

Initiative Measure No. 1401 filed April 3, 2015

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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: I-2990.1/15

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION:

AN ACT Relating to the trafficking of animal species threatened with extinction; amending RCW 77.15.085, 77.15.100, and 77.15.425; reenacting and amending RCW 77.08.010; adding a new section to chapter 77.15 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** There is broad consensus that the trafficking of animals threatened with extinction continues to grow at an alarming pace, threatening an increasing variety of animal species including elephants, rhinoceroses, tigers, lions, leopards, cheetahs, pangolins, marine turtles, sharks, and rays, among others. These species are threatened with extinction in large part due to the trafficking of their parts and products. The national strategy for combating wildlife trafficking, released in February 2014, recognized the important role that states have in protecting species that are subject to illegal wildlife trade. Federal law regulates the transfer or importation of parts or products made from endangered animal species, but due to the increasing demand for these products around the world, state authority needs to be expanded to appropriately regulate these markets on a local level.

The most effective way to discourage illegal trafficking in animal species threatened with extinction is to eliminate markets and profits. The people find that it is in the public interest to protect animal species threatened with extinction by prohibiting within the state of Washington, with certain limited exceptions, the sale, offer for sale, purchase, trade, barter for, and distribution of any part or product of any species of elephant, rhinoceros, tiger, lion, leopard, cheetah, pangolin, marine turtle, shark, or ray identified as threatened with extinction by specified international conservation organizations. These animals represent some of the most trafficked species threatened with extinction according to illegal wildlife product seizure data gathered by the

world wildlife fund-TRAFFIC, international union for conservation of nature, and other international conservation organizations.

**Sec. 2.** RCW 77.08.010 and 2014 c 202 s 301 and 2014 c 48 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.

(1) "Anadromous game fish buyer" means a person who purchases or sells steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director.

(2) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(3) "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.

(4) "Building" means a private domicile, garage, barn, or public or commercial building.

(5) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(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.

(7) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(8) "Commercial" means related to or connected with buying, selling, or bartering.

(9) "Commission" means the state fish and wildlife commission.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Contraband" means any property that is unlawful to produce or possess.

(12) "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.

(13) "Department" means the department of fish and wildlife.

(14) "Director" means the director of fish and wildlife.

(15) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(16) "Ex officio fish and wildlife officer" means:

(a) A commissioned officer of a municipal, county, or state agency having as its primary function the enforcement of criminal laws in general, while the officer is acting in the respective jurisdiction of that agency;

(b) An officer or special agent commissioned by one of the following: The national marine fisheries service; the Washington state parks and recreation commission; the United States fish and wildlife service; the Washington state department of natural resources; the United States forest service; or the United States parks service, if the agent or officer is in the respective jurisdiction of the primary commissioning agency and is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency;

(c) A commissioned fish and wildlife peace officer from another state who meets the training standards set by the Washington state criminal justice training commission pursuant to RCW 10.93.090,

43.101.080, and 43.101.200, and who is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency; or

(d) A Washington state tribal police officer who successfully completes the requirements set forth under RCW 43.101.157, is employed by a tribal nation that has complied with RCW 10.92.020(2)(a) and (b), and is acting under a mutual law enforcement assistance agreement between the department and the tribal government.

(17) "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.

(18) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(19) "Fish broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together.

(20) "Fish buyer" means:

(a) A wholesale fish dealer or a retail seller who directly receives fish or shellfish from a commercial fisher or receives fish or shellfish in interstate or foreign commerce; or

(b) A person engaged by a wholesale fish dealer who receives fish or shellfish from a commercial fisher.

(21) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(22) "Food, food waste, or other substance" includes human and pet food or other waste or garbage that could attract large wild carnivores.

(23) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(24) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(25) "Fur dealer" means a person who purchases, receives, or resells raw furs for commercial purposes.

(26) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(27) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(28) "Game farm" means property on which wildlife is held, confined, propagated, hatched, fed, or otherwise raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(29) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(30) "Illegal items" means those items unlawful to be possessed.

(31) (a) "Intentionally feed, attempt to feed, or attract" means to purposefully or knowingly provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract large wild carnivores to that land or building.

(b) "Intentionally feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(32) "Large wild carnivore" includes wild bear, cougar, and wolf.

(33) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(34) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(35) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(36) "Natural person" means a human being.

(37) (a) "Negligently feed, attempt to feed, or attract" means to provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract large wild carnivores to that land or building, without the awareness that a reasonable person in the same situation would have with regard to the likelihood that the food, food waste, or other substance could attract large wild carnivores to the land or building.

(b) "Negligently feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(38) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(39) "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.

(40) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food 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 hunt, fish, take, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(41) "Owner" means the person in whom is vested the ownership dominion, or title of the property.

(42) "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.

(43) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(44) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(45) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(46) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(47) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(48) "Resident" has the same meaning as defined in RCW 77.08.075.

(49) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(50) "Saltwater" means those marine waters seaward of river mouths.

(51) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(52) "Senior" means a person seventy years old or older.



(53) "Shark fin" means a raw, dried, or otherwise processed detached fin or tail of a shark.

(54) (a) "Shark fin derivative product" means any product intended for use by humans or animals that is derived in whole or in part from shark fins or shark fin cartilage.

(b) "Shark fin derivative product" does not include a drug approved by the United States food and drug administration and available by prescription only or medical device or vaccine approved by the United States food and drug administration.

(55) "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.

(56) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(57) "Taxidermist" means a person who, for commercial purposes, creates lifelike representations of fish and wildlife using fish and wildlife parts and various supporting structures.

(58) "To fish" and its derivatives means an effort to kill, injure, harass, harvest, or capture a fish or shellfish.

(59) "To hunt" and its derivatives means an effort to kill, injure, harass, harvest, or capture a wild animal or wild bird.

(60) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(61) "To take" and its derivatives means to kill, injure, harvest, or capture a fish, shellfish, wild animal, bird, or seaweed.

(62) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(63) "To waste" or "to be wasted" means to allow any edible portion of any game bird, food fish, game fish, shellfish, or big game animal other than cougar to be rendered unfit for human

consumption, or to fail to retrieve edible portions of such a game bird, food fish, game fish, shellfish, or big game animal other than cougar from the field. For purposes of this chapter, edible portions of game birds must include, at a minimum, the breast meat of those birds. Entrails, including the heart and liver, of any wildlife species are not considered edible.

(64) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(65) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(66) "Unclassified wildlife" means wildlife existing in Washington in a wild state that have not been classified as big game, game animals, game birds, predatory birds, protected wildlife, endangered wildlife, or deleterious exotic wildlife.

(67) "Wholesale fish dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barter, or exchanges or attempts to sell, barter, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce.

(68) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state. The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(69) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(70) "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.

(71) "Wildlife meat cutter" means a person who packs, cuts, processes, or stores wildlife for consumption for another for commercial purposes.

(72) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(73) "Covered animal species" means 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.

(74) "Covered animal species part or product" means any item that contains, or is wholly or partially made from, any covered animal species.

(75) "Distribute" or "distribution" means either a change in possession for consideration or a change in legal ownership.

NEW SECTION. Sec. 3. A new section is added to chapter 77.15 RCW to read as follows:

(1) Except as authorized in subsections (2) and (3) of this section, it is unlawful for a person to sell, offer to sell, purchase, trade, barter for, or distribute any covered animal species part or product.

(2) The prohibitions set forth in subsection (1) of this section do not apply if any of the following conditions is satisfied:

(a) The covered animal species part or product is part of a bona fide antique, provided the antique status of such an antique is established by the owner or seller thereof with historical

documentation evidencing provenance and showing the antique to be not less than one hundred years old, and the covered animal species part or product is less than fifteen percent by volume of such an antique;

(b) The distribution of the covered animal species part or product is for a bona fide educational or scientific purpose, or to or from a museum;

(c) The distribution of the covered animal species part or product is to a legal beneficiary of an estate, trust, or other inheritance, upon the death of the owner of the covered animal species part or product;

(d) The covered animal species part or product is less than fifteen percent by volume of a musical instrument, including, without limitation, string instruments and bows, wind and percussion instruments, and pianos; or

(e) The intrastate sale, offer for sale, purchase, trade, barter for, or distribution of the covered animal species part or product is expressly authorized by federal law or permit.

(3) The prohibitions set forth in subsection (1) of this section do not apply to an employee or agent of a federal, state, or local government undertaking any law enforcement activity pursuant to federal, state, or local law or any mandatory duty required by federal, state, or local law.

(4) (a) Except as otherwise provided in this section, a person is guilty of unlawful trafficking in species threatened with extinction in the second degree if the person commits the act described in subsection (1) of this section and the violation involves covered animal species parts or products with a total market value of less than two hundred fifty dollars.

(b) Except as otherwise provided in this section, a person is guilty of unlawful trafficking in species threatened with extinction in the first degree if the person commits the act described by subsection (1) of this section and the violation:

(i) Involves covered animal species parts or products with a total market value of two hundred fifty dollars or more;

(ii) Occurs after entry of a prior conviction under this section;

or

(iii) Occurs within five years of entry of a prior conviction for any other gross misdemeanor or felony under this chapter.

(c) Unlawful trafficking in species threatened with extinction in the second degree is a gross misdemeanor.

(d) Unlawful trafficking in species threatened with extinction in the first degree is a class C felony.

(e) If a person commits the act described by subsection (1) of this section and such an act also would be a violation of any other criminal provision of this title, the prosecuting authority has discretion as to which crime or crimes the person is charged as long as the charges are consistent with any limitations in the state and federal Constitutions.

(5) In addition to the penalties set forth in subsection (4) of this section, if a person is convicted of violating this section, the court shall require payment of a criminal wildlife penalty assessment in the amount of two thousand dollars that must be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425.

(6) If two or more people are convicted under subsection (1) of this section, the criminal wildlife penalty assessment under this section must be imposed against each person jointly and severally.

(7) The criminal wildlife penalty assessment provided in this section must be doubled if the person is convicted of unlawful trafficking in species threatened with extinction in the first degree.

(8) By January 1, 2017, and thereafter annually, the director shall provide a comprehensive report outlining current and future

enforcement activities and strategies related to this act, including recommendations regarding any necessary changes, to the relevant policy and fiscal committees of the senate and house of representatives.

(9) The commission may adopt rules necessary for the implementation and enforcement of this act.

**Sec. 4.** RCW 77.15.085 and 2000 c 107 s 232 are each amended to read as follows:

Fish and wildlife officers and ex officio fish and wildlife officers may seize without a warrant wildlife, fish, ~~((and))~~ shellfish, and covered animal species parts and products they have probable cause to believe have been taken, transported, or possessed in violation of this title or rule of the commission or director.

**Sec. 5.** RCW 77.15.100 and 2014 c 48 s 4 are each amended to read as follows:

(1) Fish, shellfish, and wildlife are property of the state under RCW 77.04.012. Fish and wildlife officers may sell seized, commercially taken or possessed fish and shellfish to a wholesale buyer and deposit the proceeds into the fish and wildlife enforcement reward account under RCW 77.15.425. Seized, recreationally taken or possessed fish, shellfish, and wildlife may be donated to nonprofit charitable organizations. The charitable organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code.

(2) Fish and wildlife officers may dispose of any covered animal species part or product seized through the enforcement of section 3 of this act through a donation to a bona fide educational or scientific institution, solely for the purposes of raising awareness of the trafficking and threatened nature of endangered animals, as allowed under state, federal, and international law.

(3) Unless otherwise provided in this title, fish, shellfish, ~~((or))~~ 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. For criminal cases resulting in other types of dispositions, the fish, shellfish, ~~((or))~~ wildlife, or covered animal species part or product may be returned, or its equivalent value paid, if the fish, shellfish, ~~((or))~~ wildlife, or covered animal species part or product have already been donated or sold.

**Sec. 6.** RCW 77.15.425 and 2014 c 48 s 17 are each amended to read as follows:

The fish and wildlife enforcement reward account is created in the custody of the state treasurer. Deposits to the account include: Receipts from fish and shellfish overages as a result of a department enforcement action; fees for hunter education deferral applications; fees for master hunter applications and master hunter certification renewals; all receipts from criminal wildlife penalty assessments under ~~((RCW 77.15.370, 77.15.400, and 77.15.420))~~ this chapter; all receipts of court-ordered restitution or donations associated with any fish, shellfish, or wildlife enforcement action; and proceeds from forfeitures and evidence pursuant to RCW 77.15.070 and 77.15.100. The department may accept money or personal property from persons under conditions requiring the property or money to be used consistent with the intent of expenditures from the fish and wildlife enforcement reward account. Expenditures from the account may be used only for investigation and prosecution of fish and wildlife offenses, to provide rewards to persons informing the department about violations of this title and rules adopted under this title, to offset department-approved costs incurred to administer the hunter education deferral program and the master hunter permit program, and for other valid enforcement uses as determined by the commission. Only the director or the director's

designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

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