

Readopt with amendment Fis 304.01, eff 6-3-16 (Doc #11114), to read as follows:Fis 304.01 Definitions.

(a) “Agent” means the person(s) authorized to take wildlife on behalf of the commercial grower or public airport under the pre-damage deer kill permit or the wildlife depredation permit.

(b) “Agricultural product” means:

(1) Livestock, which shall include, but not be limited to, all beef or dairy cattle, steer, oxen, goats, sheep, swine, horses, mules, or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, rabbits, yaks, or other fur-bearing animals;

(2) Poultry or the production of eggs; and

(3) Bees or the production of honey.

(c) “Claimant” means a person or legal entity whose documented gross sales in money to another person or entity of any agricultural product or commercial crop, or combination thereof, are at least \$1,000 in a calendar year.

(d) “Commercial crop” means any agricultural or horticultural crop(s) planted, cultivated, and produced by a commercial grower.

(e) “Commercial grower” means commercial grower as defined in RSA 207:22-c, II(g), namely “any person who grows an agricultural or horticultural crop from which the person has derived, or reasonably expects to derive, an annual gross income from the sale of crops normally produced of at least \$2500.

(f) “Nonqualifying product” means any product that is not a qualifying product, including but not limited to projected future qualifying products, unbaled grasses or alfalfa, compost, mulching products, or cover crops.

(g) “Public airport” means an airport that is registered with the state of New Hampshire as a public use airport.

(h) “Qualifying product” means:

(1) Any agricultural product as defined in paragraph (b) above; or

(2) Any commercial crop including, but not limited to, nursery stock grown as part of a commercial operation, plant materials processed and wrapped in airtight plastic wrapping, or berries, herbs, fruit, vegetables, tree fruit, grapes, corn, small grains, soybeans, or flowers grown by a claimant.

(i) “Wholesale value” means:

(1) For any agricultural product shown in weekly market survey data available from the New Hampshire department of agriculture, the median auctioned value of the product at the time of the loss;

(2) For any agricultural product not shown in such weekly market survey data, a value determined by examining all available evidence of the actual condition of the product, its stage of growth or readiness for market, costs to replace the product, or other factors identified by the claimant in an effort to derive a fair market value for the loss; or

(3) For fruit trees, a replacement value determined by current nursery stock.

Adopt Fis 304.08 through Fis 304.12 to read as follows:Fis 304.08 Claim for Damage by Bears

(a) Pursuant to RSA 207:23-a, a claimant, as defined in Fis 304.01(c), shall notify the wildlife division chief in writing of any claim for damage by bear within 30 days of the discovery of such damage at:

NH Fish and Game Department
Wildlife Division
Claim for Bear Damage
11 Hazen Drive
Concord, NH 03301

- (b) The claimant shall provide the following information to the wildlife division regarding the claim:
- (1) The claimant's name, address, telephone number, and email contact information, if available;
 - (2) The physical location where the bear allegedly damaged the qualifying products;
 - (3) Documentation to show that the claimant was engaged in the husbandry and sale of qualifying products of at least \$1,000 in retail value at the time of the claimed loss, such as:
 - a. Sales receipts;
 - b. Tax documents;
 - c. Invoices; or
 - d. Other documentation that provides proof of the claimant's gross annual sales of at least \$1,000 of the qualifying product(s);
 - (4) Documentation of the actual damage to qualifying products in the form of photographs, or digital photographs, of the affected products;
 - (5) Documentation that the damage was caused by bear, in the form of photographs, or digital photographs, of tracks, claw marks, scat, hair, or other evidence of the manner and extent of the damage;
 - (6) The date of the claimed loss;
 - (7) The value of the claimed loss of at least \$250.00, calculated at wholesale value. In the event no market data is available to substantiate a wholesale value, the burden shall be upon the claimant to establish a reasonable value of the lost product, pursuant to Fis 304.01(i)(2);
 - (8) Certification that the location of the damage is not posted to prohibit hunting, except as permitted by RSA 207:22-a; and
 - (9) The signature of the owner of the qualifying products damaged or lost, which signature shall constitute a certification that all of the facts contained in the claim are true and accurate to the best information and belief of the claimant and subject to RSA 641:3.
- (c) Within 30 days of the receipt of the claim, the wildlife division shall examine the same for completeness, and:
- (1) Notify the claimant in writing that the claim is complete and is being investigated; or

- (2) Notify the claimant in writing that the claim is incomplete and list the information that shall be provided before the claim process continues.
- (d) No claim shall be processed to a decision until all required information has been provided to the department.
- (e) Within 60 days of receipt of a complete claim, unless extended by written agreement with the claimant, the wildlife division chief shall issue a written decision granting the claim in full, granting the claim in part, or denying the claim.
- (f) For any claim approved in whole or in part, the wildlife division chief shall also provide in the written decision a description of abatement measures the claimant may use to mitigate future damage, which the department shall use to determine whether claims in future years shall be allowed for payment, such as, but not limited to:
- (1) Properly installed electric fencing with the required number of strands of conductor and voltage or other exclusionary measures to prevent the animal(s) from gaining access to the qualifying products;
 - (2) Noisemakers or other items used to scare the animal(s) away from the area of the qualifying products;
 - (3) Removal of food sources or other attractants to prevent the animal(s) from being attracted to the area of the qualifying products;
 - (4) Use of trained bear hounds to haze bears away from the area of the qualifying products;
 - (5) Use of a properly licensed hunter, during the open bear hunting season, to remove bear from the area of the qualifying products; or
 - (6) Other measures that take into account the economic impact to the claimant.
- (g) The written decision shall include notice to the claimant of the right to appeal the decision in accordance with Fis 304.10 and Fis 200.

Fis 304.09 Criteria for Decision.

- (a) A claimant making an initial claim for damage shall show by a preponderance of the evidence:
- (1) Gross sales in money of any qualifying product(s) of at least \$1,000 in a calendar year;
 - (2) Documentation of when the damage occurred, which qualifying product(s) is affected, and what losses are attributed to activity by a bear; and
 - (3) The claimed wholesale value of items lost by activity of a bear.
- (b) Any claim shall be only for the actual damage sustained and shall not include the costs of preparation, cultivation, or equipment used in the production of the qualifying product(s).
- (c) Only the damage resulting from the specific incident referenced in the claim shall be considered, and any projected future losses shall not be contemplated, except that frames, supers, and hive components used in beekeeping shall be allowed.
- (d) A claimant making a claim, after having been compensated for a loss in a prior calendar year, shall show by a preponderance of the evidence:

- (1) All of the information required in (a) above; and
- (2) Documentation that conflict abatement measures, as specified pursuant to Fis 304.08(f) in the adjudication of a prior loss, were in place and in use at the time of the current loss.

Fis 304.10 Request to Commence an Adjudicative Proceeding.

(a) Any person aggrieved by the decision of the wildlife division chief on a bear damage claim may request the commencement of an adjudicative proceeding within 30 days of receipt of written notice of the action taken, by letter addressed to:

NH Fish and Game Department
Wildlife Division
Claim for Bear Damage
11 Hazen Drive
Concord, NH 03301

(b) The person requesting the adjudicative proceeding shall provide the following information:

- (1) The name of the claimant aggrieved by the decision;
- (2) A concise description of the reason or reasons why the decision is believed to be in error;
- (3) A current residential address; and
- (4) A current telephone number and email address, if available.

(c) Persons who fail to file a letter requesting the commencement of an adjudicative proceeding within the 30-day time period shall be deemed to have waived their right to a hearing unless, upon petition, the executive director finds that the period to file should be extended as a result of:

- (1) A showing that the person did not in fact receive the notice of the recommendation and notice of right to request the commencement of an adjudicative proceeding sent pursuant to Fis 304.11; or
- (2) A showing of excusable neglect resulting from extended travel, a health problem, or other condition that resulted in the person not receiving actual notice of the decision prior to the expiration of the appeal period.

Fis 304.11 Adjudicative Proceeding.

(a) Any adjudicative proceeding under this section shall be conducted pursuant to Fis 200 by the executive director or by a presiding officer appointed by the executive director to conduct the hearing.

(b) The executive director or presiding officer shall consider all claims of error offered by the claimant and shall only order a modification of any recommendation made upon a finding that the claimant has shown:

- (1) A mistake of fact on a finding that serves as the basis of the decision;
- (2) A mistake in applying a federal, state, or local statute, rule, or regulation that serves as the basis of the decision; or
- (3) Identification of facts showing error in the wholesale value of the agricultural products lost due to bear behavior.

Fis 304.12 Further Appeal. Any person aggrieved may seek further review in accordance with the requirements of RSA 541 of any decision by the executive director to deny relief in an adjudicative proceeding held pursuant to Fis 304.11.

APPENDIX

Rule	Specific State Statute which the Rule Implements
Fis 304.01	RSA 21:34-a, II; RSA 206:10, I; RSA 207:22-c, II(g) and III; RSA 207:23-a, V(a); RSA 207:26
Fis 304.08	RSA 206:10, I; RSA 207:22-a; RSA 207:23-a, V; RSA 541-A:29; RSA 641:3
Fis 304.09	RSA 206:10, I; RSA 207:23-a, V(e)
Fis 304.10	RSA 206:10, I; RSA 207:23-a, II; RSA 541-A:29, II(b)
Fis 304.11	RSA 206:10, I; RSA 207:23-a, V(d); RSA 541-A:29
Fis 304.12	RSA 206:10, I; RSA 207:23-a, III; RSA 541