



MONTANA FISH AND WILDLIFE COMMISSION FWP PROPOSAL & INFORMATION SHEET

THE **OUTSIDE** IS IN US ALL.

Meeting Date: September 24, 2026

Agenda Item: Administrative Rulemaking Petition – Bear Spray Requirement

Action Needed: Decision to Approve or Deny Citizen Petition for Rulemaking

Time Needed on Agenda for this Presentation: 20 minutes

Background: On August 5, 2026, a citizen petition was directed to the Commission on behalf of approximately 65 NGOs and individuals by Patty Ames, President of the Flathead-Lolo-Bitterroot Citizen Task Force, requesting that the Commission adopt an administrative rule requiring any person who hunts, traps, or accompanies a hunter as an outfitter or guide to carry bear spray and have it reasonably accessible at all times while hunting or trapping in grizzly bear habitat. The petition also requests that the Commission adopt penalty provisions for violations and grant itself rulemaking authority to implement the rule. Under the Montana Administrative Procedure Act (“MAPA”), an interested person may petition an agency to request the promulgation, amendment, or repeal of an administrative rule.

Public Involvement Process & Results: Written public comment will be accepted through September 18, 2026. The Commission will also solicit public comment at its September 24, 2026 special meeting during consideration of this agenda item.

Analysis & Alternatives: Under this provision of MAPA (§ 2-4-315, MCA), the Commission can either deny the petition or initiate a formal MAPA rulemaking process that would involve the solicitation of public comment and a hearing on the proposed rule, followed by subsequent Commission consideration of the adoption (or non-adoption) of the proposed rule. A decision to deny the petition or initiate rulemaking must be made within 60 days after submission of the petition and must be in writing and based on record evidence.

Alternative A: Approve the petition for rulemaking and initiate the MAPA rulemaking process for the proposed rule. FWP staff would assist the petitioner administratively with the rulemaking process and format the petitioner’s proposed rule according to the Montana Secretary of State’s requirements.

Alternative B: Deny the petition for rulemaking. The status quo would remain in place, and there would be no new requirement for hunters, trappers, or outfitters/guides to carry bear spray while hunting or trapping in grizzly bear habitat.

Agency Recommendation & Rationale: The Legislature has directed the Commission to “set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state” and to “establish the hunting, fishing, and trapping rules” of FWP. See §§ 87-1-301(1)(a) and (b), MCA. The Commission generally sets hunting, fishing, and trapping regulations through seasonal rules that are adopted annually or biennially, and those seasonal regulations are specifically excluded from the requirements for a MAPA rulemaking process. See § 2-4-102(11)(b)(iv), MCA; see also § 87-1-202 (1), MCA (requiring annual and biennial Commission rules setting hunting, fishing, and trapping regulations to be published).



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The Petitioners analogize the Commission's authority to adopt a bear spray requirement to the requirement to wear hunter orange while hunting big game. However, Montana's hunter orange requirement was established by the Legislature (see § 87-6-414, MCA), not adopted by the Commission as an administrative rule under MAPA. Moreover, in the context of equipment used while hunting, the Legislature has provided both specific regulatory authority to the Commission (see § 87-1-301(2), MCA relating to archery equipment and § 87-6-401, MCA relating to electronic motion-tracking) and specific restrictions on the Commission's authority (see § 87-1-301(6) relating to the regulation of firearms, firearm accessories, or ammunition).

To the extent the proposed rule incorporates a specific penalty structure, an agency can generally only exercise penalty-imposing authority where the legislature has specifically and explicitly granted it in statute and directed the magnitude of the penalty. See generally *MTSUN, LLC v. Mont. Dep't of Pub. Serv. Regulation*, 2020 MT 238, ¶ 70, 401 Mont. 324, 472 P.3d 1154 ("Administrative agencies have only the powers specifically conferred upon them by the legislature."). The Commission does not typically establish independent penalties for violation of its adopted regulations relating to hunting, fishing or trapping. Rather, penalties are typically established by the Legislature in either an offense-specific statutory provision (see e.g., § 87-6-614, MCA [failure to wear hunter orange while hunting big game]) or as a residual Commission rule violation under § 87-6-201, MCA.

Proposed Motions:

Alternative A: Based on the petition's contents, information presented to the Commission, and the Commission's discussion, I move the Fish and Wildlife Commission grant the citizen rulemaking petition signed on behalf of the petitioners by Patty Ames, President of the Flathead-Lolo-Bitterroot Citizen Task Force and authorize the initiation of the MAPA rulemaking process for consideration of the potential adoption of the requested rule.

Alternative B: Based on the petition's contents, information presented to the Commission, and the Commission's discussion, I move that the Fish and Wildlife Commission deny the citizen rulemaking petition signed on behalf of the petitioners by Patty Ames, President of the Flathead-Lolo-Bitterroot Citizen Task Force