



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
(Implements RCW 34.05.360)

**Agency:** Washington Department of Fish and Wildlife

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

31 days after filing. **13-19**

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** This proposal amends rules concerning the conditions and criteria for wildlife-property-damage compensation. The proposal modifies the criteria for compensation and services from the state, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance for property damage.

**Citation of existing rules affected by this order:**

Repealed:

Amended: WAC 232-36-030, 232-36-051, 232-36-100, 232-36-200, and 232-36-400

Suspended:

**Statutory authority for adoption:** RCW 77.04.012, 77.04.020, 77.04.055, and 77.36.120.

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 12-20-069 on October 3, 2012 (date).

Describe any changes other than editing from proposed to adopted version: See Attachment A - Statement of Changes

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_

Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_

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

**Date adopted:** December 14, 2012

**NAME (TYPE OR PRINT)**

Miranda Wecker

**SIGNATURE**

*Miranda Wecker*

**TITLE**

Chair, Fish and Wildlife Commission

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: February 06, 2013**

**TIME: 2:36 PM**

**WSR 13-05-003**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	<u>5</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

## **ATTACHMENT A – Statement of Changes**

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

#### **Changes, if any, from the text of the proposed rule and reasons for difference:**

- Language in the first paragraph was changed to read:

**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.

These changes were made to clarify the Fish and Wildlife Commission’s authority to classify wildlife.

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

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

#### **Changes, if any, from the text of the proposed rule and reasons for difference:**

- 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, 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 chapter 34.05 RCW within sixty days of receiving a copy of the department’s decision.

The changes in this subsection are intended to make the standards more consistent with the Administrative Procedure Act (APA).

- Language in Subsection 7 was changed from:

## ATTACHMENT A – Statement of Changes

(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 subsection are intended to make the standards more consistent with the APA.

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, 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.

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.

~~((c))~~ (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.

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 10-156, 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.]

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))~~ or the owner wishes to appeal the claim denial or the ~~((department))~~ department's 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) 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 ~~((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) 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) ((and)), 232-36-210(9), and 232-36-260) of the commission.