

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE
WILDLIFE PROGRAM**

**FISH AND WILDLIFE COMMISSION MEETING
December 14-15, 2012**

CONCISE EXPLANATORY STATEMENT

WAC 232-36-030 Definitions.

A. Agency reason for adoption: The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife. This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

B. Changes, if any, from the text of the proposed rule and reasons for difference:

- None.

C. Agency responses to written and oral comments:

COMMENTS	AGENCY RESPONSE
While this is mostly a technicality, I'd like to say it would help if the definitions are consistent. The WDFW Commission did hear a great deal about how mules should be considered the same as horses as to compensation in the WACs. While we do appreciate the changes in the rules that would allow for non-commercial livestock to receive compensation if there are losses in value or life due to wolves, it would be best if the definitions between the RCWs and WACs were consistent as to what is meant by "livestock."	We agree that we did not appropriately value mules and have recommended a modification to our proposal. The definitions provided in WAC must be consistent with RCW; however if something is not defined in statute, the Commission may provide a definition. WDFW is requesting statutory changes that would make the wildlife conflict statutes more consistent with the wolf plan and provide a common definition of livestock and allow compensation for a broader definition of livestock.

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

A. Agency reason for adoption: The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife. This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

B. Changes, if any, from the text of the proposed rule and reasons for difference:

- Change the language in the first paragraph 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.

C. Agency responses to written and oral comments:

None.

WAC 232-36-100 Payment for commercial crop damage –Limitations.

A. Agency reason for adoption: The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife. This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

B. Changes, if any, from the text of the proposed rule and reasons for difference:

- None.

C. Agency responses to written and oral comments:

None.

WAC 232-36-200 Payment for commercial livestock damage—Limitations.

A. Agency reason for adoption: The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife. This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

B. Changes, if any, from the text of the proposed rule and reasons for difference:

- None.

C. Agency responses to written and oral comments:

COMMENTS	AGENCY RESPONSE
<p>I am absolutely against the State reimbursement of livestock and/or livestock guard dog losses to predation by wildlife. I do believe stock owners should be allowed to use any measure, including lethal, to protect their livestock...on their own property. When leasing State or National grazing lands I believe they must take their chances.....no guarantees or reimbursement available from the taxpayers. For hard-case predators on taxpayer owned lands, the DFW should consider relocation or elimination of the offender. I believe any reimbursement should be left to private organizations (donations) that support the protection of the predators, as I believe is done now in Montana.</p>	<p>Reimbursement for livestock losses, including guard animals, has been consistently applied across the West and is an important component to improve tolerance of wolves and is, therefore, important for wolf recovery. Lethal measures are also an important part of recovery and management of wolves, regardless of the property owner (public or private). Broad scale lethal removal actions on private lands could result in a delay in meeting recovery objectives; therefore, we are looking for a balance in non-lethal measures to keep wolves from depredate on livestock, regardless of the landowner.</p> <p>There are some organizations that provide funding to mitigate wolf-livestock issues, but most of them are no longer providing compensation for losses.</p>
<p>Stop allowing private industry - ranchers to graze their cattle on public lands! The public wants our public lands to not be used by private industry and we want our wolves to roam free! The only exception/compromise that addresses the needs of both sides of the issue is to allow ranchers to graze their cattle on public lands with range riders present (never unattended).</p>	<p>The Department and the Commission do not have any authority over federal land management; all we can address is the livestock, which is private property, and impacts to livestock while they are on public land. We are working very hard to provide a balance of options for livestock operators that include non-lethal measures, compensation when these measures are not effective, and lethal removal of wolves that continue to chronically depredate on livestock.</p>
<p>I am against any compensation for loss of livestock due to predation. I believe that this is partly what caused the unnecessary slaughter of the Wedge wolf pack. You are responsible for protecting the wolves in your state, not just giving into the wishes of ranchers and hunters. The best way to do this is to fully compensate ranchers for the implementation on non-lethal methods of determent. That is the best solution. It will encourage ranchers to cooperate instead of setting wolves up for the kill. Thank you for listening to my opinion.</p>	<p>Reimbursement for livestock losses, including guard animals, has been consistently applied across the West and is an important component to improve tolerance of wolves and is, therefore, important for wolf recovery. We do not want individuals to take lethal measures into their own hands because they are frustrated with the lack of response from management agencies.</p> <p>While lethal measures are an important part of recovery and management of wolves. We are looking for a balance in non-lethal measures to keep wolves from depredate on livestock, compensation for losses when other measures are not effective, and lethal measures when depredate cannot be avoided by other means.</p>

COMMENTS	AGENCY RESPONSE
<p>For too long ranchers have enjoyed operating without predators. Now they should have to shoulder the costs for depredations and /or any associated weight loss on public lands. It's unfair that ranchers pay only \$1.35 per AUM for grazing on public lands....this, in itself, is a subsidy. If you decide to subsidize weight loss, increase grazing fees and use that money to subsidize weight loss. Lastly, to my knowledge, there are no peer reviewed scientific studies supporting the "weight loss" theory, and until this issue is studied and has scientific basis, any compensation is premature.</p>	<p>Again regardless of land ownership, the department is committed to compensating producers for livestock losses. This strategy is designed to improve tolerance of livestock operators for wolves and wolf recovery. If livestock operators choose to take matters into their own hands, illegal and uncontrolled killing of wolves can certainly impact population recovery.</p> <p>Many wolf management strategies, whether it is compensation for weight loss or the use of "range riders," cannot be definitively supported by research or scientific studies. However, they may be important to individual producers for dealing with wolf-livestock conflicts and improve tolerance for wolves on the landscape.</p>
<p>I believe very strongly that compensation for livestock losses and weight loss should only be given to people who have entered into contracts to use non-lethal wolf conflict avoidance. It should not be just that contract-holders get a higher priority; only contract-holders should get compensation at all. Otherwise, you are enabling some ranchers to get away with not doing non-lethal measures, but still get compensated.</p> <p>I also believe that any rancher that doesn't commit to non-lethal attempts should not have their permit to graze on public lands renewed.</p>	<p>Your core value of balancing compensation with non-lethal measures to avoid wolf-livestock conflicts and depredations is shared by everyone impacted or associated with wolf recovery.</p> <p>Washington's wolf plan attempted to find that balance between conflict avoidance measures, compensation, and lethal removal when all else failed.</p> <p>So regardless of whether a producer has an agreement with WDFW, if they have complied with the requirements of the plan as captured in Commission rules, they may be compensated. Those rules do require that non-lethal measures be implemented prior to eligibility for compensation.</p>

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

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

A. Agency reason for adoption: The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife. This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

B. Changes, if any, from the text of the proposed rule and reasons for difference:

- This proposed section has been withdrawn, as the department seeks to clarify its statutory authority during the 2013 legislative session with regard to this subject matter.

C. Agency responses to written and oral comments:

COMMENTS	AGENCY RESPONSE
Good mules are generally worth as much or more than horses with the same training. During the recent down turn in equine values many good horses have been offered for little or no cost when good mules have held their value well. Mules can do everything horses can do, they live longer, are less prone to heath problems, are stronger than horses and have beautiful long ears. The authorized replacement cost for horses and mules should be the same.	We agree that we did not appropriately value mules and have recommended a modification to our proposal.
The back country horsemen support compensation for non-commercial livestock losses, but insist that mule be compensated the same as horses	Thank you for your support, we agree that we did not appropriately value mules and have recommended a modification to our proposal.

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

A. Agency reason for adoption: The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife. This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

B. Changes, if any, from the text of the proposed rule and reasons for difference:

- This proposed section has been withdrawn, as the department seeks to clarify its statutory authority during the 2013 legislative session with regard to this subject matter.

C. Agency responses to written and oral comments:

None.

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

A. Agency reason for adoption: The purpose of this proposal is to amend rules concerning the conditions and criteria for compensation for property damage from wildlife. This proposal modifies the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

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

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

- Language in Subsection 7 was changed from:

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

- (a) The order was not authorized by law or rule;
- (b) A fact stated in the order is materially incorrect;
- (c) The award amount offered is inconsistent with applicable and accepted procedures, rule, and/or law; or
- (d) Material information or evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

to:

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

- (a) The order was not authorized by law or rule;
- (b) A fact stated in the order is not supported by substantial evidence;
- (c) The award amount offered is inconsistent with applicable procedures; or
- (d) Material evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

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

C. Agency responses to written and oral comments:

None.