

# POACH AND PAY

An Overview of State Fish  
and Wildlife Agency Restitution  
Programs for Illegally Taken  
Big Game Species

## RESTITUTION

Terminology associated with restitution penalties varied among states, with no consistent patterns of use. For the purposes of this research, "restitution" incorporates what some states may refer to as restitution, replacement costs, recovery of damages, reimbursable damages, penalty enhancement, further penalty, wild animal protection surcharge, or civil liability. Hereafter, all the above will be described as "restitution."

SPONSORED BY



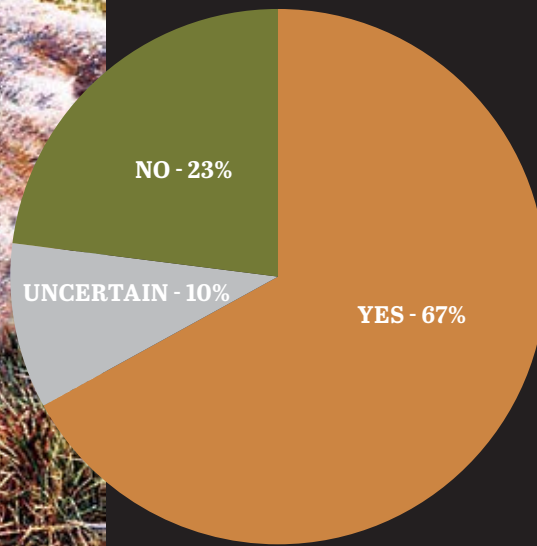
**LEUPOLD**

The illegal take or possession of big game is a serious issue in the United States, with poachers stealing wildlife from the public, taking away recreational opportunities, and in some cases, negatively affecting wildlife populations. State fish and game agencies manage and conserve wildlife as trustees of the public's resources, with agency oversight and wildlife laws grounded in the Public Trust Doctrine, a key component of the North American Model of Wildlife Conservation. Those convicted of the unlawful take or possession of wildlife may have to pay restitution, a monetary payment to the state as compensation for the loss of the public's resource. Restitution ordered by the courts in a criminal case usually is required in addition to fines, community service, imprisonment, forfeiture of equipment, license suspension or revocation, and/or felony charges.

In some states, the agency may seek restitution through a civil process as a stand-alone case or in addition to the criminal violation. In civil cases, the restitution usually is sought through monetary damages making the party "whole" again. Restitution and other penalties imposed by judges sends a message to poachers that wildlife matter to the citizens in their states, and that the illegal activity of poaching and stealing the public's resource is not tolerated.

Boone and Crockett Club's (B&C's) official measurement and big game scoring system is an important enforcement tool that some fish and game agencies use to determine restitution payment for illegally taken, trophy wildlife. However, not every state uses the system and among those that do, there are inconsistencies in how it is applied. This may lead to a reduction in the effectiveness for these states in using the B&C measuring criteria as an enforcement tool. To better understand the level of use of the B&C scoring system and its effectiveness, as well as to collect baseline information on either-sex and trophy restitution programs, B&C, along with the support of its partner, American optics maker, Leupold & Stevens sponsored this research as part of its recently established Poach and Pay Program.

B&C's Poach and Pay Program was implemented to assist states, if needed, in strengthening their restitution programs. Phase one is the research component that includes a comprehensive overview of state restitution programs for the illegal take or possession of big game. In addition, the research includes information on the obstacles enforcement officers encounter while trying to convict poachers, which may negatively affect the effectiveness of state restitution programs. The results of the



VICKIE EDWARDS

ECOSYSTEM MANAGEMENT SERVICES, LLC.

EXCERPTS FROM THE FULL REPORT  
PUBLISHED SEPTEMBER 2017

## IS RESTITUTION AN EFFECTIVE DETERRENT?

research will help guide future phases of the Poach and Pay Program and will provide state agencies and hunting and enforcement organizations with a resource for assessing and comparing state restitution programs for future policy and decision making.

I conducted surveys and interviews with state fish and wildlife enforcement officers, as well as online research to gather baseline information and agency personnel perspectives on the following:

1. Do poaching fines accurately reflect the crime and current value of big game animals?
2. Which states utilize a restitution program, and if

applicable, which states have established measuring criteria to determine trophy restitution?

3. How and why were those measuring specifications chosen?
4. What are the advantages and disadvantages to using those criteria?
5. What is the process and authority required to determine the criteria and values?
6. Is restitution an effective deterrent?

In addition, questions were asked to better understand the needs of state agencies in convicting poachers and opportunities for B&C or other partners to assist those states.

### SURVEY AND INTERVIEW RESULTS

Forty-two states participating in the study, 81 percent had restitution programs for illegally taken big game.

Of the 81 percent of states that have restitution for illegally taken big game species. Ninety-four percent of those states have either-sex restitution and 62 percent have trophy restitution with measuring, point and/or weight criteria defined in state statute, code or policy. However, in 15 percent of states, restitution was limited to a subset of the big game species. Eight different measuring systems and combinations of criteria were used by states to assess trophy level restitution, with the highest percentage using some component of B&C's official measuring system (50 percent). The second most common criteria used included a combination of total points and

measurements (other than an official measuring system). Due to the variations and the relatively small sample sizes of the different measuring systems, there were limitations to the data analysis comparing the advantages and disadvantages of each of the criteria.

The most common species with restitution identified by states included wild turkey, white-tailed deer, black bear, and elk. Restitution values for each species by state are described in **Table 1**.

### MEASURING CRITERIA

Of the 21 states with trophy restitution programs with measuring systems, the majority use some component of the B&C measuring system. The second most common system includes a combination of minimum points and other measurements besides B&C, Pope and Young, or Safari Club International.

### PROCESS AND AUTHORITY TO DETERMINE CRITERIA AND VALUES

The majority of states require legislative approval/action to add or amend restitution programs. Other state agencies and commissions have some level of authority granted to



Oklahoma Game Warden Joe Alexander finished an investigation to mark the first wildlife charges filed in Washington County for 2018. The case involved the illegal taking of this large whitetail buck carrying an impressive 17 points. Multiple charges are pending, including restitution along with the seizure of equipment used in the crime.

them by the legislature to set restitution values, recommend restitution within ranges to the courts, make adjustments to values, change restitution values outside of trophy values, and/or define trophy criteria. In North Carolina, trophy restitution could be either a rule or a law. A law would have to go through the legislature, but an agency rule would have to go through a Rules Committee and extensive public process. Arkansas Game and Fish is a constitutionally independent agency with a commission that has the authority to determine fish and game code, including restitution. The majority of agencies that have the authority to determine components or all of restitution programs in their states have to go through a public review processes to obtain public input and support for adjustments to codes, rules and/or regulations.

### ENFORCEMENT CHALLENGES

Obstacles that enforcement officers encounter while trying to convict poachers may reduce the effectiveness of restitution as a deterrent for the illegal take of wildlife. These obstacles are complex and resulted in multifaceted responses from interviewees, who often

## EVERY WILDLIFE POACHING CASE THAT IS DISMISSED OR REDUCED TO A LESSER CHARGE, AND EVERY VIOLATOR WHO IS GIVEN A MARGINAL PENALTY ERODES THE FOUNDATION OF WILDLIFE CONSERVATION IN OUR COUNTRY.

**TABLE 1. RESTITUTION FOR ILLEGALLY TAKEN BIG GAME SPECIES**

Additional states and species listed in the full report available online at boone-crockett.org

State	Whitetail Deer	Black Bear	Elk
AK		ES \$600	ES \$800
AR	ES \$300-\$600, value \$400; but as low as \$0, JD	ES \$250-\$750, value \$500; but as low as \$0, JD	ES \$750-\$2,500, value \$1,500; but as low as \$0, JD
AZ		ES Min. \$1,500, 2nd \$3,000, 3rd \$4,500	F & MNT Min. \$2,500, \$5,000 2nd, \$7,500 3rd; MT \$8,000, 2nd \$16,000, 3rd \$24,000
CO	MT \$10,000		MT \$10,000
IA	A- \$1,500; M ≤ 150" = \$2,000-\$5,000 + CS, but if no CS \$4,000-\$10,000; MT if > 150" = \$5,000-\$10,000 + CS, but if no CS = \$10,000-\$20,000		ES \$2,500 (NHP)
ID a	ES MNT \$400, MT \$2,000	ES \$400	F & MNT \$750, MT \$5,000
KS	T Fine Min. \$5,000 + MT Restitution = (gross score - 100) <sup>2</sup> X \$2		T Fine Min. \$5,000 + MT Restitution = (gross score - 200) <sup>2</sup> X \$2
KY	ES \$753.84 (RC) + MT value = (gross score - 100) <sup>2</sup> X \$1.65	ES \$1,000 (RC) + ES \$1,000	ES \$1,788.91 (RC) + MT value = (gross score - 255) <sup>2</sup> X \$1.65
MI	ES MNT \$1,000; MT \$1,000 + pt \$ (8-10 = \$500/pt; 11+ = \$750/pt)	ES \$3,500	ES \$5,000 + MT 8-10 points \$250/pt., MT 11 or more pts. \$500/pt.
MT	A- \$300; MNT \$500; MT \$8,000	ES \$1,000	ES NT \$1,000; MT \$8,000
NC	ES \$602	ES \$2,232	ES \$2,500
NM	ES NT \$250 or MT \$2,000, \$4,000, \$6,000 or \$10,000	ES \$500	ES NT \$500 or MT \$2,000, \$4,000, \$6,000, \$8,000 or \$10,000; if score > 399.9 points, director may pursue civil liability > \$10,000
OH	A- \$250; A+ NT \$500; T = ([gross score-100] <sup>2</sup> X \$1.65) + base value (min. \$500)	ES \$2,500 (endangered)	
OK	F \$1,000-\$1,500; MNT \$1,500-\$2,000; MT \$2,000-\$5,000	FNT \$1,500-\$2,500; MNT \$2,000-\$3,000; ES T \$2,000-\$5,000	F \$1,500-\$2,500; MNT \$2,000-\$3,000; MT \$2,000-\$5,000
OR	ES NT \$1,000 or MT \$7,500	ES \$7,500	ES NT \$5,000 or MT \$15,000
PA	ES \$800 or MT \$5,000	ES \$1,500 or ES T \$5,000	ES \$1,500 or MT \$5,000
SC	ES \$200	ES \$1,500	
SD d	ES NT \$1,000; MT \$2,000 - \$5,000		ES NT \$5,000; MT \$6,000 - \$10,000
TN b	A- & MNT not < \$1,000; not < \$1,000 + \$500/pt (8-10 pts); not < \$1,000 + \$750/pt (11 or > pts)	ES & for each orphaned bear cub not < \$5,000	A- & MNT not < \$1,500; not < \$1,500 + \$500/pt (8-10 pts); not < \$1,500 + \$750/pt (11 or > pts) + cost reintro.
TX	F \$273.50, M \$881.50 + MT ((gross score - 100) <sup>2</sup> X \$1.65)	ES \$4,780.50 (NHP - T sp.)	
VA	ES NT \$500; MT depending on msmt. \$1,000, \$1,500, \$2,000, or \$2,500; subsequent violations X 2 amt.	ES \$3,000	ES NT \$5,000; MT \$7,500 (NHP)
WI	ES \$43.75	ES \$175	ES \$2,000 (NHP)
WV	ES \$200 + MT depending on msmt. \$1,000, \$1,500, \$2,000 or \$2,500	ES \$500	ES \$4,500 (NHP)
WY	ES Rec. \$4,000, JD	ES Rec. \$5,000, JD	ES Rec. \$6,000, JD

**KEY:** ES-either-sex, M-male, F-female, NT non-trophy, T trophy, FMV fair market value, A- antlerless, A+ antlered, NHP non-huntable population, JD judge's discretion, RC recovery cost, CS community service

- a For each additional animal of the same category killed during a 12 month period, the amount doubles from the amount for each animal previously.
- b Did not participate in interviews. Data obtained online.
- c Restitution values and criteria not yet established.
- d If a person has taken > 2x's the lawfully daily limit, such person is liable for twice the damages.



We're 700 American craftsmen making optics for the world's most resilient hunters and shooters. We're relentless because you're relentless, and we wouldn't have it any other way.

#BERELENLESS

LEUPOLD.COM

# POACH AND PAY

qualified their answers. When interview participants were asked, “What obstacles do your enforcement officers encounter while trying to convict poachers,” the most common themes that emerged from responses focused on issues associated with the court system, followed by enforcement staffing and time constraints. The term “the courts” appeared to primarily include judges and prosecutors; however jurors also were mentioned in conjunction with judges and/or prosecutors by some of the respondents.

Reasons that respondents listed the court system as an obstacle fell into four main categories:

- Wildlife crimes and cases were not a priority.
- Courts were not consistently imposing fines, dismissing, and/or dropping cases.
- Judges were weak on prosecution because of cultural, traditional or other personal reasons.
- There was a lack of knowledge and understanding of fish and game laws by judges and prosecutors.

Many of the interviewees mentioned multiple categories per statement. In many cases, respondents did not speak negatively of the court system, but instead clarified their responses by stating that the courts were overburdened with high caseloads and/or wildlife cases were heard with other non-wildlife cases. Some also mentioned positive aspects of the court system as part, or all of their responses. However, others thought that some judges were weak on

prosecution because of their lack of hunting, fishing and outdoor experience, lack of understanding of wildlife management and conservation, and/or personal biases and motivations.

## DISCUSSION AND NEXT STEPS

Baseline information collected on state restitution programs revealed a broad range of monetary penalties for poaching wildlife, and complex and diverse issues associated with the effectiveness of those penalties as a deterrent to poachers. Survey and interview results suggest the majority of participants believe that poaching fines and restitution in their states accurately reflect the crime and current values of big game animals; however the effectiveness of those fines as a deterrent may be reduced by the level of support provided by the court system and, in some cases, whether or not monetary penalties were combined with other deterrents.

Concern that the court system does not place sufficient value on poaching violations reflects similar findings who determined there are five main issues facing wildlife law enforcement officers in Montana, including lack of support from the court system, and agency budget issues and time constraints of enforcement officers. Enforcement budget and staffing constraints also were mentioned in this research as obstacles to convicting poachers. B&C and other non-governmental entities may be able to help alleviate some of the issues enforcement officers encounter with the court system by lobbying for agency wildlife prosecutor positions, as well as wildlife case only court dockets. Groups may offer additional support to agencies by conducting outreach and

education to judges and prosecutors emphasizing the importance of hunting as a component of wildlife conservation and the role of enforcement in ensuring the protection of the public’s resource.

Specific fine information for illegal possession and other criminal charges was not presented as part of this study, but the results reflect a need to compile this data at a nationwide level for a multitude of big game species to better understand fine ranges and opportunities for improvements if needed. Currently data is available from the Quality Deer Management Association on minimum fines for illegally killed white-tailed deer, which averaged \$354 per first offense, with an overall range of \$0 - \$1,500. In some cases, the Quality Deer Management Association found that the minimum fines imposed by some courts were less than the cost of purchasing a hunting license, which would significantly reduce the effectiveness of imposing fines as a deterrent for poaching deer. An expansion of this research to include other big game species would be helpful for the public, wildlife agencies, and non-governmental organizations to petition for increased fines, if appropriate.

## CONCLUSION

The baseline information collected on state restitution programs within this report provides a valuable resource

for state agencies and non-governmental hunting, enforcement and other conservation organizations to compare programs and evaluate the need for implementing and/or amending new or current systems. The advantages and disadvantages of different measuring systems and levels of fines and restitution becomes irrelevant, however, if the laws that are in place are not applied to deter poachers from committing wildlife crimes. Every wildlife poaching case that is dismissed or reduced to a lesser charge, and every violator who is given a marginal penalty erodes the foundation of wildlife conservation in our country. Implementation of the recommendations in this report would help to address concerns expressed by the interview participants in this study. Many of these recommendations may be outside the scope of the Boone and Crockett Club’s Poach and Pay Program. However, the data reflects the need for a multi-faceted, collaborative approach among non-governmental hunting and enforcement organizations and the public to assist state enforcement personnel in addressing obstacles they encounter while trying to convict poachers. In turn, these efforts would help improve the effectiveness of restitution and other monetary penalties as wildlife poaching deterrents. ■

**The Boone and Crockett Club has a long history with sustainable use conservation dating back to the Club’s founders, Theodore Roosevelt and George Bird Grinnell, that began with the protection of Yellowstone National Park. The park’s wildlife was supposed to be protected, but was being plundered by poachers. Grinnell, who was editor of *Forest & Stream* magazine, sensationalized an incident that involved the poaching of six of the Park’s remaining bison in 1893. Public outrage over the illegal killing led to Congress passing the Yellowstone National Park Game Protection Act of 1894, which was drafted and endorsed by the Club and also spurred the Club’s development of the nation’s first game laws.**

