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**BIG GAME AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Casey Snider**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to depredation by big game.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition provision;
- ▶ modifies provisions related to damage to cultivated crops, livestock forage, fences, or irrigation equipment;
- ▶ addresses under what circumstances a landowner or lessee may kill a big game animal;
- ▶ amends provisions related to compensation for damage caused by a big game animal;
- ▶ addresses appeals; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**23-16-1.1**, as enacted by Laws of Utah 2003, Chapter 228



- 28 **23-16-3**, as last amended by Laws of Utah 2011, Chapter 297
- 29 **23-16-3.1**, as enacted by Laws of Utah 2003, Chapter 228
- 30 **23-16-3.2**, as last amended by Laws of Utah 2008, Chapter 382
- 31 **23-16-4**, as last amended by Laws of Utah 2011, Chapter 297

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

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

35 **23-16-1.1. Definitions.**

36 As used in this chapter:

37 (1) "Cultivated crops" means:

38 (a) annual crops harvested from or on cleared and planted land; ~~and~~

39 (b) perennial orchard trees on cleared and planted land; and

40 ~~[(b)]~~ (c) crop residues that have forage value for livestock.

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

42 (3) "Growing season" means the portion of a year in which local conditions permit  
43 normal plant growth.

44 (4) "Management unit" means a prescribed area of contiguous land designated by the  
45 division for the purpose of managing a species of big game animal.

46 ~~[(3)]~~ (5) "Mitigation review panel" means the panel created under Section **23-16-3.2**.

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

48 **23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation**  
49 **equipment by a big game animal -- Notice to division -- Depredation mitigation plan.**

50 (1) (a) If on private land a big game ~~[animals are damaging]~~ animal damages cultivated  
51 crops, livestock forage, fences, or irrigation equipment ~~[on private land]~~, the landowner or  
52 lessee shall ~~[immediately, upon]~~, within three business days of discovery of the damage,  
53 request that the division take action to alleviate the depredation problem.

54 (b) The landowner or lessee shall allow division personnel reasonable access to the  
55 property sustaining damage to verify and alleviate the depredation problem.

56 (2) (a) Within ~~[72 hours]~~ three business days after receiving the request for action  
57 under Subsection (1)(a), the division shall investigate the situation, and if it appears that  
58 depredation by a big game ~~[animals]~~ animal may continue, the division shall:

- 59 (i) remove the big game [~~animals~~] animal causing depredation; or
- 60 (ii) implement a depredation mitigation plan [~~which has been~~] that is approved, in
- 61 writing, by the landowner or lessee.
- 62 (b) A depredation mitigation plan may provide for any or all of the following:
- 63 (i) the scheduling of a depredation hunt;
- 64 (ii) issuing permits to the landowners or lessees, to take a big game [~~animals~~] animal
- 65 causing depredation during a general or special season hunt authorized by the Wildlife Board;
- 66 (iii) allowing landowners or lessees to designate recipients who may obtain a
- 67 mitigation permit to take a big game [~~animals~~] animal on the landowner's or lessee's land
- 68 during a general or special season hunt authorized by the Wildlife Board; or
- 69 (iv) a description of how the division will assess and compensate the landowner or
- 70 lessee under Section [23-16-4](#) for damage to cultivated crops, fences, or irrigation equipment.
- 71 (c) (i) The division shall specify the number and sex of the big game animals that may
- 72 be taken pursuant to Subsections (2)(b)(ii) and (iii).
- 73 (ii) Control efforts shall be directed toward antlerless animals, if possible.
- 74 (d) A permit issued for an antlered animal shall be approved by the division director or
- 75 the director's designee.
- 76 (e) The division and the landowner or lessee shall jointly determine the number of big
- 77 game animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may
- 78 retain possession.
- 79 (f) In determining appropriate remedial action under this Subsection (2), the division
- 80 shall consider:
- 81 (i) the extent of damage experienced or expected in a single growing season; and
- 82 (ii) any revenue the landowner derives from:
- 83 (A) participation in a cooperative wildlife management unit;
- 84 (B) use of landowner association permits;
- 85 (C) use of mitigation permits; and
- 86 (D) charging for hunter access.
- 87 (3) Any fee for accessing the owner's or lessee's land shall be determined by the
- 88 landowner or lessee.
- 89 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under

90 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or  
91 lessee may revoke [~~his or her~~] the landowner's or lessee's approval of the plan and again request  
92 that the division take action pursuant to Subsection (2)(a)(i).

93 (b) A subsequent request for action provided under Subsection (4)(a) shall be  
94 considered to be a new request for purposes of the [~~72-hour~~] three-business day time limit  
95 specified in Subsection (2)(a).

96 (5) (a) The division may enter into a conservation lease with the owner or lessee of  
97 private lands for a fee or other remuneration as compensation for depredation.

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

102 Section 3. Section **23-16-3.1** is amended to read:

103 **23-16-3.1. Landowner or lessee authorized to kill big game animals.**

104 (1) (a) A landowner or lessee may kill a big game [~~animals~~] animal damaging those  
105 cultivated crops on private land if:

106 (i) it is necessary to protect cultivated crops;

107 (ii) [~~72 hours has expired~~] three business days have passed since notice was given  
108 pursuant to Subsection **23-16-3(1)(a)**;

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

111 (iv) the landowner or lessee kills the big game animal within 90 days, or a longer  
112 period, if approved, in writing, by the division, after having requested that the division take  
113 action to prevent depredation under Subsection **23-16-3(1)(a)**; and

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

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

117 (c) The carcass of [~~an~~] a big game animal killed under Subsection (1)(a) [~~shall become~~]  
118 is the property of the division and [~~shall be disposed of by the division~~] the division shall  
119 dispose of the carcass.

120 (d) [~~Any money~~] Money derived from the sale of [~~animals~~] a big game animal killed

121 shall be placed in the Wildlife Resources Account created in Section 23-14-13.

122 (e) A landowner or lessee who kills a big game animal pursuant to this section shall:

123 (i) make reasonable effort to prevent the big game animal from wasting; and

124 (ii) provide the division reasonable access to the landowner's or lessee's land to retrieve

125 and dispose of the big game animal.

126 (2) (a) The division director may prohibit the killing of a big game [animals] animal  
127 under Subsection (1)(a) if, within [72 hours] three business days after a landowner or lessee has  
128 requested that the division take action to remove a depredating [animals] big game animal, the  
129 division:

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

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

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

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

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

138 (i) accept the plan in writing; or

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

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

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

143 or

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

145 Section 4. Section 23-16-3.2 is amended to read:

146 **23-16-3.2. Mitigation review panel.**

147 (1) A mitigation review panel may be convened to review ~~[the]~~:

148 (a) a depredation mitigation [plans.] plan; or

149 (b) division action under Section 23-16-4.

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

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

- 152 (b) (i) the commissioner of the Department of Agriculture and Food or the
- 153 commissioner's designee; or
- 154 (ii) a representative of agricultural interests appointed by the commissioner of the
- 155 Department of Agriculture and Food; and
- 156 (c) a representative of Utah State University Extension Service appointed by the Vice
- 157 President and Dean for University Extension.

- 158 (3) (a) The division director shall convene a mitigation review panel if:
- 159 (i) a landowner or lessee appeals a depredation mitigation plan under Subsection
- 160 23-16-3.1(2)(b)(ii); ~~[or]~~
- 161 (ii) the division director requests review of a depredation mitigation plan~~[-];~~ or
- 162 (iii) the division receives a petition of an aggrieved party to a final division action
- 163 under Section 23-16-4.

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

167 (c) A mitigation review panel shall act on a petition described in Subsection (3)(a)(iii)  
 168 in accordance with rules made by the Wildlife Board under Subsection 23-16-4(6).

169 (4) Judicial review of a mitigation review panel action ~~[shall be]~~ under this section is  
 170 governed by Title 63G, Chapter 4, Administrative Procedures Act.

171 Section 5. Section **23-16-4** is amended to read:

172 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**  
 173 **Limitations -- Appeals.**

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

- 176 (a) cultivated crops ~~[from or on cleared and planted]~~ on private land;
- 177 (b) fences on private land; or
- 178 (c) irrigation equipment on private land.

179 (2) To be eligible to receive compensation as provided in this section, the claimant  
 180 shall:

- 181 (a) notify the division of the damage within ~~[72 hours]~~ three business days after the
- 182 damage is discovered; and

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

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

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

188 (i) the extent of damage experienced; and

189 (ii) any revenue the landowner derives from:

190 (A) participation in a cooperative wildlife management unit;

191 (B) use of landowner association permits;

192 (C) use of mitigation permits; and

193 (D) charging for hunter access.

194 (c) The division and claimant may not include speculative damages or claims of future  
195 value in an appraisal or damage payment under this section.

196 (d) The division may deduct revenue received by the landowner or the landowner's  
197 lessee from wildlife related activities described in Subsection (3)(b) for the lands owned or  
198 leased within the management unit where the big game animal damage occurs.

199 ~~[(e)]~~ (e) In determining how to assess and compensate for damages to cultivated crops,  
200 the division's determination shall be based on the:

201 (i) estimated number of big game animals that damaged or consumed cultivated crops;

202 (ii) estimated quantity of cultivated crops damaged or consumed by a big game animal;

203 ~~[(i)]~~ (iii) [full replacement value in the local market] local market value of the

204 cultivated crops that actually have been or will be damaged or consumed by a big game

205 ~~[animals]~~ animal; and

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

208 (iv) other documented costs directly incurred by the landowner or lessee because of  
209 damage to cultivated crops by a big game animal.

210 ~~[(d)]~~ (f) If the claimant and the division are unable to agree on a fair and equitable  
211 damage payment, ~~[they]~~ the claimant and division shall designate a third party, consisting of  
212 one or more persons familiar with the crops, fences, or irrigation equipment and the type of big  
213 game animals doing the damage, to appraise the damage.

214 (4) (a) [~~Notwithstanding Section 63J-1-504, the~~] The total amount of compensation  
215 that may be provided by the division pursuant to this section and the total cost of fencing  
216 materials provided by the division to prevent crop damage may not exceed the legislative  
217 appropriation for fencing material and compensation for damaged crops, fences, and irrigation  
218 equipment.

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

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

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

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

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

231 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to  
232 Subsection (4)(a), claims in excess of \$1,000, or [~~any~~] a claim that brings the total amount of a  
233 claimant's claims in a fiscal year to an amount in excess of \$1,000, shall be prorated.

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

235 (a) [~~has failed~~] fails to exercise reasonable care and diligence to avoid the loss or  
236 minimize the damage; [~~or~~]

237 (b) fails to provide the division reasonable access to the property;

238 (c) fails to allow the division to use reasonable mitigation tools to alleviate the damage;

239 [~~(b)~~] (d) [~~has~~] unreasonably [~~restricted~~] restricts hunting on land under the claimant's  
240 control or passage through the land to access public lands for the purpose of hunting, after  
241 receiving written notification from the division of the necessity of allowing [~~such~~] the hunting  
242 or access to control or mitigate damage by a big game[-] animal; or

243 (e) fails to provide supporting evidence of cultivated crop values and claimed costs to  
244 the division during the damage appraisal process.



245 (6) (a) The Wildlife Board shall make rules, in accordance with Title 63G, Chapter 3,  
246 Utah Administrative Rulemaking Act, and consistent with Subsection (6)(d), specifying  
247 procedures for the appeal of division actions under this section.

248 (b) Upon the petition of an aggrieved party to a final division action, [~~the Wildlife~~  
249 ~~Board~~] a mitigation review panel may review the action on the record and issue an order  
250 modifying or rescinding the division action.

251 (c) [~~A qualified hearing examiner may be appointed~~] A mitigation review panel may  
252 appoint a third party designated under Subsection (3)(f) for purposes of taking evidence and  
253 making recommendations for [a board] an order of the mitigation review panel. The [board]  
254 mitigation review panel shall consider the recommendations of the [~~examiner~~] designated third  
255 party in making decisions.

256 (d) [~~Board~~] A mitigation review panel's review of final agency action and judicial  
257 review of final [board action shall be] action by a mitigation review panel is governed by Title  
258 63G, Chapter 4, Administrative Procedures Act.