

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. In most cases this would involve the destruction of aquatic life or other wildlife under the ownership of the state, as provided in Iowa Code section 481A.2. 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. The administration of this chapter shall not result in a duplication of damages collected by the department under Iowa Code section 455B.392, subsection 1, paragraph "c."

571—113.2(481A) Definitions.

"AFS" means the 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.

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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.

[ARC 8464B, IAB 1/13/10, effective 2/17/10]

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 "a" above, 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 18.117.

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

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

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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 subrule 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 subrule 113.5(1).

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

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