

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

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

ER-11-05

Analysis Prepared by Department of Natural Resources

Statutory Authority: Statutes that authorize the promulgation of this rule include ss. 20.370(1)(fs), 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 (s. 71.10 (5)(am), Stats.).

The endangered resources program has administered this program since 1985 without permanent rules because the species on the state's endangered and threatened list could change from year to year, there were relatively few claims per year, and there was no controversy about the program. There is now a need for permanent rules because the endangered resources program has responsibility for these payments regardless of legal status, claims have increased due to wolf damage, 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 \$341,845.29) have been paid for damage done by gray wolves. The remaining claims were for damage done to fish farms by bald eagles, osprey and great egrets; trumpeter swan 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 list so damage they do is no longer eligible for reimbursement from the Department of Natural Resources through the endangered and threatened species damage program.

The Wisconsin wolf population has increased from just 25 animals in 1980 to 373 according to the DNR 2003-2004 mid-winter survey. From 1985 to 1998 wolf damage payments ranged from \$200 to \$12,000 per year. Wolf damage payments from 1999 to 2004 have averaged \$43,800 per year. We anticipate that wolf damage claims will be stable in the future now that the Department has the authority to destroy wolves that are causing depredations to livestock.

In 2003, the United States Department of Agriculture—APHIS— Wildlife Services verified that wolves killed 20 cattle (18 calves), and 24 sheep (17 lambs) on 13 farms across northern Wisconsin. These wolf depredations on livestock occurred in Bayfield, Burnett, Barron, Taylor, Forest, Ashland, Price, Rusk and Chippewa Counties. Wolves also killed one deer on a deer farm and 6 hunting dogs, and injured 4 dogs. According to DATCP Agricultural Farm Statistics there are 5,663 farms in those 9 counties where wolf depredations occurred (Bayfield-325, Burnett-351, Barron-1,384, Taylor-887, Forest-111, Ashland-186, Price-370, Rusk-578 and Chippewa-1,471). Wolf depredation occurred on 13/5663 or .0023% of the farms in those counties. The 2003–04 DNR winter survey documented 108 resident packs of wolves located in

parts of 29 Wisconsin counties. Those 29 counties contain 19,641 farms (DATCP farm statistics) and a total of 904,900 head of cattle and calves (WI 2003 DATCP farm statistics). At a minimum, in 2003 wolves depredated at 13 of the 19,641 farms (00.07%) and killed 20 of the 904,900 cattle available (00.002%).

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 is now 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.

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 agents more flexibility to deal with problem wolves, including allowing government agents to destroy wolves that kill domestic animals. Since April 1, 2003, 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 the earliest this rule would go into effect is 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. The Michigan Department of Agriculture has a program to pay for livestock damage caused by wolves up to \$100,000 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 is killed; there is no deductible. Michigan considers cattle or sheep guard dogs to be "livestock." 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. They were removed from this list in 1996. The current population is estimated at over 2,500 wolves. The Minnesota Department of Agriculture has a program, funded by GPR, to pay for livestock damage caused by wolves. The Minnesota program pays for verified losses only; they do not pay for probable or missing livestock. Minnesota does not compensate for agricultural guard animals 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 for \$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 agricultural losses caused by endangered and threatened species of animals 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 claimants 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. Payments to ranchers for livestock losses have averaged \$31,200 per year for the past three state fiscal years. While these payments have been very important to the 10 to 15 farms that suffer wolf depredations each year, the amount of funding is not a significant boost to the livestock industry in Wisconsin.

The department has considered alternatives to paying for missing calves 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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[Drafter's Note: The Department has proposed two rules creating subch. III of ch. NR 12 relating to endangered/threatened wildlife and gray wolf damage. Clearinghouse Rule No. 05-005 (Board Order No. ER-11-05) relates to damage caused to livestock. Clearinghouse Rule No. 05-004 (Board Order No. ER-12-05) relates to damage to hunting dogs and pets. This subchapter is being created in two separate orders because of the potential controversy of one or both of the proposed orders. Where there are differences in wording in a section that appears in both orders, the additional wording is shown in brackets.]

SECTION 1. Subchapter III of Chapter 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 damage 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 an 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.

(6) "Livestock" means the following farm animals: bison and other bovine animals, sheep, goats, swine, farm-raised deer, equine animals, poultry, ratites, llamas, alpacas, captive game animals, guard animals for livestock, and fish.

(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 livestock [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 livestock [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.

Note: The Department will contract with the U.S. Department of Agriculture-APHIS-Wildlife Services to handle complaint contacts and response.

(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 for in sub. (2)(c).

(b) *Compliance.* Claimants need to be in compliance with carcass disposal requirements of s. 95.50, Stats., for livestock claims and for farm-raised deer claims the farm-raised deer fencing requirements of ss. 90.20 and 90.21, Stats., in order to be eligible for reimbursement.

Note: Section 95.50, Stats., regulates disposal of livestock carcasses and requires burning or burying the carcass when the animal is suspected of dying from highly dangerous diseases. Sections 90.20 and 90.21, Stats., specify fencing requirements for those who raise or keep farm-raised deer.

(2) **AMOUNT OF PAYMENTS.** (a) *Livestock.* The department shall reimburse the claimant the fair market value, that is the feeder market value for young of the year or replacement value for adult (1+ years), of livestock killed by E/T species or wolves not to exceed the established maximum for that animal type. A maximum amount to be paid for each type of animal shall be established annually by the department. These maximums shall be determined each year by January 30, by a panel of 3 agriculture experts, one each from Wisconsin department of agriculture, trade and consumer protection, University of Wisconsin-Madison agricultural extension, and the Wisconsin farm bureau federation.

Note: The list of maximum allowable claims will be available from the Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707-7921.

(b) *Veterinary expenses.* The department shall pay for all veterinary expenses incurred in the treatment of livestock [pets or hunting dogs] 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 bill.

(c) *Missing calves.* The department shall reimburse the claimant for missing calves beyond those that would be lost according to the normal mortality rate determined by U.S. department of agriculture and that research has shown to be attributed to wolf depredation when all of the following criteria are met:

1. The claimant tags all calves within 2 weeks of birth and provides a list certifying to the department an exact count at the beginning of the grazing season including information on the tag number, date and sex of all calves.

2. The claimant records and provides a list certifying to the department an exact count of all calves rounded up at the end of the grazing season and a list of all tagged calves determined to be missing.

3. The claimant provides a list certifying to the department all known deaths and losses of calves during the grazing season.

4. The department has documented that at least one livestock loss on the claimant's property within the same grazing season that is verified as a confirmed or probable wolf depredation and there is evidence that wolves continued to be present on the property during that period of time.

5. The claimant certifies that they will cooperate with any research conducted by the department to determine the amount of mortality of missing calves that is caused by wolves, if such cooperation does not impact the claimant economically in a significant manner or impose an unreasonable burden or hardship on the claimant. Disputes as to whether claimants are impacted economically in a significant manner or what is an unreasonable burden or hardship shall be resolved by the panel of 3 agricultural experts identified in par. (a).

Note: The U.S. department of agriculture calculates the normal calf mortality rate for beef cow-calf operations nationwide. In 2003 that rate was 2.3 %. The department will conduct scientific field research in Wisconsin to determine how much mortality to missing calves can be attributed to wolves.

(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.

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 August 11, 2005.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)