Regulatory Analysis

Notice of Intended Action to be published: 571—Chapter 113
"Restitution for Pollution Causing Injury to Wild Animals"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.151

State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.23, 481A.2, and 481A.151

Public Hearing

A public hearing at which persons may present their views orally will be held via virtual meeting as follows. Persons who wish to attend the virtual meeting should contact Randall Schultz via email. A link will be provided prior to the hearing. Persons who wish to make oral comments at the virtual public hearing must submit a request to Randall Schultz prior to the hearing to facilitate an orderly hearing.

September 24, 2025 12 noon to 1 p.m.	Via videoconference

Free language assistance: If you need assistance in a language other than English, contact the Department of Natural Resources (Department) at randy.schultz@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 319.217.9317 at least seven days before the event.

Asistencia lingüística gratuita: Si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento de Recursos Naturales (Departamento) al randy.schultz@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 319.217.9317 al menos siete días antes del evento.

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Randall Schultz
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: randy.schultz@dnr.iowa.gov

Free language access: If you speak a non-English language, the Department offers language assistance services free of charge, contact the Department at randy.schultz@dnr.iowa.gov.

Asistencia lingüística gratuita: Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al randy.schultz@dnr.iowa.gov.

Purpose and Summary

The Iowa Code requires the Department to obtain restitution for damages to natural resources caused by water pollution. This restitution serves as funding to remediate the damages and serves as a deterrent to future prohibited activities. Proposed Chapter 113 includes provisions identifying how investigations are to be conducted and how damages are to be assessed, designating restitution amounts for fish and other aquatic life, and providing procedures for how compensation for damages will be obtained.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Anyone causing water pollution that results in the destruction of or injury to wild animals of the State may incur the cost of restitution and reimbursement of the Department's investigative costs.

- **Classes of persons that will benefit from the proposed rulemaking:**

The public benefits by being compensated when public natural resources are damaged.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

This proposed rulemaking identifies restitution amounts for different species of fish and other aquatic animals. These rules are mandated by the Iowa Code. Each incident that results in resource damage restitution varies in severity and therefore also in cost of restitution.

- **Qualitative description of impact:**

Those who violate Iowa water pollution laws resulting in damage to natural resources will face the cost of compensating the State and people of Iowa for the damage done. These payments can be used to remediate damaged habitat and animal populations.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Department staff conduct investigations of water pollution violations. This includes field office staff and fisheries biologists. The costs of these investigations can be recouped under the provisions of this proposed chapter.

- **Anticipated effect on State revenues:**

This chapter is not being substantively changed, so there are no anticipated effects on State revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

This chapter is mandated by the Iowa Code. Costs are borne solely by those who violate the law, resulting in damage to natural resources. The benefits of deterrence and compensation for damage done are significant.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The general restitution scheme included in this proposed chapter is mandated by the Iowa Code. The specific amounts attributed to specific species are objectively calculated and published by the American Fisheries Society, which is the scientific association of professional fisheries biologists and other aquatic resource professionals. Lower restitution amounts are not justifiable.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

There are no alternative methods that were seriously considered by the Department.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The methods prescribed in this chapter are largely mandated by the Iowa Code.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This proposed chapter is mandated by the Iowa Code. To the extent that this chapter impacts a small business, it would be as a result of the business's violation of Iowa law.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 113 and adopt the following **new** chapter in lieu thereof:

CHAPTER 113
RESTITUTION FOR POLLUTION CAUSING INJURY TO WILD ANIMALS

571—113.1(481A) Applicability. These rules apply to persons who cause, by water pollution, the destruction of or injury to wild animals held in trust by the state for the public. These rules relate to the compensation to the state and public for the natural resource damages and are in addition to any other legal recourse for the event or action that caused the destruction or damage.

571—113.2(481A) Definitions.

"AFS" means the 2017 Special Publication 35, "Investigation and Monetary Values of Fish and Freshwater Mollusk Kills," published by the American Fisheries Society.

"Damages" means the costs of restoration, rehabilitation, and replacement of resources or acquisition of equivalent resources as determined in accordance with this chapter; the reasonable and necessary costs of the assessment, to include the cost of performing the assessment and administrative costs and expenses necessary for, and incidental to, the assessment; lost services to the public; and, in the event the damages claim is not resolved within six months after the incident leading to the damages, interest at the current rate published in the Iowa Administrative Bulletin by the department of revenue pursuant to Iowa Code section 421.7. The interest amount shall be computed from the date the amount of the claim is confirmed by a final ruling of the commission in a contested case decision.

"Priority watershed" means a watershed for which:

1. The department of natural resources, in partnership with other state or federal agencies, the agriculture community or nonprofit organizations, creates and implements plans, programs or projects to sustain and enhance watershed and stream functions; and
2. The principal objective is to manage wild animals and their habitats.

"Surface water resources" means the waters of the state, including the sediments suspended in water or lying on the bank, bed, or shoreline. This term does not include groundwater or water or sediments in ponds, lakes, or reservoirs designed for waste treatment under applicable laws regulating waste treatment.

"Wild animals" means fish, wildlife and other biota belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state of Iowa, the United States, or local government. Fish and wildlife include freshwater aquatic and terrestrial species; game, nongame, and commercial species; and threatened and endangered species. Other biota encompass shellfish and other living organisms not otherwise listed in this definition.

571—113.3(481A) Liability to the state. Persons who cause by water pollution the destruction of or injury to wild animals of the state shall be liable to the state as provided in Iowa Code section 481A.151. These rules establish the methodologies and criteria for evaluating the extent and value of the destruction or injury and establish the methods of compensation. If the person and the department cannot agree to the proper resolution of a particular case, the issues of liability, damage and compensation will be established through contested case proceedings as provided by 571—Chapter 7.

571—113.4(481A) Assessment. When wild animals are destroyed or injured by an identifiable source of water pollution, the degree and value of the losses shall be assessed by collecting, compiling, and analyzing relevant information, statistics, or data through prescribed methodologies to determine damages, as set forth in this rule.

113.4(1) *General.* For species other than fish, the professional judgment of fish and wildlife staff and available literature and guidance normally relied on in the fish and wildlife professions may be used to assess the injuries.

113.4(2) *Fish loss.* Assessment of damages for fish kills shall be in accordance with the following:

a. Normally investigators will follow the methods prescribed by AFS to determine, by species and size, numbers of fish killed.

b. During periods of ice cover, where local conditions prevent using the methods in 113.4(2)*"a,"* or in other appropriate circumstances; for example, when the resources are known to have been diminished by prior incidents, investigators will utilize the best information available to determine, by species and size, numbers of fish killed. Information may include existing or prior data on population levels in the affected water body or a nearby water body with similar characteristics, including any historical fish kill data.

c. The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost, except the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger and walleye/sauger hybrid. The value of these fish shall be $15 each unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be $1,000.

d. The value of lost services to the public shall be the number of fishing trips lost over the period of the resource loss as determined through local creel survey information or through interpolation from the most recent statewide creel survey. Each trip shall be valued at $30.

e. The cost of the investigation shall include:

(1) Salaries plus overhead of staff, including support staff, involved in investigating the fish kill and performing the assessment.

(2) Any meals and lodging of staff while they are in the field conducting the assessment.

(3) Mileage valued at the current rate established pursuant to Iowa Code section 8A.363.

(4) Costs borne by the department associated with containment or cleanup operations.

(5) Any other costs directly associated with the investigation and assessment.

571—113.5(481A) Compensation. The department will extend to the responsible person the opportunity to reach voluntary agreement as to the amount of damages and the compensation method. The method of compensation shall be solely in the discretion of the department. If the person disputes liability or the damage amount, these issues will be resolved through contested case proceedings.

113.5(1) *Direct monetary payment.* Compensation shall normally be by direct monetary payment to the department for projects in priority watersheds selected by the department. To the extent reasonable and practical, the money received will be used to replace, restore or rehabilitate the lost or injured animals. Resource enhancement projects, support of educational programs relating to resource

protection or enhancement, or resource acquisition of equal or greater value also may be funded. If practical, such alternatives should provide similar services to the public.

113.5(2) *Indirect monetary payment.* In cases where the destruction of or injury to wild animals is in a selected priority watershed, an equal or greater amount of compensation may be made by monetary payment to another government agency or private nonprofit group in the natural resource field for the same purposes as provided in 113.5(1).

113.5(3) *Direct funding of projects.* With the approval and oversight of the department, the person may be allowed to contract directly for the same purposes as provided in 113.5(1).

These rules are intended to implement Iowa Code sections 456A.23, 481A.2 and 481A.151.