

HB0062S05 compared with HB0062S04

~~{deleted text}~~ shows text that was in HB0062S04 but was deleted in HB0062S05.

inserted text shows text that was not in HB0062S04 but was inserted into HB0062S05.

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~~{Representative Casey Snider}~~Senator Michael K. McKell proposes the following substitute bill:

BIG GAME AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Casey Snider

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill ~~{modifies}~~addresses 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 big game animals;
- ▶ amends provisions related to compensation for damage caused by big game animals;
- ▶ addresses appeals;

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- ▶ enacts limitations on compensating people to locate big game animals; 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

23-16-3, as last amended by Laws of Utah 2011, Chapter 297

23-16-3.1, as enacted by Laws of Utah 2003, Chapter 228

23-16-3.2, as last amended by Laws of Utah 2008, Chapter 382

23-16-4, as last amended by Laws of Utah 2011, Chapter 297

ENACTS:

23-20-33, Utah Code Annotated 1953

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

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

23-16-1.1. Definitions.

As used in this chapter:

(1) "72 hours" means a time period that begins with the hour a request for action is made pursuant to Section 23-16-3 and ends 72 hours later with the exclusion of any hour that occurs on the day of a legal holiday that is on a Monday or Friday and listed in Section 63G-1-301.

~~[(1)]~~ (2) "Cultivated crops" means:

(a) annual or perennial crops harvested from or on cleared and planted land; ~~[and]~~

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

~~[(b)]~~ (c) crop residues that have forage value for livestock~~[-]; and~~

(d) pastures.

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

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

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

~~(3)~~ (6) "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 -- Depredation mitigation plan.

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

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

(2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a), the division shall 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~~] that is approved, in writing, by the landowner or lessee.

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

(i) the scheduling of a depredation hunt;

(ii) issuing permits to the 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.

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

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(ii) Control efforts shall be directed toward antlerless animals, if possible.

(d) A permit issued for an antlered animal shall be approved by the division director or the director's designee.

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

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

(i) the extent of damage experienced or expected in a single growing season; 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) 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~~] the landowner's or lessee's 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 animals.

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

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

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(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]~~ a request for action is given pursuant to Subsection 23-16-3(1)(a);

(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(1)(a); 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]~~ a big game animal killed under Subsection (1)(a) ~~[shall become]~~ is the property of the division and ~~[shall be disposed of by the division]~~ the division shall dispose of the carcass.

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

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

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

(ii) provide the division reasonable access to the landowner's or lessee's land to retrieve and dispose of the big game animals.

(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 big game 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 within a single growing season;

(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

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(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]~~

or

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

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

23-16-3.2. Mitigation review panel.

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

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

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

(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 depredation mitigation plan under Subsection 23-16-3.1(2)(b)(ii); ~~[or]~~

(ii) the division director requests review of a depredation mitigation plan[-]; or

(iii) the division receives a petition of an aggrieved party to a final division action under Section 23-16-4.

(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 depredation mitigation plan and approve or modify the plan.

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

(4) Judicial review of a mitigation review panel action [~~shall be~~] under this section is governed by Title 63G, Chapter 4, 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 animals to:

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

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

- (a) 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.

(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) The division and claimant may not include speculative damages or claims of future value in an appraisal or damage payment beyond the growing season when the damage occurred under this section.

~~(d)~~ (d) In determining how to assess and compensate for damages to cultivated crops,

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the division's determination shall be based on the:

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

(ii) estimated quantity of cultivated crops damaged or consumed by big game animals;

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

(iv) replacement value of an equivalent aged tree for perennial orchard trees; and

~~(~~five~~)v)~~ other documented costs directly incurred by the landowner or lessee because of damage to cultivated crops by big game animals.

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

(4) (a) ~~[Notwithstanding Section 63J-1-504, the]~~ 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]~~ A claim of \$1,000 or less may be paid after appraisal of the damage as provided in Subsection (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]~~ A claim for damage to irrigation equipment may be paid after appraisal of the damage as provided in Subsection (3).

(c) (i) ~~[Any]~~ A 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

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determined.

(ii) If the total exceeds the amount appropriated by the Legislature pursuant to Subsection (4)(a), claims in excess of \$1,000, or ~~[any]~~ a 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.

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

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

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

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

~~[(b)]~~ (d) [has] unreasonably [restricted] restricts 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]~~ the hunting or access to control or mitigate damage by big game~~[-]~~ animals; or

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

(6) (a) The Wildlife Board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with Subsection (6)(d), 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]~~ a mitigation review panel 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]~~ A mitigation review panel may appoint a third party designated under Subsection (3)(e) for purposes of taking evidence and making recommendations for ~~[a board]~~ an order of the mitigation review panel. The ~~[board]~~ mitigation review panel shall consider the recommendations of the ~~[examiner]~~ designated third party in making decisions.

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

Section 6. Section 23-20-33 is enacted to read:

23-20-33. Limitation on compensating people to locate big game animals.

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(1) As used in this section:

(a) "Compensate" or "compensated" means anything of value in excess of \$25 that is paid, loaned, given, granted, donated, or transferred to a person for or in consideration of locating or monitoring the location of big game animals.

(b) "Retain" or "retained" means a written or oral agreement for the delivery of outfitting services or hunting guide services between an outfitter or hunting guide and the recipient of those services.

(2) Except as provided in Subsections (3) and (4), a person may not compensate another person to locate or monitor the location of big game animals on public land in connection with or furtherance of taking a big game animal under this title.

(3) A person may compensate a registered outfitter or hunting guide, as defined in Section 58-79-102, to help the person locate and take a big game animal on public land if:

(a) the outfitter or hunting guide is registered and in good standing under Title 58, Chapter 79, Hunting Guides and Outfitters Registration Act;

(b) the person has retained the outfitter or hunting guide and is the recipient of the outfitting services and hunting guide services, as defined in Section 58-79-102;

(c) the person possesses the licenses and permits required to take a big game animal;

(d) the person retains and uses not more than one outfitter or hunting guide in connection with taking a big game animal; and

(e) the retained outfitter or hunting guide uses no more than one compensated individual in locating or monitoring the location of big game animals on public land.

(4) A registered outfitter or hunting guide in good standing may compensate another person to locate or monitor the location of big game animals on public land if:

(a) the outfitter or hunting guide has been retained by the recipient of the outfitting services or hunting guide services to assist the recipient take a big game animal on public land;

(b) the recipient possesses the licenses and permits required to take a big game animal;

(c) the recipient is not simultaneously using another outfitter or hunting guide to assist in taking the same species and sex of big game animal; and

(d) the outfitter or hunting guide compensates not more than one other individual to locate or monitor the location of big game animals in connection with assisting the recipient take a big game animal on public land.

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(5) A violation of:

(a) this section constitutes an unlawful take under Section 23-20-3; and

(b) Subsection (4) constitutes unlawful conduct under Sections 58-1-501, 58-1-502, and 58-79-501.