

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.9.1403 pertaining to grizzly) PROPOSED AMENDMENT
bear demographic objective for the)
Northern Continental Divide)
Ecosystem)

TO: All Concerned Persons

1. On August 2, 2022, at 9:00 a.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed amendment of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1 213 338 8477
Meeting ID: 829 8168 9817
Password: 591174

2. 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 the Department of Fish, Wildlife and Parks (FWP), no later than 5:00 p.m. on July 22, 2022, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

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

12.9.1403 GRIZZLY BEAR DEMOGRAPHIC OBJECTIVES FOR THE NORTHERN CONTINENTAL DIVIDE ECOSYSTEM (1) Upon delisting from the Endangered Species Act, management of the grizzly bear and its habitat in the Northern Continental Divide Ecosystem (NCDE) will be guided by the Conservation Strategy for Grizzly Bears in the Northern Continental Divide Ecosystem (NCDE Conservation Strategy). The department and federal land management agencies will endorse and commit themselves to the NCDE Conservation Strategy by entering into a memorandum of understanding detailing their agreement to implement it. The department will be a signatory to the implementation memorandum.

(2) ~~When and so long as the NCDE Conservation Strategy is in effect, t~~The department and the commission shall, within their lawful authority to do so, maintain the recovered status of the grizzly bear in the NCDE by implementing interagency cooperation, population and habitat management and monitoring, and other

provisions of the NCDE Conservation Strategy in accordance with the responsibilities described therein.

(3) ~~Specific to population management in the NCDE, as~~ described in the NCDE Conservation Strategy, the commission ~~specifically~~ adopts the following demographic objectives. The department shall:

(a) maintain a well-distributed grizzly bear population within the demographic monitoring area as described in the NCDE Conservation Strategy and maintain the documented presence of females with offspring in at least 21 of 23 bear management units of the primary conservation area and in at least six of seven occupancy units of Zone 1 at least every six years. Adherence to this objective will be evaluated by monitoring the presence of females with offspring (cubs, yearlings, or 2-year-olds) within defined geographic units of the NCDE;

(b) manage mortalities from all sources, including hunting and the loss of grizzly bears by translocation out of the NCDE, to support an estimated probability of at least 90% that the grizzly bear population within the demographic monitoring area remains above 800 bears, considering the uncertainty associated with all of the demographic parameter and further manage mortality against a 6-year running average within the following threshold objectives:

(i) ~~using a 6-year running average~~, maintain estimated annual survival rate of independent females within the demographic monitoring area of at least 90% and a rate at or above the minimum level consistent with a projected probability of at least 90% that the population within the demographic monitoring area will remain above 800 bears based on population modeling;

(ii) ~~using a 6-year running average~~, limit annual estimated number of total reported and unreported mortalities of independent females within the demographic monitoring area to a number that is no more than 10% of the number of independent females estimated within the demographic monitoring area based on population modeling and a number that is at or below the maximum level consistent with a projected probability of at least 90% that the population within the demographic monitoring area will remain above 800 bears based on population modeling; and

(iii) ~~using a 6-year running average~~, limit annual estimated number of total reported and unreported mortalities of independent males within the demographic monitoring area to a number that is no more than 15% of the number of independent males estimated within the demographic monitoring area based on population modeling;

(c) monitor demographic and genetic connectivity among populations by the following means:

(i) estimating spatial distribution of the NCDE grizzly bear population biennially; and

(ii) identifying the population of origin for individuals sampled inside and outside of the demographic monitoring area to detect movements of individuals to and from other populations or recovery areas.

(4) Hunting would cease if the probability that the grizzly bear population remains above 800 within the demographic monitoring area falls below 90% and would not resume until the probability is 90% or greater that the population of bears remains above 800.

(5) Hunting will not be allowed in a year if mortality thresholds as described in (3)(b)(ii) or (iii) were exceeded in the previous year.

AUTH: 87-1-301, MCA

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

REASON: The commission previously proposed and approved amendments to ARM 12.9.1403; however, due to a procedural filing error after the April 19, 2022 commission meeting, the amendments must be repropoed. The commission proposed amendments to ARM 12.9.1403 on January 14, 2022, at page 8 of the Montana Administrative Register, Issue No. 1. Public comments were received, including comments at a hearing on February 8, 2022. Upon consideration of the comments received, the commission approved amending (5) to read "Hunting will not be allowed in a year if mortality thresholds as described in (3)(b)(ii) or (3)(b)(iii) were exceeded in the previous year" instead of "(3)(b)(ii) and (3)(b)(iii)." This modification is a more conservative approach to evaluating closing hunting and is reflected in the current proposal.

All public comments received during the public comment period for the January 14, 2022 proposal will be considered for this proposal.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Grizzly Bear ARM, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail GrizzlyBearARM@mt.gov, and must be received no later than August 5, 2022.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. 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: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

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

Certified to the Secretary of State June 28, 2022.