

**WILDLIFE REMEDIATION ON PRIVATE
PROPERTY**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

This act modifies the Wildlife Resources Code to amend provisions relating to big game animal damage to cultivated crops, forage, fences, or irrigation equipment on private land. This act requires the owner to provide the Division of Wildlife Resources with reasonable access to the owner's property to alleviate depredation, and provides remedial action considerations for the Division of Wildlife Resources to consider. This act provides a time limit, after notification of the Division of Wildlife Resources, within which the owner may kill big game animals. This act amends compensation provisions for damage caused by big game animals.

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

AMENDS:

23-16-3, as last amended by Chapter 66, Laws of Utah 1995

23-16-3.5, as last amended by Chapter 140, Laws of Utah 1998

23-16-4, as last amended by Chapter 28, Laws of Utah 1995

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

Section 1. Section **23-16-3** is amended to read:

23-16-3. Damage to cultivated crops by big game animals -- Notice to division -- Crop owner authorized to kill animals.

(1) (a) To obtain assistance from the division in removing big game animals that are damaging cultivated crops from or upon cleared and planted land, the owner of the crops shall immediately, upon discovery of the damage, notify the division.

(b) The notice must be made both orally and in writing.

(c) The owner must allow division personnel reasonable access to the property to verify and alleviate the depredation problem.

(2) (a) Upon being notified of the damage and after consulting with the owner of the crops,

the division shall take action to prevent further damage by big game animals which may include any or all of the following:

(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.

(d) In determining appropriate remedial action under this Subsection (2), the division shall consider:

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

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

(B) use of landowner permits;

(C) use of mitigation permits; and

(D) charging for hunter access.

(3) (a) [~~If the removal of big game animals is not accomplished in a reasonable time, not to exceed 72 hours, and it becomes necessary for the crop owner to~~] The landowner may kill big game animals if:

(i) it is necessary to protect cultivated crops from or upon cleared and planted land[~~, he may do so~~];

(ii) the division fails to remove the big game animals in a reasonable time, not to exceed 72 hours, after the division is given notice; and

(iii) the landowner kills the big game animal within 90 days, or some longer period if approved in writing by the division, after having first notified the division of the necessity of removing the animals.

(b) Immediately after making the kill, the crop owner shall notify the division.

(4) (a) The carcass of an animal killed pursuant to Subsection (3) shall become the property of the division and shall be disposed of by it.

(b) Any money derived from the sale of the animals shall be placed in the Wildlife Resources Account.

(5) For purposes of this section, cultivated crops may include crop residues that have forage value for livestock.

Section 2. 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, use of mitigation 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 3. Section **23-16-4** is amended to read:

**23-16-4. Compensation for damage to crops, fences, or irrigation equipment --
Limitations -- Appeals.**

(1) The division may provide compensation to claimants for damage caused by big game to:

(a) cultivated crops from or on cleared and planted land;

(b) fences on private land; or

(c) irrigation equipment on private land.

(2) For purposes of this section, "cultivated crops" includes crop residues that provide forage value for livestock.

(3) To be eligible to receive compensation as provided in this section, the claimant:

(a) must notify the division of the damage within 72 hours after the damage is discovered[-];
and

(b) allow division personnel reasonable access to the property to verify and alleviate the
depredation problem.

(4) (a) The appraisal of the damage shall be made by the claimant and the division as soon
after notification as possible.

(b) In determining damage payment, the division and claimant shall consider:

(i) the extent of damage experienced; and

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

(B) use of landowner permits;

(C) use of mitigation permits; and

(D) charging for hunter access.

~~(b)~~ (c) If the claimant and the division are unable to agree on a fair and equitable damage
payment, they shall designate a third party, consisting of one or more persons familiar with the crops,
fences, or irrigation equipment and the type of game animals doing the damage, to appraise the
damage.

(5) (a) Notwithstanding Section 63-38-3.2, the total amount of compensation that may be
provided by the division pursuant to this section and the total cost of fencing materials provided by
the division to prevent crop damage may not exceed the legislative appropriation for fencing material
and compensation for damaged crops, fences, and irrigation equipment.

(b) (i) Any claim of [~~\$500~~] \$1,000 or less may be paid after appraisal of the damage as
provided in Subsection (4), unless the claim brings the total amount of claims submitted by the
claimant in the fiscal year to an amount in excess of [~~\$500~~] \$1,000.

(ii) Any claim for damage to irrigation equipment may be paid after appraisal of the damage
as provided in Subsection (4).

(c) (i) Any claim in excess of [~~\$500~~] \$1,000, or claim that brings the total amount of claims
submitted by the claimant in the fiscal year to an amount in excess of [~~\$500~~] \$1,000, shall be treated

as follows:

(A) \$1,000 may be paid pursuant to the conditions of this section; and

(B) the amount in excess of \$1,000 may not be paid until the total amount of the approved claims of all the claimants and expenses for fencing materials for the fiscal year are determined.

(ii) If the total exceeds the amount appropriated by the Legislature pursuant to Subsection (5)(a), claims in excess of [~~\$500~~] \$1,000, or any claim that brings the total amount of a claimant's claims in a fiscal year to an amount in excess of [~~\$500~~] \$1,000, shall be prorated.

(6) The division may deny or limit compensation if the claimant:

(a) has failed to exercise reasonable care and diligence to avoid the loss or minimize the damage; or

(b) has unreasonably restricted hunting on land under the claimant's control or passage through the land to access public lands for the purpose of hunting, after receiving written notification from the division of the necessity of allowing such hunting or access to control or mitigate damage by big game.

(7) (a) The Wildlife Board shall make rules specifying procedures for the appeal of division actions under this section.

(b) Upon the petition of an aggrieved party to a final division action, the Wildlife Board may review the action on the record and issue an order modifying or rescinding the division action.

(c) A qualified hearing examiner may be appointed for purposes of taking evidence and making recommendations for a board order. The board shall consider the recommendations of the examiner in making decisions.

(d) Board review of final agency action and judicial review of final board action shall be governed by Title 63, Chapter 46b, Administrative Procedures Act.