



## Fish and Wildlife Commission Presentation Summary Sheet

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**Meeting date:**

8/11/2023

**Agenda item:**

5. 2024 Agency Request Legislation – Decision

**Presenter(s):**

Tom McBride, Legislative Director

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**Background summary:**

Legislative policy proposals were solicited from programs and regions; reviewed by EMT and briefed to the FWC in June 2023. Draft fact sheets and draft statutory language are included within the materials for this presentation. The Department is recommending that four items advance:

1. Protecting the confidentiality of other states' fisheries information.
  2. Allow concurrent application for habitat recovery pilot project (HRPP) permits and cultural resources reviews.
  3. Expand land management authority to better utilize non-profits and volunteers.
  4. Increase state funding of crop damage.
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**Staff recommendation:**

Staff are seeking approval from the Commission to advance these four items to the Governor's Office as agency request legislation for the 2024 legislative session.

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**Policy issue(s) and expected outcome:**

1. Protecting the confidentiality of other states' fisheries information: The sharing of confidential data among WDFW and partner agencies is a key element of successful fisheries management on the West Coast. This proposal would provide confidentiality protection under Washington law for data shared by other states and allow WDFW to fully participate in collaborative conservation and management with partner agencies from other states.
2. Allow concurrent application for habitat recovery pilot project (HRPP) permits and cultural resources reviews: The intention of this pilot program was to promote and implement habitat restoration as quickly and efficiently as possible, thereby bolstering the natural resources and natural resource economy of Washington. This proposal will remove the requirement that review with the Washington State Department of Archaeology and Historic Preservation (DAHP) is completed before applying to the HRPP, and instead allow for concurrent processing. This change will better allow for the intended streamlined permitting of vetted habitat improvement projects.

3. Expand land management authority to better utilize non-profits and volunteers: The Commission currently has the authority to manage department owned lands and water access sites. This proposal would mirror a DNR statute that focuses on using non-profits and volunteer groups to work on department-managed lands through collective agreements. This will increase non-profit and volunteer-led efforts on department managed lands, leading to a better public experience at our wildlife areas and water access areas.

4. Increase state funding of crop damage: In 1996, the Washington State Legislature obligated funding for certain elk or deer related commercial crop damage payments, which limited compensation from the General Fund-State to \$30,000 statewide per fiscal year. This proposal provides 5 potential changes to the crop damage statute: (1) increase the limit of General Fund-State compensation for certain commercial crop damage from \$30,000 per fiscal year to \$300,000 per fiscal year to address the increase in damage claims and costs, (2) limit unpaid claims to be held for one fiscal year before expiring, (3) allow DFW to agree to single claims up to \$30,000, (4) limit appeal awards to no greater than \$30,000, and (5) require the Department to submit a report to the Legislature with recommended amendments to the crop damage statutes by December 1, 2024.

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#### **Fiscal impacts of agency implementation:**

1. Protecting the confidentiality of other states' fisheries information: This will not have significant fiscal impact upon agency.
  2. Allow concurrent application for habitat recovery pilot project (HRPP) permits and cultural resources reviews. Will not have significant fiscal impact upon agency: This will allow streamlined permits pilot project to better assess utility.
  3. Expand land management authority to better utilize non-profits and volunteers: This will not have significant fiscal impact upon agency and may provide for better operation and upkeep at agency wildlife areas and water access sites.
  4. Increase state funding of crop damage: This will not have significant fiscal impact upon agency.
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#### **Public involvement process used and what you learned:**

We are targeting select outreach to involved partners and state agencies. The proposals were shared and discussed with the Budget and Policy Advisory Group (BPAG) on July 25, 2023. Tom conducted conversations with our AAGs about these proposals, particularly the crop damage proposal. Staff met on July 31, 2023, with DAHP staff to discuss the HRPP proposal. Additionally, Tom will be presenting and discussing these proposals at the Northwest Indian Fisheries Commission on August 15, 2023.

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#### **Action requested and/or proposed next steps:**

Approval of proposed agency request legislation, including selection of changes to advance under proposal 4 addressing commercial crop damage by deer or elk.

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#### **Draft motion language:**

"I move to approve the agency request legislation proposals as proposed by staff. In regard to legislative proposal 4 addressing crop damage, I move to approve changes \_\_, \_\_, \_\_"

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#### **Post decision communications plan:**

The Department will continue to work with members of the BPAG and other advisory groups to secure further support for these bills. Legislative fact sheets and other outreach materials will be posted to the Department's website and provided to the Commission.

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*Form revised 8-4-20*

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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: Z-0348.1/23

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION: Concerning confidential fisheries information collected by other states and maintaining that confidentiality under the public records act.

AN ACT Relating to confidential fisheries information collected by other states and maintaining that confidentiality under the public records act; amending RCW 42.56.430 and 42.56.430; creating a new section; providing an effective date; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The sharing of confidential data among the department of fish and wildlife and partner agencies is a key element of successful fisheries management on the west coast. The intent of this act is to remove an unexpected gap in the existing department of fish and wildlife section of chapter 42.56 RCW, the public records act, and to allow the department of fish and wildlife's personnel to continue effective engagement in interagency fisheries management and enforcement and related activities.

(2) Recordkeeping occurs primarily at the state level on the west coast. However, many fishers participate in multiple fisheries and deliver their catches into multiple states. Sharing data among states is therefore often necessary to enforce regulations,

understand fisheries performance, and analyze the need for and likely effects of potential rule changes. Most recently, it has also become important for analyzing the effects of activities like offshore wind development on fishing communities.

(3) The department of fish and wildlife believed the existing provisions of RCW 42.56.430 sufficiently covered the types of data the department uses in collaboration with its partners. RCW 42.56.430(6) exempts data collected from federal fisheries no matter the state of landing, RCW 42.56.430(7) exempts elements of tribal fisheries data, and RCW 42.56.430 (1) and (5) pertain to state fisheries if under the department of fish and wildlife's jurisdiction. However, a recent review of those provisions determined that an important category was not covered, namely data collected by other states for fisheries under their jurisdiction. The most valuable fisheries on the west coast fall into this category, for example Dungeness crab.

**Sec. 2.** RCW 42.56.430 and 2018 c 214 s 1 are each amended to read as follows:

The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife

data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data must be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration;

(3) The following information regarding any damage prevention cooperative agreement, or nonlethal preventative measures deployed to minimize wolf interactions with pets and livestock:

(a) The name, telephone number, residential address, and other personally identifying information of any person who has a current damage prevention cooperative agreement with the department, including a pet or livestock owner, and his or her employees or

immediate family members, who agrees to deploy, or is responsible for the deployment of, nonlethal, preventative measures; and

(b) The legal description or name of any residential property, ranch, or farm, that is owned, leased, or used by any person included in (a) of this subsection;

(4) The following information regarding a reported depredation by wolves on pets or livestock:

(a) The name, telephone number, residential address, and other personally identifying information of:

(i) Any person who reported the depredation;

(ii) Any pet or livestock owner, and his or her employees or immediate family members, whose pet or livestock was the subject of a reported depredation; and

(iii) Any department of fish and wildlife employee, range rider contractor, or trapper contractor who directly:

(A) Responds to a depredation; or

(B) Assists in the lethal removal of a wolf; and

(b) The legal description, location coordinates, or name that identifies any residential property, or ranch or farm that contains a residence, that is owned, leased, or used by any person included in (a) of this subsection;

(5) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040;



(6) (a) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h) (3) and (i), and Sec. 1881a(b)); and

(b) Fisheries related information that was collected by another state and is confidential under the laws of that state;

(7) The following tribal fish and shellfish harvest information, shared with the department of fish and wildlife:

- (a) Fisher name;
- (b) Fisher signature;
- (c) Total harvest value per species;
- (d) Total harvest value;
- (e) Price per pound; and
- (f) Tribal tax information; and

(8) The following commercial shellfish harvest information, shared with the department of fish and wildlife:

- (a) Individual farmer name;
- (b) Individual farmer signature;
- (c) Total harvest value per species;
- (d) Total harvest value;
- (e) Price per pound; and
- (f) Tax information.

**Sec. 3.** RCW 42.56.430 and 2018 c 214 s 2 are each amended to read as follows:

The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government

agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data must be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration;

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040;

(4) (a) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h) (3) and (i), and Sec. 1881a(b)); and

(b) Fisheries related information that was collected by another state and is confidential under the laws of that state;

(5) The following tribal fish and shellfish harvest information, shared with the department of fish and wildlife:

- (a) Fisher name;
- (b) Fisher signature;
- (c) Total harvest value per species;
- (d) Total harvest value;
- (e) Price per pound; and
- (f) Tribal tax information; and

(6) The following commercial shellfish harvest information, shared with the department of fish and wildlife:

- (a) Individual farmer name;
- (b) Individual farmer signature;
- (c) Total harvest value per species;
- (d) Total harvest value;

(e) Price per pound; and

(f) Tax information.

NEW SECTION. **Sec. 4.** Section 2 of this act expires June 30, 2027.

NEW SECTION. **Sec. 5.** Section 3 of this act takes effect June 30, 2027.

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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: Z-0352.1/23

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION: Modifying the department of fish and wildlife's habitat recovery pilot program.

AN ACT Relating to modifying the department of fish and wildlife's habitat recovery pilot program; and amending RCW 77.55.480.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 77.55.480 and 2021 c 75 s 2 are each amended to read as follows:

(1) The habitat recovery pilot program is created.

(2) (a) In order to be included in this statewide pilot program and qualify for the permit review and approval process created in this section, an environmental restoration project must directly benefit freshwater, estuarine, or marine fish, or the habitat they rely on, and must be included on a list of projects reviewed, approved, or funded by one of the following restoration programs:

(i) The Bonneville power administration restoration program;

(ii) The Brian Abbott fish barrier removal board;

(iii) The estuary and salmon restoration program;

(iv) The floodplains by design program;

- (v) The office of Chehalis basin aquatic species restoration program;
- (vi) The office of Columbia river habitat recovery projects;
- (vii) The Puget Sound acquisition and restoration fund;
- (viii) The Puget Sound national estuary program;
- (ix) The salmon recovery funding board;
- (x) The Washington coast restoration and resiliency initiative;
- (xi) The Yakima tributary access and habitat program;
- (xii) Fish recovery projects sponsored by a federally recognized tribe; and
- (xiii) Fish acclimation facility projects sponsored or operated by a federally recognized tribe.

(b) A project application reviewed under this section must document consistency with local, state, and federal flood risk reduction requirements. A project may not be reviewed under the process created in this section if the local government within whose geographical jurisdiction the project will be located determines that the project does not meet applicable flood risk reduction requirements, or otherwise determines that the project raises concerns regarding public health and safety, and the local government provides timely notice of its determination to the department.

(c) (i) With regard to cultural resources, a project applicant or funding agency must review the project with the department of archaeology and historic preservation and complete any required site surveys (~~((before the project applicant files an application under this section))~~). A project applicant must document consistency in the application with applicable cultural resource protection requirements.

(ii) A project applicant must provide a copy of its application to the department of archaeology and historic preservation ~~((7))~~ and to affected federally recognized tribes ~~((7, no fewer than 60 days before the application may be filed with the department))~~.

(iii) The department may not review a project under the expedited process created in this section if a cultural resource site is identified at the project site or if an affected federally recognized tribe withholds its consent that the project should be expedited according to the process set forth in this section. Such consent may be withheld upon a determination that the project may adversely impact cultural resources. Notice of such a determination must be provided to the department by the affected federally recognized tribe in a timely manner.

(iv) In the event of an inadvertent discovery of cultural resources or human remains, the project applicant shall immediately notify the department, the department of archaeology and historic preservation, and affected federally recognized tribes. In the event of an inadvertent discovery of cultural resources or human remains, existing requirements applicable to inadvertent discoveries of cultural resources and human remains, including those set forth in chapters 27.53, 27.44, and 68.60 RCW, apply.

(d) For those projects that require a lease or other land use authorization from the department of natural resources, the project applicant must include in its application for a permit under this section a signed joint aquatic resources permit application, attachment E. The project applicant must provide a copy of a completed application to the department of natural resources no fewer than 30 days before the application may be filed with the department. The department of natural resources must make a final decision on applications for projects under this section within 30 days of the issuance of a permit under this section.

(3) Fish recovery and fish habitat restoration projects meeting the criteria of subsection (2) of this section are expected to result in beneficial impacts to the aquatic environment. Projects approved for inclusion in this pilot program and that are reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2) and are not required to obtain local or state permits or approvals other than



the permit issued under this section, except permits minimally necessary as a requirement of participation in a federal program.

(4) (a) A permit under this chapter is required for projects that meet the criteria of subsection (2) of this section and must be reviewed and, if appropriate, approved under this section. An applicant shall use the department's online permitting system to apply for approval under this section and shall at the same time provide a copy of the application to the local government within whose geographical jurisdiction the project will be located, to the members of the multiagency permitting team created in this section, and to potentially affected federally recognized tribes.

(b) When the department concludes that a complete application has been submitted under this section and copies of the application have been provided as required in this section, the department shall provide notice to the local government within whose geographical jurisdiction the project will be located, to potentially affected federally recognized tribes, and to the members of the multiagency permitting team of receipt of a complete permit application.

(i) Unless the multiagency permitting team process described in this section is invoked, the department shall evaluate and make a decision on the application not sooner than 25 days, and not later than 45 days, after receipt of a complete permit application.

(ii) Within 25 days of receiving a copy of the complete project application, the local government within whose geographical jurisdiction the project would be located, any member of the multiagency permitting team, or a potentially affected federally recognized tribe may request that the department place the application on hold and immediately convene a meeting with the requesting entity and the multiagency permitting team to review and evaluate the project.

(iii) All parties involved in this review process shall work in good faith to expedite permitting and any party with concerns shall provide the basis for its concerns and potential pathways to address those concerns. Any party objecting to expedited permitting shall

provide a written basis for its objections to the department or the multiagency permitting team.

(iv) The multiagency review process may not exceed 45 days from the request for review.

(c) The multiagency permitting team consists of representatives of the local government in whose geographical jurisdiction the project would be located, the department, the department of ecology, the recreation and conservation office, the governor's salmon recovery office, the department of natural resources, and, when the project in question is located in the Puget Sound basin, the Puget Sound partnership. For projects located in the Puget Sound basin, meetings of the multiagency permitting team must be facilitated by the Puget Sound partnership. All other meetings of the multiagency permitting team must be facilitated by the recreation and conservation office.

(d) The department or, where applicable, the multiagency permitting team, shall exclude any project from the review and approval process created by this section if it concludes that the project may adversely impact human health, public safety, or the environment, or that the project's scope or complexity renders it inappropriate for expedited review.

(e) If the department or the multiagency permitting team determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant, the appropriate local government, and potentially affected federally recognized tribes of its determination. The applicant may reapply for approval of the project under generally applicable review and approval processes. If the multiagency permitting team determines that the review and approval process created by this section is appropriate for the proposed project, the hold on the application must be lifted and the department shall make a decision within the time that remains of the original 45-day decision deadline.

(f) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may appeal the decision as provided in RCW 77.55.021(8).

(g) The department shall, in a timely manner, provide a copy of any application seeking review under this section and shall thereafter coordinate with affected federally recognized tribes as it implements this section.

(5) No local or state government may require permits or charge fees other than the permit issued under this section, except permits minimally necessary as a requirement of participation in a federal program, for fish recovery pilot projects that meet the criteria of subsection (2) of this section and that are reviewed and approved according to the provisions of this section.

(6) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish recovery stimulus pilot project permitted by the department under the criteria of this section except upon proof of gross negligence or willful or wanton misconduct.

(7) This section expires June 30, 2025.

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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: Z-0353.1/23

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION: Concerning department of fish and wildlife authority with regard to certain nonprofit and volunteer organizations.

AN ACT Relating to department of fish and wildlife authority with regard to certain nonprofit and volunteer organizations; and adding a new section to chapter 77.12 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** A new section is added to chapter 77.12 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonprofit organization" means any:

(i) Organization described in section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and exempt from tax under section 501(a) of the internal revenue code; or

(ii) Not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(b) (i) "Volunteer" or "volunteer organization" means an individual or entity performing services for a nonprofit organization or a governmental entity who does not receive

compensation, other than reasonable reimbursement or allowances for expenses actually incurred, or any other thing of value, in excess of \$500 per year.

(ii) "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

(2) The department is authorized to carry out all activities necessary to achieve the purposes of this section including, but not limited to:

(a) Planning, construction, and operation of conservation, recreational sites, areas, roads, and trails developed or maintained by itself or in conjunction with any public agency, nonprofit organization, volunteer, or volunteer organization, including entering cooperative agreements for these purposes;

(b) Planning, construction, and operation of special facilities for educational, scientific, conservation, or experimental purposes by itself or in conjunction with any other public or private agency, including entering cooperative agreements for these purposes;

(c) Improvement of any lands by entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations for these purposes;

(d) Entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations regarding the use of lands managed by the department for the purpose of providing a benefit to lands managed by the department including, but not limited to, the following benefits:

(i) The utilization of these lands for watershed purposes;

(ii) Carrying out restoration and enhancement projects on these lands, such as improving, restoring, or enhancing habitat that provides for plant or animal species protection;

(iii) Improving, restoring, or enhancing watershed conditions;

(iv) Removing nonnative vegetation and providing vegetation management to restore, enhance, or maintain properly functioning conditions of the local ecosystem; and

(v) Other similar projects on these lands that provide long-term environmental and other land management benefits, provided that the cooperative agreements are consistent with land management obligations;

(e) Authorizing individual volunteers and volunteer organizations to conduct restoration and enhancement projects on lands managed by the department through cooperative agreements authorized in this section or other arrangements that are consistent with land management obligations and that do not require the volunteers to pay a fee for the cooperative agreement purpose; and

(f) Authorizing the receipt of gifts of personal property, services, and other items of value for the purposes of this section, as well as the exchange of consideration in cooperative agreements authorized under this section.

(3) Whenever volunteers or volunteer organizations are authorized to perform activities or carry out projects under this section, the volunteers or members of the volunteer organization may not be considered employees or agents of the department and the department is not subject to any liability whatsoever arising out of volunteer activities or projects. The liability of the department to volunteers and members of the volunteer organizations is limited in the same manner as provided for in RCW 4.24.210.

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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: Z-0354.2/23 2nd draft

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION: Concerning deer and elk damage to commercial crops.



AN ACT Relating to deer and elk damage to commercial crops; and amending RCW 77.36.080, 77.36.100, and 77.36.130.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 77.36.080 and 2009 c 333 s 60 are each amended to read as follows:

(1) Unless the legislature declares an emergency under this section, the department may pay no more than (~~thirty thousand dollars~~) \$300,000 per fiscal year from the general fund for claims and assessment costs for damage to commercial crops caused by wild deer or elk submitted under RCW 77.36.100.

(2)(a) The legislature may declare an emergency if weather, fire, or other natural events result in deer or elk causing excessive damage to commercial crops.

(b) After an emergency declaration, the department may pay as much as may be subsequently appropriated, in addition to the funds authorized under subsection (1) of this section, for claims and assessment costs under RCW 77.36.100. Such money shall be used to pay wildlife interaction claims only if the claim meets the

conditions of RCW 77.36.100 and the department has expended all funds authorized under RCW 77.36.070 or subsection (1) of this section.

**Sec. 2.** RCW 77.36.100 and 2013 c 329 s 4 are each amended to read as follows:

(1)(a) Except as limited by RCW 77.36.070, 77.36.080, 77.36.170, and 77.36.180, the department shall offer to distribute money appropriated to pay claims to the owner of commercial crops for damage caused by wild deer or elk or to the owners of livestock that has been killed by bears, wolves, or cougars, or injured by bears, wolves, or cougars to such a degree that the market value of the livestock has been diminished. Payments for claims for damage to livestock are not subject to the limitations of RCW 77.36.070 and 77.36.080, but may not, except as provided in RCW 77.36.170 and 77.36.180, exceed the total amount specifically appropriated therefor.

(b) Owners of commercial crops or livestock are only eligible for a claim under this subsection if:

(i) The commercial crop owner satisfies the definition of "eligible farmer" in RCW 82.08.855;

(ii) The conditions of RCW 77.36.110 have been satisfied; and

(iii) The damage caused to the commercial crop or livestock satisfies the criteria for damage established by the commission under (c) of this subsection.

(c) The commission shall adopt and maintain by rule criteria that clarifies the damage to commercial crops and livestock qualifying for compensation under this subsection. An owner of a commercial crop or livestock must satisfy the criteria prior to receiving compensation under this subsection. The criteria for damage adopted under this subsection must include, but not be limited to, a required minimum economic loss to the owner of the commercial crop or livestock, which may not be set at a value of less than (~~five hundred dollars~~) \$500.

(2) (a) Subject to the availability of nonstate funds, nonstate resources other than cash, or amounts appropriated for this specific purpose, the department may offer to provide compensation to offset wildlife interactions to a person who applies to the department for compensation for damage to property other than commercial crops or livestock that is the result of a mammalian or avian species of wildlife on a case-specific basis if the conditions of RCW 77.36.110 have been satisfied and if the damage satisfies the criteria for damage established by the commission under (b) of this subsection.

(b) The commission shall adopt and maintain by rule criteria for damage to property other than a commercial crop or livestock that is damaged by wildlife and may be eligible for compensation under this subsection, including criteria for filing a claim for compensation under this subsection.

(3) (a) To prevent or offset wildlife interactions, the department may offer materials or services to a person who applies to the department for assistance in providing mitigating actions designed to reduce wildlife interactions if the actions are designed to address damage that satisfies the criteria for damage established by the commission under this section.

(b) The commission shall adopt and maintain by rule criteria for mitigating actions designed to address wildlife interactions that may be eligible for materials and services under this section, including criteria for submitting an application under this section.

~~(4) ((An owner who files a claim under this section may appeal the decision of the department pursuant to rules adopted by the commission if the claim:~~

~~(a) Is denied; or~~

~~(b) Is disputed by the owner and the owner disagrees with the amount of compensation determined by the department.~~

~~(5))~~ The commission shall adopt rules setting limits and conditions for the department's expenditures on claims and assessments for commercial crops, livestock, other property, and mitigating actions. Unpaid claims in excess of available funds in

the current fiscal year are eligible for payment in the next state fiscal year. If additional funds are not provided by the legislature in the subsequent fiscal year, then no further payment may be made on the claim.

**Sec. 3.** RCW 77.36.130 and 2013 c 329 s 5 are each amended to read as follows:

(1) Except as otherwise provided in this section and as limited by RCW 77.36.100, 77.36.070, 77.36.080, 77.36.170, and 77.36.180, the cash compensation portion of each claim by the department under this chapter is limited to the lesser of:

(a) The value of the damage to the property by wildlife, reduced by the amount of compensation provided to the claimant by any nonprofit organizations that provide compensation to private property owners due to financial losses caused by wildlife interactions. The value of killed or injured livestock may be no more than the market value of the lost livestock subject to the conditions and criteria established by rule of the commission; or

(b) ~~((Ten thousand dollars))~~ \$30,000.

~~(2) ((The department may offer to pay a claim for an amount in excess of ten thousand dollars to the owners of commercial crops or livestock filing a claim under RCW 77.36.100 only if the outcome of an appeal filed by the claimant under RCW 77.36.100 determines a payment higher than ten thousand dollars.~~

~~(3))~~ All payments of claims by the department under this chapter must be paid to the owner of the damaged property and may not be assigned to a third party.

~~((4))~~ (3) The burden of proving all property damage, including damage to commercial crops and livestock, belongs to the claimant.

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