project approval for such construction or work; and

(3) That any of these acts occurred in Grays Harbor County, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

RCW 77.15.300 / WPIC 4.21 Unlawfully Undertaking Hydraulic Project Activities – Elements (EXPANDED INSTRUCTION)
i. **INSTRUCTION HYDRAULIC PROJECT DEFINITION.**

“Hydraulic project” means construction or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state.

Driving a vehicle or operating equipment on or across a wetted stream bed at areas other than established fords is a hydraulic project.

WAC 220-10-020(42); WAC 220-110-035; RCW 77.55.011(12); RCW 77.55.031 Hydraulic Project-Definition (For use with EXPANDED instruction only)
j. **INSTRUCTION ON APPROVAL PERMIT.**

Any person that desires to undertake a hydraulic project, shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life. Driving across streams or on wetted streambeds at areas other than established fords requires a permit.

**RCW 77.55.021/.031 - Hydraulic Project Approval Permit Requirement and Exemption**
(For use with EXPANDED instruction only)
To convict the defendant of the crime of Unlawfully Undertaking Hydraulic Project Activities, each of the following elements of the crime must be proved beyond a reasonable doubt:

(3) That on or about June 29, 2008, the defendant did drive a vehicle on or across a wetted stream bed at an area other than an established ford; and

(4) did fail to have a hydraulic project approval at the time; and

(5) That any of these acts occurred in Grays Harbor County, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.
1. INSTRUCTION WHAT IS HYDRAULIC APPROVAL. _____

A “hydraulic project approval” means:

(a) A written approval for a hydraulic project signed by the director of the department of fish and wildlife, or the director's designates; or

(b) A verbal approval for an emergency hydraulic project from the director of the department of fish and wildlife, or the director's designates; or

(c) The following printed pamphlet approvals and any supplemental approvals to them:

(i) A “Gold and Fish” pamphlet issued by the department which identifies and authorizes specific minor hydraulic project activities for mineral prospecting and placer mining; or

(ii) An “Irrigation and Fish” pamphlet issued by the department which identifies and authorizes specific minor hydraulic project activities; or

(iii) An “Aquatic Plants and Fish” pamphlet issued by the department which identifies and authorizes specific aquatic noxious weed and aquatic beneficial plant removal and control activities.

WAC 220-110-020(44) Hydraulic Project Approval-Definition
m. INSTRUCTION ESTABLISHED FORD. _____

“Established ford” means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department, and, has identifiable approaches on the banks.

WAC 220-110-020(26) Established Ford-Definition

2. No Tags Case Example State v Brett Bowcutt

a. Plaintiff’s Proposed Jury Instructions:
STATE OF WASHINGTON,

Plaintiff,

v.

BRETT BOWCUTT,

Defendant.

DATED: July 2, 2019

H. STEWARD MENEFEE
Prosecuting Attorney
For Grays Harbor County

BY:

EDGAR M. KORZENIOWSKI
Deputy Prosecuting Attorney
WSBA #35118
b. Courts Instruction to the Court:
STATE OF WASHINGTON,

Plaintiff,

v.

BRETT BOWCUTT,

Defendant.

Nos. C333

COURT'S INSTRUCTIONS
TO THE JURY

DATED: ________________

JUDGE
It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer’s objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.
[WPIC 1.02 Conclusion of Trial – Introductory Instruction]
d. **INSTRUCTION ON A PLEA OF NOT GUILTY.**

The defendants have entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendants have no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

[WPIC 4.01 Burden of Proof – Presumption of Innocence – Reasonable Doubt]
e. INSTRUCTION ON DEFINITION. _____

A person commits the crime of Unlawful Hunting of Big Game in the Second Degree when, he or she does hunt for big game, not having and possessing all license, tags, or permits required by law.
f. **INSTRUCTION ON CONVICTING THE DEFENDANT.**

To convict the defendant of Unlawful Hunting of Big Game in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(6) That on or about November 8, 2009 the Defendant did hunt for big game;

(7) That the Defendant did not, at the time, have or possess all tags, or permits required by law; and

(8) That the above acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

*WPIC 4.21 / RCW 77.15.410(1)(a) Unlawful Big Game Hunting in the Second Degree – Elements*
g. INSTRUCTION ON DEFINITIONS.

An Elk is “big game.”
[RCW 77.08.030 – definition]

“To hunt” means an effort to kill, injure, capture, or harass a wild animal.
[RCW 77.08.010(47) – definition]

A big game hunting license is required to hunt for big game.
[RCW 77.32.450(1) – definition]

A “valid” license means a license that was issued to the bearer for the current season by the Department of Wildlife which is required to hunt or possess big game.
[WAC 232-12-001 – definition]
Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

[WPIC 5.01 Direct and Circumstantial Evidence]
As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

[WPIC 1.04 Jurors' Duty to Consult with One Another]
j. INSTRUCTION WITH DELIBERATING. _____

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the court clerk. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and a verdict form for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.
Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The presiding juror must sign the verdict form and notify the court clerk. The court clerk will bring you into court to declare your verdict.

[WPIC 151.00 Basic Concluding Instruction]
k. Verdict Form
GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1

STATE OF WASHINGTON,

Plaintiff,

v.

BRETT BOWCUTT,

Defendant.

No. C333

VERDICT FORM

We, the jury in the above-entitled cause, do find the defendant, BRETT BOWCUTT, ______________________

“Not Guilty” or “Guilty”

of the crime of Unlawful Hunting of Big Game in the Second

Degree.

___________________________________

PRESIDING JUROR
3. UPF Case Example State v Douglas Brewer:

a. Plaintiff’s Proposed Jury Instructions:
STATE OF WASHINGTON,

Plaintiff,

v.

DOUGLAS BREWER,

Defendant.

DATED: July 2, 2019

No. C2038

PLAINTIFF’S PROPOSED JURY INSTRUCTIONS

H. STEWARD MENEFEE
Prosecuting Attorney
For Grays Harbor County

BY:

EDGAR M. KORZENIOWSKI
Deputy Prosecuting Attorney
WSBA #35118
b. Court’s Instructions To The Jury:
STATE OF WASHINGTON,
Plaintiff,

v.

DOUGLAS BREWER,
Defendant.

No. C2038

COURT’S INSTRUCTIONS
TO THE JURY

DATED: ____________

JUDGE
It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer’s objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your
rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

[WPIC 1.02 Conclusion of Trial – Introductory Instruction]
d. INSTRUCTION DEFENDANTS PLEA OF NOT GUILTY.

The defendants have entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendants have no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

[WPIC 4.01 Burden of Proof – Presumption of Innocence – Reasonable Doubt]
e. INSTRUCTION TO CONVICT. _____

To convict the defendant of Unlawful Use or Possession of a Loaded Firearm in a Motor Vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

(9) That on or about October 17, 2009 the Defendant carried, transported, conveyed, possessed, or controlled a rifle in or on a motor vehicle; and

(10) The rifle contained shells or cartridges in the magazine or chamber; and

(11) That this act occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21: RCW 77.15.460(1)(a) Unlawful Use or Possession of a Loaded Firearm in a Motor Vehicle – Elements]
It is a defense to a charge of Unlawful Use or Possession of a Loaded Firearm in a Motor Vehicle that:

(1) the defendant possess a disabled hunter’s permit; and

(2) the defendant displayed a vehicle identification placard on his or her vehicle that had the loaded firearm.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

[RCW 77.15.460(4)(b)/WAC 232-12-828(5) and (6): Disabled Hunter Defense]
g. INSTRUCTION ON DEFINITION.

“Motor vehicle” means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

[RCW 46.04.320/RCW 46.70.011(2) – Definition]
h. INSTRUCTION ON EVIDENCE. _____

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

[WPIC 5.01 Direct and Circumstantial Evidence]
As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

[WPIC 1.04 Jurors' Duty to Consult with One Another]
j. INSTRUCTION ON DELIBERATING.

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the court clerk. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and a verdict form for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.
Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The presiding juror must sign the verdict form and notify the court clerk. The court clerk will bring you into court to declare your verdict.

[WPIC 151.00 Basic Concluding Instruction]
k. Verdict Form:
We, the jury in the above-entitled cause, do find the defendant, DOUGLAS BREWER, "Not Guilty" of the crime of Unlawful Use or Possession of a Loaded Firearm in a Motor Vehicle.

PRESIDING JUROR
4. Hunting Case Example State v Sean Brown and Annica Mizin

a. Plaintiff’s Proposed Jury Instructions:
STATE OF WASHINGTON, 

Plaintiff, 

v. 

SEAN BROWN 
ANNICA MIZIN 

Defendants. 

DATED: April 16, 2010 

H. STEWARD MENEFEE 
Prosecuting Attorney 
For Grays Harbor County 

BY: 
EDGAR M. KORZENIOWSKI 
Deputy Prosecuting Attorney 
WSBA #35118 

PLAINTIFF’S PROPOSED 
JURY INSTRUCTIONS
b. Courts Instructions to the Jury:
STATE OF WASHINGTON,

Plaintiff,

v.

SEAN BROWN
ANNICA MIZIN

Defendants.

Nos. C501, C502, C503, C504

COURT'S INSTRUCTIONS
TO THE JURY

DATED: ______________

JUDGE
INSTRUCTION ON DECIDING THE FACTS.

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer’s objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all
parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

[WPIC 1.02 Conclusion of Trial – Introductory Instruction]
d. INSTRUCTION ON CHARGING TO CRIMES.

Defendant Sean Brown has been charged by criminal citation with the following crimes:

**Cause No. C501 - Count I:**
Spotlighting Big Game in the Second Degree that occurred on or about October 18, 2009.

**Cause No. C501 – Count II:**
Hunting Before or After Hours that occurred on or about October 18, 2009.

**Cause No. C503:**
Unlawful Possession of a Loaded Firearm in a Motor Vehicle that occurred on or about October 18, 2009.
Defendant Annica Mizin has been charged by criminal citation with the following crimes:

**Cause No. C502 - Count I:**
Spotlighting Big Game in the Second Degree that occurred on or about October 18, 2009.

**Cause No. C502 – Count II:**
Hunting Before or After Hours that occurred on or about October 18, 2009.

**Cause No. C504:**
Unlawful Possession of a Loaded Firearm in a Motor Vehicle that occurred on or about October 18, 2009.
f. INSTRUCTION ON DEFENDANTS PLEA OF NOT GUILTY.

The defendants have entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendants have no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

[WPIC 4.01 Burden of Proof – Presumption of Innocence – Reasonable Doubt]
g. INSTRUCTION ON DEFENDANT NOT TESTIFY. _____

A defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice her in any way.

[WPIC 6.31 Defendant not Testify]
h. INSTRUCTION ON SEPARATE CRIME CHARGED.

A separate crime is charged in each count. You must separately decide each count charged against each defendant. Your verdict on one count as to one defendant should not control your verdict on any other count or as to any other defendant.

[WPIC 3.03 Multiple Defendants—Multiple Counts]
A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

The word “aid” means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

[WPIC 10.51 Accomplice-Definition]
To convict the defendant Sean Brown of Spotlighting Big Game in the Second Degree, as charged under Cause No. C501 – Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(12) That on or about October 18, 2009 the Defendant did hunt for big game;

(13) With the aid of a spotlight or other artificial light while in possession or control of a firearm, bow and arrow, or crossbow; and

(14) That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21: RCW 77.15.450(1) Spotlighting Big Game in the Second Degree – Elements]
k. **INSTRUCTION ON SPOTLIGHTING BIG GAME.**

To convict the defendant Annica Mizin of Spotlighting Big Game in the Second Degree, as charged under Cause No. C502 – Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about October 18, 2009 the Defendant did hunt for big game;
2. With the aid of a spotlight or other artificial light while in possession or control of a firearm, bow and arrow, or crossbow; and
3. That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21: RCW 77.15.450(1) Spotlighting Big Game in the Second Degree – Elements]
1. INSTRUCTION ON DEFINITIONS. _____

A Deer is “big game.”

[RCW 77.08.030 Big Game — Definition]

“To hunt” means an effort to kill, injure, capture, or harass a wild animal.

[RCW 77.08.010(47) To Hunt — Definition]

A “firearm” is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

[WPIC 2.10 Firearm — Definition]

The Modern Firearm Deer Season for 2009 was October 17 through October 31.

[WAC 232-28-351 Modern Firearm Deer Season — Definition]

Modern Firearm means rifle, handgun, shotgun, bow or muzzleloader.

[WAC 232-28-351 Modern Firearm — Definition]

The official hunting hours for big game on October 18, 2009 was from 6:55 a.m. to 6:50 p.m.

[WAC 232-12-289(10) Official Hunting Hours — Definition]

The factual impossibility of completing the crimes of Spotlighting Big Game in the Second Degree and or Hunting Before or After Hours on account big game was a decoy is not a defense.

[State v. Walsh, 123 Wn.2d 741, 870 P.2d 974 (1994)]
m. INSTRUCTION ON POSSESSION. _____
Possession means to have an item in one’s custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over an item, you may consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. No single one of these factors necessarily controls your decision.

[WPIC 133.52 Possession (Modified) —Definition]
n. INSTRUCTION ON DOMINION AND CONTROL.

“Dominion and control” means that the object may be immediately reduced to actual possession.

[State v. Jones, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002)]
To convict the defendant Sean Brown of Hunting before or after Hours, as charged under Cause No. C501 – Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about October 18, 2009 the Defendant did hunt for big game;
2. Contrary to official hunting hours for the 2009 Modern Firearm Deer Season; and
3. That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21: RCW 77.15.410(1)(b)/WAC 232-12-291 Hunting After Hours – Elements]
To convict the defendant Annica Mizin of Hunting before or after Hours, as charged under Cause No. C502 – Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about October 18, 2009 the Defendant did hunt for big game;

(2) Contrary to official hunting hours for the 2009 Modern Firearm Deer Season; and

(3) That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21: RCW 77.15.410(1)(b)/WAC 232-12-291 Hunting After Hours – Elements]
To convict the defendant Sean Brown of Unlawful Use or Possession of a Loaded Firearm in a Motor Vehicle, as charged under Cause No. C503, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about October 18, 2009 the Defendant carried, transported, conveyed, possessed, or controlled a rifle in or on a motor vehicle; and

(2) The rifle contained shells or cartridges in the magazine or chamber; and

(3) That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21: RCW 77.15.460(1) Unlawful Use or Possession of a Loaded Firearm – Elements]
To convict the defendant Annica Mizin of Unlawful Use or Possession of a Loaded Firearm in a Motor Vehicle, as charged under Cause No. C504, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about October 18, 2009 the Defendant carried, transported, conveyed, possessed, or controlled a rifle in or on a motor vehicle; and

(2) The rifle contained shells or cartridges in the magazine or chamber; and

(3) That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21: RCW 77.15.460(1) Unlawful Use or Possession of a Loaded Firearm – Elements]
“Motor vehicle” means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. [RCW 46.04.320 Motor Vehicle—Definition]
Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

[WPIC 5.01 Direct and Circumstantial Evidence]
As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

[WPIC 1.04 Jurors' Duty to Consult with One Another]
v. INSTRUCTION ON DELIBERATING. 

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the court clerk. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each of the verdict forms the words “not guilty” or the word “guilty”, according to the decision you reach.
Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the court clerk. The court clerk will bring you into court to declare your verdict.

[WPIC 151.00 Basic Concluding Instruction]
w. Verdict Forms

(1) Count 1:

GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1

STATE OF WASHINGTON,
Plaintiff,

v.

SEAN BROWN,
Defendant.

No. C501

VERDICT FORM
(COUNT I)

We, the jury in the above-entitled cause, do find the defendant, SEAN BROWN, of the crime of Spotlighting Big Game in the Second Degree.

“Not Guilty” or “Guilty”

PRESIDING JUROR
We, the jury in the above-entitled cause, do find the defendant, SEAN BROWN, of the crime of Hunting Before or After Hours.

“Not Guilty” or “Guilty”

PRESIDING JUROR
STATE OF WASHINGTON, Plaintiff,
v. SEAN BROWN, Defendant.

We, the jury in the above-entitled cause, do find the defendant, SEAN BROWN, "Not Guilty" or "Guilty" of the crime of Unlawful Possession of a Loaded Firearm in a Motor Vehicle.

PRESIDING JUROR
(4) Count 1:

STATE OF WASHINGTON,

Plaintiff,

v.

ANNICA MIZIN,

Defendant.

VERDICT FORM
(COUNT I)

We, the jury in the above-entitled cause, do find the defendant, ANNICA MIZIN, of the crime of Spotlighting Big Game in the Second Degree.

“Not Guilty” or “Guilty”

PRESIDING JUROR
We, the jury in the above-entitled cause, do find the defendant, ANNICA MIZIN, of the crime of Hunting Before or After Hours.

"Not Guilty" or "Guilty"

PRESIDING JUROR
STATE OF WASHINGTON,  
Plaintiff,  
v.  
ANNICA MIZIN,  
Defendant.  

We, the jury in the above-entitled cause, do find the defendant, ANNICA MIZIN,  
of the crime of Unlawful Possession of a Loaded Firearm in a  
“Not Guilty” or “Guilty”  
Motor Vehicle.  

PRESIDING JUROR
5. UBGH Case Example State V Joseph Calpito

a. State’s Proposed Jury Instructions:

STATE OF WASHINGTON, )
) No. C 25147
Plaintiff, )
) STATE’S PROPOSED
vs. ) JURY INSTRUCTIONS
JOSEPH A. CALPITO, )
Defendant. )

* * * * * * * * * * * * * * * *

By: Clayton A. Hill, WSBA #34103
Deputy Prosecuting Attorney

Submitted this ___ day of __________, 20__.

CITED
b. INSTRUCTION ON DUTY TO DECIDE.

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit
of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.
You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

WPIC 1.02
c. INSTRUCTION AS JURORS. 

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

WPIC 1.04
d. INSTRUCTION ON A PLEA OF NOT QUILTY. ____

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of the each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

WPIC 4.01
e. INSTRUCTION ON EVIDENCE.

The evidence that has been presented to you may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

WPIC 5.01
f. INSTRUCTION ON UNLAWFUL HUNTING OF BIG GAME.

A person commits the crime of Unlawful Hunting of Big Game in the Second Degree when he or she hunts for, takes, or possesses big game and the person violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game, or possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

RCW 77.15.410(1) Unlawful Hunting of Big Game in the Second Degree – Definition

g. INSTRUCTION ON ACCOMPLICE.
A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime. A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

1. Solicits, commands, encourages, or requests another person to commit the crime; or
2. Aids or agrees to aid another person in the planning or committing of the crime.

The word “aid” means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

[WPIC 10.51 Accomplice-Definition]
A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

WPIC 10.02 Knowledge—Knowingly—Definition (to be used with WPIC 10.02).
i. INSTRUCTION ON DEFINITIONS. _____

(1) TO HUNT:

“To hunt” and its derivatives, such as “to take,” means an effort to kill, injure, capture, or harass big game.

RCW 77.08.010(53) To Hunt — Definition

(2) INSTRUCTION ON GMU OFFENSE WAS COMMITTED.

The area of Elbow Coulee Road approximately ¼ to ½ mile from Twisp River Road is located within Game Management Unit Number 231.

WAC 232-28-331 through 336 GMU in which Offense was Committed — Definition

(3) INSTRUCTION ON DEER SEASON.

Modern Firearm Season for 2011 in Game Management Unit 231 was October 15-23.

WAC 232-28-351 Deer Season — Definition

(4) INSTRUCTION ON BIG GAME.

A deer, whether blacktail deer, mule deer, or whitetail deer is “big game.”

RCW 77.08.030 Big Game — Definition

(5) INSTRUCTION ON CLOSED SEASON.

“Closed seasons” means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. “Closed season” also means all hunting, fishing, taking, or possession of game animals that do not conform to the special restrictions or physical descriptions established by rule of the
commission as an open season or that have not otherwise been deemed legal to hunt, take, or possess by rule of the commission as an open season.

RCW 77.08.010(6) Closed Seasons — Definition

(6) INSTRUCTION ON COMMISSION.

“Commission” means the state fish and wildlife commission.

RCW 77.08.010(9)

(7) INSTRUCTION ON DIRECTOR.

“Director” means the director of fish and wildlife.

RCW 77.08.010(14)
j. INSTRUCTION ON UNLAWFUL HUNTING OF BIG GAME.

To convict the defendant of Unlawful Hunting of Big Game in the Second Degree by Accomplice liability, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about September 16, 2011, Jamison Kelly hunted for, took, or possessed big game and violated any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possessing of that big game during a closed season for hunting with a modern firearm; and

(2) That on or about September 16, 2011, the defendant acted as an accomplice to Jamison Kelly in hunting for, taking or possessing big game in a manner that violated any rule of the Fish and Wildlife Commission or Director of the Department of Fish and Wildlife regarding closed seasons for modern firearm hunting.

(3) That any of these acts occurred in the County of Okanogan, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

RCW 77.15.410(1) Unlawful Hunting of Big Game in the Second Degree – Elements
k. INSTRUCTION ON DELIBERATING. ____

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in the verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

WPIC 151.00
I. VERDICT FORM

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

********************************************************
STATE OF WASHINGTON )
) No. C25147
Plaintiff, ) VERDICT
) 
vs. )
JOSEPH A. CALPITO )
) Defendant.
)

********************************************************

COUNT I

We, the jury, find the Defendant, JOSEPH A. CALPITO, _________________________(Guilty or Not Guilty) of the crime of Unlawful Big Game Hunt in the Second Degree by Accomplice liability.

__________________________  ______________________________
Date                        Presiding Juror

WPIC 180.01

6. Snagging Case Example State V Patrick Wayne Fisk
a. Plaintiff’s Proposed Jury Instructions:

GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1

STATE OF WASHINGTON,

Plaintiff,

v.

PATRICK WAYNE FISK,

Defendant.

No. C33060
PLAINTIFF’S PROPOSED JURY INSTRUCTIONS

DATED: July 2, 2019

H. STEWARD MENEFEE
Prosecuting Attorney
For Grays Harbor County

BY:
EDGAR M. KORZENIOWSKI
Deputy Prosecuting Attorney
WSBA #35118

b. Court’s Instructions To The Jury:
STATE OF WASHINGTON,

Plaintiff,

v.

PATRICK WAYNE FISK,

Defendant.

No. C33060

COURT’S INSTRUCTIONS
TO THE JURY

DATED: _________________

JUDGE
c. INSTRUCTION ON DUTY TO DECIDE. _____

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer’s objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper
verdict.

[WPIC 1.02 Conclusion of Trial – Introductory Instruction]
d. **INSTRUCTION ON A PLEA OF NOT GUILTY.**

The defendants have entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendants have no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

[WPIC 4.01 Burden of Proof – Presumption of Innocence – Reasonable Doubt]
e. INSTRUCTION ON UNLAWFUL RECREATIONAL FISHING IN THE FIRST DEGREE. _____

A person commits the crime of Unlawful Recreational Fishing in the First Degree when, he or she snags fish in state waters.
f. INSTRUCTION ON CONVICTING THE DEFENDANT. _____

To convict the defendant of Unlawful Recreational Fishing in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(15) That on or about October 21, 2010 the Defendant did snag fish; and
(16) That the above acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

[WPIC 4.21 / RCW 77.15.370(1)(c) Unlawful Recreational Fishing in the First Degree – Elements]
“To Snag” means an attempt to take fish with a hook and line in such a way that the fish does not voluntarily take the hook in its mouth.

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

[WPIC 5.01 Direct and Circumstantial Evidence]
i. **INSTRUCTION AS JURORS. _____**

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

[WPIC 1.04 Jurors' Duty to Consult with One Another]
j. **INSTRUCTION ON DELIBERATING.**

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the court clerk. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and a verdict form for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When
all of you have so agreed, fill in the verdict form to express your decision. The presiding juror
must sign the verdict form and notify the court clerk. The court clerk will bring you into court to
declare your verdict.

[WPIC 151.00 Basic Concluding Instruction]
k. **Verdict Form**

GRAYS HARBOR COUNTY DISTRICT COURT  
DEPT. 1

STATE OF WASHINGTON,  
Plaintiff,  

v.  

PATRICK WAYNE FISK,  
Defendant.  

No. C33060  

VERDICT FORM

We, the jury in the above-entitled cause, do find the defendant, PATRICK WAYNE FISK,  
“Not Guilty” or “Guilty”  
of the crime of Unlawful Recreational Fishing in the First Degree.  

PRESIDING JUROR
7. Instruction on Defense of Necessity:

a. Definition on Necessity-Defense: WPIC 18.02 Necessity—Defense

Necessity is a defense to a charge of ________ if

(1) the defendant reasonably believed the commission of the crime was necessary to avoid or minimize a harm; and

(2) the harm sought to be avoided was greater than the harm resulting from a violation of the law; and

(3) the threatened harm was not brought about by the defendant; and

(4) no reasonable legal alternative existed.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty [as to this charge].

b. Note on Use

Use in every case in which the common law defense of necessity is asserted. Do not use when a statute, or case law, provides exceptions or defenses dealing with the specific situation involved. See the Comment below.

Use WPIC 19.17, Bail Jumping—Unforeseen Circumstances—Defense, and WPIC 19.16, Escape—First and Second Degree—Unforeseen Circumstances—Defense, when the offense charged is bail jumping or escape.

Use WPIC 52.10, Marijuana—Qualifying Patient—Defense, or WPIC 52.11, Marijuana—Designated Provider—Defense, when the offense charged is possession, delivery, or manufacturing of marijuana.

Use WPIC 94.10, Attempting to Elude a Police Vehicle—Reasonable Belief that the Pursuer is Not a Police Officer—Defense, when the offense charged is eluding and the defendant is claiming that the identity of the driver of the pursuing vehicle was unknown to him or her.

For certain medical necessity cases, paragraph (4) may need to be revised to add the phrase “equally effective.” See discussion in the Comment below.

c. Comment

(1) Limited applicability—Common law defense. The instruction sets forth the common law defense of necessity, as recognized in State v. Diana, 24 Wn.App. 908, 604 P.2d 1312 (1979). Because the common law defense must yield to a statutory defense for a particular crime, see discussion below, the instruction has limited applicability.

(2) Instruction does not apply to crimes that have a statutory necessity defense. Statutory defenses on necessity supersede the common law defense. See State v. Diana, 24 Wn.App. at 913–14 (quoting Section 3.02(1)(b) of the Model Penal Code). Accordingly, before giving
WPIC 18.02, the court should determine that (1) neither the criminal code nor other laws defining the offense provide exceptions or defenses dealing with the specific situation involved, and (2) a legislative purpose to exclude the justification claimed does not otherwise appear. State v. Diana, 24 Wn.App. at 914.

(3) Several statutes supersede the common law defense of necessity for particular crimes, including:

- Bail jumping: RCW 9A.76.170(2);
- Escape, first and second degree: RCW 9A.76.110(2) and 9A.76.120(2);
- Eluding: RCW 46.61.024(2)(a);
- Medical marijuana, qualifying patient defense: RCW 69.51A.040(3); State v. Butler, 126 Wn.App. at 748–50 (the Medical Use of Marijuana Act affirmative defense superseded the common law medical necessity defense);
- Medical marijuana, designated provider defense: RCW 69.51A.040(3).

Practitioners should consult the applicable statutes, including the most recent legislative enactments for any new defenses, before using WPIC 18.02.

(4) Instruction does not apply to defending property from wildlife damage. When the defendant kills or injures wildlife in order to protect property, the jury should be instructed with instructions based on State v. Burk, 114 Wash. 370, 195 P. 16 (1921), rather than with the pattern instruction on necessity. See State v. Vander Houwen, 163 Wn.2d 25, 177 P.3d 93 (2008) (holding that the constitutional right to protect property requires the State to bear the burden of proof).

(5) Availability of common law defense. The common law defense of necessity was recognized in State v. Diana, supra. In that case the Court of Appeals held that the trial court should have taken additional evidence to determine whether the defendant's possession of marijuana was justified by medical necessity. The Court of Appeals noted that the defense is available “when the physical forces of nature or the pressure of circumstances cause the accused to take unlawful action to avoid a harm which social policy deems greater than the harm resulting from the violation of the law.” State v. Diana, 24 Wn.App. at 913. “The defense is not applicable where the compelling circumstances have been brought about by the accused or where a legal alternative is available to the accused.” State v. Diana, 24 Wn.App. at 913–14. The Diana court's analytical framework remains good law, although the
opinion's specific holding as to applying the common law's medical necessity defense to the possession of Schedule I drugs has been superseded by statute. See State v. Williams, 93 Wn.App. at 344–47 (holding that the Legislature's designation of Schedule I drugs as having no accepted medical use renders unavailable the medical necessity defense).

(6) Burden of proof. “[T]he defendant must prove by a preponderance of the evidence that (1) he or she reasonably believed the commission of the crime was necessary to avoid or minimize a harm, (2) the harm sought to be avoided was greater than the harm resulting from a violation of the law, and (3) no legal alternative existed.” State v. Gallegos, 73 Wn.App. 644, 651, 871 P.2d 621 (1994); State v. Bailey, 77 Wn.App. 732, 893 P.2d 681 (1995).


(8) “Equally effective.” For medical necessity cases, the term “equally effective” may need to be added to the instruction's paragraph (4). See State v. Pittman, 88 Wn.App. 188, 943 P.2d 713 (1997) (in cases for which a defense of medical necessity is still available, the defendant will be required to show that there is no equally effective legal drug).

(9) Comparison with defense of duress. Where the pressure upon the defendant comes from another human being, instead of from the physical forces of nature, the jury should be instructed on the defense of duress rather than the defense of necessity. State v. Turner, 42 Wn.App. 242, 711 P.2d 353 (1985).

8. Instructions on Bag Limit:

a. Bag Limit Definition: RCW 77.08.010(4)

“Bag limit” means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

9. Instructions on Closed Area:
a. **Closed Area Definition: RCW 77.08.010(5)**

“Closed area” means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

10. **Instructions on Closed Season:**

a. **Closed Season Definition: RCW 77.08.010(6)**

“Closed season” means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. “Closed season” also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

11. **Instructions on Commission:**

a. **Commission Definition: RCW 77.08.010(9)**

“Commission” means the state fish and wildlife commission.

12. **Instructions on Director:**

a. **Director Definition: RCW 77.08.010(13)**

“Director” means the director of fish and wildlife.

13. **Instructions on Game reserve:**

a. **Game Reserve Definition: RCW 77.08.010(14)**

“Game reserve” means a closed area where hunting for all wild animals and wild birds is prohibited.

14. **Instructions on Open and Unclaimed Lands:**
a. **Open and Unclaimed Lands definition:**

“Open and unclaimed lands” means publicly-owned lands, or lands that are not in private ownership.1 Public lands that are put to a use consistent with hunting, such as National Forest lands where there is no active logging taking place, may be “open and unclaimed.” 2


15. **Instructions on Wild Birds:**

a. **Wild Birds Definition: RCW 77.08.010(62)**

“Wild birds” means those species of the class Aves whose members exist in Washington in a wild state.

16. **Instructions on Duress:**

a. **Duress Definition: WPIC 18.01 Duress—Defense**

Duress is a defense to a charge of ________ if:

(a) The defendant participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the defendant that in case of refusal [the defendant][or][another person] would be liable to immediate death or immediate grievous bodily injury; and

(b) Such apprehension was reasonable upon the part of the defendant; and

(c) The defendant would not have participated in the crime except for the duress involved.

[The defense of duress is not available if the defendant intentionally or recklessly placed [himself][herself] in a situation in which it was probable that [he][she] would be subject to duress.]

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty [as to this charge].

b. **Note on Use:**
Use in every case in which the defense of duress is in issue except as applying to murder (including felony murder), attempted murder, or manslaughter. See discussion in the Comment. Use bracketed material as applicable.

Use WPIC 10.01, Intent—Intentionally—Definition, and WPIC 10.03, Recklessness—Definition, as applicable with this instruction.

c. **Comment:**

1. **RCW 9A.16.060.** This statute provides for a defense of duress that is available for every crime except murder, attempted murder, and manslaughter. **RCW 9A.16.060(2); State v. Mannering, 150 Wn.2d 277, 75 P.3d 961 (2003)** (defense of duress was not available to rebut an attempted murder charge).

2. The term “grievous bodily injury,” taken from **RCW 9A.16.060,** is not defined in the statute or in the pattern instructions. The committee believes that it is acceptable practice to give WPIC 18.01 without further definition, leaving the issue to be addressed in the arguments of counsel.

3. **RCW 9A.16.060(4)** provides that the command of one's spouse is not enough to establish the defense of duress.


5. In **State v. Turner, 42 Wn.App. 242, 711 P.2d 353 (1985),** the trial court had refused to instruct the jury on the defense of duress because the defendant did not show that the threats against her posed a threat of immediate death or bodily harm. The appellate court reversed, stating that the question of whether there is a threat of immediate death or bodily harm should be determined by the trier of fact based on an assessment of all the circumstances.

6. In **State v. Ng, 110 Wn.2d 32, 750 P.2d 632 (1988),** the court held that the jury need not be specially informed about the subjective nature of the duress defense. The court found that, unlike the self-defense statute, the duress statute on its face describes the subjective nature of the defense and that an instruction based upon the statute was adequate. **State v. Ng, 110 Wn.2d at 41–42.** The
court also held that duress is not available as a defense to felony murder. *State v. Ng, 110 Wn.2d at 39.*

(7) **For a general discussion of the burden of proof on defenses, see Introduction to Part IV—Defense.**

(8) **The defense of duress should be distinguished from the defense of necessity.** See WPIC 18.02. [*Current as of July 2008.*]

17. **Instruction to Convict the defendant of Unlawful Hunting of Big Game, Second Degree:**

   a. **To convict: RCW 77.15.410(1)(a)**

   To convict the defendant of Unlawful Hunting of Big Game, Second Degree, RCW 77.15.410(1)(a), each of the following three elements of the crime must be proved beyond a reasonable doubt:

   (1) That on or about [date], the defendant hunted a big game animal;

   (2) That the defendant at the time of hunting the animal did not have and possess all licenses, tags, or permits required under Title 77 RCW; and

   (3) That the acts occurred in the County of _______, State of Washington.

   If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of Guilty.

   On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of Not Guilty.

18. **Instruction to Convict the defendant of Unlawful Hunting of Big Game, Second degree:**

   a. **To Convict: RCW 77.15.410(1)(b)**

   To convict the defendant of Unlawful Hunting of Big Game, Second Degree, RCW 77.15.410(1)(b), each of the following three elements of the crime must be proved beyond a reasonable doubt:

   (1) That on or about [date], the defendant hunted a big game animal;

   (2) That the defendant at the time of hunting the animal violated any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; and

   (3) That the acts occurred in the County of _______, State of Washington.
If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of Guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of Not Guilty.

19. **Instructions on Entrapment:**

   **a. Entrapment definition: WPIC 18.05 Entrapment—Defense**

   Entrapment is a defense to a charge of _________ if the criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and the defendant was lured or induced to commit a crime that the defendant had not otherwise intended to commit.

   The defense is not established if the law enforcement officials did no more than afford the defendant an opportunity to commit a crime. The use of a reasonable amount of persuasion to overcome reluctance does not constitute entrapment.

   The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty [as to this charge].

   **b. Note on Use:**

   Use this instruction when the defense of entrapment is in issue and supported by the evidence.

   For bribery cases, see the Comment.

   **c. Comment:**

   (1) **RCW 9A.16.070.** The law governing the defense of entrapment is reviewed in *State v. Smith, 101 Wn.2d 36, 677 P.2d 100 (1984).* *Smith* states: Both by statute and court decision, the entrapment defense focuses on “the intent or predisposition of the defendant to commit the crime”. *Hampton v. United States, 425 U.S. 484, 488, 96 S.Ct. 1646, 1649, 48 L.Ed.2d 113 (1976).* Entrapment occurs only when the criminal design originated in the mind of the police officer or informer, and the accused is lured or induced into committing a crime he had no intention of committing. *State v. Waggoner, 80 Wn.2d 7, 10, 490 P.2d 1308 (1971).* A police informant’s use of a “normal amount of persuasion to overcome” an “expected resistance” to sell drugs “does not constitute entrapment and will not justify an entrapment instruction.” *Waggoner,* at 11. Similarly, “that solicitation is made in connection with an appeal to sympathy or to friendship” does not, by itself, constitute entrapment. *State v. Swain, 10 Wn.App. 885, 889, 520 P.2d 950 (1974).* Furthermore, the police, in affording a


20. Instructions on Unlawful baiting of black bear:

   a. **Unlawful Baiting of Black Bear Definition:** Jury instruction, Unlawful baiting of black bear, RCW 77.15.245/ RCW 77.15.245(1)(a) and (d).

   The crime of Unlawful Baiting of Black Bear occurs when a person unlawfully takes, hunts, or attracts black bear with the aid of a substance that the person places, exposes, deposits, distributes, scatters, or otherwise uses for the purpose of attracting black bears to an area where the person is hunting black bear or intends to hunt black bear.

   the word "hunt" is defined in RCW 77.08.010(7) as”...an effort to kill, injure, capture, or harass a wild animal...” As noted by the Court in *State v. Walsh*, 123 Wn.2d
21. Instruction on Game Animals:

   a. Game Animals Definition: RCW 77.08.010(21)

   “Game animals” means wild animals that shall not be hunted except as authorized by the commission.

22. Instruction on Lesser Crime or Lesser Degree:

   a. Lesser Included Crime or Lesser Degree: WPIC 4.11 Lesser Included Crime or Lesser Degree

   The defendant is charged [in count] with __________. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime[s] of __________.

   When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more [degrees] [crimes] that person is guilty, he or she shall be convicted only of the lowest [degree] [crime].

   b. Note on Use:

   Use this instruction when the evidence would allow conviction of a lesser included crime, whether that be a lesser degree of the same crime or a lesser included crime with a different name. See discussion in the Comment.

   Along with this instruction, use WPIC 155.00, Concluding Instruction—Lesser Degree/Lesser Included Crime/Attempted Crime, and the applicable special verdict forms from WPIC 180.01, 180.05, and 180.06.

   In order to have a complete set of instructions, there must be a separate elements instruction setting out what must be proved to convict a defendant of the lesser included crime or lesser degree.

   c. Comment:
Lesser included crimes and lesser degree crimes. This instruction explains the proper sequence of the jury's decisions when considering a lesser offense. The instruction applies regardless of whether the crime is a lesser degree crime or a lesser included crime. In either instance, the framework for juror decision-making is the same. It is only in other regards that the law distinguishes between lesser degree crimes and lesser included crimes. See State v. Tamalini, 134 Wn.2d 725, 730–35, 953 P.2d 450 (1998) (distinguishing between lesser included crimes and lesser degree crimes with respect to the judge's threshold test for deciding whether to instruct the jury about a lesser crime); see also State v. Fernandez-Medina, 141 Wn.2d 448, 454, 6 P.3d 1150 (2000).

Lesser included offenses—Analysis. The test for analyzing lesser included offenses is traditionally stated as follows: “First, each of the elements of the lesser offense must be a necessary element of the offense charged. Second, the evidence in the case must support an inference that the lesser crime was committed.” State v. Workman, 90 Wn.2d 443, 447–48, 584 P.2d 382 (1978) (citations omitted). Additionally, “the lesser offense must arise from the same act or transaction supporting the greater charged offense … .” State v. Porter, 150 Wn.2d 732, 738, 82 P.3d 234 (2004). The Workman test requires a factual showing that is “more particularized” than the sufficient evidence standard that otherwise applies to jury instructions. State v. Porter, 150 Wn.2d at 737, 82 P.3d 234. “[T]he evidence must raise an inference that only the lesser included … offense was committed to the exclusion of the charged offense.” In other words, “the evidence must affirmatively establish the defendant's theory of the case—it is not enough that the jury might disbelieve the evidence pointing to guilt.”

Lesser degree offenses—Analysis. The test for lesser degree offenses is whether: “(1) the statutes for both the charged offense and the proposed inferior degree offense 'proscribe but one offense'; (2) the information charges an offense that is divided into degrees, and the proposed offense is an inferior degree of the charged offense; and (3) there is evidence that the defendant committed only the inferior offense.” State v. Peterson, 133 Wn.2d 885, 891, 948 P.2d 381 (1997) (quoting State v. Foster, 91 Wn.2d 466, 472, 589 P.2d 789 (1979)). The factual (third) component of this test is the same as the factual component of the Workman test for lesser included instructions. State v. Fernandez-Medina, 141 Wn.2d at 455, 6 P.3d 1150. Unlike a lesser included offense, a lesser degree offense may have an element that is not an element of the greater offense. For example, second degree assault (by torture) is an inferior degree offense for first degree assault (by inflicting great bodily injury), even though the lesser
degree offense has an element that is not a part of the greater degree offense and thus does not qualify as a lesser included offense. *State v. Peterson, 133 Wn.2d at 891–92, 948 P.2d 381.*


(5) Statute of limitations as to lesser offense. The statute of limitations for a lesser included offense is frequently shorter than the statute of limitations for the charged offense. The filing of the charging document will toll the running of the statute of limitation for the charged offense and all lesser offenses, but will not revive an already expired statute of limitations for a lesser offense. *State v. N.S., 98 Wn.App. 910, 991 P.2d 133 (2000).*

(6) Instruction's final paragraph. The instruction's final paragraph is required by *State v. Stationak, 73 Wn.2d 647, 440 P.2d 457 (1968).*

(7) Revised instruction. The instruction has been simplified for the 2005 update. Also, language has been deleted that is covered in other instructions or that is extraneous to the jury's decisionmaking role. No substantive change is intended.

(8) Cross-references. For a more detailed analysis of the law relating to lesser included and lesser degree offenses, see Fine and Ende, 13A Washington Practice, Criminal Law § 106 et seq. (2nd ed.). Additionally, lesser offense issues for specific crimes are discussed in Comments throughout Volumes 11 and 11A.

[Current as of 2005 Update.]

23. Instruction on Single Defendant:
a. **Multiple Accounts on Single Defendant: WPIC 3.01 Multiple Counts—Single Defendant**

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on [any] [the] other count.

b. **Note on Use:**

Use this instruction when there are multiple counts and a single defendant. Use bracketed material as applicable.

c. **Comment:**

In *State v. Bradford*, 60 Wn.App. 857, 808 P.2d 174 (1991), the jury inquired of the trial judge whether jurors could consider knowledge gained from one count when deliberating on another count. The trial judge answered that the jury was free to determine the use to which it will put evidence presented during trial. The Court of Appeals held that this response did not contradict WPIC 3.01, but suggested that additional language be added to WPIC 3.01 that informs the jury, in the absence of a limiting instruction, that “all evidence is applicable on all counts, provided that it meets relevance requirements.” *State v. Bradford*, 60 Wn.App. at 862, 808 P.2d 174. The language suggested in *Bradford* may be appropriate in individual cases. However, the committee has not included this language in the instruction, because the jury will have been instructed as to the use of the evidence in most cases and the suggested language may be more confusing than helpful to jurors. If the language suggested in *Bradford* is added to this instruction, the committee believes that further qualifications are necessary and recommends that the instruction be tailored to the specific evidence in the case. If this recommendation is followed, the trial court must take caution to avoid commenting on the evidence.

24. **Instruction on Unlawful Hunting Big Game Second Degree:**

a. **Unlawful Hunting of Big Game, Second Degree, Occurs when a Person: RCW 77.15.410(1)(a), (1)(b), and (1)(c)**

(1) unlawfully hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under Title 77 RCW; or

(2) violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or
(3) possesses big game taken during a closed season for that big
game or taken from a closed area for that big game.

b. **Definition to Hunt:** RCW 77.08.010(7); State v. Walsh, 123 Wn.2d 741, 748 (1994)

To "hunt" means an effort to kill, injure, capture, or harass a wild animal. The act of
hunting big game begins not when a hunter actually encounters big game, but rather when he or
she makes an effort to kill or injure big game in an area where such animals may reasonably be
expected.

c. **Definition on Game Animals:** RCW 77.08.010(21)

“Game animals” means wild animals that shall not be hunted except as authorized by the
commission.

d. **Definition on Commission:** RCW 77.08.010(9)

“Commission” means the state fish and wildlife commission.

e. **Definition on Director:** RCW 77.08.010(1)

“Director” means the director of fish and wildlife.

f. **Definition on Closed Area:** RCW 77.08.010(12)

“Closed area” means a place where the hunting of some or all species of wild animals or
wild birds is prohibited.

g. **Definition on Game Reserve:** RCW 77.08.010(14)

“Game reserve” means a closed area where hunting for all wild animals and wild birds is
prohibited.

h. **Definition on Closed Season:** RCW 77.08.010(11)
“Closed season” means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. “Closed season” also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

i. **Definition on Bag Limit: RCW 77.08.010(15)**

“Bag limit” means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

j. **Convict the defendant of Unlawful Hunting of Big Game, Second Degree: RCW 77.15.410(1)(a)**

To convict the defendant of Unlawful Hunting of Big Game, Second Degree, RCW 77.15.410(1)(a), each of the following three elements of the crime must be proved beyond a reasonable doubt:

1. That on or about [date], the defendant hunted a big game animal;
2. That the defendant at the time of hunting the animal did not have and possess all licenses, tags, or permits required under Title 77 RCW; and
3. That the acts occurred in the County of Jefferson, State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of Guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of Not Guilty.

25. **Instruction on To Hunt:**

a. **To Hunt Definition: RCW 77.08.010(47); State v. Walsh, 123 Wn.2d 741, 748 (1994)**

“To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal. The act of hunting big game begins not when a hunter actually encounters big game, but rather when he or she makes an effort to kill or injure big game in an area where such animals may reasonably be expected.

26. **Instruction on Unlawful Hunting of Big Game, Second Degree:**
a. The Crime Occurs: RCW 77.15.410(1)(a), (1)(b), and (1)(c)

The crime of Unlawful Hunting of Big Game, Second Degree, occurs when a person:

(1) unlawfully hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under Title 77 RCW; or

(2) violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or

(3) possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

27. Instruction on Confession and First Trial


You are trying this case upon the evidence introduced at this trial. You should not make any inference from or take into consideration the fact that there was a previous trial. You should not let the result of a previous trial influence your verdict.

28. Instructions on DUI:

a. Under the Influence of or Affected by Intoxicating Liquor or Drugs: WPIC 92.10 Under the Influence of or Affected by Intoxicating Liquor or Drugs—Definition

A person is under the influence of or affected by the use of [intoxicating liquor] [or] [drugs] if the person's ability to drive a motor vehicle is lessened in any appreciable degree. [It is not unlawful for a person to consume [intoxicating liquor] [or] [drugs] and drive a motor vehicle. The law recognizes that a person may have consumed [intoxicating liquor] [or] [drugs] and yet not be under the influence of it.]

b. Driving or Being in Physical Control While Under the Influence: WPIC 92.01 Driving or Being in Physical Control While under the Influence—Definition

A person commits the crime of [driving] [or] [being in actual physical control while] under the influence when he or she [drives] [or] [has actual physical control of] a motor vehicle [while he or she is under the influence of or affected by [intoxicating liquor] [or] [any drug]] [or] [while he or she is under the combined influence of or affected by intoxicating liquor and any drug] [or] [while he or she has sufficient alcohol in [his] [her] body to have an alcohol concentration of 0.08 or higher within two hours after [driving] [or] [being in actual physical control] as shown by an accurate and reliable test of the person's [breath] [blood]].
c. Operation of a Vessel Under the Influence of Intoxicating Liquor and/or Drugs: Operation of a Vessel Under the Influence of Intoxicating Liquor and/or Drugs — RCW 79A.60.040(2)

On or about the ________ day of ____________, ________, in the County of , State of Washington, the above-named Defendant did operate a vessel (insert all relevant options from the following list):

(1) while under the influence of or affected by intoxicating liquor or any drug (, and/or)

(2) while under the combined influence of or affected by intoxicating liquor and any drug (, and/or)

(3) with 0.08 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of his/her breath made under RCW 46.61.506 (, and/or)

(4) with 0.08 percent or more by weight of alcohol in his/her blood, as shown by analysis made under RCW 46.61.506 contrary

29. Instructions on Hunting While Suspended:

a. Deciding the facts: WPIC 1.02

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It is also your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that related to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the
things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer’s objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

b. **Instruction on Defendant’s Plea of Not Guilty: WPIC 4.01**

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

c. **Instruction on as Jurors: WPIC 1.04**

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after
you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

d. Instructions on Evidence: WPIC 5.01

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common practice. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

e. Instructions on Witness: WPIC 6.51

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness’ information, together with the factors already given you for evaluating the testimony of any other witness.

f. Instructions on Guilty of Violating a Suspension Department Privileges: RCW 77.15.670(1) and (4)

A person is guilty of Violating a Suspension of Department Privileges in the Second Degree if the person engages in any activity that is licensed by the department and the person’s privileges to engage in that activity were revoked or suspended by any court or the department. As used in this section, hunting includes trapping with a trapping license.

g. Instructions on Department Definition:

“Department” means the Department of Fish and Wildlife.

h. To Convict: RCW 77.15.670
To convict the defendant, JOHN DOE, of the crime of Violating a Suspension of Department Privileges in the Second Degree, as charged in Count X, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about the XX day of XXX, 200( ), the defendant engaged in hunting/fishing/trapping, which is licensed by the department, and that the defendant’s privileges to engage in that hunting/fishing/trapping were revoked or suspended by any court or the department; and

2. That the act occurred in XXXX County, the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

i. Instructions on Deliberating: WPIC 151.00

When you begin deliberating, you should first select a presiding juror. The presiding juror’s duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instruction, and five verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words “not guilty” or the word “guilty,” according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.
30. Instruction on Intent Obstructing:

a. Definition on Intentionally: WPIC 10.01 Intent--Intentionally--Definition

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

b. Definition on Obstructing a Law Enforcement Officer: WPIC 120.02.01 Obstructing A Law Enforcement Officer--Willfully--Definition

Willfully means to purposefully act with knowledge that this action will hinder, delay, or obstruct a law enforcement officer in the discharge of the officer's official duties.

c. Definition on Obstructing a Law Enforcement Officer: WPIC 120.01 Obstructing A Law Enforcement Officer—Definition

A person commits the crime of obstructing a law enforcement officer when [he] /[she]/willfully hinders, delays, or obstructs any law enforcement officer in the discharge of the law enforcement officer's official powers or duties.

d. To Convict the Defendant: WPIC 120.02 Obstructing A Law Enforcement Officer--Elements

To convict the defendant of the crime of obstructing a law enforcement officer, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about (date), the defendant willfully hindered, delayed, or obstructed a law enforcement officer in the discharge of the law enforcement officer's official powers or duties;

(2) That the defendant knew that the law enforcement officer was discharging official duties at the time;

(3) That the acts occurred in the [State of Washington] [City of ________] [County of ________].

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

31. Undersize and Female Crab Case Example:
a. Proposed Jury Instructions:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRAYS HARBOR

STATE OF WASHINGTON,

Plaintiff,

vs.

,

Defendant.

NO.
PLAINTIFF'S PROPOSED JURY INSTRUCTIONS
CITED

DATED this _____ day of April, 2010.

H. STEWARD MENEFFEE
Prosecuting Attorney

_______________________________
LACEY BLAIR, WSBA #
Deputy Prosecuting Attorney

b. Jury Instructions:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRAYS HARBOR

STATE OF WASHINGTON,

Plaintiff,

vs.

NO.
c. **Deciding the facts: WPIC 1.02**

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It is also your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.
One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that related to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer’s objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

d. Defendant plea of not guilty: WPIC 4.01

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully,
fairly and carefully considering all of the evidence or lack of evidence. If, after such
c consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a
reasonable doubt.

e. As Jurors: WPIC 1.04

As jurors, you have a duty to discuss the case with one another and to deliberate in an
effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after
you consider the evidence impartially with your fellow jurors. During your deliberations, you
should not hesitate to reexamine your own views and to change your opinion based upon further
review of the evidence and these instructions. You should not, however, surrender your honest
belief about the value or significance of evidence solely because of the opinions of your fellow
jurors. Nor should you change your mind just for the purpose of reaching a verdict.

f. Evidence: WPIC 5.01

Evidence may be either direct or circumstantial. Direct evidence is that given by a
witness who testifies concerning facts that he or she has directly observed or perceived through
the senses. Circumstantial evidence is evidence of facts or circumstances from which the
existence or nonexistence of other facts may be reasonably inferred from common practice. The
law makes no distinction between the weight to be given to either direct or circumstantial
evidence. One is not necessarily more or less valuable than the other.

g. Witness: WPIC 6.51

A witness who has special training, education or experience in a particular science,
profession or calling, may be allowed to express an opinion in addition to giving testimony as to
facts. You are not bound, however, by such an opinion. In determining the credibility and weight
to be given such opinion evidence, you may consider, among other things, the education,
training, experience, knowledge and ability of that witness, the reasons given for the opinion, the
sources of the witness’ information, together with the factors already given you for evaluating
the testimony of any other witness.

h. A person guilty: RCW 77.15.550

A person is guilty of Violation of Commercial Fishing Area or Time in the First Degree
if the person commits any of the following acts, and the person acted with knowledge that the
area or time was not open to the taking or fishing of fish or shellfish for commercial purposes,
and the violation involved two hundred fifty dollars or more worth of fish or shellfish:

(1) While acting for commercial purposes, the person takes, fishes for, possesses,
delivers, or receives fish or shellfish:
   (a) At a time not authorized by statute or rule;
   (b) From an area that was closed to the taking of such fish or shellfish for
commercial purposes by statute or rule; or
(c) If such fish or shellfish do not conform to the special restrictions or physical descriptions established by rule of the department.

i. **A Person Guilty: WAC 220-52-040(3)**

A person is guilty of Violation of Commercial Crab Fishery Acts if the person, acting for commercial purposes, takes, possesses, delivers, or otherwise controls:

(a) Any female Dungeness crabs; or  
(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back of the crab’s shell immediately in front of the shell’s tips.

j. **A person Guilty: RCW 77.15.280**

A person is guilty of Violation of Reporting of Fish or Wildlife Harvest Rules if the person:

(1) Fails to make a harvest log report of a commercial fish or shellfish catch in violation of any rule of the commission or the director;  
(2) Fails to maintain a trapper's report or taxidermist ledger in violation of any rule of the commission or the director;  
(3) Fails to submit any portion of a big game animal for a required inspection required by rule of the commission or the director; or  
(4) Fails to return a catch record card to the department as required by rule of the commission or director, except for catch record cards officially endorsed for Puget Sound Dungeness crab.

k. **A person Guilty: WAC 220-52-041**

A person is guilty of Violation of Coastal Dungeness Crab Logbook Requirements if the person:

(1) Is a vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery and fails to complete a department-issued logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters adjacent to the state of Washington; and  
(2) Is a vessel operator engaged in fishing and fails to comply with the following method and time frame related to harvest logbook submittal and record keeping:
   
   (a) The department must receive a copy of the completed logbook sheets within ten days following any calendar month in which fishing occurred. Completed Dungeness crab harvest logs must be sent to the following address: Washington Department of Fish and Wildlife, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563.  
   (b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for no less than three years after the fishing activity ended.  
   (c) Vessel operators can obtain logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628.
l. Commercial Purposes: WAC 220-16-305

“Commercial purposes,” defined: The taking, fishing for, possession, processing, or otherwise dealing in or disposing of food fish and shellfish for commercial purposes is defined as the taking or fishing for food fish with any gear unlawful for fishing for personal use, or taking or possessing food fish and shellfish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish, shellfish or parts thereof for profit or by sale, barter, trade or in commercial channels.

m. Definition of Commission: RCW 77.08.010(9)

“Commission” means the state fish and wildlife commission.

n. Definition of Director: RCW 77.08.010(13)

“Director” means the director of fish and wildlife.

o. Definition of Shellfish: RCW 77.08.010(50)

“Shellfish” means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term “shellfish” includes all stages of development and the bodily parts of shellfish species.

p. Definition of Department: RCW 77.08.010(13)

"Department" means the Department of Fish and Wildlife.

q. Classified Species: WAC 220-12-020

Abalone
Pinto abalone \( Haliotis \) kamtschatkana
Mussel
Blue mussel \textit{Mytilus trossulus}
California mussel \textit{Mytilus californianus}
Mediterranean mussel \textit{Mytilus galloprovincialis}

\textbf{Scallops}
Pacific pink scallop \textit{Chlamys rubida}
Rock scallop \textit{Crassadoma gigantea}
Spiny scallop \textit{Chlamys hastata}
Weathervane scallop \textit{Patinopecten caurinus}

\textbf{Clams}
All macoma clams \textit{Macoma spp.}
Butter clam \textit{Saxidomus giganteus}
Common cockle \textit{Clinocardium nuttallii}
Geoduck \textit{Panopea abrupta}
Horse or Gaper clam \textit{Tresus nuttallii, Tresus capax}
Mud or soft shell clam \textit{Mya arenaria}
Manila clam \textit{Venerupis philippinarum}
Piddock \textit{Zirfaea pilsbryi}
Razor clam \textit{Siliqua patula}
Rock or native little neck clam \textit{Protothaca staminea}
Varnish clam \textit{Nuttallia obscurata}
All other marine clams existing in Washington in a wild state

\textbf{Oysters}
All oysters \textit{(Ostreidae)}

\textbf{Squid}
All squid \textit{Sepiolida or Teuthida}

\textbf{Octopus}
Octopus \textit{Enteroctopus dolfeini}
<table>
<thead>
<tr>
<th>Animal</th>
<th>Scientific Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barnacles</td>
<td></td>
</tr>
<tr>
<td>Goose barnacle</td>
<td><em>Pollicipes polymerus</em></td>
</tr>
<tr>
<td>Shrimp</td>
<td></td>
</tr>
<tr>
<td>Coonstripe shrimp</td>
<td><em>Pandalus danae</em></td>
</tr>
<tr>
<td>Coonstripe shrimp</td>
<td><em>Pandalus hypsinotus</em></td>
</tr>
<tr>
<td>Ghost or sand shrimp</td>
<td><em>Neotrypaea spp.</em></td>
</tr>
<tr>
<td>Humpy shrimp</td>
<td><em>Pandalus goniurus</em></td>
</tr>
<tr>
<td>Mud shrimp</td>
<td><em>Upogebia pugettensis</em></td>
</tr>
<tr>
<td>Ocean pink shrimp</td>
<td><em>Pandalus jordani</em></td>
</tr>
<tr>
<td>Pink shrimp</td>
<td><em>Pandalus eous</em></td>
</tr>
<tr>
<td>Sidestripe shrimp</td>
<td><em>Pandalopsis dispar</em></td>
</tr>
<tr>
<td>Spot shrimp</td>
<td><em>Pandalus platyceros</em></td>
</tr>
<tr>
<td>Crab</td>
<td></td>
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<tr>
<td>Dungeness or Pacific crab</td>
<td><em>Cancer magister</em></td>
</tr>
<tr>
<td>Red rock crab</td>
<td><em>Cancer productus</em></td>
</tr>
<tr>
<td>Tanner crab</td>
<td><em>Chionoecetes tanneri</em></td>
</tr>
<tr>
<td>King and box crab</td>
<td><em>Lopholithodes spp.</em></td>
</tr>
<tr>
<td>Crawfish</td>
<td></td>
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<tr>
<td>Crawfish</td>
<td><em>Pacifastacus sp.</em></td>
</tr>
<tr>
<td>Sea cucumber</td>
<td></td>
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<tr>
<td>Sea cucumber</td>
<td><em>Parastichopus californicus</em></td>
</tr>
<tr>
<td>Sea urchin</td>
<td></td>
</tr>
<tr>
<td>Green urchin</td>
<td><em>Strongylocentrotus droebachiensis</em></td>
</tr>
<tr>
<td>Red urchin</td>
<td><em>Strongylocentrotus franciscanus</em></td>
</tr>
<tr>
<td>Purple urchin</td>
<td><em>Strongylocentrotus purpuratus</em></td>
</tr>
</tbody>
</table>

r. To Convict:
To convict the defendant, XX XX, of the crime of Violation of Commercial Area or Time in the First Degree, as charged in Count X, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the XXth day of XX 2008, the defendant

s. When Deliberating: WPIC 151.00

When you begin deliberating, you should first select a presiding juror. The presiding juror’s duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instruction, and five verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words “not guilty” or the word “guilty,” according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

t. Verdict Form: WPIC 180.01

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRAYS HARBOR

STATE OF WASHINGTON,
     Plaintiff,

     vs.

     NO.

     VERDICT FORM
We, the jury, find the defendant, XX XX, of the crime of VIOLATION OF COMMERCIAL FISHING AREA OR TIME, FIRST DEGREE, as charged in Count X.

__________________________  
PRESIDING JUROR

32. Instructions on Winegarden:

a. Instructions on Violating a Suspension of Department Privileges: RCW 77.15.670(1)

A person is guilty of Violating a Suspension of Department Privileges in the Second Degree if the person engages in any activity that is licensed by the department and the person’s privileges to engage in that activity were revoked or suspended by any court or the department.

b. Guilty of Unlawful Purchase: RCW 77.15.650(1) and (4)

(1) A person is guilty of Unlawful Purchase or Use of a License in the Second Degree if the person buys, holds, uses, displays, transfers, or obtains any license, tag, permit, or approval required by Title 77 RCW and the person:
(a) Uses false information to buy, hold, use, display, or obtain a license, permit, tag, or approval;
(b) Acquires, holds, or buys in excess of one license, permit, or tag for a license year if only one license, permit, or tag is allowed per license year;
(c) Except as authorized under RCW 77.32.565, uses or displays a license, permit, tag, or approval that was issued to another person;
(d) Except as authorized under RCW 77.32.565, permits or allows a license, permit, tag, or approval to be used or displayed by another person not named on the license, permit, tag, or approval;
(e) Acquires or holds a license while privileges for the license are revoked or suspended.

(2) For purposes of this section, a person “uses” a license, permit, tag, or approval if the person engages in any activity authorized by the license, permit, tag, or approval held or possessed by the person. Such uses include but are not limited to fishing, hunting, taking, trapping, delivery or landing fish or wildlife, and selling, buying, or wholesaling of fish or wildlife.

c. Guilty of Unlawful hunting of Wild Birds: RCW 77.15.400(1)

(1) A person is guilty of Unlawful Hunting of Wild Birds in the Second Degree if the person:
(a) Hunts for, takes, or possesses a wild bird and the person does not have and possess all licenses, tags, stamps, and permits required under this title;
(b) Maliciously destroys, takes, or harms the eggs or nests of a wild bird except when authorized by permit;
(c) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or other rule addressing the manner or method of hunting or possession of wild birds; or
(d) Possesses a wild bird taken during a closed season for that wild bird or taken from a closed area for that wild bird.

d. Definition on Department: RCW 77.08.010(13)

“Department” means the Department of Fish and Wildlife.

e. Definition on Commission: RCW 77.08.010(9)

“Commission” means the state Fish and Wildlife Commission.

f. Definition on Director: RCW 77.08.010(14)

“Director” means the director of Fish and Wildlife.
g. **Definition on Game Birds: RCW 77.08.010(24)**

"Game birds" means wild birds that shall not be hunted except as authorized by the commission.

h. **Definitions on Migratory: RCW 77.08.045**

As used in this title or rules adopted pursuant to this title:

1. "Migratory waterfowl" means members of the family Anatidae, including brants, ducks, geese, and swans;
2. "Migratory bird" means migratory waterfowl and coots, snipe, doves, and band-tailed pigeon;
3. "Migratory bird stamp" means the stamp that is required by RCW 77.32.350 to be in the possession of all persons to hunt migratory birds;
4. "Prints and artwork" means replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory bird stamp that is required by RCW 77.32.350. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications, or any other kind of design; and
5. "Migratory waterfowl art committee" means the committee created by RCW 77.12.680. The committee's primary function is to select the annual migratory bird stamp design.

33. **Commercial Fishing Case Example State v. Dennis Sturgell:**

a. **Plaintiff’s Proposed Jury Instructions:**
v.
DENNIS L. STURGELL,
Defendant.

PLAINTIFF’S PROPOSED
JURY INSTRUCTIONS

DATED: April 14, 2010

H. STEWARD MENEFEE
Prosecuting Attorney
For Grays Harbor County

BY:
EDGAR M. KORZENIOWSKI
Deputy Prosecuting Attorney
WSBA #35118

b. Court’s Instructions to the Jury:

GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1
c. **Duty to Decide: [WPIC 1.02 Conclusion of Trial – Introductory Instruction]**

   It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

   Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence
presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers’ remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer’s objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

d. Defendant Has been Charged:

The Defendant has been charged by criminal complaint with the following counts:

COUNT I:
Violation of Commercial Fishing Area or Time in the Second Degree by Taking, Possessing, Delivering or otherwise Controlling Undersized Male Dungeness Crab while Engaged in fishing for Dungeness Crab for Commercial Purposes that occurred on or about March 4, 2008.

COUNT II:

Violation of Commercial Fishing Area or Time in the Second Degree by Taking, Possessing, Delivering or otherwise Controlling Female Dungeness Crab while Engaged in fishing for Dungeness Crab for Commercial Purposes that occurred on or about March 4, 2008.

COUNT III:

Violation of Reporting of Fish or Wildlife Harvest Rule by Failing to Complete a Coastal Dungeness Crab Logbook Entry for each Day Fished prior to Offloading that occurred on or about February 25, 2008.

COUNT IV:

Violation of Reporting of Fish or Wildlife Harvest Rule by Failing to Complete a Coastal Dungeness Crab Logbook Entry for each Day Fished prior to Offloading that occurred on or about March 4, 2008.

e. Multiple Counts: [WPIC 3.01 Multiple Counts – Single Defendant]

A separate crime is charged in each count. You must decide each count separately as if it were a separate trial. Your verdict on one count should not control your verdict on any other count.

f. Defendants Plea of Not Guilty: [WPIC 4.01 Burden of Proof – Presumption of Innocence – Reasonable Doubt]

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.
g. **Defendant not Testify:** [WPIC 6.31 Defendant not Testify]

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice him in any way.

h. **Violation of Commercial Fishing:** [WAC 220-52-040 (3)(a)-(b) Violation of Commercial Fishing Area or Time in the Second Degree—Definition]

A person commits the crime of Violation of Commercial Fishing Area or Time in the Second Degree if he or she is acting for commercial purposes and takes, possesses, delivers or otherwise controls:

1. Any female Dungeness crab;
2. Any male Dungeness crab measuring less than 6 ¼ inches:

i. **Definition of ‘to Fish’:** [RCW 77.08.010(52) fish and take — Definition]

“To fish”, “to take”, and its derivatives mean an effort to kill, injure, harass, or catch Dungeness crab.

j. **Definition of Possession:** [WPIC 133.52 Possession (Modified) — Definition]

Possession means to have an item in one’s custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over an item, you may consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. No single one of these factors necessarily controls your decision.

k. **Definition of Dominion and Control:** [State v. Jones, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002)]

“Dominion and control” means that the object may be immediately reduced to actual possession.
l. Definition of Commercial Purpose: [WAC 220-16-305/WAC 220-12-020 Commercial Purpose—Definition]

“Commercial purpose” means the taking, fishing for, handling, processing, or otherwise disposing of or dealing in any Dungeness crab with the intent of disposing of it or parts thereof for profit or by sale, barter, trade or in commercial channels.

m. Definition of Measurement: [WAC 220-52-040 (3)(b) Measurement—Definition]

The length of a male Dungeness crab is determined by caliper measurement, across the back of the crab’s shell immediately in front of the shell’s tips.

n. To Convict: [WPIC 4.21: RCW 77.15.550(1)(c)/WAC 220-52-040(3)(b) Violation of Commercial Fishing Area or Time in the Second Degree—Elements]

To convict the defendant of Violation of Commercial Fishing Area or Time in the Second Degree, as charged in Count I of the complaint, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about March 4, 2008 the Defendant took, possessed, delivered, or otherwise controlled any male Dungeness crabs;
2. That any of the crabs measured less than 6 ¼ inches;
3. That the Defendant was acting for commercial purpose; and
4. That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

o. To Convict: [WPIC 4.21: RCW 77.15.550(1)(c)/WAC 220-52-040(3)(a) Violation of Commercial Fishing Area or Time in the Second Degree—Elements]

To convict the defendant of Violation of Commercial Fishing Area or Time in the Second Degree, as charged in Count II of the complaint, each of the following three elements of the crime must be proved beyond a reasonable doubt:

1. That on or about March 4, 2008 the Defendant took, possessed, delivered, or otherwise controlled any female Dungeness crabs;
2. That the Defendant was acting for commercial purpose; and
3. That these acts occurred in the County of Grays Harbor, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.
p. **Violation of Reporting of Fish and Wildlife Harvest: [WAC 220-52-041 Violation of Reporting of Fish or Wildlife Harvest Rule—Definition]**

A person commits the crime of Violation of Reporting of Fish or Wildlife Harvest Rule when a vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery, fails to complete a department-issued Coastal Dungeness crab logbook for each day fished prior to offloading.

q. **To Convict: [RCW 77.15.280(1)(a)/WAC 220-52-041 Violation of Reporting of Fish or Wildlife Harvest Rule—Elements]**

To convict the defendant of Violation of Reporting of Fish or Wildlife Harvest Rule, as charged in Count III of the complaint, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about February 25, 2008, the Defendant was a vessel operator engaged in fishing for Dungeness crab;
2. That the Defendant was acting for commercial purpose;
3. That the Defendant failed to complete a logbook entry prior to offloading; and
4. That these acts occurred in the County of Grays Harbor, State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

r. **To Convict: [RCW 77.15.280(1)(a)/WAC 220-52-041 Violation of Reporting of Fish or Wildlife Harvest Rule—Elements]**

To convict the Defendant of Violation of Reporting of Fish or Wildlife Harvest Rule, as charged in Count IV of the complaint, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about March 4, 2008, the Defendant was a vessel operator engaged in fishing for Dungeness crab;
2. That the Defendant was acting for commercial purpose;
3. That the Defendant failed to complete a logbook entry prior to offloading; and
4. That these acts occurred in the County of Grays Harbor, State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

s. **Evidence: [WPIC 5.01 Direct and Circumstantial Evidence]**
Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

As Jurors: [WPIC 1.04 Jurors' Duty to Consult with One Another]

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

When Deliberating: [WPIC 151.00 Basic Concluding Instruction]

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you. During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations. If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the court clerk. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each of the verdict forms the words “not guilty” or the word “guilty”, according to the decision you reach. Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the court clerk. The court clerk will bring you into court to declare your verdict.
v. Verdict Forms

(1) Verdict Form (count 1):

GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1

STATE OF WASHINGTON,

Plaintiff,

v.

DENNIS L. STURGELL,

Defendant.

No. 2008125

VERDICT FORM
(COUNT I)

We, the jury in the above-entitled cause, do find the defendant, DENNIS L. STURGELL, of the crime of Violation of Commercial Fishing Area or Time in the Second Degree.

“Not Guilty” or “Guilty”

PRESIDING JUROR

(2) Verdict Form (Count II):

GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1

STATE OF WASHINGTON,

Plaintiff,

No. 2008125
v.

DENNIS L. STURGELL,

Defendant.

VERDICT FORM
(COUNT II)

We, the jury in the above-entitled cause, do find the defendant, DENNIS L. STURGELL, “Not Guilty” or “Guilty” of the crime of Violation of Commercial Fishing Area or Time in the Second Degree.

PRESIDING JUROR

(3) Verdict Form (Count III):

GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1

STATE OF WASHINGTON,
Plaintiff,  
v.  
DENNIS L. STURGELL,  
Defendant.  

No. 2008125

VERDICT FORM
(COUNT III)

We, the jury in the above-entitled cause, do find the defendant, DENNIS L. STURGELL, “Not Guilty” or “Guilty” of the crime of Violation of Reporting of Fish or Wildlife Harvest Rule.

PRESIDING JUROR

(4)  Verdict Form (Count IV):

GRAYS HARBOR COUNTY DISTRICT COURT
DEPT. 1
STATE OF WASHINGTON,

Plaintiff,

t. "Not Guilty” or “Guilty"

DENNIS L. STURGELL,
Defendant.

No. 2008125

VERDICT FORM
(COUNT IV)

We, the jury in the above-entitled cause, do find the defendant, DENNIS L. STURGELL, of the crime of Violation of Reporting of Fish or Wildlife Harvest “Not Guilty” or “Guilty” Rule.

PRESIDING JUROR

C. Materials and Jury Instructions Misc

1. Regarding Reservation Boundaries:
a. The following addresses reservation boundaries and is meant to prepare you to respond to the defendant’s arguments:

(1) Reservation boundaries of the Spokane Indian Reservation were established by Executive Order, January 18, 1881.

(2) “Indian country” includes all lands within reservation boundaries, regardless of ownership. 18 U.S.C. 1151.

(3) “Changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress.” 25 U.S.C. 398d.

(4) “Once a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise.” Solem v. Barlett, 465 U.S. 463 (1984).

(5) [I was unable to find any act by Congress that may have diminished the reservation boundaries of the Spokane Indian Reservation, meaning that the reservation boundaries are intact.]

(6) The non-Indian fee property where the violation occurred is within the reservation boundaries of the Spokane Indian Reservation.

(7) The WDFW Game Management Unit (GMU) ends at the border of the reservation. WAC 232-28-331.


(9) If it appears that a person is engaging in conduct that tribal law regulates or is violating tribal law, tribal law enforcement may stop the person to determine whether the person is an Indian or non-Indian. Tribal police cannot determine whether someone is an Indian or non-Indian just by looking at the person. A tribal officer may stop and detain a person long enough to request identification and determine whether the person is an Indian or non-Indian. If the person is a non-Indian, and there is no violation of state law, then tribal police
must release the non-Indian. If the person is an Indian and is in violation of state law, then the tribal officer may stop and detain the person for a reasonable amount of time for the purpose of turning over the non-Indian to government authorities (sheriff, trooper, WDFW officer, etc.). State v. Schmuck, 121 Wn.2d 373 (Wash. 1993). This is applicable even without any management agreement or cross-deputization agreement between tribal law enforcement and the county sheriff.

b. GMU 121: WAC 232-28-358

Jury Instructions for GMU 121: (Note – you may have to define the other GMUs that surround the reservation to show that the reservation is not within the GMU and, thus, is closed as it’s not an area listed as open for hunting in WAC 232-28-358)

c. GMU: 121

*“Game Management Unit (GMU) 121-Huckleberry (Stevens County)” is defined as the area beginning at the US Hwy (US) 395 bridge over Lake Roosevelt (Columbia River) NW of the town of Kettle Falls; SE on US 395 through Colville and Chewelah to State Route (SR) 292 at Loon Lake; W on SR 292 to SR 231 at the town of Springdale; S on SR 231 to the first tributary of Chamokan Creek intersecting SR 231 south of the northeast corner of the Spokane Indian reservation; SW on the said tributary to Chamokan Creek, the northern boundary of the Spokane Indian reservation; W along the northern border of the Spokane Indian Reservation border to eastern boundary of the Colville Indian reservation on the Ferry-Stevens county line on Lake Roosevelt; N along the Colville Indian reservation boundary to its northern corner on Lake Roosevelt; W along Colville Indian reservation boundary to the western shore of Lake Roosevelt; N along western shore of Lake Roosevelt to the US 395 bridge over Lake Roosevelt northwest of the town of Kettle Falls and the point of beginning.

WAC 232-28-331, Game management units (GMUs) boundary descriptions—Region one.

*Might be a good idea to make a map part of this instruction. Let me know if you need help with maps.

d. Jury Instructions for Unlawful Hunting: RCW 77.15.410(1) Unlawful Hunting of Big Game in the Second Degree – Definition

Jury Instructions for Unlawful Hunting of Big Game, 2\textsuperscript{nd} Degree: (For crimes occurring after June 7, 2012) A person commits the crime of Unlawful Hunting of Big Game in the Second Degree when he or she [[hunts for] [takes] [possesses] big game and the person does not have and possess all licenses, tags, or permits required under Title 77 RCW]] or [violates any department rule regarding [seasons] [bag or possession limits] [closed areas including game reserves] [closed times] [any other rule governing the hunting, taking, or possession of big game]].

e. To Convict:
(For crimes occurring after June 7, 2012) To convict the defendant of Unlawful Hunting of Big Game in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about _______, the defendant:
   a. [hunted for] [took] [possessed] big game and the person does not have and possess all licenses, tags, or permits required under Title 77 RCW]; or
   b. [violated any department rule regarding [seasons] [bag or possession limits] [closed areas including game reserves] [closed times] [any other rule governing the hunting, taking, or possession of big game]]; and
2. That any of these acts occurred in the County of __________, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

f. Definitions:

1. To Hunt: RCW 77.08.010(65) To Hunt — Definition
   “To hunt” and its derivatives, such as “to take,” means an effort to kill, injure, capture, or harass big game.

2. Big Game: RCW 77.08.030 Big Game — Definition
   A [bear (black bear, grizzly bear)] [caribou] [cougar] [deer (blacktail deer, mule deer, whitetail deer)] [moose] [mountain goat] [mountain lion] [mountain sheep] [pronghorn antelope] [elk] is “big game.”

3. Closed Area: RCW 77.08.010(7) Closed Area — Definition
   *“Closed area” means a place where the hunting of some or all species of wild animals is prohibited.

*You may want to adjust this definition due to the kind of “silent” or “default” nature of the reservation being closed.