

WILDLIFE CONFLICT RULES – RULE ACTION

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“GREEN SHEET”

Meeting: December 14-15, 2012
Agenda Item: Wildlife Conflict Rules – **Rule Action**
Prepared By: Dave Ware, Game Division Manager, Wildlife Program
Presented By: Dave Ware, Game Division Manager, Wildlife Program

Background:

Department staff will brief the Commission on proposed amendments to WAC 232-36-030 Definitions, WAC 232-36-051 Killing wildlife causing private property damage, WAC 232-36-100 Payment for commercial crop damage—Limitations, WAC 232-36-200 Payment for commercial livestock damage—Limitations, and WAC 232-36-400 Commercial crop or livestock damage claim--Dispute resolution.

The 2009 Legislature made major changes to the statutes governing wildlife conflict issues. One of the greatest changes involved expanding the Fish and Wildlife Commission’s authority to manage wildlife conflict through the rule-making process. In 2010, the Commission developed a set of rules in Chapter 232-36 WAC consistent with the new legislative authority.

Washington’s Wolf Conservation and Management Plan was adopted by the Commission in December of 2011. One of the greatest issues for managing wolves is managing wolf-human conflicts, and as a result, this chapter of the wolf plan is very prescriptive. The proposed changes to the wildlife conflict rules are mainly intended to make them more consistent with the plan.

Based on the 2012 legislative budget appropriation of wildlife account funds and current statute language, the Department’s authority to provide compensation for livestock losses is restricted to paying commercial operators for cattle, sheep, or horse losses caused by cougars, bears, or wolves. In addition, other rule changes in this proposal would provide greater encouragement to livestock operators to enter into agreements with WDFW. These agreements could be broad-based, including providing financial incentives to the operator to utilize preventative measures, assistance with other conflict mitigation measures including “caught in the act permits,” and compensation for impacts outside of documented losses of livestock.

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

- Making the wildlife conflict rules consistent with the wolf management plan within current statutes.
 - Encourage cooperative agreements with the department to employ preventative measures and to mitigate losses other than documented mortalities to livestock.
-

Public involvement process used and what you learned:

We have been in continual communication with stakeholders from the agricultural and environmental communities. Several modifications have been incorporated into the department’s recommendations as a result of these communications and discussions. Notification was mailed to approximately 600 organizations and individuals informing them of the opportunity to provide comments on the proposed regulations. Additionally, these organizations and individuals were

informed of the opportunity to provide testimony at the November 8-9, 2012 Commission Meeting in Olympia.

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

Amend WAC 232-36-030, 232-36-051, 232-36-100, 232-36-200 and 232-36-400 as proposed.

Draft motion language:

I move to adopt the amendments to WACs 232-36-030, 232-36-051, 232-36-100, 232-36-200 and 232-36-400 as proposed.

Justification for Commission action:

This proposal makes the rules for mitigating livestock losses by providing compensation to livestock owners more consistent with the wolf management plan.

These changes meet the approved criteria established by OFM as a result of the Governor's Executive Order 11-03 Expanding Executive Order 10-06 Suspending Non-critical Rule Development and Adoption by satisfying the following condition:

- Necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources.
-

Communications plan:

- Communication with Agricultural and Environmental Stakeholders
 - WDFW Website
 - News Release
 - Washington State Register
-

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

WAC 232-36-030 Definitions. Definitions used in rules of the fish and wildlife commission are defined in RCW 77.08.010, and the definitions for wildlife interactions are defined in RCW 77.36.010. In addition, unless otherwise provided, the following definitions are applicable to this chapter:

"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.

"Big game" means those animals listed in RCW 77.08.030.

"Claim" means an application to the department for compensation under this chapter.

"Claimant" means owner of commercial crop or livestock who has filed a wildlife damage claim for cash compensation.

"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.

"Commercial livestock" means cattle, sheep, and horses held or

raised by a person for sale.

"Compensation" means a cash payment, materials, or service.

"Completed written claim" means that all of the information required on a department crop or livestock damage claim form is supplied and complete, including all supplemental information and certifications required to process the claim.

"Damage" means economic losses caused by wildlife interactions.

"Damage claim assessment" means department approved methods to evaluate crop loss and value caused by deer or elk damage to commercial crops, or livestock losses and value caused by bear, cougar, or wolves.

"Eligible farmer" means an owner who satisfies the definition of eligible farmer pursuant to RCW 82.08.855 (4)(b)(i) through (iv).

"Emergent" means an unforeseen circumstance beyond the control of the landowner or tenant, that presents a real and immediate threat to crops, domestic animals, or fowl.

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

"Guard dog" means dogs trained for the purpose of protecting livestock from attack by wildlife or for herding livestock.

"Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

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

"Livestock" means horses, cattle, sheep, goats, swine, donkeys, mules, llamas, and alpacas.

"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.

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

"Public hunting" means an owner satisfies the "public hunting" requirement for his or her land, as defined in WAC 232-36-300.

"Wild animal" means those species of the class Mammalia whose members exist in Washington in a wild state.

"Wildlife control operator" means a person who has successfully completed the training and obtained one or more levels of certification from the department to assist landowners to prevent or control problems caused by wildlife.

"Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, commercial livestock, or other property.

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. 10-13-182 (Order 10-156), § 232-36-030, filed 6/23/10, effective 7/24/10.]

AMENDATORY SECTION (Amending Order 10-291, filed 11/8/10, effective 12/9/10)

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

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

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

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

(i) Predatory birds (defined in RCW 77.08.010(39)) and

unclassified wildlife that are in the act of damaging commercial crops or livestock may be killed with the express permission of the owner at any time on private property, to protect commercial crops or livestock.

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

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

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

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

(b) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.36.030. 10-23-026 (Order 10-291), § 232-36-051, filed 11/8/10, effective 12/9/10. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. 10-13-182 (Order 10-156), § 232-36-051, filed 6/23/10, effective 7/24/10.]

WAC 232-36-051 Killing wildlife causing private property damage.

RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR 102) filing.

Page 5

- Strike the words “or pets” from subsection (1)(a)(iii). This section is specific to commercial crop and commercial livestock damage.

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

WAC 232-36-100 Payment for commercial crop damage--Limitations. Owners, who have worked with the department to prevent deer and elk damage, but continue to experience losses, may be eligible to file a damage claim and receive cash compensation from money appropriated by the legislature. Damages payable under this section are limited to the lost or diminished value of a commercial crop, whether growing or harvested, and shall be paid only to the owner of the crop at the time of damage, without assignment. Cash compensation for claims from deer and elk damage shall not include damage to other real or personal property, including other vegetation or animals, lost profits, consequential damages, or any other damages. The department is authorized to pay up to ten thousand dollars to the owner per claim.

Claims for cash compensation will be denied when:

- (1) The claim is for a noncommercial crop;
- (2) The owner of the commercial crop does not meet the definition of "eligible farmer" in RCW 82.08.855 (4)(b)(i) through (iv);
- (3) The loss estimate is less than one thousand dollars;
- (4) No claim will be processed unless the owner provides the department with an approved checklist of the preventative and nonlethal means that have been employed, and the owner has complied with the terms and conditions of his or her agreement(s) with the

department;

(5) An owner or lessee has accepted noncash compensation to offset crop damage in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for crop damages within the growing season of the damaged crop;

(6) An owner or lessee has denied the department's offer of fencing as a long-term preventative measure;

(7) Damages to the commercial crops claimed are covered by insurance or are eligible for payment from other entities. Any portion of the actual damage not covered by others is eligible for compensation from the department;

~~((7))~~ (8) The property where the damage occurred was not open to public hunting consistent with WAC 232-36-300 for the species causing the damage, unless, as determined by the department, the property is inconsistent with hunting or hunting would not address the damage problem. This includes all properties owned or leased by the owner adjacent to, contiguous to, or in the vicinity of the property where crop damage occurred;

~~((8))~~ (9) The crop is grown or stored on public property;

~~((9))~~ (10) The owner or lessee fails to provide on-site access to the department or designee for inspection and investigation of alleged damage or to verify eligibility for a claim;

~~((10))~~ (11) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within WAC 232-36-110;

~~((11))~~ (12) The owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the

owner's knowledge;

~~((12))~~ (13) The owner or designee has harvested commercial crops without an investigation completed under the direction of the department; or

~~((13))~~ (14) The department has expended all funds appropriated for payment of such claims for the current fiscal year.

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. 10-13-182 (Order 10-156), § 232-36-100, filed 6/23/10, effective 7/24/10.]

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

WAC 232-36-200 Payment for commercial livestock damage--Limitations. Owners who have worked with the department to prevent depredation but continue to experience losses, or who experience unforeseen losses, may be eligible to file a damage claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when specifically appropriated by the legislature. Damages payable under this section are limited to the lost or diminished value of commercial livestock caused by wild bears, cougars, or wolves and shall be paid only to the owner of the livestock (~~(at the time of damage)~~), without assignment. Cash compensation for livestock losses from bears, cougars, and wolves shall not include damage to other real or personal property, including other vegetation or animals, (~~(lost profits,)~~) consequential damages, or any other damages including veterinarian services. However, livestock owners under written agreement with the department will be compensated consistent with their agreement which may extend beyond the limitations in this section. The department is authorized to pay up to two hundred dollars per sheep and one thousand five hundred dollars per head of cattle or per horse, and no more than ten thousand dollars to the commercial livestock owner per claim.

Claims for cash compensation will be denied when:

(1) Funds for livestock compensation have not been specifically appropriated by the legislature;

(2) The claim is for livestock other than sheep, cattle, or horses;

(3) The owner of the commercial livestock does not meet the definition of "eligible farmer" in RCW 82.08.855 (4)(b)(i) through (iv);

(4) The loss estimate is less than five hundred dollars;

(5) The owner fails to provide the department with an approved checklist of the preventative and nonlethal means that have been employed, or the owner failed to comply with the terms and conditions of his or her agreement(s) with the department;

(6) The owner has accepted noncash compensation to offset livestock losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for livestock losses within a fiscal year;

(7) Damages to the commercial livestock claimed are covered by insurance or are eligible for payment from other entities. However, any portion of the damage not covered by others is eligible for filing a claim with the department;

(8) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;

(9) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;

(10) No claim will be processed if the owner fails to sign a

statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge;

(11) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed under the direction of the department; or

(12) The department has expended all funds appropriated for payment of such claims for the current fiscal year.

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. 10-13-182 (Order 10-156), § 232-36-200, filed 6/23/10, effective 7/24/10.]

NEW SECTION

~~WAC 232-36-250 Payment for noncommercial livestock or guard dog losses--Limitations.~~ Owners who experience unforeseen losses, have an agreement with the department, or who have implemented conflict preventative measures on their own may be eligible to file a claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when funds have been provided for those purposes. Damages payable under this section are subject to the conditions of the funding source and are limited to the lost or diminished value of livestock or guard dogs caused by wild wolves and shall be paid only to the owner of the livestock or guard dog, without assignment. Cash compensation for livestock losses from wolves shall not include damage to other real or personal property, including other vegetation or animals, consequential damages, or any other damages except veterinarian services may be covered up to the loss value for the livestock or guard dog. However, livestock owners under written agreement with the department will be compensated (cash, materials, and services) consistent with their agreement which may extend beyond the limitations in this section. The department is authorized to pay for the replacement cost of the animal up to two hundred dollars per sheep or goat; five hundred dollars per swine, donkey, or mule; and one thousand five hundred dollars per head of cattle or per horse, llama, alpaca, or guard dog and no more than ten thousand dollars to the livestock owner per claim.

~~Claims for cash compensation will be denied when:~~

~~—— (1) Funds for compensation have not been specifically provided by contract appropriation, or other source;~~

~~—— (2) The claim is for anything other than livestock or guard dogs;~~

~~—— (3) The owner fails to provide the department with an approved checklist or narrative describing the preventative and nonlethal means that have been employed, or the owner failed to comply with the terms and conditions of his or her agreement(s) with the department;~~

~~—— (4) The owner has accepted noncash compensation to offset losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for losses within a fiscal year consistent with their agreement;~~

~~—— (5) Damages to the livestock or guard dogs claimed are covered by insurance or are eligible for payment from other entities. However, any portion of the damage not covered by others is eligible for filing a claim with the department;~~

~~—— (6) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;~~

~~—— (7) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;~~

~~—— (8) No claim will be processed if the owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge;~~

~~—— (9) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed~~

~~under the direction of the department; or~~

~~— (10) The department has expended all funds appropriated for payment of such claims for the current fiscal year.~~

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WAC 232-36-250 Payment for noncommercial livestock or guard dog losses--Limitations.

RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR 102) filing.

Pages 15-17

The department is recommending the withdrawal of this proposed section at this time. We plan to clarify our statutory authority to compensate noncommercial livestock owners and to compensate for livestock losses other than horses, cattle, and sheep, during the 2013 legislative session.

NEW SECTION

~~WAC 232-36-260 Application and payment of cash compensation for noncommercial livestock or guard dog losses--Procedure.~~

~~Pursuant to this section, the department may distribute money specifically provided for this purpose to pay livestock losses caused by wild wolves in the amount of up to ten thousand dollars per claim unless, following an appeal, the department is ordered to pay more (see RCW 77.36.130(2)). The department will develop claim procedures and application forms consistent with this section for cash compensation of livestock and guard dog losses. Partnerships with other public and private organizations to assist with completion of applications, assessment of losses, and to provide funding for compensation are encouraged.~~

~~Filing a claim:~~

~~(1) Owners who experience a loss or losses under emergent situations may file a claim for cash compensation if they meet eligibility requirements.~~

~~(2) Claimant must notify the department within twenty four hours of discovery of livestock attack.~~

~~(3) Damage claim assessment of amount and value of livestock loss is the primary responsibility of the claimant.~~

~~(4) Assessment/investigation of the cause of the loss will be conducted by the department.~~

~~—— (a) The owner must provide access to department staff or designees to investigate the cause of death or injury to livestock and use reasonable measures to protect evidence at the depredation site.~~

~~—— (b) Federal officials may be responsible for the investigation when it is suspected that the attack was by a federally listed species.~~

~~—— (5) Claimant must request a damage claim application within ten days of a loss.~~

~~—— (6) A complete written claim must be submitted to the department within sixty days of an attack on livestock.~~

~~—— (7) The claim form declaration must be signed, affirming that the information provided is factual and truthful, before the department will process a claim.~~

~~—— (8) In addition to a completed claim form, an applicant must provide:~~

~~—— (a) Claimant must provide proof of legal ownership or contractual lease of claimed livestock.~~

~~—— (b) Claimant must provide records documenting livestock value based on current market price.~~

~~—— (c) Declaration signed under penalty of perjury indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this section, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.~~

~~—— (d) Copy of any insurance policy covering livestock loss claimed.~~

~~—— (e) Copy of application for other sources of loss compensation and any payment or denial documentation.~~

~~—— Settlement of claims:~~

~~—— (9) Subject to money appropriated to pay for livestock losses, undisputed claims will be paid up to ten thousand dollars.~~

~~—— (10) Compensation paid by the department, in addition to any other compensation, may not exceed the total value of the assessed livestock loss.~~

~~—— (11) Valuation of the lost livestock will be determined by the sales market at the time the animals would normally be sold. Replacement livestock (to be retained by the owner) will be valued based on the average weight of herd mates at the time of weaning at the cash market price received. Depredated cows or ewes, will be replaced based on the value of a bred animal of the same age and type as the one lost, and bulls will be replaced using actual purchase price prorated based on a four year depreciation cycle minus salvage value. The department may utilize the services of a certified livestock appraiser to assist in the evaluation of livestock claims.~~

~~—— (12) Upon completion of the evaluation, the department will notify the owner of its decision to either deny the claim or make a settlement offer (order). The owner has sixty days from the date received to accept the department's offer for settlement of the claim or to submit an appeal of the order. The response must be in writing and the signed document may be mailed or submitted by fax or e-mail. If no written acceptance or request for appeal is received, the offer is considered rejected and not subject to appeal.~~

~~—— (13) The department will prioritize payment for livestock~~

~~losses first to owners with written agreements with the department and then in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for livestock losses during the first fiscal year of a biennium, the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take first priority and receive payment before any new claims are paid. Claims will not be carried from one biennium to the next.~~

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WAC 232-36-260 Application and payment of cash compensation for noncommercial livestock or guard dog losses--Procedure.

RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR 102) filing.

Pages 19-22

The department is recommending the withdrawal of this proposed section at this time. We plan to clarify our statutory authority to compensate noncommercial livestock owners and to compensate for livestock losses other than horses, cattle, and sheep, during the 2013 legislative session.

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

WAC 232-36-400 Commercial crop or livestock damage claim--Dispute resolution. For claims where the owner has met all claim eligibility criteria and procedures, but ultimately rejects the written settlement offer (order) for crop or livestock loss and/or value assessment, the provisions of this section shall apply:

Informal resolution:

(1) If the owner rejects the property loss or value assessment and would like to discuss a negotiated settlement, he or she can request a meeting by notifying the department in writing within ten days of receiving the settlement offer or claim denial (order).

(2) A department representative and the owner or designee(s) will meet and attempt to come to mutual resolution.

(3) A livestock appeals committee may be established with a minimum of three citizen members appointed by statewide livestock organization(s), a representative from the department of fish and wildlife, and a representative from the department of agriculture to review and recommend a settlement if requested by the claimant.

(4) Monetary compensation or noncash compensation, mutually agreed upon by both the department and owner, shall be binding and constitute full and final payment for claim.

~~((+4)) (5) If parties cannot agree upon damages, the owner may elect to apply for an adjudicative proceeding pursuant to chapter~~

~~34.05 RCW.~~

~~Adjudicative proceeding:~~

~~((5))~~ ~~(6)~~ If the owner wishes to appeal the claim denial, or the department settlement offer (order), the owner may request an adjudicative proceeding consistent with chapter 34.05 RCW within sixty days of receiving ~~the original order~~ a copy of the department's decision.

~~((6))~~ (7) The request must comply with the following:

(a) The request must be in writing, and the signed document may be mailed or submitted by fax or e-mail;

(b) It must clearly identify the order being contested (or attach a copy of the order);

(c) It must state the grounds on which the order is being contested and include the specific facts of the order that are relevant to the appeal; and

(d) The request must identify the relief being requested from the proceeding (e.g., modifying specific provisions of the order).

~~((7))~~ (8) The proceeding may only result in the reversal or modification of an order when the preponderance of evidence shows:

(a) The order was not authorized by law or rule;

(b) A fact stated in the order is ~~materially incorrect~~ not supported by substantial evidence;

(c) The award amount offered is inconsistent with applicable ~~and accepted~~ procedures, ~~rule, and/or law~~; or

(d) Material ~~information or~~ evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

~~((8))~~ (9) The burden of proof is on the appellant (owner) to show that he or she is eligible for a claim and that the damage assessment is reliable (see RCW 77.36.130(4)).

~~((9))~~ (10) Findings of the hearings officer are subject to the annual funding limits appropriated by the legislature and payment rules (WAC 232-36-110(12) (~~and~~), 232-36-210(9), and 232-36-260) of the commission.

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. 10-13-182 (Order 10-156), § 232-36-400, filed 6/23/10, effective 7/24/10.]

WAC 232-36-400 Commercial crop or livestock damage claim--Dispute resolution.

RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR 102) filing.

Pages 24-25

- Language in Subsection 5 was changed from:

(4) If parties cannot agree upon damages, the owner may elect to apply for an adjudicative proceeding pursuant to chapter 34.05 RCW.

Adjudicative proceeding:

(5) If the owner wishes to appeal the claim denial or the department settlement offer (order), the owner may request an adjudicative proceeding consistent with chapter 34.05 RCW within sixty days of receiving the original order.

to:

(5) If parties cannot agree upon damages, the owner wishes to appeal the claim denial, or the department settlement offer (order), the owner may request an adjudicative proceeding consistent with chapter 34.05 RCW within sixty days of receiving a copy of the department's decision.

Page 25

- Language in Subsection 7 was changed from:

(7) The proceeding may only result in the reversal or modification of an order when the preponderance of evidence shows:

- (a) The order was not authorized by law or rule;
- (b) A fact stated in the order is materially incorrect;
- (c) The award amount offered is inconsistent with applicable and accepted procedures, rule, and/or law; or

(d) Material information or evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

to:

(8) The proceeding may only result in the reversal or modification of an order when the preponderance of evidence shows:

(a) The order was not authorized by law or rule;

(b) A fact stated in the order is not supported by substantial evidence;

(c) The award amount offered is inconsistent with applicable procedures; or

(d) Material evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

The changes in this section are intended to make the standards more consistent with the APA.

SUMMARY OF WRITTEN PUBLIC INPUT

WAC 232-36- “Wildlife Interaction Rules”

COMMENTS	AGENCY RESPONSE
<p>Good mules are generally worth as much or more than horses with the same training. During the recent downturn in equine values many good horses have been offered for little or no cost when good mules have held their value well. Mules can do everything horses can do, they live longer, are less prone to health problems, are stronger than horses and have beautiful long ears. The authorized replacement cost for horses and mules should be the same.</p>	<p>We agree that we did not appropriately value mules and have recommended a modification to our proposal.</p>
<p>Stop allowing private industry - ranchers to graze their cattle on public lands! The public wants our public lands to not be used by private industry and we want our wolves to roam free! The only exception/compromise that addresses the needs of both sides of the issue is to allow ranchers to graze their cattle on public lands with range riders present (never unattended).</p>	<p>The Department and the Commission do not have any authority over federal land management; all we can address is the livestock, which is private property, and impacts to livestock while they are on public land. We are working very hard to provide a balance of options for livestock operators that include non-lethal measures, compensation when these measures are not effective, and lethal removal of wolves that continue to chronically deplete on livestock.</p>
<p>I am absolutely against the State reimbursement of livestock and/or livestock guard dog losses to predation by wildlife. I do believe stock owners should be allowed to use any measure, including lethal, to protect their livestock...on their own property. When leasing State or National grazing lands I believe they must take their chances.....no guarantees or reimbursement available from the taxpayers. For hard-case predators on taxpayer owned lands, the DFW should consider relocation or elimination of the offender. I believe any reimbursement should be left to private organizations (donations) that support the protection of the predators, as I believe is done now in Montana.</p>	<p>Reimbursement for livestock losses, including guard animals, has been consistently applied across the West and is an important component to improve tolerance of wolves and is, therefore, important for wolf recovery. Lethal measures are also an important part of recovery and management of wolves, regardless of the property owner (public or private). Broad scale lethal removal actions on private lands could result in a delay in meeting recovery objectives; therefore, we are looking for a balance in non-lethal measures to keep wolves from depredating on livestock, regardless of the landowner.</p> <p>There are some organizations that provide funding to mitigate wolf-livestock issues, but most of them are no longer providing compensation for losses.</p>
<p>While this is mostly a technicality, I'd like to say it would help if the definitions are consistent. The WDFW Commission did hear a great deal about how mules should be considered the same as horses as to compensation in the WACs. While we do appreciate the changes in the rules that would allow for non-commercial livestock to receive compensation if there are losses in value or life due to wolves, it would be best if the definitions between the RCWs and WACs were consistent as to what is meant by "livestock."</p>	<p>We agree that we did not appropriately value mules and have recommended a modification to our proposal. The definitions provided in WAC must be consistent with RCW; however if something is not defined in statute, the Commission may provide a definition. WDFW is requesting statutory changes that would make the wildlife conflict statutes more consistent with the wolf plan and provide a common definition of livestock and allow compensation for a broader definition of livestock.</p>

SUMMARY OF WRITTEN PUBLIC INPUT

WAC 232-36- “Wildlife Interaction Rules”

<p>I am against any compensation for loss of livestock due to predation. I believe that this is partly what caused the unnecessary slaughter of the Wedge wolf pack. You are responsible for protecting the wolves in your state, not just giving into the wishes of ranchers and hunters. The best way to do this is to fully compensate ranchers for the implementation on non-lethal methods of deterrent. That is the best solution. It will encourage ranchers to cooperate instead of setting wolves up for the kill. Thank you for listening to my opinion.</p>	<p>Reimbursement for livestock losses, including guard animals, has been consistently applied across the West and is an important component to improve tolerance of wolves and is, therefore, important for wolf recovery. We do not want individuals to take lethal measures into their own hands because they are frustrated with the lack of response from management agencies.</p> <p>While lethal measures are an important part of recovery and management of wolves. We are looking for a balance in non-lethal measures to keep wolves from depredating on livestock, compensation for losses when other measures are not effective, and lethal measures when depredations cannot be avoided by other means.</p>
<p>For too long ranchers have enjoyed operating without predators. Now they should have to shoulder the costs for depredations and /or any associated weight loss on public lands. It's unfair that ranchers pay only \$1.35 per AUM for grazing on public lands....this, in itself, is a subsidy. If you decide to subsidize weight loss, increase grazing fees and use that money to subsidize weight loss. Lastly, to my knowledge, there are no peer reviewed scientific studies supporting the "weight loss" theory, and until this issue is studied and has scientific basis, any compensation is premature.</p>	<p>Again regardless of land ownership, the department is committed to compensating producers for livestock losses. This strategy is designed to improve tolerance of livestock operators for wolves and wolf recovery. If livestock operator s choose to take matters into their own hands, illegal and uncontrolled killing of wolves can certainly impact population recovery.</p> <p>Many wolf management strategies, whether it is compensation for weight loss or the use of “range riders,” cannot be definitively supported by research or scientific studies. However, they may be important to individual producers for dealing with wolf-livestock conflicts and improve tolerance for wolves on the landscape.</p>
<p>I believe very strongly that compensation for livestock losses and weight loss should only be given to people who have entered into contracts to use non-lethal wolf conflict avoidance. It should not be just that contract-holders get a higher priority; only contract-holders should get compensation at all. Otherwise, you are enabling some ranchers to get away with not doing non-lethal measures, but still get compensated. I also believe that any rancher that doesn't commit to non-lethal attempts should not have their permit to graze on public lands renewed.</p>	<p>Your core value of balancing compensation with non-lethal measures to avoid wolf-livestock conflicts and depredations is shared by everyone impacted or associated with wolf recovery.</p> <p>Washington’s wolf plan attempted to find that balance between conflict avoidance measures, compensation, and lethal removal when all else failed.</p> <p>So regardless of whether a producer has an agreement with WDFW, if they have complied with the requirements of the plan as captured in Commission rules, they may be compensated. Those rules do require that non-lethal measures be implemented prior to eligibility for compensation.</p>

SUMMARY OF ORAL PUBLIC INPUT
 Taken at the Fish and Wildlife Commission Meeting
 November 7-8, 2012

WAC 232-36- “Wildlife Interaction Rules”

COMMENTS	AGENCY RESPONSE
<p>The back country horsemen support compensation for non-commercial livestock losses, but insist that mule be compensated the same as horses</p>	<p>Thank you for your support, we agree that we did not appropriately value mules and have recommended a modification to our proposal.</p>
<p>The wildlife conflict rules should reflect the wolf’s endangered species status and be consistent with the Wolf Conservation and Management Plan. Weight loss in livestock is not supported by peer-reviewed science and additional time should be provided to submit additional information. Wolves are an endangered species and should be treated as such; changes to the wolf plan should be subject to public notice and comment, including agreements with producers. Wolf management decisions should be based on the best available science; weight loss has not been confirmed and it is difficult to determine if it was caused by wolves. Compensation should be prioritized for confirmed wolf depredations as described in the wolf plan. Weight loss claims may deplete the funds available for livestock losses or undermine public support for wolf recovery with inflated damage estimates. We encourage the department to extend the rule making process and ensure public participation.</p>	<p>These amendments and recommended modifications to the conflict rules are specifically intended to make them consistent with the wolf plan.</p> <p>As mentioned previously, many of the strategies identified in the wolf plan have not been proven through scientific study. That is true of weight loss claims from livestock producers or the use of range riders to reduce wolf predation of livestock as promoted by wolf advocates. However, these measures are all designed to improve livestock owner tolerance of wolves and wolf recovery and provide benefits to that end.</p> <p>Compensation costs even if they include compensation for reduced weight gains in livestock are minimal compared to the other costs of wolf recovery and should not significantly impact public support for wolves.</p> <p>Wolves are a very unique endangered species. Public opinions on recovery and sustainability are often polarized. The people that we hear from express either their love for them or their hatred of them. What we have learned is that the behavior of wolves as top level predators means they will get into conflict with human uses of our landscape. They are also extremely prolific for a carnivore; and their persistence on the landscape is almost certain if we have enough prey (which we do) and enough tolerance, which we are striving for.</p> <p>Even though wolves are currently classified as an endangered species in Washington, they are re-colonizing quickly and will continue to do so. We are seeking tolerance from those who must live with and are directly affected by wolves, and a balance between those who believe that wolves are a threat to their economic and cultural welfare and those who are ardent supporters of wolves. As such, lethal management of wolves that get into conflict is an important strategy to maintain long-term support and ultimately conservation of the species.</p>



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR** 12-05-122 **on** 2/22/12 ;
or
 Expedited Rule Making--Proposed notice was filed as WSR _____ ; **or**
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

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

Title of rule and other identifying information: (Describe Subject)

Amend Wildlife Conflict Rules:
WAC 232-36-030 Definitions.
WAC 232-36-051 Killing wildlife causing private property damage.
WAC 232-36-100 Payment for commercial crop damage--Limitations.
WAC 232-36-200 Payment for commercial livestock damage--Limitations.
WAC 232-36-250 Payment for noncommercial livestock or guard dog losses--Limitations.
WAC 232-36-260 Application for cash compensation for noncommercial livestock or guard dog losses--Procedure.
WAC 232-36-400 Commercial crop or livestock damage claim--Dispute resolution.

Hearing location(s):

Natural Resources Building, Conference Room 172
1111 Washington Street SE
Olympia, WA 98501

Date: November 8-9, 2012 Time: 8:30 a.m.

Submit written comments to:

Name: Wildlife Program Commission Meeting Public Comments
Address: 600 Capitol Way North, Olympia, WA 98501-1091
E-mail Wildthing@dfw.wa.gov
Fax (360) 902-2162 by (date) October 26, 2012

Assistance for persons with disabilities: Contact

Tami Lininger by November 2, 2012

TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: on or after December 14-15, 2012

(Note: This is **NOT** the **effective** date)

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

The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife.

Reasons supporting proposal:

This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures and clarifies priorities and assistance available to address property damage.

Statutory authority for adoption: 77.04.012; 77.04.020; 77.04.055

Statute being implemented: 77.04.012; 77.04.020; 77.04.055

Is rule necessary because of a:

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 03, 2012

TIME: 8:31 AM

WSR 12-20-069

DATE

October 3, 2012

NAME (type or print)

Joanna Eide

SIGNATURE

TITLE

Administrative Regulations Analyst

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

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

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Nate Pamplin	Natural Resources Building, Olympia	(360) 902-2693
Implementation....Nate Pamplin	Natural Resources Building, Olympia	(360) 902-2693
Enforcement.....Bruce Bjork	Natural Resources Building, Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Wildlife Program
Address: 600 Capitol Way North
Olympia, WA 98501-1091
phone (360) 902-2515
fax (360) 902-2162
e-mail Wildthing@dfw.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name:
Address:

phone () _____
fax () _____
e-mail _____

No: Please explain: These are not hydraulic rules.

Small Business Economic Impact Statement

Wildlife Interaction Rule Amendments

1. Description of the reporting, record keeping, and other compliance requirements of the proposed rule.

These amendments change existing rules for claims for cash compensation for commercial livestock damage caused by wild carnivores by:

- Allows livestock and pet owners regardless of whether they are commercial operators to kill one game animal when it is attacking their domestic livestock or pet;
- Allow livestock operators regardless of whether they are considered commercial enterprises to receive cash compensation for livestock lost to wolves.
- Expands the types of livestock and guard animals that may be compensated for if killed or injured by wolves.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements.

Applicants for claims of livestock losses are responsible for assessing the value of their losses. WDFW will assist owners of livestock if they chose to hire additional staff (range riders) to employ preventive nonlethal and lethal means to prevent livestock losses. Some small businesses may need to hire bookkeepers, accountants, or other professionals to assist with required paperwork for documenting losses and other impacts to their livestock operation.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs.

This is hard to estimate because most businesses will not have to hire bookkeepers, accountants, or other professionals because they can do this work themselves. Some small businesses may have friends or family who are willing to function as range riders to check on livestock and haze wolves, so the cost may be limited.

Assuming, however, that a small business must pay for all of these things, costs may average the following:

- Range rider: \$5,000 per month if used full time.
- Guard dogs: \$3,000 to purchase plus an estimated annual maintenance of \$1,200.

- Fencing: \$14/ft. for installation; average electric fence to protect livestock is assumed to be one mile long.

4. Will compliance with the rule cause businesses to lose sales or revenue?

No. The intent of these rules is to help businesses avoid livestock losses in the first place, and compensate them if they take appropriate steps but experience losses anyway. If businesses follow the procedures in these rules, they should be able to minimize lost sales or revenue.

5. Cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules, using one or more of the following as a basis for comparing costs:

- 1. Cost per employee;**
- 2. Cost per hour of labor; or**
- 3. Cost per one hundred dollars of sales**

Larger livestock operations will experience more costs than smaller operators for things like fence installation, range riders, and bookkeeping/accounting, but the reason for this is that they have a larger land mass or more livestock. Their cost per hour of labor or per one hundred dollar of sales has little correlation to the costs of complying with these rules, especially since these rules are designed to help businesses avoid livestock losses.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so.

The Department works closely with livestock producers to deter wildlife that causes damage so that they experience fewer losses. Costs that producers incur as a result of these rules are reasonable, considering the benefits. For example, WDFW assists with fencing to livestock producers who request it, which may be very costly. Therefore, it is reasonable to require the operator to install the fence himself/herself, or pay to have someone else do it, if the fencing will keep wildlife away from livestock and prevent losses.

7. A description of how the agency will involve small businesses in the development of the rule.

The Department has collaborated on an ongoing basis with commercial growers and livestock producers to develop rules that are fair to everyone but that also help to deter abuses. WDFW will notify commercial growers and livestock owners of the opportunity to comment on these rules and to continue collaborating on changes.

8. A list of industries that will be required to comply with the rule.

Growers of commercial crops and livestock producers; and wildlife control operators.