

1 **UNLAWFUL TAKING OF GAME FISH**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Stephen D. Clark**

5 **This act modifies the Wildlife Resources Code to amend restitution amounts for certain**  
6 **game fish and wildlife species. ⚠ THIS ACT CONTAINS A COORDINATION CLAUSE. ⚠**

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

8 AMENDS:

9 **23-20-4**, as last amended by Chapter 265, Laws of Utah 1996

10 **23-20-4.5**, as last amended by Chapter 265, Laws of Utah 1996

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

12 Section 1. Section **23-20-4** is amended to read:

13 **23-20-4. Wanton destruction of protected wildlife -- Penalties.**

14 (1) A person is guilty of wanton destruction of protected wildlife if ~~he~~ that person:

15 (a) commits an act in violation of Section 23-13-4, 23-13-5, 23-13-13, 23-15-6 through  
16 23-15-9, 23-16-5, or Subsection 23-20-3(1);

17 (b) captures, injures, or destroys protected wildlife; and

18 (c) (i) does so with intentional, knowing, or reckless conduct as defined in Section  
19 76-2-103;

20 (ii) intentionally abandons protected wildlife or a carcass;

21 (iii) commits the offense at night with the use of a weapon;

22 (iv) is under a court or division revocation of a license, tag, permit, or certificate of  
23 registration; or

24 (v) acts for pecuniary gain.

25 (2) Subsection (1) does not apply to actions taken which are in accordance with the  
26 following:

27 (a) Title 4, Chapter 14, Utah Pesticide Control Act;



- 28 (b) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act; or
- 29 (c) Section 23-16-3.
- 30 (3) Wanton destruction of wildlife is punishable:
- 31 (a) as a third degree felony if:
- 32 (i) the aggregate value of the protected wildlife determined by the values in Subsection
- 33 23-20-4(4) is more than \$500; or
- 34 (ii) a trophy animal was captured, injured, or destroyed;
- 35 (b) as a class A misdemeanor if the aggregate value of the protected wildlife, other than
- 36 any trophy animal, determined by the values established in Subsection 23-20-4(4) is more than
- 37 \$250, but does not exceed \$500; and
- 38 (c) as a class B misdemeanor if the aggregate value of the protected wildlife
- 39 determined by the values established in Subsection 23-20-4(4) is \$250 or less.
- 40 (4) Regardless of the restitution amounts imposed under Subsection 23-20-4.5(2), the
- 41 following values shall be assigned to protected wildlife for the purpose of determining the
- 42 offense for wanton destruction of wildlife:
- 43 (a) \$1,000 per animal for:
- 44 (i) bison;
- 45 (ii) bighorn sheep;
- 46 (iii) rocky mountain goat;
- 47 (iv) moose;
- 48 (v) bear; [~~or~~]
- 49 (vi) peregrine falcon; or
- 50 [~~(vi)~~] (vii) endangered species;
- 51 (b) \$750 per animal for:
- 52 (i) elk; or
- 53 (ii) threatened species;
- 54 (c) \$500 per animal for:
- 55 (i) cougar;
- 56 (ii) golden eagle;
- 57 (iii) river otter; or
- 58 (iv) gila monster;

- 59 (d) \$400 per animal for:
- 60 (i) pronghorn antelope; or
- 61 (ii) deer;
- 62 (e) \$350 per animal for bobcat;
- 63 (f) \$100 per animal for:
- 64 (i) swan;
- 65 (ii) sandhill crane;
- 66 (iii) turkey;
- 67 (iv) pelican;
- 68 (v) loon;
- 69 (vi) egrets;
- 70 (vii) herons;
- 71 (viii) raptors, except those that are threatened or endangered;
- 72 (ix) Utah milk snake; or
- 73 (x) Utah mountain king snake;
- 74 (g) \$35 per animal for furbearers, except:
- 75 (i) bobcat;
- 76 (ii) river otter; and
- 77 (iii) threatened or endangered species;
- 78 (h) \$25 per animal for trout, char, salmon, grayling, tiger muskellunge, walleye,
- 79 largemouth bass, smallmouth bass, and wiper;
- 80 [~~(h)~~] (i) \$15 per animal for game birds, except:
- 81 (i) turkey;
- 82 (ii) swan; and
- 83 (iii) sandhill crane;
- 84 [~~(i)~~] (j) \$10 per animal for game fish not listed in Subsection (4)(h);
- 85 [~~(j)~~] (k) \$8 per pound dry weight of processed brine shrimp including eggs; and
- 86 [~~(k)~~] (l) \$5 per animal for protected wildlife not listed.
- 87 (5) For purposes of sentencing for a wildlife violation, a person who has been
- 88 convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory
- 89 sentencing requirements prescribed in ~~h~~ **[f] Subsection [j] [Section] h** 76-3-203 ~~h~~ **(2)(d)** ~~h~~ [~~(4)~~].

90 (6) As part of any sentence imposed, the court shall impose a sentence of incarceration  
91 of not less than 20 consecutive days for any person convicted of a third degree felony under  
92 Subsection (3)(a)(ii) who captured, injured, or destroyed a trophy animal for pecuniary gain.

93 (7) If a person has already been convicted of a third degree felony under Subsection  
94 (3)(a)(ii) once, each separate further offense under Subsection (3)(a)(ii) is punishable by, as  
95 part of any sentence imposed, a sentence of incarceration of not less than 20 consecutive days.

96 (8) The court may not sentence a person subject to Subsection (6) or (7) to less than 20  
97 consecutive days of incarceration or suspend the imposition of the sentence unless the court  
98 finds mitigating circumstances justifying lesser punishment and makes that finding a part of the  
99 court record.

100 Section 2. Section 23-20-4.5 is amended to read:

101 **23-20-4.5. Illegal taking, possession, or wanton destruction of protected wildlife --**  
102 **Restitution -- Reimbursable damages -- Assessment by magistrates -- Disposition of**  
103 **monies.**

104 (1) When a person is adjudged guilty of illegal taking, illegal possession, or wanton  
105 destruction of protected wildlife, other than any trophy animal, the court may order the  
106 defendant to pay restitution as set forth in Subsection (2), or a greater or lesser amount, for the  
107 value of each animal taken, possessed, or destroyed, unless the court finds that restitution is  
108 inappropriate.

109 (2) Suggested minimum restitution values for protected wildlife are as follows:

110 (a) \$1,000 per animal for:

111 (i) bison;

112 (ii) bighorn sheep;

113 (iii) rocky mountain goat;

114 (iv) moose;

115 (v) bear; [or]

116 (vi) peregrine falcon; or

117 [~~(vi)~~] (vii) endangered species;

118 (b) \$750 per animal for:

119 (i) elk; or

120 (ii) threatened species;

- 121 (c) \$500 per animal for:
- 122 (i) cougar;
- 123 (ii) golden eagle;
- 124 (iii) river otter; or
- 125 (iv) gila monster;
- 126 (d) \$400 per animal for:
- 127 (i) pronghorn antelope; or
- 128 (ii) deer;
- 129 (e) \$350 per animal for bobcat;
- 130 (f) \$100 per animal for:
- 131 (i) swan;
- 132 (ii) sandhill crane;
- 133 (iii) turkey;
- 134 (iv) pelican;
- 135 (v) loon;
- 136 (vi) egrets;
- 137 (vii) herons;
- 138 (viii) raptors, that are threatened or endangered;
- 139 (ix) Utah milk snake; or
- 140 (x) Utah mountain king snake;
- 141 (g) \$35 per animal for furbearers, except:
- 142 (i) bobcat;
- 143 (ii) river otter; and
- 144 (iii) threatened or endangered species;
- 145 (h) \$25 per animal for trout, char, salmon, grayling, tiger muskellunge, walleye,
- 146 largemouth bass, smallmouth bass, and wiper;
- 147 [~~(h)~~] (i) \$15 per animal for game birds, except:
- 148 (i) turkey;
- 149 (ii) swan; and
- 150 (iii) sandhill crane;
- 151 [~~(i)~~] (j) \$10 per animal for game fish not listed in Subsection (2)(h);

152           ~~[(j)]~~ (k) \$8 per pound dry weight of processed brine shrimp including eggs; and  
 153           ~~[(k)]~~ (l) \$5 per animal for protected wildlife not listed.

154           (3) If the court finds that restitution is inappropriate or if the value imposed is less than  
 155 the suggested minimum value as provided in Subsection (2), the court shall make the reasons  
 156 for the decision part of the record.

157           (4) The court shall order any person convicted of a third degree felony under  
 158 Subsection 23-20-4(3)(a)(ii) to pay restitution. Minimum restitution values for trophy animals  
 159 are as follows:

160           (a) \$30,000 per animal for bighorn, desert, or rocky mountain sheep;

161           (b) \$8,000 per animal for deer;

162           (c) \$8,000 per animal for elk;

163           (d) \$6,000 per animal for moose or mountain goat;

164           (e) \$6,000 per animal for bison; and

165           (f) \$2,000 per animal for pronghorn antelope.

166           (5) Any restitution shall be remitted to the division and deposited in the Wildlife  
 167 Resources Account.

168           (6) Restitution monies shall be used by the division for activities and programs to help  
 169 stop poaching, including:

170           (a) educational programs on wildlife crime prevention;

171           (b) acquisition and development of wildlife crime detection equipment;

172           (c) operation and maintenance of anti-poaching projects; and

173           (d) wildlife law enforcement training.

174           (7) If restitution is required it shall be in addition to:

175           (a) any other fine or penalty imposed for a violation of any provision of this title; and

176           (b) any remedial action taken to revoke or suspend a person's license, permit, tag, or  
 177 certificate of registration.

178           (8) A judgment imposed under this section constitutes a lien when recorded in the  
 179 judgment docket and shall have the same effect and is subject to the same rules as a judgment  
 180 for money in a civil action.

180a           **h SECTION 2. COORDINATION CLAUSE.**

180b           **IF THIS BILL AND H.B. 209, SENTENCING FOR USE OF DANGEROUS WEAPON, BOTH PASS,**  
 180c **IT IS THE INTENT OF THE LEGISLATURE THAT THE OFFICE OF LEGISLATIVE RESEARCH AND**  
 180d **GENERAL COUNSEL IN PREPARING THE DATABASE FOR PUBLICATION, SHALL CHANGE THE**  
 180e **REFERENCE IN SUBSECTION 23-20-4 TO SUBSECTION 76-3-203(2)(d) IN THIS BILL TO SUBSECTION**  
 180f **76-3-203.8(3). h**

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**Legislative Review Note**

as of 1-29-03 4:53 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

Provisions of this bill may increase revenues to the Division of Wildlife Resources as a result of restitution payments for illegal takings of wildlife. It is estimated that new revenues will be less than \$1,000.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
GF Restrict-Wildlife Res.	\$0	\$0	\$1,000	\$1,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,000</b>	<b>\$1,000</b>

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**Individual and Business Impact**

Individuals found guilty of illegally taking wildlife may pay higher fines.

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