

CORRECTED VERSION – JUNE 27, 2023

Montana Fish, Wildlife and Parks’ Recommendation to Initiate Montana Administrative Procedures Act Rulemaking on Administrative Rules of Montana to the Fish and Wildlife Commission

To: All Concerned Persons.

Re.: Adoption of Administrative Rules of Montana Re. Grizzly Bear Management.

The rules as proposed to be adopted provide as follows:

NEW RULE I – 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) “Nonlethal 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 Plant and Health Inspection Service.

NEW RULE II – GRIZZLY BEAR MANAGEMENT OBJECTIVE

(1) The Department will implement management strategies to assure 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.

NEW RULE III – 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 years 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.

NEW RULE IV – 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.

NEW RULE V – 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.

NEW RULE VI – 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.

NEW RULE VII – ALLOWABLE LETHAL MANAGEMENT OF THE GRIZZLY BEAR

(1) The Commission authorizes the Department to use lethal control of depredate 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; and,
- (b) When the Department makes the determination that the grizzly bear was not purposefully or intentionally fed or baited.

(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), (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.

NEW RULE VIII – ALLOWABLE NONLETHAL 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 nonlethal measures or preventative measures intended to decrease risk of, prevent, or resolve a conflict without killing the grizzly bear in question. Allowable nonlethal 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, state and federal land managing agencies, to provide technical assistance and to assist with selection and implementation of proactive nonlethal 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.

NEW RULE IX – BAITING GRIZZLY BEARS & NORMAL LIVESTOCK OPERATIONS

(1) A person may not intentionally bait a grizzly bear. Normal livestock operations are not considered baiting.

NEW RULE X – 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.

NEW RULE XI – 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 years' 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;

NEW RULE XII – 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, will analyze those samples to evaluate genetic diversity and connectivity between populations and the need for continued efforts.

NEW RULE XIII – DATE OF EFFECT AND APPLICABILITY

(1) Administrative Rules of Montana _____ to _____ 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.