

Wildlife Conflict WACs & RCWs

WAC 232-36-020 Purpose. Public support for the recovery and management of healthy wildlife populations is an important aspect of wildlife conservation. Support for wildlife can diminish when people experience negative interactions with wildlife and damage to private property. The intent of the department is to provide technical advice and assistance to property owners to prevent and mitigate damages caused by wildlife. Compensation may be necessary in situations where preventative measures are not successful or when circumstances, outside the control of the private property owner, get in the way of resolving negative wildlife interactions.

WAC 232-36-030 Definitions. Definitions used in rules of the fish and wildlife commission are defined in RCW 77.08.010, and the definitions for wildlife interactions are defined in RCW 77.36.010. In addition, unless otherwise provided, the following definitions are applicable to this chapter:

"Act of damaging" means that private property is in the process of being damaged by wildlife, and the wildlife are on the private property, which contains commercial crops, pasture, or livestock.

"Big game" means those animals listed in RCW 77.08.030.

"Claim" means an application to the department for compensation under this chapter.

"Claimant" means owner of commercial crop or livestock who has filed a wildlife damage claim for cash compensation.

"Commercial crop" means a commercially raised horticultural and/or agricultural product and includes the growing or harvested product, but does not include livestock, forest land, or rangeland. For the purposes of this chapter, Christmas trees and managed pasture grown using agricultural methods including one or more of the following: seeding, planting, fertilizing, irrigating, and all parts of horticultural trees, are considered a commercial crop and are eligible for cash compensation.

"Commercial livestock" means cattle, sheep, and horses held or raised by a person for sale.

"Compensation" means a cash payment, materials, or service.

"Completed written claim" means that all of the information required on a department crop or livestock damage claim form is supplied and complete, including all supplemental information and certifications required to process the claim.

"Damage" means economic losses caused by wildlife interactions.

"Damage claim assessment" means department approved methods to evaluate crop loss and value caused by deer or elk damage to

commercial crops, or livestock losses and value caused by bear, cougar, or wolves.

"Eligible farmer" means an owner who satisfies the definition of eligible farmer pursuant to RCW 82.08.855 (4)(b)(i) through (iv).

"Emergent" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, or fowl.

"Game animal" means wild animals that shall not be hunted except as authorized by the commission.

"Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

"Immediate threat of physical harm" means that animal-to-human bodily contact is imminent and the animal is in attack posture/mode.

"Owner" means a person who has a legal right to commercial crops, commercial livestock, or other private property that was damaged during a wildlife interaction.

"Physical act of attacking" means actual or imminent animal-to-human physical contact.

"Public hunting" means an owner satisfies the "public hunting" requirement for his or her land, as defined in WAC 232-36-300.

"Wild animal" means those species of the class Mammalia whose members exist in Washington in a wild state.

"Wildlife Control Operator" means a person who has successfully completed the training and obtained one or more levels of certification from the department to assist landowners in preventing or controlling problems caused by wildlife.

"Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, commercial livestock, or other property.

WAC 232-36-100 Payment for commercial crop damage--Limitations. Owners, who have worked with the department to prevent deer and elk damage, but continue to experience losses, may be eligible to file a damage claim and receive cash compensation from money appropriated by the legislature. Damages payable under this section are limited to the lost or diminished value of a commercial crop, whether growing or harvested, and shall be paid only to the owner of the crop at the time of damage, without assignment. Cash compensation for claims from deer and elk damage shall not include damage to other real or personal property, including other vegetation or animals, lost profits, consequential damages, or any other damages. The department is authorized to pay up to ten thousand dollars to the

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owner per claim.

Claims for cash compensation will be denied when:

- (1) The claim is for a noncommercial crop;
- (2) The owner of the commercial crop does not meet the definition of "eligible farmer" in RCW 82.08.855 (4)(b)(i) through (iv);
- (3) The loss estimate is less than one thousand dollars;
- (4) No claim will be processed unless the owner provides the department with an approved checklist of the preventative and nonlethal means that have been employed, and the owner has complied with the terms and conditions of his or her agreement(s) with the department;
- (5) An owner or lessee has accepted noncash compensation to offset crop damage in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for crop damages within the growing season of the damaged crop;
- (6) Damages to the commercial crops claimed are covered by insurance or are eligible for payment from other entities. Any portion of the actual damage not covered by others is eligible for compensation from the department;
- (7) The property where the damage occurred was not open to public hunting, consistent with WAC 232-36-300 for the species causing the damage, unless, as determined by the department, the property is inconsistent with hunting or hunting would not address the damage problem. This includes all properties owned or leased by the owner adjacent to, contiguous to, or in the vicinity of the property where crop damage occurred;
- (8) The crop is grown or stored on public property;
- (9) The owner or lessee fails to provide on-site access to the department or designee for inspection and investigation of alleged damage or to verify eligibility for a claim;
- (10) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within WAC 232-36-110;
- (11) The owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge;
- (12) The owner or designee has harvested commercial crops without an investigation completed under the direction of the department; or
- (13) The department has expended all funds appropriated for payment of such claims for the current fiscal year.

WAC 232-36-110 Application for cash compensation for commercial crop damage--Procedure. Pursuant to this section, the department may distribute money appropriated by the legislature to pay commercial crop damage caused by wild deer or elk in the amount of up to ten thousand dollars per claim, unless following an appeal the department is ordered to pay more (see RCW 77.36.130(2)). The department shall develop claim procedures and application forms consistent with this section for cash compensation of commercial crop damage. Partnerships with other public and private organizations to assist with completion of applications, assessment of damage, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Owners who have worked with the department to prevent deer or elk damage, yet who still experience loss and meet eligibility requirements, may file a claim for cash compensation.

(2) The claimant must notify the department within seventy-two hours of discovery of crop damage and at least seventy-two hours prior to harvest of the claimed crop.

(3) A complete, written claim must be submitted to the department within sixty days of when the damage stops.

(4) Owners may only file one claim per year. Multiple partners in a farming operation are considered one owner. Operations involving multiple partners must designate a "primary grower" to receive payment from the department.

(5) The claim form declaration must be signed, affirming that the information provided is factual and truthful per the certification set out in RCW 9A.72.085, before the department will process the claim.

(6) In addition to a completed claim form, an applicant must provide:

(a) A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service indicating the applicant's gross sales or harvested value of commercial crops for the previous tax year.

(b) The assessment method used consistent with WAC 232-36-120, valuation of property damage.

(c) Applicant must provide proof of ownership of claimed commercial crops or contractual lease of claimed commercial crops consistent with department procedural requirements for submission of documents.

(d) Written documentation of approved methodology used to assess and determine final crop

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loss and value.

(e) Applicant must provide records documenting average yield on claimed crop and parcel, certified yield reports, production reports and certified third-party weight certificates completed at the time weighed for claimed year, and other applicable documents that support yield loss and current market price. Current market price will be determined less transportation and cleaning costs when applicable.

(f) Declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this section, and that all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(g) Copy of the insurance policy and payment on the commercial crop where loss is claimed.

(h) Copy of application for other sources of loss compensation and any payment or denial documentation.

Damage claim assessment:

(7) Damage claim assessment of amount and value of commercial crop loss is the primary responsibility of the claimant. A crop damage evaluation and assessment must be conducted by a licensed crop insurance adjustor:

(a) The owner must submit a damage claim assessment prepared by a crop insurance adjustor licensed by the state of Washington and certified by the Federal Crop Insurance Service.

(b) The department will provide the claimant with a list of approved adjustors. The owner must select an adjustor from the approved list and arrange for the completion of a crop damage assessment. Adjustor fees will be the shared responsibility of the owner and the department.

(c) The department or the owner may accept the damage claim assessment provided by the licensed adjustor or may hire a state licensed adjustor of their choosing and conduct a separate assessment of the crop loss amount and value.

(8) Disagreement between the claimant and the department over the crop loss value may be settled through an adjudicative proceeding.

Settlement of claims:

(9) Subject to money appropriated to pay commercial crop damage, undisputed claims will be paid, less one half of the crop adjustor's fee or a maximum of six hundred dollars for the owner's share of the crop adjustor's fee. The crop adjustor's fee is not subject to the ten thousand dollar payment limit per owner.

(10) Compensation paid by the department,

in addition to any other compensation received by the claimant, may not exceed the total value of the assessed crop loss.

(11) The owner will be notified by the department upon completion of the evaluation and has sixty days to accept or appeal the department's offer for settlement of the claim, or the claim is considered satisfied and not subject to appeal.

(12) The department shall prioritize payment for commercial crop damage in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial crop damage during the first fiscal year of a biennium, the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take first priority and receive payment before any new claims are paid. Claims will not be carried from one biennium to the next.

WAC 232-36-120 Valuation methods for crop damage assessment.

Several methods may be used to determine the extent of a crop damaged by deer and elk and the lost value of the crop resulting from the damage. Assessment methods used by qualified crop adjustors licensed by the state and certified by the federal crop insurance service will be accepted by the department. Evaluation of crop losses must consider other impacts to crop production, including fertilization, irrigation, precipitation, weather, timing of planting or harvest, and weed control. The following methods are listed in preferred order based on reliability:

(1) Amount consumed - relies on wildlife-proof enclosures in the field; clipping similar sized plots inside and outside of enclosures; then comparing yields.

(2) Amount of stored crops consumed or damaged - determine the bales or pounds of stored crops consumed or destroyed; then determine replacement value.

(3) Replacement value of horticultural trees lost as a result of damage; partial loss due to damage can be estimated per tree based on the percentage destroyed.

(4) Damage vs. undamaged areas - using random sampling methods to compare the yields of damaged to undamaged portions of a field or two similar fields can provide an estimate of loss. Comparing similar fields assumes the fields are truly "similar" (soil type, aspect, slope, irrigation, fertilization, stand age, etc.).

(5) Animal use - count the number of animals causing damage and the number of days they were present; then estimate the percentage of daily intake provided by the crop (generally less than fifty

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percent), and the amount of waste, trampling, or trampling; the result should also consider the timing of the damage and potential recovery of the vegetation prior to crop harvest.

(6) Decrease from average yield - historic yields can be used for comparison; the difference between average yield and current yield may shed light on the extent of damage; changing weather or crop growing conditions from one year to the next make this technique less reliable.

WAC 232-36-300 Public hunting requirements. "Public hunting" generally means that land is open for licensed hunters. The intent of the provision in this chapter is to allow hunting at an appropriate time, manner, and level to help prevent property damage.

As specified in WAC 232-36-100, cash compensation will only be paid when the property where the damage occurred is open to public hunting. Public hunting is defined as:

(1) The landowner opens the property on which the damage or loss is claimed for general access to all licensed hunters during the season prior to the occurrence of damage; or

(2) The landowner has entered into and complied with any agreement with the department covering the land(s) on which the damage is claimed. Access agreements shall require that:

(a) The land is open to general access to licensed hunters; or

(b) The landowner allows the department to select a limited number of hunters who are authorized to access the land; or

(c) The landowner and the department determine how hunters will be selected and authorized to hunt on the landowner's property in order to effectively prevent damage.

RCW 82.08.85 Exemptions — Replacement parts for qualifying farm machinery and equipment.

(4) The definitions in this subsection apply to this section.

(a) "Agricultural products" has the meaning provided in RCW [82.04.213](#).

(b) "Eligible farmer" means:

(i) A farmer as defined in RCW [82.04.213](#) whose gross sales or harvested value of agricultural products grown, raised, or produced by that person is at least ten thousand dollars for the tax year immediately preceding the year in which an application for exemption under this section is submitted to the department;

(ii) The transferee of an exemption certificate under subsection (3)(c)(ii) of this section

where the transferred certificate expires before the transferee engages in farming operations for a full tax year, if the combined gross sales or harvested value of agricultural products that the transferor and transferee have grown, raised, or produced meet the requirements of (b)(i) of this subsection;

(iii) A farmer as defined in RCW [82.04.213](#), who does not meet the definition of "eligible farmer" in (b)(i) or (ii) of this subsection, and who did not engage in farming for the entire tax year immediately preceding the year in which application for exemption under this section is submitted to the department, because the farmer is either new to farming or newly returned to farming; or

(iv) Anyone who otherwise meets the definition of "eligible farmer" in this subsection except that they are not a "person" as defined in RCW [82.04.030](#).