



STATE OF NEVADA

#13

DEPARTMENT OF WILDLIFE

Game Division

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MEMORANDUM

February 21, 2018

To: Nevada Board of Wildlife Commissioners, County Advisory Boards to Manage Wildlife, and Interested Publics

From: Brian Wakeling, Administrator, Game Division

Title: **Landowner Deer and Antelope Compensation Tag Program – For Possible Action**

Description: The Commission will consider stakeholder input on the proposal to promulgate regulation to equitably distribute deer and antelope compensation tags if the statutory limit is reached in the future. The Commission may vote to provide the Department with direction to initiate rulemaking.

Presenter: Game Division Administrator Brian F. Wakeling

Summary:

NRS 502.145 and NAC 502.424 through 502.4268 (attached) govern the Landowner Deer and Antelope Compensation Tag Program. These regulations limit the number of landowner deer and antelope compensation tag quotas in the conglomerate at 2.5% of the total deer and antelope quotas adopted annually by the Commission. This statutory limit was increased from 1.5% during the last legislative session. NRS authorizes the Commission to adopt regulations necessary to carry out the provisions of the statute.

During spring 2017, prior to the increase in the statutory limit, counts of deer and antelope on cooperators' land qualified for more damage compensation tags than the statutory limit allowed for issuance. The legislative amendment to statute allowed for all damage compensation tags to be issued, yet no regulation existed that would facilitate and equitable distribution of damage compensation tags should the statutory limit ever be reached again.

At their August 2017 meeting, the Commission directed the Department to seek input from stakeholders and provide an update at a subsequent meeting. In January 2018, the Department provided an update on feedback received from three stakeholder meetings in Elko, Ely, and Winnemucca, as well as any comments received from correspondence directed to the cooperators in the landowner damage compensation program, Nevada Farm Bureau, Cattleman's Association, and several sportsmen's organization. At that meeting, the Commission directed the Department to seek additional feedback on the concept of protecting the cooperators that receive a single damage compensation tag, and using a mathematical formula based on counts to determine how to equitably distribute any remaining. The Commission also favored a concept that would provide preference to cooperators that had been engaged in this program for the longest time.

A letter was distributed to all cooperators in the damage compensation tag program on February 5, 2018 (attached). This letter was emailed to the Nevada Farm Bureau, Cattleman's Association, several sportsmen's organizations, County Advisory Boards to Manage Wildlife, and Commission during the week following. The Department indicated that any feedback received would be shared with the Commission.

The Department has drafted language for the Commission's use in beginning discussion about potential NAC language in NAC 502.426. A new subsection 3 could be added stating, with subsequent paragraphs renumbered:

"3. Damage compensation tags cannot be issued in excess of the limit established pursuant to subsection 6 (a) of NRS 502.145. If the cumulative number of damage compensation tags for which all applicants qualified through counts in a single year exceeds the limit established pursuant to subsection 6 (a) of NRS 502.145, the Department will proportionally reduce all damage compensation tag awards until the total is less than the statutory limit. If this proportional reduction results in the issuance of less than all damage compensation tags that could be issued, the remaining damage compensation tags will be issued in increments of one to cooperators with the longest continuous history of cooperative agreements with the Department until all tags are issued."

This language is intended for general information in assisting the Commission in initiating dialogue. Other potential language may be considered, or the Commission may choose to initiate no action.

Recommendation:

The Department recommends that the Commission **FURTHER DISCUSS AND POSSIBLY SELECT REGULATORY LANGUAGE FOR EQUITABLY DISTRIBUTING LANDOWNER COMPENSATION TAGS IF THE STATUTORY LIMIT IS REACHED AND IF APPROPRIATE DIRECT THE DEPARTMENT TO INITIATE RULEMAKING TO IMPLEMENT THE SELECTED OPTION.**

Chapter 502 - Licenses, Tags and Permits

NRS 502.145 - Issuance of deer or antelope tags as compensation for damage to private property.

Universal Citation: [NV Rev Stat § 502.145 \(2013\)](#)

1. An owner, lessee or manager of private land in this State may apply to the Department for the issuance to him or her of one or more deer or antelope tags as provided in this section. The tags must be issued as compensation for damage caused by deer or antelope to the private land or to any improvements thereon.

2. An application made pursuant to this section must:

(a) Be made in the form prescribed by the Department;

(b) Establish to the satisfaction of the Department that the applicant has sustained damage of the kind described in subsection 1; and

(c) Be accompanied by the fee charged for the tags pursuant to NRS 502.250 and any fee charged for administrative costs.

3. The Department shall review the application, may conduct any investigation it deems appropriate and, if it approves the application, shall issue to the applicant not more than one tag for each 50 animals present on the private land owned, leased or managed by the applicant. Both deer and antelope tags may be issued to an applicant.

4. A tag issued as compensation for damage pursuant to this section:

(a) May be used by the owner, lessee or manager of the private land if the owner, lessee or manager holds a valid Nevada hunting license, or may be sold by that person to any holder of a valid Nevada hunting license at any price mutually agreed upon;

(b) Except as otherwise provided in subparagraph (2) of paragraph (c), must be used on the private land or in the unit or units within the management area or areas in which the private land is located; and

(c) May only be used during:

(1) The open season for the species for which the tag is issued; or

(2) A season prescribed by regulation of the Commission for the use of such tags only on the private land.

5. As a condition of receiving a tag from the Department pursuant to this section, an owner, lessee or manager who is lawfully in control of private land that blocks access to

adjacent public land must provide access to the public land during the hunting season to a person or hunting party with a tag for the purpose of hunting on the public land.

6. Insofar as they are consistent with this section, the provisions of this title and of the regulations adopted by the Commission apply to the issuance and use of tags pursuant to this section. The Commission:

(a) Shall by regulation establish the maximum number of tags which may be issued annually by the Department pursuant to this section, which must not exceed 1.5 percent of the total number of deer and antelope tags which are authorized for issuance annually throughout the State; and

(b) May adopt any other regulations it deems necessary to carry out the provisions of this section.

(Added to NRS by 1991, 2155; A 1993, 1190, 1664; 1995, 53, 54, 555; 2001, 1070; 2003, 1535, 2543; 2013, 1628)

NAC 502.424 Definitions. ([NRS 501.105](#), [501.181](#), [502.145](#), [502.160](#)) As used in [NAC 502.424](#) to [502.4268](#), inclusive, unless the context otherwise requires:

1. “Damage” means a change, caused by deer or antelope, in the quality or quantity of private property that, at the time the Department inspects the private property, is planted, irrigated or otherwise cultivated to produce a harvestable crop.

2. “Damage compensation tag” means a special deer or antelope tag issued to an owner applicant for his or her own use, or for use by a hunter designated by the owner applicant, as compensation for damage to his or her land or to improvements on his or her land which is caused by deer or antelope.

3. “Owner applicant” means:

(a) The owner of private land, as identified in the deed of the private land which is recorded with the county recorder of the county in which the property is located, who claims that his or her private land was damaged by deer or antelope; or

(b) A person who has obtained written authorization from the owner described in paragraph (a) to represent the owner regarding matters concerning damage compensation tags before the Department, including, without limitation, a lessee or manager of the private land.

(Added to NAC by Bd. of Wildlife Comm’rs, eff. 7-16-92; A 10-26-93, eff. 10-1-93; 11-29-95; R113-01, 12-17-2001; R030-06, 6-1-2006)

NAC 502.4242 “Any holder of a valid Nevada hunting license” interpreted. ([NRS 501.105](#), [501.181](#), [502.145](#), [502.160](#)) For the purposes of subsection 4 of [NRS 502.145](#), the Commission will interpret “any holder of a valid Nevada hunting license” to mean a person who currently holds a valid Nevada hunting license and who has not had any hunting privileges limited or revoked pursuant to [NRS 502.330](#) or [503.185](#), or [NAC 502.405](#), or a similar statute or regulation of another state.

(Added to NAC by Bd. of Wildlife Comm’rs, eff. 7-16-92)

NAC 502.4244 Ineligible persons. ([NRS 501.105](#), [501.181](#), [502.145](#), [502.160](#))

1. The following persons are not eligible for damage compensation tags:

(a) An owner applicant who feeds or baits deer or antelope to attract the animals onto his or her land; and

(b) An owner applicant who sustains damage which is a covered loss pursuant to a policy of insurance.

2. An employee of the Department and his or her family may not purchase or use a damage compensation tag resulting from a complaint serviced directly by the employee.

(Added to NAC by Bd. of Wildlife Comm’rs, eff. 7-16-92; A 11-29-95)

NAC 502.4246 Requirements for eligibility; requests regarding damage to separate locations. ([NRS 501.105](#), [501.181](#), [502.145](#), [502.160](#))

1. To be eligible for the issuance of a damage compensation tag, an owner applicant must:

(a) Have sustained damage to his or her private property caused by deer or antelope;

(b) In accordance with the requirements set forth in [NAC 502.4252](#), notify the Department of any damage within 10 days after discovering it;

(c) Enter into a cooperative agreement with the Department which complies with the requirements set forth in [NAC 502.4248](#);

(d) Submit an application for a damage compensation tag which includes, without limitation:

(1) A form which sets forth any proof of the damage claimed by the owner applicant;

(2) A map which identifies the location on the private land at which the owner applicant will provide access to public land, if applicable; and

(3) The cooperative agreement entered into with the Department which is signed by the owner applicant and the Department;

(e) Cooperate with the Department in inspecting the damage and formulating a plan to prevent or mitigate the damage;

(f) Mitigate damages where possible and not feed or bait deer or antelope to attract the animals onto his or her land;

(g) Comply with the requirements of [NAC 502.424](#) to [502.4268](#), inclusive.

2. A separate application must be made, and a separate cooperative agreement must be entered into, for each request for one or more damage compensation tags made with regard to each separate location on the property of the owner applicant at which damage was sustained.

(Added to NAC by Bd. of Wildlife Comm'rs, eff. 7-16-92; A 11-29-95; R010-00, 4-3-2000; R030-06, 6-1-2006)

NAC 502.4248 Cooperative agreement with Department. ([NRS 501.105](#), [501.181](#), [502.145](#), [502.160](#))

1. A cooperative agreement entered into pursuant to [NAC 502.4246](#) must provide that:

(a) If the owner applicant's private land is adjacent to public land for which access is not available except through the private land, the owner applicant shall provide access to the public land during the hunting season to a person or hunting party with a tag for the purpose of hunting on the public land. The access may be at a specified location or locations as mutually agreed upon by the owner applicant and the Department and must be identified on the map provided by the Department which is required to be submitted with the application for a damage compensation tag pursuant to subparagraph (2) of paragraph (d) of subsection 1 of [NAC 502.4246](#).

(b) When the Department receives a notice from the owner applicant, the Department agrees to act expeditiously to:

- (1) Consult with the owner applicant;
- (2) Assess the cause of damage;
- (3) Conduct a count of any depredating animals; and
- (4) Recommend a course of action to mitigate damages.

(c) The owner applicant agrees to:

(1) Consult with the Department and consider its technical advice; and

(2) Allow a representative of the Department to enter his or her property at times mutually agreed upon to:

(I) Inspect the property;

(II) Assess the cause of damage;

(III) Count the number of any depredating animals; and

(IV) Prevent further damage by any method the Department deems to be necessary, including, but not limited to, hazing, hunting, shooting and scaring.

2. If the owner applicant stops or attempts to stop any hunter holding a tag from entering or crossing his or her private land in violation of paragraph (a) of subsection 1 before the expiration of the agreement, the Department must refuse to issue any damage compensation tags to the owner applicant for 1 year.

(Added to NAC by Bd. of Wildlife Comm'rs, eff. 7-16-92; A 10-26-93, eff. 10-1-93; 11-29-95; R113-01, 12-17-2001; R030-06, 6-1-2006)

NAC 502.4252 Notice of damage; inspection of property; assessment and proof of damage. ([NRS 501.105](#), [501.181](#), [502.145](#), [502.160](#))

1. A notice of damage submitted to the Department pursuant to paragraph (b) of subsection 1 of [NAC 502.4246](#) must include, without limitation, the following information:

(a) The name and any contact information of the owner applicant;

(b) The location of the private land and any name or other description of the private land;

(c) The date on which the damage was discovered; and

(d) A description of the damage caused to the private land, including, without limitation, the estimated number of animals, designated by each species of animal, that caused the damage.

2. Within 10 days after the Department receives a notice of damage, the Department shall inspect the property claimed to have been damaged.

3. After the inspection by the Department pursuant to subsection 2:

(a) The Department shall:

(1) Consult with the owner applicant;

(2) Assess the cause of damage; and

(3) Conduct a count of the number of any depredating animals during the period of the day in which each species of any depredating animal is the most active.

(b) The Department and the owner applicant shall complete a form provided by the Department which sets forth any proof of damage.

(Added to NAC by Bd. of Wildlife Comm'rs, eff. 7-16-92; A by R030-06, 6-1-2006)

NAC 502.4258 Formulation and implementation of plan to prevent or mitigate damage. (NRS 501.105, 501.181, 502.145, 502.160)

1. After property that is claimed to have been damaged is inspected pursuant to [NAC 502.4252](#), the Department and the owner applicant shall formulate a plan, if possible, to prevent or mitigate damage caused by the deer or antelope, including, but not limited to:

- (a) Hazing and scaring;
- (b) Erecting exclusionary devices;
- (c) Issuing special depredation or emergency depredation hunt tags; or
- (d) Removing the animals that are causing the damage.

2. Each owner applicant shall implement the plan formulated pursuant to subsection 1, where possible, by exercising reasonable care and diligence to minimize or lessen damage.

(Added to NAC by Bd. of Wildlife Comm'rs, eff. 7-16-92; A by R030-06, 6-1-2006)

NAC 502.426 Issuance, validity, contents and use of tags; fees; reissuance of application; appeal of denial of application. (NRS 501.105, 501.181, 502.145, 502.160, 502.250)

1. If the owner applicant enters into a cooperative agreement with the Department and the Department approves the application for a damage compensation tag, the owner applicant is eligible for the issuance of one or more damage compensation tags pursuant to subsection 2.

2. An owner applicant is eligible for the issuance of:

(a) One damage compensation tag for deer for each 50 deer that caused damage to his or her property; and

(b) One damage compensation tag for antelope for each 50 antelope that caused damage to his or her property.

3. If the Department issues a damage compensation tag, the tag is valid for use in the calendar year after the calendar year in which the application was submitted.

4. The unit or units within a management area or areas for which the Department issues a damage compensation tag must be limited to the unit or units within the management area or areas in which the damaged property is located.

5. The Department shall indicate on each damage compensation tag it issues:

(a) The period or periods during the calendar year for which the tag is valid, which must be limited to the hunting season or seasons, other than a hunting season for a tag issued pursuant to subsection 5 of [NRS 502.250](#), established by the Commission for antlered mule deer or antelope with horns longer than their ears, as appropriate for the species to which the tag applies, in the unit or units within the management area or areas in which the damaged property is located and for which the tag is valid; and

(b) The unit or units within the management area or areas in which the damaged property is located and for which the tag is valid.

6. A person possessing a valid damage compensation tag may hunt only:

(a) During the period or periods indicated by the Department on the tag, as established by the Commission;

(b) With the type of weapon designated for the type of hunt to which each such period applies, as established by the Commission; and

(c) In the unit or units within the management area or areas established by the Commission:

(1) In which the damaged property is located; and

(2) For which the tag is valid.

7. Damage compensation tags will only be issued to owner applicants and sold to hunters through the headquarters of the Department.

8. The fee charged for a damage compensation tag will include:

(a) A fee of \$50 for each such tag;

(b) A license fee based on the status of the hunter as a resident or nonresident; and

(c) The fee specified in [NAC 502.331](#) for acting upon each application for a tag.

9. If the Department provides a refund for a cancelled tag under the conditions set forth in [NAC 502.422](#), the Department may reissue an application for a damage compensation tag to the owner applicant.

10. If the Department denies an application for a damage compensation tag, the owner applicant may appeal the decision to the Commission within 10 days after the Department notifies the owner applicant of the decision. A request for an appeal pursuant to this subsection must be submitted in writing to the Secretary of the Commission. As soon as practicable after receiving such a request, the Chair of the Commission will appoint a panel consisting of not less than two members of the Commission to consider the appeal. The panel shall notify the Commission in writing of its determination. If the panel is unable to make a determination, the Commission will appoint another panel to consider the appeal in accordance with this subsection. The determination of a panel appointed pursuant to this subsection is a final decision for the purposes of judicial review.

(Added to NAC by Bd. of Wildlife Comm'rs, eff. 7-16-92; A 10-26-93, eff. 10-1-93; 11-29-95; R168-99, 1-19-2000; R113-01, 12-17-2001; R107-02, 1-21-2003; R030-06, 6-1-2006)

NAC 502.4266 Request for additional tags: Prerequisites and procedure; effect of approval. (NRS 501.105, 501.181, 502.145, 502.160)

1. If the damage to an owner applicant's property is ongoing and the number of deer or antelope causing the damage is increasing, the owner applicant may amend the proof of damage form which he or she filed with the Department pursuant to subparagraph (1) of paragraph (d) of subsection 1 of [NAC 502.4246](#) to increase the number of damage compensation tags being requested.

2. If the owner applicant's request for additional damage compensation tags is approved by the Department, the owner applicant is entitled to one or more additional damage compensation tags in accordance with the provisions of [NAC 502.426](#).

(Added to NAC by Bd. of Wildlife Comm'rs, eff. 7-16-92; A 10-26-93, eff. 10-1-93; 11-29-95; R030-06, 6-1-2006)

NAC 502.4268 Receipt of tags: Effect on eligibility for general hunts; no limitation on number. (NRS 501.105, 501.181, 502.145, 502.160)

1. A person's eligibility to receive a tag for the general hunt for antelope or deer is not affected by his or her acquisition of a damage compensation tag.

2. There is no limitation on the number of damage compensation tags that a person may acquire, if he or she is otherwise eligible for the tags.

(Added to NAC by Bd. of Wildlife Comm'rs, eff. 7-16-92)



BRIAN SANDOVAL
Governor

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TONY WASLEY
Director

LIZ O'BRIEN
Deputy Director

JACK ROBB
Deputy Director

February 5, 2018

RE: Compensation tag process

Dear Compensation Tag Cooperator:

For calendar year 2018, the Department is able to issue all 327 deer and antelope compensation tags for which counts were conducted. With the new 2.5% statutory cap, we did not come close to limiting compensation tag issuance. However, should it ever become necessary, we still lack a regulatory method by which to equitably distribute tags.

At the January 27, 2018 meeting of the Nevada Board of Wildlife Commissioners, the Commission listened to the input the Department has collected from cooperators, sportsmen, and interested County Advisory Boards and publics, and directed the Department to develop draft language that they might consider for equitably distributing compensation tags should we reach the new 2.5% statutory limit. The process that they currently favor is one in which every cooperator would be guaranteed at least a single tag, but a formula would be used to determine which cooperators would receive remaining available tags. Aspects the Commission directed the Department to consider include number of animals during counts and duration of relationship with the cooperator in this program.

The Commission intends to discuss this further at their next meeting during March 16-17, 2018 in Laughlin, NV. If you have an opinion about their direction, you are encouraged to attend in person, share your input at a County Advisory Board meeting, or send me direct correspondence through the mail (at 6980 Sierra Center Parkway, Suite 120, Reno, NV 89511) or through email (at bwakeling@ndow.org). I will share any correspondence directly with the Commission.

Thanks for you continued cooperation. This is a successful program and the Department will continue to support it. Don't hesitate to contact me if you have any questions. I welcome your input!

Sincerely,

A handwritten signature in blue ink, appearing to read "BWakeling", written over a blue circular stamp.

Brian Wakeling
Administrator, Game Division