

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 12 subch. III relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to hunting dogs and pets.

ER-12-05

Analysis Prepared by Department of Natural Resources

Statutory Authority: Statutes that authorize the promulgation of this rule include ss. 29.014 and 227.11, Stats. These sections grant rule-making authority to the Department to pay for damages done by endangered and threatened species of animals. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted: In promulgating this rule, ss. 20.370(1)(fs), 71.10(5)(am) and 29.604, Stats., have been interpreted as allowing the Department the authority to develop rules to implement a damage payment program authorized by this section.

Plain Language Rule Analysis: The program to pay for damage done by species listed as endangered or threatened in Wisconsin was established in the 1983-85 budget bill (s. 20.370(1)(fs), Stats.). Funds for these payments come from the Endangered Resources Voluntary Payments Fund. The 1999-01 budget bill added Endangered Resources License Plate funding and added that damage by gray wolves will be paid for by this fund even after wolves are delisted.

The Bureau of Endangered Resources has administered this program since 1985 without permanent rules because the species on the state's endangered and threatened list would change from year to year and there was no controversy about the program. There is now a need for permanent rules because wolf damage has been made a permanent part of the payment program and there is significant public controversy about the wolf damage payment program.

Through the end of State Fiscal Year 2003-04, the Bureau of Endangered Resources has settled 199 damage claims totaling \$381,655.08. A vast majority of these claims (164 for a total of \$341,845.29) have been paid for damage done by gray wolves. The remaining claims were for damage done by bald eagles, osprey, and great egret damage to fish farms; trumpeter swans damage to personal property; and double-crested cormorant damage to commercial whitefish fishing. Bald eagles and double-crested cormorants have been removed from the endangered and threatened species lists so damage they do is no longer eligible for reimbursement from the Department of Natural Resources.

The Wisconsin wolf population has increased from just 25 animals in 1980 to 373 in 2004. From 1985 to 1998 wolf damage payments ranged from \$200.00 to \$12,000.00 per year. Wolf damage payments from 1999 to 2004 have averaged \$43,800 per year. We can anticipate that wolf damage claims will be reduced somewhat in the future now that the Department has the authority to destroy wolves that are causing depredations to livestock. However, 37% of all wolf damage payments are paid to reimburse dog owners for killed or injured dogs. Most of these dogs are hound dogs killed or injured by wolves while the dogs are pursuing legal game animals such as bear, bobcat and coyote.

The population of gray wolves has recovered in Wisconsin to the point that the species has been removed from the state's threatened species list and managed as a protected species, according to the state's wolf management plan. The proposed payment program would continue as long as gray wolves remain on the protected animal list under s. NR 10.02(1). If wolves become a game species with a harvest season, additional administrative rules will be needed.

The Department has paid for damage done to personal property other than live animals. Specifically, two claims for lost fishing equipment in 1998 for \$75 and \$154 and one claim in 1999 for \$400 worth of camera equipment were paid when trumpeter swans tipped over the canoes that the claimants were riding in. The proposed rule would eliminate such payments in the future.

Federal Regulatory Analysis: The gray wolf was added to the federal list of endangered species in 1973. The U.S. Fish and Wildlife Service revised the status of gray wolves in Wisconsin from endangered to threatened on April 1, 2003. The federal change gave state biologists more flexibility to deal with problem wolves, including allowing government agents to destroy wolves that kill domestic animals. Since that change, the state has trapped and euthanized 39 wolves that were preying on livestock. The federal government has proposed rules to remove gray wolves from the U.S. list of threatened species. We anticipate that this rule will go into effect in 2005. The federal government does not pay for damages done by species on the federal list of endangered or threatened animals and there are no federal regulations on states paying for damages.

State Regulatory Analysis: Management of large carnivores present unique challenges to natural resource agencies. Currently Wisconsin is one of nine states in the U.S. known to have resident wolf populations. The following is a summary of the rules related to gray wolf management in the states adjacent to Wisconsin.

Illinois: Does not have an E/T damage payment program and since wolves are not a resident species Illinois does not have a wolf damage program.

Iowa: Does not have an E/T damage payment program and since wolves are not a resident species, Iowa does not have a wolf damage program.

Michigan: Wolves from Wisconsin recolonized the Upper Peninsula in the 1980's; there are now approximately 400 wolves in Michigan. Michigan Department of Agriculture has a program to pay for damage caused by wolves up to \$100,000.00 per year utilizing GPR funds. The Michigan program pays for both verified and probable livestock losses but does not pay for missing livestock. The maximum payment is the replacement value the day the animal was killed; there is no deductible. Michigan considers cattle or sheep guard dogs to be "livestock" but does not reimburse for pets or hunting dogs. Michigan does not have a program to pay for damage caused by other endangered or threatened species of wildlife.

Minnesota: Gray wolves were listed as a state threatened species in 1984 when the population was estimated to be 1,000 animals. The current population is estimated at over 2,500 wolves. Minnesota Department of Agriculture has a program to compensate ranchers for losses caused by wolves funded with GPR. The Minnesota program pays for only verified losses; they do not pay for probable or missing livestock. Minnesota does not compensate for guarding animals killed by wolves. Additionally, they do not reimburse for pets or hunting dogs killed by wolves. Minnesota does not have a program to pay for damage caused by other E/T species.

A Summary of Factual Data: Through the end of State Fiscal Year 2003-04, the Bureau of Endangered Resources has settled 199 damage claims totaling \$381,655.08. A vast majority of these claims, 164, (\$341,845.29) has been paid for damage done by gray wolves.

Anticipated Private Sector Costs: These rules do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Effects on Small Businesses: The proposed revision to ch. NR 12 will regulate payments for depredations to hunting dogs and pets caused by endangered and threatened species of wildlife and by gray wolves. There are no compliance or reporting requirements for small businesses nor are there any design or operational standards. However, there are requirements that must be followed by bear hunting guides if they want to receive reimbursement for their losses.

In accordance with s, 227.114, Stats., the department has considered the possible implications of these rules on small business and determined that there is no significant impact on small business in the state. The Department of Natural Resources proposes to continue to reimburse bear hunters and bear hunting guides the financial value of hound dogs that are killed or injured by gray wolves. The department has paid an average of \$23,400 per year for the past three state fiscal years for dogs killed or injured by gray wolves. Again this reimbursement is valued by the individual dog owners but is not a significant impact to the recreational industry of bear hunting in Wisconsin.

The department has considered alternatives to paying for hunting dogs but the alternatives would be contrary to the statutory objective of reimbursing the public for damage caused by Endangered and Threatened Species of wildlife and gray wolves.

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SECTION 1. Subchapter III of ch. NR 12 is created to read:

NR 12 Subchapter III
Endangered/Threatened Wildlife and Gray Wolf Damage

NR 12.50 Purpose. This subchapter is adopted to implement and administer the payment of claims for damage associated with endangered and threatened species funded under s. 20.370(1)(fs), Stats., and for damage caused by gray wolves authorized by s. 71.10(5)(am), Stats.

NR 12.51 Applicability. This subchapter applies to claims for damages caused by E/T species and gray wolves. It is not applicable to damage caused by gray wolves when the department authorizes either public hunting or trapping of gray wolves, or both.

NR 12.52 Definitions. For the purposes of this subchapter:

(1) "Confirmed depredation" means that the department has found clear evidence that wolves or E/T species were responsible for the depredation or injury, such as a carcass present with bite marks and associated hemorrhaging, tracks in the immediate vicinity or other sign.

(2) "Confirmed non-wolf or non-E/T species depredation" means that department has found conclusive evidence that something other than an E/T species or wolf killed or injured the animal.

(3) "Department " means the Wisconsin department of natural resources or agents designated by the department.

(4) "E/T species" means any animal on the Wisconsin list of endangered species under s. NR 27.02 or threatened species under s. NR 27.03.

(5) "Hunting dogs" means any dog used in the pursuit of game animals.

(7) "Pets" mean dogs and other domestic animals maintained as companion animals.

(8) "Probable depredation" means that the department did not find a carcass from a reported depredation or the damage observed on the carcass was inconclusive but there is evidence of depredation such as a kill site, blood trails, tracks or scat located in the immediate vicinity.

(9) "Unconfirmed depredation" means any depredation that is not a confirmed depredation or a probable depredation.

NR 12.53 Depredation verification procedures. (1) RESPONSE TIME. Any person who believes that pets or hunting dogs owned by the person has been injured or killed by an E/T species or a gray wolf and wishes to seek compensation under this subchapter shall contact the department within 24 hours of the depredation or within 24 hours of becoming aware of missing pets or hunting dogs. The complainant shall provide the location of the depredation and a description of the animals injured, killed or missing. The department shall make an onsite inspection within 48 hours of receipt of the complaint and draft a written report of the investigation, which shall include an estimate of the value of the loss.

(2) VERIFICATION CATEGORIES. Each complaint received under this section shall be classified by the department under one of the following:

- (a) Confirmed E/T species or wolf depredation.
- (b) Probable E/T species or wolf depredation.
- (c) Confirmed non-wolf or non-E/T species depredation.
- (d) Unconfirmed depredation.

(3) CLAIM SUBMITTAL. The complainant shall submit a claim for reimbursement within 14 days of the loss on forms provided by the department.

NR 12.54 Depredation reimbursement procedures. (1) ELIGIBLE CLAIMS. (a) *Verified claims.* Only cases classified as confirmed depredation or probable depredation by the department shall be eligible for reimbursement, except as provided in sub. (2)(c).

[Drafter's Note: NR 12.54(2)(c) as proposed in Clearinghouse Rule No. 05-005 relates to the procedure for reimbursement for missing calves.]

(2) AMOUNT OF PAYMENTS. (am) *Hunting dogs and pets.* The department shall reimburse the claimant the fair market value based upon recent sale records for similar animals of hunting dogs or pets killed by E/T species or wolves up to a maximum of \$2,500 per animal.

(b) *Veterinary expenses.* The department shall pay for all veterinary expenses incurred in the treatment of hunting dogs or pets injured by E/T species or wolves. If the animal dies from the injury, the veterinary treatment costs shall be paid in addition to the fair market value of the animal. If the animal does not die, only the veterinary treatment costs shall be paid. A detailed receipt shall be submitted to the department within 14 days of paying the veterinarian bill.

(3) INSURANCE. The department shall reimburse owners for losses due to E/T species or wolf depredation regardless of any other insurance the owner may have on the animals that were killed or injured.

NR 12.55 Personal property. The department may not provide compensation for damage done by E/T species or wolves to personal property other than livestock, hunting dogs and pets.

SECTION 2. EFFECTIVE DATE. The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on April 27, 2005 and July 21, 2005.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)