

**DAMAGE ON PRIVATE LAND BY BIG GAME
ANIMALS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen H. Urquhart

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. The act modifies the conditions under which a landowner may kill big game animals damaging cultivated crops. The act provides for a mitigation review panel which, under certain circumstances, reviews depredation mitigation plans proposed by the Division of Wildlife Resources. The act makes technical changes. The act provides a coordination clause.

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

AMENDS:

23-16-3, as last amended by Chapter 232, Laws of Utah 2002

23-16-4, as last amended by Chapter 232, Laws of Utah 2002

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

ENACTS:

23-16-1.1, Utah Code Annotated 1953

23-16-3.1, Utah Code Annotated 1953

23-16-3.2, Utah Code Annotated 1953

REPEALS:

23-16-3.5, as last amended by Chapter 232, Laws of Utah 2002

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

Section 1. Section **23-16-1.1** is enacted to read:

23-16-1.1. Definitions.

As used in this chapter:

(1) "Cultivated crops" means:

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

(b) crop residues that have forage value for livestock.

(2) "Depredation mitigation plan" means the plan described in Subsection 23-16-3(2).

(3) "Mitigation review panel" means the panel created under Section 23-16-3.2.

Section 2. Section **23-16-3** is amended to read:

23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation equipment by big game animals -- Notice to division.

(1) (a) ~~[To obtain assistance from the division in removing]~~ If big game animals [that] are damaging cultivated crops [from or upon cleared and planted], livestock forage, fences, or irrigation equipment on private land, the [owner of the crops] landowner or lessee shall immediately, upon discovery of the damage, [notify] request that the division take action to alleviate the depredation problem.

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

~~[(c)]~~ (b) The [owner must] landowner or lessee shall allow division personnel reasonable access to the property sustaining damage to verify and alleviate the depredation problem.

(2) (a) ~~[Upon being notified of the damage and after consulting with the owner of the crops,]~~ Within 72 hours after receiving the request for action under Subsection (1)(a), the division shall [take action to prevent further damage by big game animals which may include any or all of the following:] investigate the situation, and if it appears that depredation by big game animals may continue, the division shall:

(i) remove the big game animals causing depredation; or

(ii) implement a depredation mitigation plan which has been approved, in writing, by the landowner or lessee.

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

(b) A depredation mitigation plan may provide for any or all of the following:

~~[(ii)]~~ (i) the scheduling of a depredation hunt; [or]

~~[(iii)]~~ (ii) issuing [tags] permits to the [landowner or lessee for the harvest of] landowners or lessees, to take big game animals causing depredation[-] during a general or special season hunt authorized by the Wildlife Board;

(iii) allowing landowners or lessees to designate recipients who may obtain a mitigation permit to take big game animals on the landowner's or lessee's land during a general or special season hunt authorized by the Wildlife Board; or

(iv) a description of how the division will assess and compensate the landowner or lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

~~[(b)]~~ (c) (i) The division shall specify the number and sex of the big game animals that may be taken pursuant to ~~[Subsection (2)(a)(iii)]~~ Subsections (2)(b)(ii) and (iii).

(ii) Control efforts shall be directed toward antlerless animals~~[, sparing], if possible~~~~[, but not excluding trophy animals].~~

~~[(ii)]~~ (d) ~~[Any tag]~~ A permit issued for an antlered animal must be approved by the division director or the director's designee.

~~[(e)]~~ (e) The division and the landowner or lessee shall jointly determine the number of animals taken pursuant to ~~Subsection (2)(a)(iii)]~~ (b)(ii) of which the landowner or lessee may retain possession.

~~[(f)]~~ (f) 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 association permits;
 - (C) use of mitigation permits; and
 - (D) charging for hunter access.

~~[(3) (a) The landowner may kill big game animals if:]~~

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

~~[(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.]~~

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

(4) (a) If the landowner or lessee who approved the depredation mitigation plan under Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or lessee may revoke his or her approval of the plan and again request that the division take action pursuant to Subsection (2)(a)(i).

(b) A subsequent request for action provided under Subsection (4)(a) shall be considered to be a new request for purposes of the 72-hour time limit specified in Subsection (2)(a).

(5) (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 **23-16-3.1** is enacted to read:

23-16-3.1. Crop owner authorized to kill animals.

(1) (a) A landowner or lessee may kill big game animals damaging those cultivated crops on private land if:

(i) it is necessary to protect cultivated crops;

(ii) 72 hours has expired since notice was given pursuant to Subsection 23-16-3(2)(a)(i);

(iii) the landowner or lessee has provided or sent written notice of an intent to kill the big game animal to the nearest regional office;

(iv) the landowner or lessee kills the big game animal within 90 days, or a longer period, if approved, in writing, by the division, after having requested that the division take action to prevent depredation under Subsection 23-16-3(2)(a)(i); and

(v) the killing is not prohibited by Subsection (2)(a) or (3).

(b) Immediately after killing a big game animal under Subsection (1)(a), the landowner or lessee shall notify the division of the killing.

(c) The carcass of an animal killed under Subsection (1)(a) shall become the property of the division and shall be disposed of by the division.

(d) Any money derived from the sale of animals killed shall be placed in the Wildlife Resources Account created in Section 23-14-13.

(2) (a) The division director may prohibit the killing of big game animals under Subsection (1)(a) if, within 72 hours after a landowner or lessee has requested that the division take action to remove depredating animals, the division:

(i) determines that the restitution value of the big game animal or animals, as established under Section 23-20-4.5, is more than twice the estimated value of the cultivated crops that have been or will be damaged or consumed;

(ii) determines that the prohibition is consistent with the management plan established under Section 23-16-7;

(iii) notifies the landowner or lessee of the prohibition; and

(iv) offers the landowner or lessee a depredation mitigation plan.

(b) A landowner or lessee who is offered a depredation mitigation plan may:

(i) accept the plan in writing; or

(ii) refuse to accept the plan and appeal the plan, in writing, to the division director.

(3) After a landowner or lessee has killed a big game animal under Subsection (1)(a), the division director may prohibit any further killing of big game animals if:

(a) the division takes the actions described in Subsections (2)(a)(i) through (iv); and

(b) the mitigation review panel reviews and approves the deprecation mitigation plan.

Section 4. Section **23-16-3.2** is enacted to read:

23-16-3.2. Mitigation review panel.

(1) A mitigation review panel may be convened to review the deprecation mitigation plans.

(2) Membership of the mitigation review panel shall consist of:

(a) the division director or the director's designee;

(b) (i) the commissioner of the Department of Agriculture and Food or the commissioner's designee; or

(ii) a representative of agricultural interests appointed by the commissioner of the Department of Agriculture and Food; and

(c) a representative of Utah State University Extension Service appointed by the Vice President and Dean for University Extension.

(3) (a) The division director shall convene a mitigation review panel if:

(i) a landowner or lessee appeals a deprecation mitigation plan under Subsection 23-16-3.1(2)(b)(ii); or

(ii) the division director requests review of a deprecation mitigation plan.

(b) Within five business days of an appeal under Subsection 23-16-3.1(2)(b)(ii) or a division request for review under Subsection 23-16-3.1(3)(b), the mitigation review panel shall review the deprecation mitigation plan and approve or modify the plan.

(4) Judicial review of a mitigation review panel action shall be governed by Title 63, Chapter 46b, Administrative Procedures Act.

Section 5. 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)]~~ (2) 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)]~~ (3) (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 association permits;
 - (C) use of mitigation permits; and
 - (D) charging for hunter access.

(c) In determining how to assess and compensate for damages to cultivated crops, the division's determination shall be based on the:

(i) full replacement value in the local market of the cultivated crops that actually have been or will be damaged or consumed by big game animals; and

(ii) cost of delivery of a replacement crop to the location of the damaged crop or other location that is not farther from the source of the replacement crop.

~~[(c)]~~ (d) 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)]~~ (4) (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 \$1,000 or less may be paid after appraisal of the damage as provided in Subsection ~~[(4)]~~ (3), unless the claim brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of \$1,000.

(ii) Any claim for damage to irrigation equipment may be paid after appraisal of the damage as provided in Subsection ~~[(4)]~~ (3).

(c) (i) Any claim in excess of \$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 \$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)]~~ (4)(a), claims in excess of \$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 \$1,000, shall be prorated.

~~[(6)]~~ (5) 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)]~~ (6) (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.

Section 6. Section **23-20-4** is amended to read:

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

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

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

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

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

(ii) intentionally abandons protected wildlife or a carcass;

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

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

(v) acts for pecuniary gain.

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

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

(b) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act; or

(c) Section [~~23-16-3~~] 23-16-3.1.

(3) Wanton destruction of wildlife is punishable:

(a) as a third degree felony if:

(i) the aggregate value of the protected wildlife determined by the values in Subsection ~~[23-20-4]~~(4) is more than \$500; or

(ii) a trophy animal was captured, injured, or destroyed;

(b) as a class A misdemeanor if the aggregate value of the protected wildlife, other than any trophy animal, determined by the values established in Subsection ~~[23-20-4]~~(4) is more than \$250, but does not exceed \$500; and

(c) as a class B misdemeanor if the aggregate value of the protected wildlife determined by the values established in Subsection ~~[23-20-4]~~(4) is \$250 or less.

(4) Regardless of the restitution amounts imposed under Subsection 23-20-4.5(2), the following values shall be assigned to protected wildlife for the purpose of determining the offense for wanton destruction of wildlife:

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

(i) bison;

(ii) bighorn sheep;

(iii) rocky mountain goat;

(iv) moose;

(v) bear; or

(vi) endangered species;

(b) \$750 per animal for:

(i) elk; or

(ii) threatened species;

(c) \$500 per animal for:

(i) cougar;

(ii) golden eagle;

(iii) river otter; or

(iv) gila monster;

(d) \$400 per animal for:

(i) pronghorn antelope; or

- (ii) deer;
- (e) \$350 per animal for bobcat;
- (f) \$100 per animal for:
 - (i) swan;
 - (ii) sandhill crane;
 - (iii) turkey;
 - (iv) pelican;
 - (v) loon;
 - (vi) egrets;
 - (vii) herons;
 - (viii) raptors, except those that are threatened or endangered;
 - (ix) Utah milk snake; or
 - (x) Utah mountain king snake;
- (g) \$35 per animal for furbearers, except:
 - (i) bobcat;
 - (ii) river otter; and
 - (iii) threatened or endangered species;
- (h) \$15 per animal for game birds, except:
 - (i) turkey;
 - (ii) swan; and
 - (iii) sandhill crane;
- (i) \$10 per animal for game fish;
- (j) \$8 per pound dry weight of processed brine shrimp including eggs; and
- (k) \$5 per animal for protected wildlife not listed.

(5) For purposes of sentencing for a wildlife violation, a person who has been convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory sentencing requirements prescribed in Subsection 76-3-203[~~(4)~~] (2)(d).

(6) As part of any sentence imposed, the court shall impose a sentence of incarceration of

not less than 20 consecutive days for any person convicted of a third degree felony under Subsection (3)(a)(ii) who captured, injured, or destroyed a trophy animal for pecuniary gain.

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

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

Section 7. Repealer.

This act repeals:

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

Section 8. Coordination clause.

If this bill and H.B. 209, Sentencing for Use of Dangerous Weapon, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the database for publication, shall change the reference from Subsection 76-3-203(2)(d) in this bill, contained in Subsection 23-20-4(5), to Subsection 76-3-203.8(3).