

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

**FISH AND WILDLIFE COMMISSION MEETING
October 4-5, 2013**

CONCISE EXPLANATORY STATEMENT

WAC Chapter 232-36

A. Agency reason for adoption:

- The 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 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.

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

WAC 232-36-030 Definitions.

- 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.”
- 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.

- 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

- 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

- 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

- 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.

- 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.

- 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.
- 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.

- 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.
- 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.
- 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.

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

- Change subsection (3) to read: “A livestock appeals committee may be established with a minimum of six citizen members appointed by the Director, 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. This allows the use of the current Wolf Advisory Group as the review committee.

C. Agency responses to written and oral comments:

Original -

WAC 232-36-030 Definitions	
COMMENTS	AGENCY RESPONSE
<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. http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt10/index.html</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 & 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>
<p>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.</p>	<p>Thank you for your support of this proposed language.</p>
<p>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.</p>	<p>The department fully supports the wolf conservation and management plan and recognizes the comprehensive guidance provided by it.</p> <p>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.</p>
<p>WAC 232-36-051</p>	
<p>Killing wildlife causing private property damage</p>	
<p>COMMENTS</p>	<p>AGENCY RESPONSE</p>
<p>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.</p>	<p>Yes the definitions apply to the entire chapter, please see previous response.</p>
<p>WAC 232-36-052</p>	
<p>Killing wolves attacking domestic animals</p>	
<p>COMMENTS</p>	<p>AGENCY RESPONSE</p>
<p>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.</p>	<p>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.</p>

WAC 232-36-210	
Application for cash compensation for livestock damage or other domestic animals - procedure	
COMMENTS	AGENCY RESPONSE
<p>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.</p>	<p>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.</p>

Extended - August 2 through September 20, 2013

WAC 232-36-030 Definitions	
COMMENTS	AGENCY RESPONSE
<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 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 that 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 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>
<p>WAC 232-36-052 Killing wolves attacking domestic animals</p>	
<p>COMMENTS</p>	<p>AGENCY RESPONSE</p>
<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	
COMMENTS	AGENCY RESPONSE
<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>
<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>
WAC 232-36-400	
Commercial livestock damage claim – dispute resolution	
COMMENTS	AGENCY RESPONSE
<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>

Chapter WAC 232-36 General Comments	
COMMENTS	AGENCY RESPONSE
<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 & 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>
<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 2nd 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. 20th. 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 2nd; 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>