

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE ADMINISTRATION
PART 2 DEPREDATION ASSISTANCE

19.30.2.1 ISSUING AGENCY: New Mexico Department of Game and Fish
[1-13-96; 19.30.2.1 NMAC - Rn, 19 NMAC 30.2.1, 7-16-01]

19.30.2.2 SCOPE: Agricultural producers, property owners and sportsmen. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30, 31, 32 and 33 of Title 19.
[1-13-96; 19.30.2.2 NMAC - Rn, 19 NMAC 30.2.2, 7-16-01]

19.30.2.3 STATUTORY AUTHORITY: 17-1-14, 17-1-26, 17-2-7.2, 17-2-10, 17-2-26, 17-3-13.3, 17-3-13.4, 17-3-31, and 17-5-3 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.
[9-1-89; 1-13-96; 9-15-97; 19.30.2.3 NMAC - Rn & A, 19 NMAC 30.2.3, 7-16-01]

19.30.2.4 DURATION: Permanent.
[1-13-96; 19.30.2.4 NMAC - Rn, 19 NMAC 30.2.4, 7-16-01]

19.30.2.5 EFFECTIVE DATE: January 13, 1996, unless a different date is cited at the end of a section or paragraph.
[1-13-96; 9-15-97; 19.30.2.5 NMAC - Rn, 19 NMAC 30.2.5, 7-16-01]

19.30.2.6 OBJECTIVE: Establish procedures and limits for the handling of depredation caused by protected wildlife species on privately owned or leasehold interest land. Establish procedures and requirements for the big game depredation damage stamp.
[1-13-96; 19.30.2.6 NMAC - Rn & A, 19 NMAC 30.2.6, 7-16-01]

19.30.2.7 DEFINITIONS:

A. Game animals: This regulation shall apply to only those wildlife species defined as protected under 17-2-3, 17-5-2, 17-2-13, 17-2-14 NMSA 1978 and any other wildlife species managed or regulated by the New Mexico state game commission and New Mexico department of game and fish.

B. “Depredation” is hereby defined as private property damage, including growing crops or harvested and stored crops, caused by game animals on privately owned or leasehold private land, such that the damage caused results in a measurable loss of value. This definition may apply to private property that occurs on other than private land, as reasonable and appropriate, as determined by the department.

C. “Threat to human life” shall mean that death or great bodily harm is likely to occur to a person due to the closeness, aggression or attack of a game animal or quadruped.

D. “Immediate threat to human life” shall mean that an attack is so imminent that nothing, short of destruction, can be done to avert the aggression.

E. “Immediate threat of damage to property or crops” shall mean that game animals exist in such numbers that there is no time for intervention by the department to avert substantial private property damage.

F. “Crops” shall mean any cultivated field or forage, whether sown or natural, which is used chiefly for livestock in that the landowner harvests the product to feed livestock or commercially sell it; or any other feed or commercially sold product that may be stored on properties for future shipping or marketing or any other crop grown to provide human subsistence.

G. “Attractive nuisance” shall mean any crop or other material placed on a landowner’s property to intentionally draw in protected wildlife.

H. “Landowner” is any person who personally owns private property legally recognized by the state of New Mexico.

I. “Lessee” is any person who leases private property from another in order to grow crops or produce livestock.

J. “Employee” is any person who is paid by a landowner or lessee for providing services to the landowner or lessee and that the service is related to the depredation.

K. “Take” shall mean to trap, ensnare, or intentionally prevent the natural movement of a game animal or quadruped.

L. “Leasehold interest” shall mean any person who leases or rents private agricultural property, whether or not that person is responsible for the crop or livestock.

M. “Quadruped” shall mean any furbearing animal, as defined in 17-5-2 NMSA 1978, for which the department has jurisdiction (muskrat, mink, nutria, otter, weasel, beaver, masked or black-footed ferret, ringtail cat, raccoon, pine marten, coatimundi, badger, bobcat, and all foxes).

N. “Good cause” as used herein shall mean either or both of the following.

(1) The landowner can document that the intervention offered would cause physical damage to persons or property.

(2) The landowner can document that the intervention offered will not result in a substantial lessening of the depredation it is intended to affect.

(3) In either instance the claim of good cause by the landowner must be made in good faith and supported with facts sufficient reasonably to meet either or both of the above criteria and provided to the department in written form within ten (10) days following the proposed interventions being communicated to the landowner or lessee.

O. “Negligence” shall mean the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.

P. “Big game depredation damage stamp” shall mean a stamp, check off or other official mark purchased with each big game hunting license as required by 17-3-13.3 and 17-3-13.4 NMSA 1978. [9-1-89, 9-15-97; 19.30.2.7 NMAC - Rn & A, 19 NMAC 30.2.7, 7-16-01; A, 12-28-01; A, 12-31-08]

19.30.2.8 TECHNIQUES/INTERVENTION:

A. Reporting: A landowner, lessee, or employee, upon recognizing depredation, shall contact the department of game and fish by toll-free phone number available twenty-four (24) hours a day, seven (7) days a week.

(1) Upon being notified by a landowner, lessee, or employee of a wildlife complaint, the appropriate department staff will contact the landowner, lessee, or employee as soon as is reasonably possible. Department staff will arrange an inspection of the property as promptly as possible, and as agreed to by the landowner, lessee, or employee.

(2) Upon completion of inspection and provided the inspection resulted in confirmation of depredation as defined pursuant to this regulation, the department will, within ten (10) days, offer a minimum of three (3) formal interventions, if practical, that are reasonable and effective, for preventing, resolving or correcting the wildlife caused damage.

(3) Within ten (10) days following receipt of interventions, the landowner, lessee, or employee shall notify the department, in writing or on an approved form, of acceptance or rejection of each intervention offered.

(4) The department will initiate interventions accepted by the landowner, lessee, within five (5) days of receipt of acceptance, or such later time as reasonable based on the intervention accepted.

(5) If the landowner, lessee, or employee rejects all interventions offered by the department, the landowner, lessee, or employee must submit written grounds for good cause for rejection. The department shall take no further action until justifications for rejection have been met pursuant to this regulation and been approved by the director. If the grounds for good cause are approved the landowner may continue working with the department to develop alternative interventions or take action pursuant to 17-2-7.2B.

B. Exceptions:

(1) In the case of an immediate threat to human life, or an immediate threat of damage to private property, including crops, by a game animal or other quadruped, game bird, or fowl, a landowner or lessee, or employee of either, may take or kill the game animal, quadruped, game bird or fowl, and must report such killing to the department’s toll free phone number within 24 hours. If the taking or killing is not reported within two (2) hours, the landowner or lessee, or employee of either shall field dress the carcass so as to salvage any edible portions and preserve them for disposal by the department in accordance with the law, which may include sale to the highest bidder. In no case shall the landowner or lessee, or employee of either refuse or prevent the department motorized vehicle access to any carcasses taken pursuant to this rule and the department shall not be responsible for removal of any carcass, or parts thereof, if it is determined by the department to be un-fit for human consumption. If game animals are killed pursuant to this Paragraph, the department shall publish at least quarterly, a notice of the

incidents. The notice shall describe each incident, the county of the occurrence, landowner, lessee, or employee of either involved, and the number of game animals, quadrupeds, game birds, or fowl taken.

(2) In the case of threat of damage to property or crops, that is not immediate, a landowner may take any non-lethal action to discourage the protected animal or quadruped, and continue such action until the agreed upon intervention method begins. If the department does not resolve the threat within one year, and the property depredation meets the conditions set forth in 17-2-7.2 B (6) NMSA 1978, the landowner, lessee, or employee may take action as prescribed in 17-2-7.2 B (7) NMSA 1978 by taking or killing the offending animals. All reporting, field dressing, and department access requirements identified above shall apply. Nothing in this provision shall be interpreted to limit any protections afforded by the constitution.

(3) Nothing shall prevent the department from taking action to discourage the offending animals during the pendency of the written intervention agreement.

(4) Nothing shall prevent a landowner, lessee, or employee from continuing to work with the department after one year, thereby preventing the destruction of the animals, if agreed by the parties.

(5) Nothing in this regulation shall authorize taking or harassing any animals contrary to the federal Endangered Species Act or Migratory Bird Treaty Act or contrary to any other federal or state law.

(6) Conflicts of interest: to avoid conflict of interest or the harvesting of wildlife for personal gain, the landowner, lessee, employee, all family members and any person involved in the killing of the offending animal are not allowed to take possession or bid on the animals killed.

C. Interventions: Intervention methods offered by the department shall be designed to achieve fiscally responsible, reasonable, effective, and, if practical, long-term solutions to depredation on private lands and shall be incorporated into the written agreements pursuant to this regulation.

D. Causing a nuisance game animal problem: It shall be unlawful for any person, by their action or lack of action, whether intentionally or through negligence, to cause a nuisance game animal or depredation problem by baiting, feeding, or otherwise enticing game animals to an area, and such persons, if convicted, may be punished under 17-2-10 NMSA 1978. The department shall not be required to offer or provide interventions to depredation complaints caused by landowner, lessee, or employee of either violating this prohibition. [9-1-89, 9-15-97; 19.30.2.8 NMAC - Rn, 19 NMAC 30.2.8, 7-16-01; A, 07-31-02; A, 12-31-08]

19.30.2.9 [RESERVED]

[9-15-97; 19.30.2.9 NMAC - Rn, 19 NMAC 30.2.9, 7-16-01; A, 07-31-02; Repealed, 12-31-08]

19.30.2.10 [RESERVED]

[9-15-97; 19.30.2.10 NMAC - Rn, 19 NMAC 30.2.10, 7-16-01; Repealed, 12-31-08]

19.30.2.11 REPORTS: A department representative shall make regular reports to the commission regarding recent wildlife complaints, their nature, resolution status and any other pertinent information per commission request.

[9-15-97; 19.30.2.11 NMAC - Rn, 19 NMAC 30.2.11, 7-16-01; A, 12-31-08]

19.30.2.12 BIG GAME DEPREDAATION DAMAGE STAMP:

A. Purchase: Each person hunting any big game species in New Mexico must purchase a big game depredation damage stamp at the time of application or purchase of a big game license. Stamp fees shall be in accordance with 19.30.1.9.

B. Availability: Big game depredation damage stamps will be sold with all big game licenses by all hunting and fishing license vendors. The big game depredation damage stamp fee shall be included with every big game license type purchased.

C. Expiration: Each big game hunter shall be required to purchase one stamp or validation per license. Each stamp will expire at the same time as the license it is issued to.

[19.30.2.12 NMAC - N, 7-16-01, A, 12-28-01]

[This amendment is for any application or license purchased for the 2002 hunting license season and beyond]

19.30.2.13 BIG GAME DEPREDAATION DAMAGE FUND:

A. Expenditures: Allowable expenditures from the big game depredation damage fund shall be restricted to the procurement of goods and services intended to resolve or mitigate depredation in accordance with 17-3-13.4.B NMSA 1978, 17-2-7.2.B NMSA 1978, and 19.30.2 NMAC. Direct compensation shall not be allowed.

(1) No intervention method shall be approved if funding is not available.

(2) If funding is limited, big game depredation damage agreements will be funded and given a priority based upon the level of verifiable and irreversible financial loss, history of documented depredation reporting by the landowner, lessee or employee, agreement by landowner, lessee or employee to provide in-kind contributions, such as costs or labor, and by availability of funds.

B. Written agreements: All written agreements that result in the expenditure of funds from the big game depredation damage fund shall be signed by both the director of the department, or his designee, and the landowner, and the lessee as to an existing leasehold interest, or an authorized representative of each. Each agreement shall specify the exact location where the intervention method will be implemented, the standard and specifications with which it will be implemented (i.e. fence-height, width, length, gate design, etc.), estimated cost per intervention, life expectancy of intervention, and maintenance and repair responsibilities. Prior to implementation of any intervention method, an owner or their representative, and lessee if applicable, must provide verifiable proof as to the land status and ownership of the property. If any conflict in documentation, map, deed or survey is found to exist, the owner shall have a survey completed depicting land ownership status and submit the results to the department prior to implementation of any intervention method.

[19.30.2.13 NMAC - N, 12-14-01; A, 07-31-02; A, 12-31-08]

HISTORY OF 19.30.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 673, Depredation Assistance To Landowners, 9-1-89.

History of Repealed Material: [RESERVED]