

WILDLIFE CODE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

AN ACT RELATING TO FISH AND GAME; MODIFYING MEASURES TO MITIGATE DAMAGE BY BIG GAME; PROVIDING FOR REFUNDS OF SALES OF LICENSES, CERTIFICATES, OR PERMITS; DELETING STATUTORY PROVISIONS RELATING TO SEARCHES OF CERTAIN PLACES AND PROPERTY BY CONSERVATION OFFICERS WHICH ARE SUPERSEDED BY STATE AND FEDERAL CONSTITUTIONAL CASE LAW DECISIONS; REPEALING PROVISIONS REGARDING ASSAULT OF A CONSERVATION OFFICER; PROVIDING FOR REVIEW AND APPROVAL OF COOPERATIVE AGREEMENTS; SPECIFYING REQUIREMENTS FOR COOPERATIVE WILDLIFE MANAGEMENT UNIT AGENTS; AND REAUTHORIZING THE WILDLIFE HERITAGE ACT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

23-16-3.5, as last amended by Chapter 258, Laws of Utah 1997

23-19-38, as last amended by Chapter 211, Laws of Utah 1995

23-20-1, as last amended by Chapter 212, Laws of Utah 1992

23-22-1, as last amended by Chapter 260, Laws of Utah 1992

23-23-2, as last amended by Chapter 258, Laws of Utah 1997

63-55-223, as last amended by Chapters 15 and 134, Laws of Utah 1997

REPEALS:

23-20-26, as last amended by Chapter 60, Laws of Utah 1975

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **23-16-3.5** is amended to read:

23-16-3.5. Damage to livestock forage, fences, or irrigation equipment on private lands.

(1) If big game animals are damaging livestock forage, fences, or irrigation equipment on

private land or are consuming livestock forage on private land, the landowner or lessee may request the division to take action to prevent depredation.

(2) (a) Within a reasonable time, not to exceed 72 hours after receiving the request, the division shall investigate the situation. If it appears that depredation by big game may continue, the division may, after consulting with the landowner or lessee, take action appropriate for the extent of damage experienced or expected. Action taken may include:

(i) sending a representative onto the premises to control or remove the animals;

(ii) scheduling a depredation hunt; or

(iii) issuing tags to the landowner or lessee for the harvest of big game animals causing depredation.

(b) (i) The division shall specify the number and sex of the big game animals that may be taken pursuant to Subsection (2)(a)(iii). Control efforts shall be directed toward antlerless animals, sparing if possible, but not excluding, trophy animals.

(ii) Any tag issued for an antlered animal must be approved by the division director or the director's designee.

(c) The division and the landowner or lessee shall jointly determine the number of animals taken pursuant to Subsection (2)(a)(iii) of which the landowner or lessee may retain possession.

(3) (a) The division may implement the measures specified in Subsections (4) through (6) to mitigate damage to livestock forage, if:

(i) actions taken to control or remove depredating big game are not successful or are not likely to be successful; or

(ii) both the division and landowner or lessee determine the measure is preferable to immediately controlling or removing big game animals.

(b) (i) The measures specified in Subsections (4) through (6) may also be used to mitigate damage to fences or irrigation equipment on private land or cultivated crops from or upon cleared and planted land, if:

(A) the landowner or lessee elects to not file a claim under Section 23-16-4; or

(B) the landowner or lessee and the division agree upon a combination of mitigation

measures to be used pursuant to Subsections (4) through (6) and a payment of damage under Section 23-16-4.

(ii) The agreement must be made before a claim for damage is filed and the mitigation measures are taken.

(iii) A landowner or lessee who elects to pursue mitigation through the measures specified in Subsections (4) through (6) may not subsequently file a claim under Section 23-16-4, except as provided by an agreement made under Subsection (3)(b)(i).

(c) In determining appropriate mitigation, the division shall consider:

(i) the extent of damage experienced or expected; and

(ii) any revenue the landowner derives from participation in a cooperative wildlife management unit, use of landowner permits, and charging for hunter access.

(4) (a) (i) The division may issue tags to the landowner or lessee for the harvest of big game on the owner's or lessee's land during a general or special season hunt authorized by the Wildlife Board.

(ii) In accordance with rules adopted by the Wildlife Board, the division may issue tags to groups of landowners or lessees for the harvest of big game on their lands during a general or special season hunt authorized by the Wildlife Board.

(b) Any tag issued for an antlered animal must be approved by the division director or the director's designee.

(5) (a) (i) In accordance with rules adopted by the Wildlife Board, the division may allow a landowner or lessee to designate who shall receive big game permits to be used for hunting on the owner's or lessee's land during a general or special season hunt authorized by the Wildlife Board.

(ii) In accordance with rules adopted by the Wildlife Board, the division may allow groups of landowners or lessees to designate who shall receive big game permits to be used for hunting on their lands during a general or special season hunt authorized by the Wildlife Board.

(b) Any fee for accessing the owner's or lessee's land shall be determined by the owner or lessee.

(6) (a) The division may enter into a conservation lease with the owner or lessee of private

lands for a fee or other remuneration as compensation for depredation.

(b) Any conservation lease entered into under this section shall provide that the claimant may not unreasonably restrict hunting on the land or passage through the land to access public lands for the purpose of hunting, if those actions are necessary to control or mitigate damage by big game.

Section 2. Section **23-19-38** is amended to read:

23-19-38. Sales of licenses, certificates, or permits final -- Exceptions -- Reallocation of surrendered permits.

(1) Sales of all licenses, certificates, or permits are final, and no refunds may be made by the division except as provided in Subsection (2).

(2) The division may refund the amount of the license, certificate, or permit if:

(a) the division or the Wildlife Board discontinues the activity for which the license, certificate, or permit was obtained;

(b) the division determines that it has erroneously collected a fee;

(c) (i) a person is not able to participate in a permitted activity due to illness or injury;

(ii) the person furnishes verification of illness or injury from a physician; and

(iii) the permit is surrendered before the season for which the permit was issued begins; or

~~[(b)]~~ (d) the person to whom the license, certificate, or permit is issued dies prior to that person's being able to participate in the activity for which the license, certificate, or permit was obtained.

(3) The division director may reallocate surrendered permits in accordance with rules adopted by the Wildlife Board.

Section 3. Section **23-20-1** is amended to read:

23-20-1. Enforcement authority of conservation officers -- Seizure and disposition of property.

(1) Conservation officers of the division shall enforce the provisions of this title with the same authority and following the same procedures as other peace officers.

~~[(2)(a) Except as provided in Subsection (b), conservation officers may search vehicles, camps, or other places where wildlife may be possessed or stored, if there is:]~~

~~[(i) probable cause to believe that wildlife illegally taken or held may be found; and]
[(ii) a reasonable likelihood the wildlife evidence will be lost, destroyed, or hidden before a search warrant may be obtained.]~~

~~[(b) An occupied or unoccupied dwelling may not be searched without a search warrant.]~~

~~[(c)]~~ (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

~~[(d)]~~ (b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife shall be confiscated by the court and sold or otherwise disposed of by the division.

(ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

(iii) Migratory wildfowl may not be sold, but must be given to a charitable institution or used for other charitable purposes.

(3) (a) Materials and devices used for the unlawful taking or possessing of protected wildlife shall be seized, and upon a finding by the court that they were used in the unlawful taking or possessing of protected wildlife, the materials and devices shall be:

(i) confiscated by the court;

(ii) conveyed to the division; and

(iii) upon the expiration of time for appeal, sold at a public auction or otherwise disposed of by the division.

(b) Any proceeds from the sale of the material or device shall be deposited into the Wildlife Resources Account.

(4) (a) (i) As used in Subsection (4), "owner" means a person, other than a person with a security interest, having a property interest in or title to a vehicle and entitled to the use and possession of a vehicle.

(ii) "Owner" includes a renter or lessee of a vehicle.

(b) (i) Conservation officers may seize and impound a vehicle used for the unlawful taking or possessing of protected wildlife for any of the following purposes:

(A) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

(B) to search the vehicle as provided in Subsection (2)(a) or as provided by a search warrant;

or

(C) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or possessed.

(ii) The division shall store any seized vehicle in a public or private garage, state impound lot, or other secured storage facility.

(iii) A seized vehicle shall be released to the owner no later than 30 days after the date the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by a person who is charged with committing a felony under this title.

(c) (i) Upon a finding by a court that the person who used the vehicle for the unlawful taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be:

(A) confiscated by the court;

(B) conveyed to the division; and

(C) upon expiration of time for appeal, sold at a public auction or otherwise disposed of by the division.

(ii) Any proceeds from the sale shall be deposited into the Wildlife Resources Account.

(iii) If the vehicle is not confiscated by the court, it shall be released to the owner.

(d) (i) The owner of a seized vehicle is liable for the payment of any impound fee if the person who used the vehicle for the unlawful taking or possessing of wildlife is found by a court to be guilty of a violation of this title.

(ii) The owner of a seized vehicle is not liable for the payment of any impound fee or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:

(A) no charges are filed or all charges are dropped which involve the use of the vehicle for the unlawful taking or possessing of wildlife; or

(B) the person charged with using the vehicle for the unlawful taking or possessing of wildlife is found by a court to be not guilty.

Section 4. Section **23-22-1** is amended to read:

23-22-1. Cooperative agreements and programs authorized.

(1) The Division of Wildlife Resources may enter into cooperative agreements and programs with other state agencies, federal agencies, states, educational institutions, municipalities,

counties, corporations, organized clubs, landowners, associations, and individuals for purposes of wildlife conservation.

(2) Cooperative agreements that are policy in nature must be:

- (a) approved by the executive director of the Department of Natural Resources; and
- (b) reviewed by the Wildlife Board.

Section 5. Section **23-23-2** is amended to read:

23-23-2. Definitions.

As used in this chapter:

(1) "Cooperative wildlife management unit" or "unit" means a generally contiguous area of land open for hunting small game, waterfowl, or big game which is registered in accordance with this chapter and rules of the Wildlife Board.

(2) (a) "Cooperative wildlife management unit agent" means a person appointed by a landowner, landowner association, or landowner association operator to perform the functions described in Section 23-23-9.

(b) For purposes of this chapter, a cooperative wildlife management unit agent may not:

- (i) be appointed by the division or the state;
- (ii) be an employee or agent of the division [~~or the state~~];
- (iii) receive compensation from the division or the state to act as a cooperative wildlife management unit agent; or
- (iv) act as a peace officer or perform any duties of a peace officer without qualifying as a peace officer under Title 77, Chapter 1a, Peace Officer Designation.

(3) "Cooperative wildlife management unit authorization" means a card, label, ticket, or other identifying document authorizing the possessor to hunt small game or waterfowl in a cooperative wildlife management unit.

(4) "Cooperative wildlife management unit permit" means a permit authorizing the possessor to hunt big game in a cooperative wildlife management unit.

(5) "Division" means the Division of Wildlife Resources.

(6) "Landowner association" means a landowner or an organization of owners of private

lands who operates a cooperative wildlife management unit.

(7) (a) "Landowner association operator" means a person designated by a landowner association to operate the cooperative wildlife management unit.

(b) For purposes of this chapter, a landowner association operator may not:

- (i) be appointed by the division; or
- (ii) be an employee or agent of the division.

Section 6. Section **63-55-223** is amended to read:

63-55-223. Repeal dates, Title 23.

Title 23, Chapter 26, Wildlife Heritage Act, is repealed December 31, [~~1998~~] 2003.

Section 7. **Repealer.**

This act repeals:

Section **23-20-26, Assault or battery upon officer a class A misdemeanor.**