

SCOPING NOTICE
Game Damage Hunt and Weapon Restriction Area Review

Dear Interested Party,

Montana Fish, Wildlife and Parks (FWP) will be conducting a partial review of the Game Damage Hunt Program, which will also include a review of Weapon Restriction Areas (WRAs). The Game Damage Program has a number of components, but this review will focus only on updating the Game Damage Hunt Administrative Rules of Montana, and further, will provide direction for implementing Weapon Restriction Areas.

The current Game Damage Program is authorized by Statute (MCA 87-1-225). The Administrative Rules of Montana (ARM) describe procedures for implementing Damage Hunts (12.9.801), and also address some of the specifics of the Game Damage Program (12.9.802). Some elements of the Damage Hunt ARM need updating, including incorporating the use of a second elk license (A9), which was not available when the existing ARM was developed; revising the language that presently states, "With the exception of deer and antelope, no person may take more than one big game animal of any species during this license year"; and, the game damage hunt roster was established in 1999, but will be re-evaluated, and considered for possible expanded application, as part of this process.

The Game Damage Hunt Statute and Administrative Rules of Montana associated with the Game Damage Program are included below for your information.

Relative to the issue of Weapon Restriction Areas, MCA 87-1-304 authorizes the Commission to "restrict areas and species to hunting with only specified hunting arms..." Generally, weapons permitted in WRAs have included archery equipment, shotgun, traditional handgun, muzzleloader, or crossbow. However, some hunting districts include various subsets of these weapons. Issues to be evaluated in this review include human safety from a firearm perspective as well as weapons effectiveness in addressing private land game damage.

You are invited to identify issues and provide comments on the Game Damage Hunt ARM, and further, to identify issues and concerns specifically related to Weapon Restriction Areas.

Comments will be accepted through October 1, 2005 and can be submitted electronically at fwpwd@mt.gov (please include your name and address with your e-mail), or in writing to Mt. Fish, Wildlife and Parks, Wildlife Division, 1420 E. 6th Ave., POB 200701, Helena, Montana 59620-0701 (please include - Attn: Game Damage Hunt comments).

► STATUTE

87-1-225. Regulation of wild animals damaging property -- public hunting requirements. (1) Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if he:

- (a) allows public hunting during established hunting seasons; or
- (b) does not significantly reduce public hunting through imposed restrictions.

(2) The department may provide game damage assistance when public hunting on a landowner's property has been denied because of unique or special circumstances that have rendered public hunting inappropriate.

(3) Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops thereon, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method be not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. No wild ferocious animal damaging property or endangering life shall be covered by this section.

History: En. Sec. 1, Ch. 60, L. 1957; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-135; amd. Sec. 1, Ch. 569, L. 1987; amd. Sec. 1, Ch. 568, L. 1989.

► ADMINISTRATIVE RULES OF MONTANA (ARM)

12.9.801 DAMAGE HUNTS (1) Damage hunts are carried out according to the following policies and procedures:

(a) In January, the department requests the commission to tentatively approve a specified number of antlerless deer, antlerless elk and doe/fawn antelope licenses for potential game damage occurring between August 15 and February 15.

(b) If a special damage season is determined by the regional supervisor to be necessary before, during, or after the general hunting season, the following conditions apply:

(i) The supervisor must obtain approval of the commissioner in whose district the special game damage season is proposed prior to implementing the season. If the commissioner is not available, then approval will be requested from the chairman of the commission or, in his absence, any other commissioner.

(ii) The regional supervisor will request the district's list of special license applicants. The list will include all those special license applications processed to date and on the computer file. The regional supervisor and staff will randomly select names of individuals on this list, and these individuals will be given an opportunity to use a game damage permit.

(iii) If a special license applicant list is not available for the district, the damage hunt roster for that species will be used. The damage hunt roster will be a list of individuals who have applied to be listed on the roster. Hunters selected by the region to participate in the special damage season may be allowed to hunt with the special damage license/permit during, before, or after the general season. These hunters will be in addition to the general season permit quota set by the commission.

(iv) After the August special license drawing, successful applicants may be used for game damage hunts before, during, or after the general season and may not always be holding licenses issued in addition to the general season permit quota set by the commission.

(c) The regional supervisor may opt to award damage permits to unsuccessful deer and antelope special license applicants by a first come, first served method, using a district or local drawing or the damage hunt roster.

(d) The damage hunt roster of hunters to participate in elk damage season conducted before, after, and during, the general hunting season will be developed according to the following priority:

(i) holders of A-7 elk licenses, valid in that portion of the district, who did not fill their A-7 elk license during the period when it was valid;

(ii) unsuccessful applicants for A-7 elk licenses in that portion of the districts;

(iii) unsuccessful applicants for a permit in the district;

(iv) the list of applicants from the damage hunt roster for that district.

(e) If an applicant list is not available for elk, a local drawing or a first come, first served method of distribution will be used.

(2) Unless stated otherwise, participants in a damage hunt must possess a valid unused license and damage hunt permit for the following species:

(a) For deer, the hunter may use valid unused class AAA, A-3, A-4, B-7, B-8, B-10, B-11 or senior, disabled, or youth deer licenses, or special deer damage licenses. The holder of a class B-11 license may use the damage hunt permit only on the landowner sponsor's property.

(b) For elk, the hunter may use valid unused class AAA, A-5, senior, disabled, or youth or B-10 licenses. The holder of a class A-7 elk license may use the damage hunt permit only in the district in which the A-7 elk license is valid.

(c) A person who is contacted by the department for purpose of a damage hunt may waive the opportunity to participate, but may not be considered again until all other interested persons have been contacted.

(3) With the exception of deer and antelope, no person may take more than one big game animal of any species during this license year.

(4) The 10% nonresident limitation is not applicable to damage hunts.

(5) No fee is necessary for a special permit issued under these procedures. (History: [87-1-225](#), MCA; [IMP](#), [87-1-225](#), MCA; [NEW](#), 1991 MAR p. 815, Eff. 5/31/91; [AMD](#), 1999 MAR p. 1297, Eff. 6/18/99.)

[12.9.802 GAME DAMAGE](#) (1) By law, the department is required to respond to all big game damage complaints. General hunting seasons are the primary tool to deal with animals causing or having the potential to cause game damage.

(2) The department investigates damage complaints as soon as possible, and within 48 hours of the filing of the complaint. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions may be made if complainant is agreeable to a longer waiting period.

(3) The department of fish, wildlife and parks investigates all damage complaints under this policy with the exception of (4). A phone call or on-site visit constitutes an immediate response under this provision.

(4) Damage caused by nongame, furbearing, or federally listed threatened and endangered species is not covered by this policy, but is addressed on a case-by-case basis.

(5) In response to legitimate damage complaints, a regional supervisor may address the problem in the following ways:

(a) special seasons may be used under the following conditions:

(i) during the time period of August through February;

(ii) when reasonable hunter access is available to allow for harvest of problem animals;

(iii) when there are enough animals involved to justify public hunting; and

(iv) when the game damage is a recurring problem, and animals are normally unavailable during the general hunting season;

(b) herding may be employed as a temporary measure;

(c) a variety of animal dispersal methods may be employed, such as airplanes, snowmobiles, cracker shells and scareguns;

(d) repellents such as bloodmeal may be employed as temporary solutions;

(e) fencing options may be utilized if the problem is chronic and involves haystacks:

(i) stackyards may be used as a permanent solution in cases where records show haystack damage occurs annually. The department will furnish the property owner with posts and wire. It is the landowner's responsibility to

construct the fence and to provide proper maintenance. In situations where stackyards enclose several acres, particularly those surrounding round bales, permanent stackyards may not be the most desirable treatment of the problem;

(ii) electric fencing may be the most feasible solution in situations where a large area is being used as a bale stackyard as round bale storage. The department will provide the charger and fencing materials. On the initial installation, the department will assist in setting up the fence. The storage and care of this equipment is the responsibility of the rancher, and with proper care, materials should last three years. If game damage does not recur in succeeding winters, the department will pick up the charger for use in other areas;

(iii) if a haystack has straight sides, a four or six foot snowfence works well. In the case of elk, eight foot panels may be used. It is reasonable to assume the snowfence

or panels will last for a minimum of three winters if properly cared for. Rolling and storage are the rancher's responsibility. Depending upon the size of the area and availability, the department will furnish the snowfence or panels, and the property owner will be responsible to put it up, take it down, and provide maintenance;

(iv) it will be the responsibility of the landowner to store materials furnished by the department in a manner consistent with proper care, with reasonable wear expected. A signed agreement with the landowner will record any planned actions and serve as a receipt for any materials that are provided. These agreements will be sent to the individuals. Fence fabric shall be returned to the department when it is no longer needed for protection from wildlife damage. Materials will be replenished when reasonable wear makes them ineffective;

(f) a kill permit may be considered to be the best immediate solution and may be activated without first exhausting any of the previously mentioned methods. Authorization for kill permits is issued by regional supervisors;

(g) the department, through the regional supervisor or designated staff, has the discretion to issue supplemental game damage licenses for antlerless animals to hunters as an alternative to a kill permit being issued to a landowner. Supplemental game damage licenses administrative procedures are outlined in ARM [12.9.805](#);

(h) netting or mechanical devices may be used to reduce tree damage; and

(i) archery, shotgun and/or muzzle loader weapons may be used as an alternative hunting method when rifle hunting poses a threat to the safety and welfare of persons or property.

(6) Assistance may be denied or discontinued to a landowner who:

(a) creates or further contributes to game damage problems by not providing sufficient public hunting to aid in reduction of game populations;

(b) imposes other restrictions which prevent adequate harvests; or

(c) refuses reasonable suggestions, actions or remedies offered by the department. The decision to deny or terminate assistance will be made by the regional supervisor. Denial or discontinuance of assistance will be documented with the reasons, history and other pertinent information used to make that decision. A copy of the written decision will be provided to the landowner. The written decision will explain appeal rights.

(7) A landowner may appeal the denial or discontinuance of assistance to the director of the department. The appeal

must be in writing and must contain specific reasons why the regional supervisor's decision is felt to be erroneous. The appeal must be filed within 10 days following receipt of a denial or discontinuance determination from the regional supervisor.

(a) The director of the department will review the information used by the regional supervisor in making the initial determination and the reasons cited by the landowner for appealing the decision. At the director's discretion, the

commission may be asked to review the appeal and make recommendations for the decision. Following the review, a final decision will be rendered by the director. (History: [87-1-225](#), MCA; IMP, [87-1-225](#), MCA; NEW, 1991 MAR p. 815, Eff. 5/31/91; AMD, 2002 MAR p. 1306, Eff. 4/26/02.)