

# ***WILDLIFE INTERACTIONS-RULE BRIEFING AND PUBLIC HEARING***

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## Summary Sheet

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**Meeting:** October 4, 2013  
**Agenda Item 8:** Wildlife Interaction Regulations – **Rule Adoption**  
**Prepared By:** Dave Ware, Game Division Manager, Wildlife Program  
**Presented By:** Dave Ware, Game Division Manager, Wildlife Program

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### Background:

Department staff will brief the Commission on proposed amendments to WAC 232-36-030 Definitions, WAC 232-36-040 Wildlife/human interaction and conflict resolution for private property damage, WAC 232-36-051 Killing wildlife causing private property damage, WAC 232-36-060 Director or his/her designee is empowered to grant wildlife control operator certifications, WAC 232-36-110 Application for cash compensation for commercial crop damage—Procedure, WAC 232-36-200 Payment for commercial livestock damage or other domestic animals—Limitations, WAC 232-36-210 Application for cash compensation for livestock damage or other domestic animal—Procedure, and WAC 232-36-400 Commercial crop or livestock damage claim--Dispute resolution; and the proposed new rule WAC 232-36-052 Killing wolves attacking domestic animals.

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. As instructed in statute, the department will provide the 2014 Legislature with an update of how implementation has progressed along with recommendations for additional statutory changes.

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 2013 Legislation, budget appropriation of wildlife account funds, and current statute language, the Department's authority to provide compensation has been expanded to cover losses for all domestic animals due to wolves. However, funds have only been appropriated from the Wildlife Account to be used for losses of cattle, sheep, or horses caused by wolves; state funds were not provided to compensate for losses to cougar or bears in 2013, nor for losses of other domestic animals.

This proposal would allow WDFW to compensate non-commercial operators of livestock as defined in the plan using other fund sources such as federal and local (e.g. donations from organizations) funds. The U.S. Fish and Wildlife Service (USFWS) recently announced the availability of "Livestock Demonstration" funds to employ proactive measures and compensate for losses of a variety of types of livestock and for guard animals. At this point, there are no funds available for compensation of pets, working dogs, or any other domestic animals.

The proposal includes a permanent rule that would make it legal to kill a wolf caught in the act of attacking domestic animals. An emergency rule was adopted by the Director earlier this spring based on the Commission's instruction and the encouragement of several key legislators for the caught in the act regulation. This proposal would make that rule permanent.

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In addition, this proposal will provide greater encouragement for livestock operators to enter into agreements with WDFW. The landowner damage prevention agreements are broad-based, including providing financial incentives to the operator to utilize preventative measures. The new rules also allow for compensation of losses outside of documented losses of livestock such as reduced weight gain or pregnancy rates, and higher than normal livestock mortalities on open range pastures.

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

- Amend and adopt wildlife conflict rules to implement 2013 Legislation.
- Expand the conditions for mitigating wolf-human conflicts to include non-commercial operators and the types of domestic animal losses that may be compensated by the department.
- Making the wildlife conflict rules consistent with the wolf management plan within current statutes.
- Encourage cooperative agreements with the department to prevent and mitigate losses other than documented mortalities to livestock.
- Allow citizens to protect their domestic animals from attack by wolves.

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**Public involvement process used and what you learned:**

We have been in continual communication with stakeholders from the agricultural and environmental communities and have formed a wolf advisory group. Several modifications have been incorporated into the department's recommendations as a result of these communications and discussions. Notification was mailed to approximately 500 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 August 2-3, 2013 Commission Meeting in Olympia and provide written comment during an extension of public comment through September 20th.

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

Consider adoption of the new and amended rule proposals governing wildlife conflict management as proposed by the department.

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**Draft motion language:**

I move to amend WACs 232-36-030, 232-36-040, 232-36-051, 232-36-060, 232-36-110, 232-36-200, 232-36-210, 232-36-400 and adopt 232-36-052 as proposed.

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**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. It also makes permanent an emergency rule adopted earlier this year that allows citizens to kill a wolf caught attacking their domestic animals in those areas of Washington where wolves are not listed under the federal endangered species act.

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**Communications plan:**

- Communication with agricultural and environmental stakeholders
  - WDFW Website
  - News Release
  - Washington State Register
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AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

**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)~~).

~~"Attack" means that there is evidence to support the fact that animal to animal contact has occurred or is imminent.~~

"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~~ of livestock, or other property 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~~ property 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, or damages to other property.

"Domestic animal" means any animal that is lawfully possessed and controlled by a person.

"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 or animal to animal 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, 77.04.055, and 77.36.120. WSR 13-05-003 (Order 13-19), § 232-36-030, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-030, filed 6/23/10, effective 7/24/10.]

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

**WAC 232-36-040 Wildlife/human interaction and conflict resolution for private property damage.** The department is the primary source for property owners seeking to determine legal and effective remedies for addressing wildlife interactions. Protection of property using nonlethal techniques is the primary response encouraged by the department. Harassment and/or lethal removal may also be important techniques to protect human safety or to protect property. The following criteria describe the compensation available to protect property ~~that does not qualify under commercial crop or livestock damage~~:

(1) (~~Unless specifically appropriated by the legislature,~~) Cash compensation will ((not)) only be provided to property owners by the department if the funds are appropriated by the legislature or provided through local or federal grants or contracts.

(2) Compensation will be prioritized in the following order:

(a) As conditioned by the legislature or granting entity.

(b) Property prioritization:

(i) Private property that is primarily designed for public use, where there is a human safety risk not addressed by other entities.



(ii) Private property that directly contributes to commercial crop or to livestock production.

(iii) Private property used for other business purposes.

(iv) Public property.

(v) Residential property.

(vi) Recreational property.

~~((b))~~ (c) Species prioritization:

(i) Damages caused by wildlife listed as endangered, threatened, sensitive, or categories of concern by the state or federal government.

(ii) Damages caused by big game animals.

(iii) Other federal and state protected species.

(iv) Other wildlife species except unclassified species and predatory birds.

(3) The department may make agreements with private landowners to prevent property damage. These agreements may include the use of:

(a) Best management practices to reduce risk of private property damage;

(b) Scaring or hazing materials;

(c) Fencing materials;

(d) Volunteers referred by the department for hazing, fence repair, etc; and

(e) Lethal removal options.

(4) Private property owners must utilize nonlethal abatement techniques prior to requesting other compensation from the department or before utilizing lethal techniques (~~as outlined in WAC 232-36-050~~)).

(a) Use of nonlethal techniques must be documented and consistent with procedures and requirements established by the department.

(b) Evidence of damage (e.g., photographs) must be provided by the property owner.

(c) Property owner must comply with reporting requirements of the department.

(5) Wildlife may not be captured and transported or relocated off the owner's property (parcel where damage occurred) unless:

(a) Authorized by rule of the commission; or

(b) By written permit from the department; and

(c) Owner is in compliance with department rules, permits, and reporting requirements.

(6) The department will establish written procedures for assisting private property owners, using the criteria and priorities provid-

ed in this rule. The procedures will include enlistment of partners and volunteers through agreements, permits, and incentives to help mitigate wildlife interactions.

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-040, filed 6/23/10, effective 7/24/10.]

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

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

The fish and wildlife commission is authorized to classify wildlife as game, and/or as endangered or protected species, and/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 on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property.

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) 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:

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

(b) 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 to a commercial crop or ~~((commercial))~~ to 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 attacking livestock or other domestic animals, under the following conditions:

((~~i~~)) (a) Predatory birds (defined in RCW 77.08.010(39)) and unclassified wildlife that are in the act of damaging commercial crops or attacking livestock or other domestic animals may be killed with the express permission of the owner at any time on private property, to protect domestic animals, livestock, or commercial crops ~~or live-~~  
~~stock.~~

((~~ii~~)) (b) 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; a permit will be provided if authorized in the agreement.

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

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

((~~v~~)) (e) 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 descrip-

tion 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))~~ (3) 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))~~ domestic animals.

(b) Predatory birds (as defined in RCW 77.08.010(39)), unclassified wildlife, and eastern gray squirrels may be killed with the ex-

press permission of the property owner at any time, to prevent private property damage on private real property.

(c) Subject to subsection (~~(6)~~) (7) 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.

(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.

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

~~(3)~~ (4) 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)~~ (5) Tribal members may assist property owners under the conditions of valid comanagement agreements between tribes and the de-

partment. Tribes must be in compliance with the agreements including, but not limited to, adhering to reporting requirements and harvest restrictions.

~~((5))~~ (6) Hunting licenses and tags are not required to kill wildlife under this section, unless the killing is pursuant to subsections ~~((2))~~ (3)(c) and (d) of this section. Tribal members operating under subsection ~~((4))~~ (5) of this section are required to meet tribal hunting license, tag, and permit requirements.

~~((6))~~ (7) 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, 77.04.020, 77.04.055, and 77.36.120. WSR 13-05-003 (Order 13-19), § 232-36-051, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.36.030. WSR 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. WSR 10-13-182 (Order 10-156), § 232-36-051, filed 6/23/10, effective 7/24/10.]



NEW SECTION

**WAC 232-36-052 Killing wolves attacking domestic animals.** The commission is authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property. 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) An owner of domestic animals, the owner's immediate family member, the agent of an owner, or the owner's documented employee may kill one gray wolf (*Canis lupus*) without a permit issued by the director, regardless of its state classification, if the wolf is attacking their domestic animals.

(a) This section applies to the ~~eastern Washington recovery region and those areas of the state that meet or exceed four breeding pairs per recovery region as identified in the state wolf conservation and management plan and does not apply to any~~ area of the state where the gray wolf is not listed as endangered or threatened under the federal endangered species act.

(b) Any wolf killed under this authority must be reported to the department within twenty-four hours.

(c) The wolf carcass must be surrendered to the department.

(d) The owner of the domestic animal must grant or assist the department in gaining access to the property where the wolf was killed for the purposes of data collection or incident investigation.

(2) If the department finds that a private citizen killed a gray wolf that was not attacking a domestic animal, or that the killing was not consistent with this rule, then that person may be prosecuted for unlawful taking of endangered wildlife under RCW 77.15.120.

(3) In addition to the provisions of subsection (1) of this section, the director may authorize additional removals by permit under the authority of RCW 77.12.240.

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AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

**WAC 232-36-060 Director or his/her designee is empowered to grant wildlife control operator certifications.** For purposes of training in-

dividuals to assist landowners with employing nonlethal management techniques, or to harass, kill, trap, release, and dispatch animals that are causing damage to private property, the director or his/her designee may issue wildlife control operator (WCO) certifications.

(1) To qualify for WCO certification, applicants must:

(a) Be at least eighteen years of age;

(b) Take and complete the department's WCO certifications course;

(c) Be certified by the department and have the equipment, knowledge, and ability to control the wildlife species causing conflict or property damage;

(d) Be legally eligible to possess a firearm and without a felony or domestic violence conviction including, but not limited to, convictions under chapter 9.41 RCW, unless firearm possession rights have been restored;

(e) Not have a gross misdemeanor fish and wildlife conviction within the last five years; and

(f) Pay the enrollment fee for each certification training/education. After July 1, 2010, this fee shall be fifty dollars (RCW 77.12.184) per certification.

(2) Once a person is granted WCO certification, he or she must apply for a permit pursuant to WAC 232-36-065 in order to harass,

kill, trap, release, or dispatch animals causing damage to private property.

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-060, filed 6/23/10, effective 7/24/10.]

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

**WAC 232-36-110 Application for cash compensation for commercial crop damage—Procedure.** Pursuant to this section, the department may distribute money appropriated by the legislature to pay commercial crop damage caused by wild deer or elk 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 shall develop claim procedures and application forms consistent with this section for cash compensation of commercial crop damage. Partnerships with other public and private organizations to assist with completion of applications, assessment of damage, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Owners who have worked with the department to prevent deer or elk damage, yet who still experience loss and meet eligibility requirements, may file a claim for cash compensation.

(2) The claimant must notify the department within seventy-two hours of discovery of crop damage and at least seventy-two hours prior to harvest of the claimed crop.

(3) A complete, written claim must be submitted to the department within sixty days of when the damage stops.

(4) Owners may only file one claim per year. Multiple partners in a farming operation are considered one owner. Operations involving multiple partners must designate a "primary grower" to receive payment from the department.

(5) The claim form declaration must be signed, affirming that the information provided is factual and truthful per the certification set out in RCW 9A.72.085, before the department will process the claim.

(6) In addition to a completed claim form, an applicant must provide:

(a) A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service or other documentation indicating the applicant's gross sales or harvested value of commercial crops for the previous tax year.

(b) The assessment method used consistent with WAC 232-36-120, valuation of property damage.

(c) Applicant must provide proof of ownership of claimed commercial crops or contractual lease of claimed commercial crops consistent with department procedural requirements for submission of documents.

(d) Written documentation of approved methodology used to assess and determine final crop loss and value.

(e) Applicant must provide records documenting average yield on claimed crop and parcel, certified yield reports, production reports and weight certificates completed at the time weighed for claimed year, and other applicable documents that support yield loss and current market price. Current market price will be determined less transportation and cleaning costs when applicable.

(f) Declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this section, and that all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(g) Copy of the insurance policy and payment on the commercial crop where loss is claimed.

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

Damage claim assessment:

(7) Damage claim assessment of amount and value of commercial crop loss is the primary responsibility of the claimant. A crop damage evaluation and assessment must be conducted by a licensed crop insurance adjustor:

(a) The owner must submit a damage claim assessment prepared by a crop insurance adjustor licensed by the state of Washington and certified by the federal crop insurance service.

(b) The department will provide the claimant with a list of approved adjustors and written authorization to proceed with an assessment. The owner must select an adjustor from the approved list and arrange for the completion of a crop damage assessment. Adjustor fees will be the (~~shared~~) responsibility of the (~~owner and the~~) department.

(c) The department or the owner may accept the damage claim assessment provided by the licensed adjuster or may hire a state licensed adjustor of their choosing and conduct a separate assessment or evaluation of the crop loss amount and value. The party hiring an ad-

justor to conduct a separate assessment or evaluation is responsible for payment of all fees.

(8) Disagreement between the claimant and the department over the crop loss value may be settled through an adjudicative proceeding.

Settlement of claims:

(9) (~~Subject to money appropriated to pay commercial crop damage, undisputed claims will be paid, less one half of the crop adjustor's fee or a maximum of six hundred dollars for the owner's share of the crop adjustor's fee.~~) The crop adjustor's fee is not subject to the ten thousand dollar payment limit per owner.

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

(11) The owner will be notified by the department upon completion of the evaluation and has sixty days to accept or appeal the department's offer for settlement of the claim, or the claim is considered satisfied and not subject to appeal.

(12) The department shall prioritize payment for commercial crop damage in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial crop damage during the (~~first~~) current 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.~~))

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-110, filed 6/23/10, effective 7/24/10.]

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

**WAC 232-36-200 Payment for ((~~commercial~~)) livestock damage and other domestic animals-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 or other funding entity. Damages payable under this section are limited to the lost or diminished value of ~~com-~~  
~~mercial~~-livestock caused by wild bears, cougars, or wolves and shall be paid only to the owner of the livestock, 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, consequential damages, or any other damages ~~((including))~~ except veterinarian services may be eligible. 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))~~ the market value for the ~~domestic animal~~ livestock or guard dog lost, the market value of reduced weight gains for livestock, 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 or other funding entity;
- (2) The claim is for livestock other than sheep, cattle, or horses, when only state funds are available; or any domestic animals not allowed by the funding entity;
- (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))~~ (4) 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))~~ (5) Damages to the ~~((commercial))~~ livestock or other domestic animals 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))~~ (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;

~~((9))~~ (7) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;

((+10+)) (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;

((+11+)) (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

((+12+)) ~~(10) 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, 77.04.055, and 77.36.120. WSR 13-05-003 (Order 13-19), § 232-36-200, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-200, filed 6/23/10, effective 7/24/10.]

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

**WAC 232-36-210 Application for cash compensation for ((~~commer-~~  
~~cial~~)) livestock damage or other domestic animal-Procedure.** Pursuant to this section, the department may distribute money specifically appropriated by the legislature or other funding entity to pay ~~commer-~~

~~cial~~-livestock or guard dog losses caused by wild bear, cougar, or 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 ((~~commercial~~)) livestock or other domestic animal 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 have worked with the department to prevent livestock depredation, yet who still experience loss or losses that occur 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 or other domestic animal attack or as soon as feasible.

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

(4) (~~Assessment~~) Investigation of the loss and review and approval of the assessment 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~~) domestic animals 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 (~~commercial livestock~~) domestic animals.

(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) (~~A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service in-~~

~~dicating the applicant's gross sales or value of commercial livestock for the previous tax year.~~

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

~~((e))~~ (b) Claimant must provide records documenting ~~((live-  
stock))~~ the value of the domestic animal based on current market price.

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

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

~~((f))~~ (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 ~~((commercial live-  
stock))~~ domestic animal losses, undisputed claims will be paid up to ten thousand dollars.

(10) Valuation of the lost livestock will be determined by the market at the time the animals would normally be sold. Livestock will be valued based on the average weight of herd mates at the time of sale multiplied by 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.

(11) Claims for higher than normal livestock losses, reduced weight gains, or reduced pregnancy rates must include:

(a) At least three years of records prior to the year of the claim;

(b) The losses must occur on large open ~~range~~ pastures where regular monitoring of livestock is impractical (and therefore discovery of carcasses infeasible) as determined by the department;

(c) Verification by the department that wolves are occupying the ~~range area~~;

(d) The losses cannot be reasonably explained by other causes;  
and



(e) Claims will be assessed for losses in excess of the previous three year running average.

(f) Owners must be ~~working with the department and complying in compliance with a~~ the department's preventative measures checklist and/or ~~a~~ damage prevention agreement.

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

((+11)) (13) 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.

(14) If the claimant accepts the department's offer, the department will send payment to the owner within 30 days from receipt of the written acceptance document.

((+12)) (1415) The department will prioritize payment for ~~com-~~mercial-livestock losses in the order the claims were received or upon

final adjudication of an appeal. If the department is unable to make a payment for ~~commercial~~-livestock losses during the ((~~first~~)) current 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.~~))

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-210, filed 6/23/10, effective 7/24/10.]

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

**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~~ six citizen members appointed by (~~statewide livestock organization(s)~~) the department, and 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 or the department. The citizen members must represent a variety of interests including at least three statewide organizations representing the interests of livestock owners, two representing wildlife advocates, and one at large.

(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.

(5) If parties cannot agree upon damages, or the owner wishes to appeal the claim denial or the department's settlement offer (order), the owner may request an adjudicative proceeding consistent with chap-

ter 34.05 RCW within sixty days of receiving a copy of the department's decision.

(6) 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) 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.

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

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, and 77.36.120. WSR 13-05-003 (Order 13-19), § 232-36-400, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-400, filed 6/23/10, effective 7/24/10.]

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<b>WAC 232-36-030 Definitions</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
<p>Attacking should be defined as biting, wounding, or killing; not just chasing or pursuing, to be consistent with the wolf plan. The current draft of WAC 232-36-030 allows a person to use the caught in the act (CIA) defense when the attack was imminent leaves too much to interpretation.</p>	<p>We have added the term “immediately” to the definition to address your concern.</p> <p>It is important to understand that during legislative testimony and in public discussions leading to the emergency rule filed earlier this year, it did not seem reasonable for a person to wait until a wolf actually bit their domestic animal before a person could take lethal action to stop the attack.</p> <p>The caught in the act provision of protecting livestock was used early in the recovery of wolves in the Rocky Mountain Distinct Population Segment where wolves were listed as “experimental” by the U.S. Fish and Wildlife Service. <a href="http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt10/index.html">http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt10/index.html</a></p> <p>The strategy did not result in any notable impact on wolf recovery there and is not likely to have any impact in Washington either based on the modeling described in appendix G and H of the Wolf Conservation and Management Plan.</p> <p>The definition of attack in the proposed amendment to rule WAC 232-36-030, states that there must be evidence to indicate that an attack occurred or was about to occur. That is a relatively high, but common standard and the department’s enforcement staff are well trained and capable of determining whether the evidence supports that an attack occurred.</p>
<p>The department should delay presenting the WACs to the Commission until they are more fully aligned with the Washington Wolf Management Plan.</p>	<p>The Plan is a great document designed to chart the way to the primary goal of wolf recovery and sustainability in Washington. However, it has three additional goals: 1) to manage wolf-livestock conflicts in a way that minimizes livestock losses while not impacting recovery; 2) maintain healthy ungulate populations for predators and hunters; and 3) gain public understanding of wolves and promote co-existence.</p> <p>While the proposed amendments to WAC chapter 232-36 may vary in the detail of the plan, they do not vary from the goals or the intent. The Wolf Working Group recognized that the plan would be adaptive and stated that in a letter addressed to the citizens of Washington. The letter is captured on pages 245 &amp; 246 of the plan and the reference to adaptive management is in the first sentence of the last paragraph.</p>
<p>This WAC should include language that describes a review of the rule if two wolf mortalities occur under this provision in one year as recommended in the wolf plan.</p>	<p>A rule generally defines what is lawful or unlawful. The department’s ability to reconsider a rule does not need to be in rule in order to be carried out. The department intends to carefully monitor implementation of the CIA rule and will use the emergency rule making authority if warranted to address any problems quickly.</p>

<b>WAC 232-36-030 Definitions</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
The language that restricts where CIA can be used (4 breeding pairs) is a critical safeguard for ensuring protection and recovery in the Cascades and should be retained.	Thank you for your support of this proposed language.
The language in the wolf plan only allows CIA for livestock and guarding/herding animals with a permit and not for all domestic animals without a permit as allowed in the current draft of the WAC. The WAC should reflect the plan.	The department fully supports the wolf conservation and management plan and recognizes the comprehensive guidance provided by it.  It was clear during the discussions and even the letter received from several key members of the Legislature (attached), that this rule was to consider allowing CIA for protecting all domestic animals during a wolf attack. It did not seem reasonable to allow livestock owners to protect their animals, but not a pet owner.
<b>WAC 232-36-051</b>	
<b>Killing wildlife causing private property damage</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
Because the definitions described in 232-36-030 affect all of the rules in this chapter, the rationale for what can be killed is expanded beyond what was provided in the wolf conservation and management plan.	Yes the definitions apply to the entire chapter, please see previous response.
<b>WAC 232-36-052</b>	
<b>Killing wolves attacking domestic animals</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
The intent of requiring a permit to kill a wolf in the act of attacking livestock in the Plan is to start the conversation between WDFW and a citizen that is starting to see wolves on their property so that preventative, non-lethal measures can be implemented to prevent wolf/livestock conflict. The permit requirement was a result of years of consensus building with diverse stakeholders and the public, and the proposed revision undermines the process.	Even the wolf working group recognized that the plan would be adaptive (page 246). The department is completely committed to implementing proactive measures to prevent wolf-human conflicts and we have staff essentially going door to door to inform and educate the affected public on how to minimize conflicts. We are not waiting until someone requests a permit to make contact.
<b>WAC 232-36-210</b>	
<b>Application for cash compensation for livestock damage or other domestic animals - procedure</b>	
The provision for a livestock owner to claim compensation for greater than normal losses and reduced weight gains was supposed to require the completion of a checklist and an agreement with the department.	Current state law and the department's claims process (and forms) do require that preventative measures have been taken by a producer in order to receive compensation. We added language to section 11 of this WAC to clarify that requirement. However at this point, we have not restricted the ability to apply for this type of compensation to those under formal agreements with the department. The new language only requires that a checklist be completed which documents that the producer has complied with the required.

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<b>WAC 232-36-030 Definitions</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
<p>We support the initial proposed definition of attack which read: “Attack” means that there is evidence to support the fact that animal to animal contact has occurred or is imminent.</p>	<p>We had comments that both supported and objected to the definition of attack.</p> <p>The definition of “attack” was not included in the emergency rule language that was carefully balanced between what wolf advocates desired and what rural residents felt was needed to protect their domestic animals from harm by wolves. The public debate on this proposal to amend the WAC has threatened that balance. Therefore, the department is no longer proposing to define the term “attack” in rule.</p> <p>If a term is not defined in the relevant statutes or regulations, the investigating officer, county prosecutor, and courts will turn to the standard dictionary language for guidance. “To set upon with force” or “to begin to affect harmfully” would seem to be the most applicable dictionary definitions. In reviewing other states rules related to authority to kill wolves in the act of attacking, few have defined the term “attack” likely because of the same issues the department ran into with this proposal.</p>
<p>The definitions proposed by the department for “attack” are different from the Plan. The language in the Plan says biting, wounding, or killing. This language was agreed to by stakeholders in a five year process to adopt the Plan; it is also easiest for law enforcement to enforce in investigations after the fact.</p> <p>WDFW’s August 30 proposed amendments offer a different definition of attacking that depart from the Plan as follows: “Physical act of attacking” means actual or imminent animal to human or animal to animal physical contact.” This is still different than what is in the Plan.</p>	<p>See the response above.</p> <p>It is important to understand that during legislative testimony on this issue and in public discussions leading to the emergency rule, it did not seem reasonable for a person to wait until a wolf actually bit their domestic animal before a person could take lethal action to stop the attack. The department’s enforcement staff are well trained and capable of determining whether the evidence supports that an attack occurred.</p> <p>It is also important to remember that this authority was seldom used in other recovery areas and did not impede wolf population recovery.</p> <p>The language referencing “physical act of attacking” is not used in the caught in the act authority (WAC 232-36-052) for killing a wolf.</p>
<p>We support the definitions of Physical act of attacking and domestic animal.</p>	<p>Thank you for your support.</p>
<p>We do not support the definition of a domestic animal. We think this definition is broader than what was intended in the emergency rule.</p>	<p>The term was not defined in the emergency rule and could be interpreted much more broadly than this proposal.</p>
<b>WAC 232-36-052</b> <b>Killing wolves attacking domestic animals</b>	



**WAC 232-36-030 Definitions**

<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
<p>We do not support the language in the earlier proposal for this rule regarding the four breeding pair requirement for the ability to kill a wolf caught in the act of attacking domestic animals. Keep this language the same as the emergency rule.</p>	<p>Again, we received comments supporting the requirement for four breeding pairs and comments opposed to it.</p> <p>This initial recommended change to the language used in the emergency rule was one of the most contentious of this proposal. There were strong feelings that there should be no geographic limits on where the authority could be used as long as the area was outside the area where wolves are federally listed. As well as feelings that this was an important safeguard for wolf recovery.</p> <p>The emergency rule language was carefully balanced between what wolf advocates desired and what rural residents felt was needed to protect their domestic animals from harm by wolves. The public debate on this proposal has threatened that balance. Therefore, the department is changing its recommendation to use the emergency rule language for this permanent rule.</p> <p>If the Federal proposal to delist wolves comes to fruition, WDFW may need to reconsider the geographic scope of the caught in the act authority.</p>
<p>We support the current proposal for keeping this language consistent with the emergency rule.</p>	<p>Thank you for your support.</p>

**WAC 232-36-210**

**Application for cash compensation for livestock damage or other domestic animals – procedure**

<p>Our organization has grave concerns that WDFW and the wolf plan are not recognizing the realities of wolf conflict on the ground. You can see that in the proposed rule language for 232-36-210 subsection 11(b) and (f). These two items should be struck from the proposal.</p> <p>It is unreasonable to expect a person to put up several miles of fladry or to bunch up cattle on a forest allotment and each area requires site specific wolf-livestock interaction deterrents. A one size fits all checklist denies compensation even for the best efforts given by a livestock owner.</p> <p>How is “working with the department” in subsection 11(f) defined?</p> <p>Livestock agreements in subsection 11(f) put unreasonable burdens and conditions on livestock owners.</p>	<p>We added language to section 11 of this WAC to initiate a process that would allow compensation for higher than normal livestock losses (where carcasses were not found and investigated), reduced weight gains, or reduced pregnancy rates. The difficulty for a producer to document the cause of losses (wolf or other causes) on large, open pastures is the reason for the language in 11(b). If a producer experiences livestock mortality on smaller fenced pastures, one would expect that those losses would be noticed and reported. If there are reduced weight gains or reduced pregnancy rates experience by livestock owners with smaller pastures, this would be different than what has been noted in other states, but could be considered in the future, if this requirement results in significant hardships.</p> <p>The intent of 11(f) was to demonstrate that the producer was in compliance with chapter 77.36 RCW and the requirements to implement prevention measures in order to qualify for compensation. The checklist does not require fladry or bunching of cattle on forest allotments in order to qualify for compensation. However, because the language in this subsection was a concern expressed by several others, we will modify our proposal to address these concerns.</p>
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<b>WAC 232-36-030 Definitions</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
<p>We support compensation for all domestic animals killed by wolves.</p>	<p>The Wolf Plan only identifies specific livestock (as defined in WAC 232-36-030) and guard animals in what would qualify for compensation. This appeared to be the priority for compensation. The protection of pets from wolves is generally much easier to accomplish and there are limited documented problems from either the Great Lakes states or the Rocky Mountain states with recovered wolf populations.</p> <p>State compensation funding is only available for cattle, sheep, and horses. Limited Federal funding is available beginning in October 2013 for other animals. There is only so much funding available for compensation and the priority is for livestock and guard animals.</p>
<b>WAC 232-36-400</b>	
<b>Commercial livestock damage claim – dispute resolution</b>	
<p>Subsection (3) changes the original composition of the appeals committee and may create imbalance. Please allow the agricultural or statewide livestock groups to nominate and the department appoints members, or return to the original language.</p>	<p>In order to be more consistent with the wolf plan and to ensure broader representation, this sub section was proposed to be modified. We will recommend changes to the language in this subsection that would require representation from at least three statewide organizations representing livestock owners.</p> <p>At this point, the department intends to utilize the wolf advisory group to function as the appeals committee. This group would meet the language as modified.</p>
<b>Chapter WAC 232-36 General Comments</b>	
<p>Whether regarding the initial proposal or subsequent modifications, our organization is dismayed that the proposals focus on killing and money when the Plan is comprised of so many other critical provisions necessary for wolf recovery and conservations. The proposals as posted on August 30 continue to focus on expanding when wolves can be killed.</p>	<p>The Plan is a great document designed to chart the way to the primary goal of wolf recovery and sustainability in Washington.</p> <p>While the proposed amendments to WAC chapter 232-36 may vary in the detail of the final plan, they do not vary from options considered or from the final goals and intent. The Wolf Working Group recognized that the plan would be adaptive and stated that in a letter addressed to the citizens of Washington. The letter is captured on pages 245 &amp; 246 of the plan and the reference to adaptive management is in the first sentence of the last paragraph.</p>
<p>We are opposed to additional language that would allow the Director to suspend a rule if more than two wolves were killed using the caught in the act authority.</p>	<p>Again, we received comments that both supported this language and opposed the language. At this point the rule language proposal has been dropped by the department; however the Commission has previously delegated the authority to the Director to amend rules on an emergency basis. Consistent with the Wolf Plan, the Director would consider rescinding this rule by emergency action if more than two wolves were killed under the caught in the act authority in a year.</p>

**WAC 232-36-030 Definitions**

<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
<p>We are concerned that WDFW is proposing new language for the same WACs that are already in the midst of a public comment period. The original proposed changes were held open for public comment from June 18-July 19. At the August 2<sup>nd</sup> Commission hearing, WDFW stated that there was confusion from the public regarding the term of the comment period and therefore they agreed to extend the official comment period until Sept. 20<sup>th</sup>. The department put forward new proposals on Aug. 30 when original proposed amendments were still open to public comment. We have serious concerns that about the validity of WDFW’s action in posting modifications to their proposal in the midst of an ongoing comment period.</p>	<p>The purpose for a comment period is for an agency to consider what the public has to say about their proposals to create or change a regulation. WDFW has received many comments from the public regarding the wildlife interaction rules since the initial proposals were published in June. As a result of those comments, WDFW has modified its proposals.</p> <p>The Administrative Procedures Act (APA) has specific requirements for an agency’s process in developing or amending rules. WDFW is in compliance with those requirements. In this case we filed our official proposed rules in June; we considered public comment and input up to and including the Commission hearing on August 2<sup>nd</sup>; as a result of that input, we have changed our recommendation. Based on the APA process, we were not required to let the public know that we were modifying our recommendation, regardless of the decision to extend the comment period.</p> <p>However, we wanted to ensure that the public understood that we are changing our proposals, so we posted those changes on our website. We also informed everyone on our email address list who requested wildlife regulation information and those on the wolf advisory group of those modified recommendations.</p> <p>So regardless of whether the public comments were submitted referencing the initial proposal (posted CR 102) or the modified proposals posted on our website (August 30), we consider all of those comments and respond to them in this document.</p>
<p>We are concerned that comments simply stating support for the WAC would be misinterpreted because of the multiple versions of the agency’s proposals provided on their web site.</p>	<p>The department did not receive such comments during this process. As described above, we felt it was more important that the public be made aware of changes proposed by the department during the extended comment period.</p>
<p>A small business impact statement should be prepared as required by RCW 19.85.</p>	<p>WDFW has determined that there will not be more than minor costs to a business to comply with these rules. Most livestock owners will possess the information necessary to qualify for compensation as a standard practice in their business. The commenter’s’ requesting that an impact statement be developed did not provide any documentation to indicate that these rules would require significant costs to a business.</p> <p>These rules do not impose costs to conduct the business of livestock production. They only regulate what a producer would need to provide in order to receive compensation or assistance from the state if a livestock owner so chooses. Keeping records by livestock owners is not being mandated by the department unless the producer seeks compensation.</p>
<p>We oppose Federal delisting of gray wolves. WDFW should better protect wolves from being killed.</p>	<p>Several comments such as these were received that are not specific to the rule (WAC) proposals.</p>

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<b>WAC 232-36-030 Definitions</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
<p>Washington has had a science based Wolf Conservation and Management Plan in place now for over a year and a half. One of the stated purposes of the proposed amendments is to more closely align the wildlife conflict rules with what is in the Wolf Plan. While this was accomplished with some of the proposed amendments, several deviate from the intent of the Plan. For example, the Plan definition for attack is biting, wounding, or killing. The proposed amendment leaves far too much to interpretation. The proposed amendment could easily lead to more wolves being killed due to different interpretation based on the experience and comfort level of observers.</p>	<p>The definition of attack was not included in the emergency rule language that was carefully balanced between what wolf advocates desired and what rural residents felt was needed to protect their domestic animals from harm by wolves. The public debate on this proposal has threatened that balance. Therefore, the department is no longer proposing to define the term “attack” in rule.</p> <p>It is important to understand that during legislative testimony and in public discussions leading to the emergency rule filed earlier this year, it did not seem reasonable for a person to wait until a wolf actually bit their domestic animal before a person could take lethal action to stop the attack.</p> <p>The department’s enforcement staff are well trained and capable of determining whether the evidence supports that an attack occurred.</p>
<p>The Commission should stick to what is in the Washington Wolf Management Plan.</p>	<p>The Plan is a great document designed to chart the way to the primary goal of wolf recovery and sustainability in Washington. However, it has three additional goals: 1) to manage wolf-livestock conflicts in a way that minimizes livestock losses while not impacting recovery; 2) maintain healthy ungulate populations for predators and hunters; and 3) gain public understanding of wolves and promote co-existence.</p> <p>While the proposed amendments to WAC chapter 232-36 may vary from the detail of the plan, they do not vary from the goals or the intent. The Wolf Working Group recognized that the plan would be adaptive and stated that in a letter addressed to the citizens of Washington. The letter is captured on pages 245 &amp; 246 of the plan and the reference to adaptive management is in the first sentence of the last paragraph.</p>
<p><b>WAC 232-36-052</b>  <b>Killing wolves attacking domestic animals</b></p>	

**WAC 232-36-030 Definitions**

<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
<p>The adopted Wolf Plan purposely did not allow the permit-less caught in the act wolf killing because in the early stages of wolf recovery, it is not appropriate. Killing wolves in the early stages of wolf recovery should be a last resort.</p>	<p>The department is completely committed to implementing proactive measures to prevent wolf conflicts and we have staff working very hard to inform and educate the public on how to minimize conflicts. Killing a wolf attacking a person’s domestic animal would be considered by most as a last resort.</p> <p>The requirement for a person to have a permit from the department was problematic because few can anticipate an attack by a wolf.</p> <p>It was clear during public discussions (and even the letter received from several key members of the Legislature), that this rule was to consider allowing caught in the act authority for protecting all domestic animals during a wolf attack. It did not seem reasonable to allow livestock owners to protect their animals, but not a pet owner.</p> <p>The caught in the act provision of protecting livestock was used early in the recovery of wolves in the Rocky Mountain Distinct Population Segment where wolves were listed as “experimental” by the U.S. Fish and Wildlife Service.  <a href="http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt10/index.html">http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt10/index.html</a></p> <p>The strategy did not result in any notable impact on wolf recovery there and is not likely to have any impact in Washington either based on the modeling described in appendix G and H of the Wolf Conservation and Management Plan.</p>
<p>The proposed changes expand the ability of private citizens to kill wolves. The Plan already addresses the question of when endangered wolves can be killed in order to reduce livestock conflict.</p>	<p>See the above response. In addition, the wolf working group recognized that the plan would be adaptive (page 246 of the Washington Wolf Conservation and Management Plan (Plan).</p>
<p>We support this rule including the requirement that four breeding pairs be established in a recovery zone prior to the area qualifying for use of the caught in the act authority.</p>	<p>This recommended change to the language used in the emergency rule was one of the most contentious of this proposal. There were strong feelings that there should be no geographic limits on where the authority could be used as long as the area was outside the area where wolves are federally listed.</p> <p>The emergency rule language was carefully balanced between what wolf advocates desired and what rural residents felt was needed to protect their domestic animals from harm by wolves. The public debate on this proposal has threatened that balance. Therefore, the department is changing its recommendation to reinstate the emergency rule language.</p>
<p>We ask that WAC 232-36-052 not be adopted as proposed and that the original language from the emergency rule of WAC 232-36-05100B be substituted and adopted.</p>	<p>Our proposal has been amended to reflect your suggestion.</p>

**WAC 232-36-210**

**Application for cash compensation for livestock damage or other domestic animals - procedure**

<b>WAC 232-36-030 Definitions</b>	
<b>COMMENTS</b>	<b>AGENCY RESPONSE</b>
The proposed changes would expand compensation for any domestic animal. We don't support expanding compensation to animals other than livestock but, rather, support responsible care of companion animals to keep them out of harm's way.	We have modified our recommendation to limit compensation to livestock and guard animals as identified in the Plan.
The proposed amendments remove the Plan's requirement that the livestock be held commercially or even that the animal in question be livestock.	The Plan never suggested that livestock be held commercially in order to qualify for compensation. The department has modified its proposal to only compensate for livestock and guard animals as identified in the Plan.
We have concerns about what the legal meaning of "working with the department".	We will take a look at the language, but our intent was to signal that the livestock owner was using non-lethal deterrents to reduce wolf-livestock conflicts as supported by the department.
<b>Chapter WAC 232-36 General Comments</b>	
We think the Wolf Conservation and Management Plan should be codified into WAC to improve enforceability, accountability, and transparency.	Additional portions of the Plan can be incorporated into rule as necessary. Priorities and specific suggestions will be developed for future modifications of this WAC chapter.
We support the proposal as presented.	Thank you for your support.
We were caught off-guard with the timelines for commenting on this proposal and would like to have more time to consider and comment.	The comment period has been extended through September 20, 2013.



# 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 13-10-043 on 4/25/13;  
 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)

The subject of this proposed rule-making effort is the amendment of Wildlife Interaction Regulations, in chapter 232-36 WAC.

**Hearing location(s):**  
 Natural Resources Building, Rm. 172  
 1111 Washington Street SE  
 Olympia, Washington 98504

Date: August 2-3, 2013 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  
 Email: [Wildthing@dfw.wa.gov](mailto:Wildthing@dfw.wa.gov)  
 Fax: (360) 902-2162 by July 19, 2013

**Assistance for persons with disabilities:** Contact

Tami Lininger by July 26, 2013

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

**Date of intended adoption:** on or after August 2, 2013

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

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

The proposed amendments implement 2013 legislation and expand the conditions for mitigating wolf/human conflicts to include non-commercial operators and the types of domestic animal losses that may be compensated by the department. The proposed amendments make the wildlife conflict rules consistent with the wolf management plan within current statutes, encourage cooperative agreements with the department to prevent and mitigate losses other than documented mortalities to livestock, and allow citizens to protect their domestic animals from attack by wolves.

**Reasons supporting proposal:**

To address human/wildlife conflicts and property damage.

**Statutory authority for adoption:** RCW 77.04.012; 77.04.055; 77.12.047; 77.12.240; chapter 77.36 RCW and ESSB 5193

**Statute being implemented:** RCW 77.04.012; 77.04.055; 77.12.047; 77.12.240; chapter 77.36 RCW and ESSB 5193

**Is rule necessary because of a:**

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

**CODE REVISER USE ONLY**

**DATE**  
June 19, 2013

**NAME** (type or print)  
Lori Preuss

**SIGNATURE**

**TITLE**  
Rules Coordinator

(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:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

These rules do not directly regulate small business.



**Is a cost-benefit analysis required under RCW 34.05.328?**

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

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain: This proposal is not related to hydraulics rules.



# 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 13-10-043 on 4/25/13;  
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 13-13-085

Title of rule and other identifying information: (Describe Subject)  
Wildlife-interaction regulations, chapter 232-36 WAC.

Hearing location(s):  
The public hearing on this rule proposal was held on August 2-3, 2013. The Department is extending the deadline for written comments on these rules to September 20, 2013.

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](mailto:Wildthing@dfw.wa.gov)  
Fax: (360) 902-2162 by (date) September 20, 2013

Assistance for persons with disabilities: Contact  
Tami Lininger by September 20, 2013  
(360) 902-2207 or TTY at 1-800-833-6388

Date of intended adoption: On or after October 4, 2013  
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed amendments implement 2013 legislation and expand the conditions for mitigating wolf/human conflicts to include non-commercial operators and the types of domestic animal losses that may be compensated by the department. The proposed amendments make the wildlife conflict rules consistent with the wolf management plan within current statutes, encourage cooperative agreements with the department to prevent and mitigate losses other than documented mortalities to livestock, and allow citizens to protect their domestic animals from attack by wolves.

Reasons supporting proposal:  
To address human/wildlife conflicts and property damage.

Statutory authority for adoption: RCW 77.04.012, 77.12.047, 77.12.240, chapter 77.36 RCW and ESSB 5193

Statute being implemented: RCW 77.04.012, 77.12.047, 77.12.240, chapter 77.36 RCW and ESSB 5193

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

### CODE REVISER USE ONLY

DATE  
August 19, 2013

NAME Lori Pruess

SIGNATURE

TITLE

(COMPLETE REVERSE SIDE)

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

N/A

**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	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2693
Implementation....Nate Pamplin	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2693
Enforcement.....Bruce Bjork	1111 Washington Street SE, Olympia, WA 98504	(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.

A copy of the statement may be obtained by contacting:

Name:  
Phone:  
Fax:  
E-mail:

No. Explain why no statement was prepared.

These rules do not affect small businesses.

**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 proposals do not affect hydraulics.



## RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR 102) filing and are already included in your notebook.

- There are several places throughout the WAC document where edits were made to delete the term commercial, insert the term domestic animal, insert the term property, and make clerical edits. These changes reflect the change in wildlife interaction statutes during the 2013 legislative session and/or add clarity.

### **WAC 232-36-030 Definitions.**

#### Page 1

- The definition of attack has been deleted. An emergency rule was passed earlier in 2013 to allow citizens to kill a wolf caught attacking their domestic animal. Since then, there have been concerns expressed that a definition of attack was necessary to prevent indiscriminant use of this authority. After receiving many comments on the proposed definition and much debate among wolf advisory group members, it was decided to go back to the original language of the emergency rule, which did not contain a definition. This means that an investigating officer, a prosecutor, and the courts would essentially use the standard definition provided in the dictionary. The most applicable dictionary definitions would likely be: “to set upon with force” or “to begin to affect harmfully.”

#### Page 3

- The definition of the physical act of attacking was changed, adding the language: “or animal to animal.” The definition now reads: “‘Physical act of attacking’ means actual or imminent animal to human or animal to animal physical contact.” This term had been used previously in chapter WAC 232-36 to describe animal to animal contact situations. This is a correction to ensure the term is appropriately defined.

### **WAC 232-36-040 Wildlife/human interaction and conflict resolution for private property damage.**

#### Page 5

- The last sentence in the introductory statement was changed by deleting: “~~that does not qualify under commercial crop or livestock damage.~~” This change reflects the statutory changes allowing compensation for property other than commercial crops or livestock, as defined in statute, for payment of claims with non-state funds.

## **WAC 232-36-051 Killing wildlife causing private property damage**

### **Page 10**

- The term “big game” was changed to “game” in two places, making the use of the term consistent throughout this rule. There was some confusion regarding whether legislative classification of animals as big game (in particular wolves) meant that they could be killed consistent with this rule. There is language in this rule that stipulates that endangered species may not be killed (regardless of other classification) without a permit from the department or under a specific rule of the Commission. This change helps clarify that issue.
- The term attacking was added prior to the term livestock in several places on this page. This change clarifies that a game animal may be killed when livestock are the object of damage.
- The term “domestic animals” was added in several places. To make the authority for killing of wildlife when attacking domestic animals consistent throughout the chapter (WAC 232-36).

## **WAC 232-36-052 Killing wolves attacking domestic animals**

### **Page 14**

- The language in Section (1) (a) was changed to reflect the language of the emergency rule, authorizing the killing of a wolf attacking domestic animals. An emergency rule was passed earlier in 2013 to allow citizens to kill a wolf caught attacking their domestic animal in that part of the state where wolves are not federally listed as endangered or threatened. Since then, there have been concerns that with the US Fish and Wildlife proposal to delist wolves, the use of this authority might impede recovery in the state of Washington. After receiving many comments on the proposed definition and much debate among wolf advisory group members, it was decided to go back to the original language of the emergency rule.

## **WAC 232-36-110 Application for cash compensation for commercial crop damage-Procedure**

### **Page 18**

- Under subsection (6)(a) add the language: “ or other documentation” after “Internal Revenue Service.” This would allow claimants to provide documentation other than a copy of their schedule F to prove that they received \$10,000 or more in gross income and, therefore, qualify as a commercial crop owner.

**Page 20**

- Under subsection (7) (b) add the language: “and written authorization to proceed with an assessment” after “approved adjustors.” This ensures that a claimant does not obligate the department to pay for an assessment without clear authority.
- Under subsection (7) (b) remove the strike out language “shared” and “owner and the.” Reinstating this language allows the department to require that a claimant share in the cost of an assessment and, therefore, helps prevent frivolous assessments and associated costs.

**WAC 232-36-200 Payment for ((commercial)) livestock damage and other domestic animals-Limitations.**

**Page 23**

- Delete the term commercial to make this change consistent with the type of livestock eligible for compensation throughout the chapter WAC 232-36.
- Delete the term “domestic animal” and insert the language “livestock or guard dog.” Several public comments were received regarding the expectations that might be created with claims for pets and other domestic animals besides those defined as livestock and guard dogs even though there are no funds to pay for them.
- Add the language “for livestock” after reduced weight gains to better reflect the intent of this rule.

**Page 25**

- Delete the last subsection of this rule because it is inconsistent with the change made in subsection 12 of WAC 232-36-210.

**WAC 232-36-210 Application for cash compensation for ((commercial)) livestock damage or other domestic animal—Procedure.**

**Pages 25&26**

- The term commercial was deleted in several places in this rule amendment to make this change consistent with the type of livestock eligible for compensation throughout Chapter 232-36 WAC.
- Add the term guard dog to better reflect what can be compensated.
- Delete the term other domestic animal to better reflect what can be compensated and the funding available.

- Change the language under subsection (2) to read: “Claimant must notify the department as soon as possible, preferably within 24 hours of discovery of livestock or other domestic animal attack.” This better reflects the intent of the wolf plan and provides some flexibility to an owner who experiences an attack and notification within 24 hours is not feasible.

**Page 29**

- Delete the word “range” to be consistent with the language in other documents that describe the pasture or grazing land conditions used as criteria for compensation of livestock losses and other agency actions.

**Page 30**

- Add a requirement to section 11: “(f) Owners must be in compliance with a preventative measures checklist and/or a damage prevention agreement.” The requirement to have implemented preventative measures is required by statute for compensation and is part of the claims forms; however, this language clarifies that it is a specific requirement of section 11 regarding greater than normal losses, reduced weight gains, and reduced pregnancy rates.
- Add a subsection to describe the department’s commitment for timely payment of agreed upon claims as follows: “(14) If the claimant accepts the department’s offer, the department will send payment to the owner within 30 days from receipt of the written acceptance document.” This subsection was added based on discussions with the wolf advisory group members.
- Delete the term commercial to make this change consistent with the type of livestock eligible for compensation throughout the Chapter 232-36 WAC.
- Change subsection (3) to read: “A livestock appeals committee may be established with a minimum of six citizen members appointed by the department, and a representative from the department of fish and wildlife to review and recommend a settlement if requested by the claimant or the department. The citizen membership must represent a variety of interests including at least three statewide organizations representing the interests of livestock owners, two representing wildlife advocates, and one at-large. Comments were received that requested better clarity on the make-up of the appeals committee.