

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) SECOND NOTICE OF PUBLIC
RULES I through XIII and the) HEARING ON PROPOSED
amendment of ARM 12.9.1401) ADOPTION AND AMENDMENT
pertaining to grizzly bears)

TO: All Concerned Persons

1. On September 22, 2023, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-614 regarding a public hearing on the proposed adoption and amendment of the above-stated rules at page 1043 of the 2023 Montana Administrative Register, Issue Number 18. Thereafter, Montana Fish, Wildlife and Parks (FWP) became aware that there was a clerical error excluding the date and manner in which the primary sponsor for Senate Bill 295 was contacted. This second notice is being published to comply with the requirements of 2-4-302, MCA. No changes have been made to the rule language from the original proposal notice.

2. On November 17, 2023, at 9:00 a.m., the commission will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed adoption and amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: +1 206 337 9723
Meeting ID: 819 7121 7560
Passcode: 141764

3. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact FWP no later than 5:00 p.m., on November 3, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I (ARM 12.9.1404) DEFINITIONS (1) "Authorized person" means any individual given written or verbal authority by the livestock owner, or who is authorized by name on a permit to take a grizzly bear. This does not include department staff or wildlife services' staff.

(2) "Confirmed grizzly bear mortality" means a situation where a grizzly bear carcass is present.

(3) "Demographic monitoring area" or "DMA" is the area within which the grizzly bear population is monitored, where population estimates are derived, and within which the mortality threshold will apply.

(4) "Department" means Montana Fish, Wildlife and Parks.

(5) "Department director" means Montana, Fish, Wildlife and Parks' director or the director's designee.

(6) "Investigate" or "investigation" means a fact-gathering and analytical activity conducted to determine the facts relating to a reported incident and to assess a fitting non-lethal or lethal management response.

(7) "Non-lethal measures" means actions that are not intended to injure or kill a grizzly bear.

(8) "Preventative measures" means actions that are intended to prevent or reduce conflict.

(9) "Probable grizzly bear mortality" means a situation where there is sufficient evidence of grizzly bear blood, hair, and other grizzly bear tissues, to support a finding of death.

(10) "Take" or "taken" means the killing of a grizzly bear by firearm.

(11) "Wildlife services" means the United States Department of Agriculture – Animal and Plant Health Inspection Service.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE II (ARM 12.9.1405) GRIZZLY BEAR MANAGEMENT

OBJECTIVE (1) The department will implement management strategies to ensure that grizzly bears continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department will manage grizzly bears to ensure that recovery is maintained. The department's grizzly bear management objective is to maintain and enhance Montana's contribution to the grizzly bear population in the lower-48 states and the grizzly bear's connectivity between populations in and outside Montana.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE III (ARM 12.9.1406) THE QUOTA AND ESTABLISHING AND ADJUSTING THE QUOTA

(1) For each delisted ecosystem, the commission will establish an annual quota for the number of delisted grizzly bears that may be taken by a livestock owner or other authorized person, whether permitted or not, pursuant to 87-5-301, MCA. The commission shall consider relevant factors, including information provided to the commission by the department in the grizzly bear annual report, the most recent grizzly bear population estimate, the mortality threshold, and previous quotas.

(2) Grizzly bears taken by the department, wildlife services, or an individual person in self-defense do not count towards the quota.

(3) Information concerning the quota will be made public via the department's website.

(4) When the quota is met, the department will make a public announcement, via its webpage and social media page. The quota will officially close at 11:59 p.m., the same day the department's notice is made.

(5) Any individual who takes a grizzly bear after the quota is closed may be subject to criminal penalties, pursuant to 87-6-201, 87-6-413, 87-6-905, and 87-6-907, MCA, as applicable, and the deceased bear(s) will be recognized in determining the next year's available quota.

(6) If the commission determines that circumstances require an adjustment to the total number of grizzly bears taken, pursuant to 87-5-301(3), MCA, then it may, at any time prior to the quota being met, adjust the quota.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE IV (ARM 12.9.1407) THE MORTALITY THRESHOLD (1) The mortality threshold(s) is/are the maximum annual number of grizzly bear mortalities, within the DMA, that the population(s) can withstand without falling below recovery levels.

(2) All grizzly bear mortalities within the DMA will count toward the relevant mortality threshold(s).

(3) Information concerning the mortality threshold will be made public via the department's website.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE V (ARM 12.9.1408) GRIZZLY BEAR MORTALITIES THAT APPLY TO THE QUOTA AND THE MORTALITY THRESHOLD (1) A delisted grizzly bear taken within the DMA, pursuant to 87-5-301(3) and (4), MCA, counts towards the quota and the relevant mortality threshold.

(2) The quota and the total mortalities counted towards the mortality threshold include confirmed or probable grizzly bear mortalities.

(3) If a female grizzly bear with a cub or cubs of the year is taken, both the female grizzly bear and the cub(s) will count towards the quota. If the mortalities are within the DMA, they will also count towards the mortality threshold.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VI (ARM 12.9.1409) IF A DELISTED GRIZZLY BEAR POPULATION OVERLAPS TWO OR MORE STATES (1) If a delisted grizzly bear population overlaps two or more states, the mortality threshold will be apportioned by a percentage allocated to each state involved, and the quota will consider the percentage allocated to Montana.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VII (ARM 12.9.1410) ALLOWABLE LETHAL MANAGEMENT OF THE GRIZZLY BEAR

(1) The commission authorizes the department to use lethal control of depredated grizzly bears.

(2) Pursuant to 87-5-301(3), MCA, a livestock owner or other authorized person may take, without a permit or license, a grizzly bear that is attacking or killing livestock. Take by a livestock owner or other authorized person is limited to those areas that a livestock owner's livestock are legally authorized to be.

(3) Pursuant to 87-5-301(4) and 87-6-106(4), MCA, the department director may issue a permit to a person, livestock owner, or other authorized person to take a grizzly bear, under the following circumstances and conditions:

(a) when the department makes the determination that the grizzly bear is threatening livestock or poses a threat to humans;

(b) when the department makes the determination that the grizzly bear was not purposefully or intentionally fed or baited; and

(c) when the bear is threatening livestock on public land, and the livestock owner has demonstrated an effort to utilize non-lethal measures as determined by the department director or designee.

(4) A permit issued pursuant to 87-5-301(4) and 87-6-106(4), MCA, to a person, livestock owner, or other authorized person must identify the following:

(a) the permittee's name;

(b) the permit's duration and expiration date;

(c) the geographic area the permit is valid;

(d) the rationale for issuing the permit; and

(e) that the permit is applicable to one delisted grizzly bear.

(5) If a person, livestock owner, or other authorized person, whether permitted or not, takes or injures a grizzly bear, pursuant to 87-5-301(3) and (4) or 87-6-106(4), MCA, they shall:

(a) notify the department within 24 hours;

(b) leave the grizzly bear carcass, if any, where it lay;

(c) preserve the area the shot was taken from;

(d) preserve the area surrounding the grizzly bear carcass, if any; and

(e) surrender the grizzly bear carcass, if any, to the department.

(6) A person, livestock owner, or other authorized person, who purposefully injures or kills a grizzly bear by any other means, besides a firearm, is subject to criminal penalties, pursuant to 87-6-201, MCA.

(7) Pursuant to 87-5-301(4)(b) and 87-6-106(4), MCA, the department has the discretion to lethally remove a grizzly bear. If a grizzly bear is lethally removed by department or wildlife services' staff, after conducting an on-site investigation, the grizzly bear does not count towards the quota. However, if the lethal removal occurred inside of the DMA, the grizzly bear will count towards the mortality threshold.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VIII (ARM 12.9.1411) ALLOWABLE NON-LETHAL MEASURES OR PREVENTATIVE MEASURES OF THE GRIZZLY BEAR (1) As allowed by 87-5-301 and 87-6-106(4), MCA, control of the grizzly bear includes a variety of non-lethal measures or preventative measures intended to decrease risk of, prevent, or resolve a conflict without killing the grizzly bear in question. Allowable non-lethal measures or preventative measures include, but are not limited to:

(a) husbandry practices, including, but not limited to, electric fencing, increased human presence, herding, or guarding animals, night pens, carcass removal, alternative pastures, amended pasture or grazing rotations, or supplemental feed;

(b) the department's placement of a radio collar to facilitate increased monitoring of the grizzly bear;

(c) hazing in a non-injurious manner;

(d) intentional harassment;

(e) electric fencing of bone yards;

(f) working with interested individual livestock owners and private landowners, watershed groups, interested groups, and state and federal land managing agencies to provide technical assistance and to assist with selection and implementation of proactive non-lethal controls on both public and private lands when and where livestock are present, either seasonally or yearlong; and

(g) the department's capture and relocation of the grizzly bear.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE IX (ARM 12.9.1412) BAITING GRIZZLY BEARS AND NORMAL LIVESTOCK OPERATIONS (1) A person may not intentionally bait a grizzly bear. Normal livestock operations are not considered baiting.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, MCA

NEW RULE X (ARM 12.9.1413) REQUIREMENT TO MANAGE ANY DELISTED GRIZZLY BEAR POPULATION FOR FIVE YEARS PRIOR TO A HUNTING OR HARVEST SEASON (1) The department shall manage any delisted grizzly bear population for five years prior to proposing any hunting season or harvest for grizzly bears.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE XI (ARM 12.9.1414) GRIZZLY BEAR ANNUAL REPORT (1) The department shall generate and publish a grizzly bear annual report starting the first year after either the Northern Continental Divide Ecosystem or the Greater Yellowstone Ecosystem is delisted and will continue thereafter.

(2) The grizzly bear annual report will include:

- (a) the population estimate and previous year's mortalities for delisted populations;
- (b) the methods used by department personnel to monitor grizzly bears and develop population estimates;
- (c) information concerning connectivity and genetic exchange between the Northern Continental Divide Ecosystem and the Greater Yellowstone Ecosystem;
- (d) description of mortality sources and potential for future population level impacts;
- (e) the number, types, and locations of human-bear conflicts; and
- (f) outreach and education efforts made by the department.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE XII (ARM 12.9.1415) GENETIC AND POPULATION

AUGMENTATION (1) Upon delisting, the department shall continue to translocate grizzly bears between the Northern Continental Divide Ecosystem, the Greater Yellowstone Ecosystem, and other grizzly bear populations for genetic and population augmentation. The department will continue to conduct genetic sampling, as necessary, when handling bears, and will analyze those samples to evaluate genetic diversity and connectivity between populations and the need for continued efforts.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE XIII (ARM 12.9.1416) DATE OF EFFECT AND APPLICABILITY

(1) [NEW RULES I through XIII] only apply to grizzly bear populations that have been delisted by the United States Fish and Wildlife Service and take effect upon the date that said populations are delisted and no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, MCA

REASON: The department is proposing the new rules, mentioned above, to adhere to the requirements of Senate Bill 295 (2023 Legislature) and to further clarify how Montana will manage delisted grizzly bears for human safety, conflict with livestock, and genetic exchange.

5. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

12.9.1401 GRIZZLY BEAR POLICY (1) through (1)(b) remain the same.

(c) Hunting and recreational use. The commission recognizes its responsibility to consider and provide for recreational opportunities as part of a grizzly bear management program. These opportunities shall include: sport hunting,

when deemed appropriate; recreational experiences; aesthetics of natural ecosystems; and other uses consistent with the overall welfare of the species.

(i) through (d)(iii) remain the same.

(iv) Grizzly bears ~~committing depredations~~ that do not directly endanger human life but that are causing non-livestock related property losses shall be evaluated on an individual case basis.

(v) through (f) remain the same.

AUTH: 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

REASON: The department is proposing amendments to this rule to better reflect current practices and to conform with its obligation to manage a delisted grizzly bear population for five years post-delisting prior to instituting a hunting season.

6. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Wildlife Division, ATTN: Grizzly Bear ARM, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail fwpwd@mt.gov, and must be received no later than November 20, 2023.

7. Christina Bell or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply. The department contacted Senate Bill 295's primary sponsor, Senator Bruce Gillespie, on April 14, 2023, June 20, 2023, and June 28, 2023, via email. Senator Gillespie did not provide any substantive feedback or comments regarding the draft rule language. The department further contacted Senator Gillespie on September 28, 2023, via phone, and October 5, 2023, via email. In the October 5, 2023, correspondence, Senator Gillespie was informed of the Secretary of State process, which identified the new hearing date and the deadline to submit comment(s).

10. With regard to the requirements of 2-4-111, MCA, the commission has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State October 10, 2023.