



## Fish and Wildlife Commission Presentation Summary Sheet

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**Meeting date:**

5/16/2025

**Agenda item:**

Deer and Elk commercial crop damage claim rule amendments CR102

**Presenter(s):**

Jim Brown, Conflict Section Manager, Landowner Services Division, Wildlife Program

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**Background summary:**

The department is required to adopt rules and processes for the implementation of commercial crop damage payments for wild deer or elk. These rule changes are necessary to provide clarity to the claim process and ensure that the necessary adjustor resources are available to comply with the requirements of RCW chapter 77.36.

When the deer and elk commercial crop damage rules were last significantly updated in 2013, the department did not have the number of claim filings to create the historical experience for both claimants and for staff as to how the process would apply, particularly across a myriad of crop types and crop growing situations that would be encountered. Over time, the department has determined some minor adjustments in rules would aid with the process of claim investigation and processing and has proposed rulemaking. None of the proposed amendments are believed to create new or extra costs or add claim preparation workload for the crop grower. The proposed rule changes are intended to clarify eligibility and process for claims, assessor fee payment process, and speedup claim processing, allowing suspension of claim process timelines for explicit reasons.

**Rule structure:**

Several code titling and other minor wording changes were made to clarify intent of the rule content. And clarify that they are only applicable for deer and elk commercial damage and, therefore, not for other species and clarify process flow steps. There are provisions in these rules that are duplicative between rules or, as in one case, superfluous and having nothing to do with claims filing or handling. That language is removed as unnecessary or confusing.

**Crop adjusters qualifications:**

In addition, the current rules provide an avenue for claimants to use department contracted crop adjusters to investigate claims and establish loss values with the assessment fees being shared between claimant and the department. Standards were originally established in rule that required that a crop adjuster to have both state license and federal crop adjuster certification to qualify. However, the department has historically contracted

with experienced crop adjusters that are retired from such employment and only handle claims for deer or elk commercial crop damage. As they are not employed by a federal crop insurance company, some contracted adjusters often cannot get the federal certification as it can only be obtained through such full time employment. And most federal crop insurance providers do not allow their adjusters to “moonlight” as contract assessors, even though the department does not compete with their business model. The department’s deer and elk commercial crop damage claim process is in addition to any multi-peril federal crop insurance program, not in competition with it.

Therefore, the department has determined that basic licensure of the available Washington state property-casualty license would be sufficient if, through the RFQ contracting application process, the potential contracted adjuster could be evaluated by the department for their experience with deer and elk crop damage investigation. An emergency rule has been in place for several months allowing this option for one of our existing adjusters while the department prepared for permanent rule making. The department believes that four years of actual deer and elk damage investigation experience as the minimum qualification for contractors is sufficient, while still maintaining the option of them having both state and federal licenses as an alternative to experience. And the department retains in rule the option of a claimant using and paying for their own adjuster if they use a Washington state licensed and federally certified adjuster as already exists in rule.

#### **Assessment, investigation, and claim processing clarification:**

Some crop types require multiple site crop adjuster visits due to the crop grown, such as cuttings of alfalfa, or agricultural practices involved. Language was added that clarifies in rule the “assessment fees” sharing is to be applied for each respective adjuster site visit, not just the first. The department already applies these sharing of “fees” this way, but the proposed language clarifies that in rule. Additionally, shared fee porting in existing rule is normally deducted from the claim award amount. However, we see a few claims every year that are never completed by the claimant or are found to be too low for claim, or otherwise are ineligible for payment after the assessment has already occurred. The department added proposed language to address collection of those shared fees where there is no claim award from which to deduct them from. This proposal clarifies that the claimant obligation remains and the department may bill them regardless of claim award outcome.

Another proposed change clarifies that when other causes of damage than deer or elk are observed, those other damages are to be separated out and accounted for when determining the deer or elk damage assessment.

A proposed change is being made allowing the department to pause processing the claim while awaiting an insurance claim process. Claims cannot be paid in excess of the crop value. Therefore, insurance payments already must be deducted from a deer or elk damage claim. When filed, insurance claims must be resolved before the remaining portion of the claim to the department can continue. The present rule was unclear the department could pause the required claim processing time limits if an insurance claim delay resulted in processing. The proposal also clarifies that the records surrounding the insurance claim are needed by the department, not the actual claim “payment” as the current rule now reads. The department needs to know what was claimed and the details around that to determine a state damage claim is not resulting in the claimant being double-paid for the same damage.

And lastly, the “order of priority” of identified assessment techniques language was removed. Those processes are not applicable in every situation or crop type. The department typically allows any of processes in existing rule to be used and they are not considered in any particular order. The crop type or growing situation typically dictates which process is best. In recognition of the variability of assessment methods, a proposal is added to explicitly allow the department to suspend claim processing and request additional assessment work or documentation to consider the assessment as complete.

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**Staff recommendation:**

Briefing only.

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

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

The proposed rulemaking, if adopted, seeks to clarify the following:

1. Allowing the department to continue to use contracted crop damage claim adjusters. To do so, the department must establish updated certification and experience standards for department-contracted crop adjusters. Since there was a change in the availability of federal crop insurance continuing education training for crop adjusters, there has been a decline in available crop adjusters resulting in the department being unable to comply with existing rule. Consequently, the department has been unable to carry out this statutory obligation to assess crop damage claims by current department contracted adjusters. This change will allow for the substitution of experience for the federal license and allow claims to continue to be processed by contracted crop adjusters with at least a Washington state license.
2. The handling of shared adjustor fees and clarify that shared costs apply for multiple site visits and for shared repayment where no claim is paid.
3. Removal of redundant or irrelevant language unrelated to claims that appear in multiple rules.
4. The department may suspend timelines to allow for further investigation of a claim and require submission of additional information to complete the processing of a claim.
5. How causes of damage other than crop damage by deer or elk are considered in the claim process.
6. The assessor processes acceptable for how the value of crop damage in a claim is assessed and is considered and that the processes are not needed to be in any order of preference.
7. That assessor reports are not automatically accepted and that the department may require additional steps or reports in order to verify that the assessment is accurate and complete.
8. That WAC 220-440-230 contains the process of appeal that is used for claim decision appeals filed under chapter 34.05 RCW.

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**Fiscal impacts of agency implementation:**

No fiscal impact

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

CR102 filed and public commenting is open until May 19, 2025.

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

Informational only, for now. Decision will be requested at a future meeting after public commenting has closed and the final proposal (if changes are recommended) is brought to you.

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**Draft motion language:**

NA

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**Post decision communications plan:**

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