

November 16, 2023

Wildlife Division
ATTN: Grizzly Bear ARM
Montana Fish Wildlife & Parks
P.O. Box 200701
Helena, MT 59620-0701

Re: Grizzly Bear ARM–SB 295 Rulemaking

Dear Director Temple and Commissioners,

We, the undersigned organizations representing thousands of members and supporters in Montana, ask that you please make the following changes to the draft Grizzly Bear ARM:

NEW RULE I (ARM 12.9.1404) DEFINITIONS

SB 295 uses terms including “threatening,” “persistent presence” and “proximity,” which are subjective, and are left undefined in both the bill and the draft rule. For example, would a bear that is a quarter-mile away be considered “proximate”? What if a bear is 100 yards away? In the Senate Fish and Game Committee hearing on the bill, several livestock producers present were asked by committee members how they would define “threatening.” They each had completely different responses, with one landowner saying that if he sees a bear, then it is threatening. The U.S. Fish and Wildlife Service has previously expressed similar concerns over the lack of definition in the MCA around “threatening,” yet SB 295 and this draft rule fail to address those concerns, and instead creates further ambiguity. The Department needs to clarify these terms in the ARM.

NEW RULE V (ARM 12.9.1408) GRIZZLY BEAR MORTALITIES THAT APPLY TO THE QUOTA AND THE MORTALITY THRESHOLD

While Department staff have stated that ALL grizzly bears taken under SB 295 will count towards a quota established by the Commission, the language in the draft rule is ambiguous in this regard, and could be interpreted so that bears outside of the DMA will not be counted against the quota. There exists important grizzly bear habitat outside of the DMA boundaries—including scientifically-identified linkage zones and corridors between ecosystems—that is critically important to long-term, statewide bear conservation, connectivity and recovery. We recommend that this rule clearly state that ALL grizzly bear mortalities permitted under SB 295—even those mortalities occurring outside of the DMA—will be counted against the quota determined by the Commission.

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

We appreciate that this rule may require the use of non-lethal measures on public land before the Department will issue a permit to a person to take a grizzly bear. However, as written, New Rule VII (ARM 12.9.1410) is unclear if that is the case. For example, Rules VII(a)-(c) require that the Department can only issue a permit if all of the following criteria are met: (a) the department makes a determination that the grizzly bear is threatening livestock or poses a threat to humans; (b) the department makes the determination that the grizzly bear was not purposefully or intentionally fed or baited; and (c) 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.

As an initial matter, this Section is confusing because, while it requires all three criteria to be met and subsection (c) only references public land, there is no explanation as to what criteria must be met before the Department may issue a permit to a person to take a grizzly bear on private land. While it seems that subsection (a) would be applicable to private land, that is not clear in the current language. We request that the Department clarify the language in subsections (a)-(c).

Second, subsection (c) states that the livestock owner must demonstrate an effort to utilize non-lethal measures “as determined by the department director or designee.” In order to ensure this provision is meaningful, we request that language be added to state that the use of non-lethal measures is documented or verified on site by the Department’s bear management specialist and that the type and use of non-lethal measures be recorded in writing before issuing the permit. This additional language would ensure that the requirement of subsection (c) is applied consistently and effectively across the landscape.

Precedent for proactive use of non-lethal measures for predatory carnivore deterrence has been set in Washington in the Washington Department of Fish and Wildlife’s Wolf-livestock Interaction Protocol.¹ The Protocol expects livestock producers to proactively implement at least two (2) deterrence measures with concurrence from the local WDFW Wildlife Conflict Specialist long enough for the deterrence measures to have had an opportunity to be effective. New Rule VII should make proactive use of at least two (2) deterrence measures a requirement prior to consideration of issuance of a permit for removal of a grizzly bear. Additional responsive non-lethal measures should be considered prior to issuance of a permit. Every measure, proactive and responsive, should be taken to avoid conflict and prevent grizzly bear mortality. Lethal removal of a bear under SB 295 was not intended to be the first response to conflict, but rather, an option for livestock producers after other non-lethal efforts have failed.

Finally, while we appreciate the inclusion of a non-lethal conflict prevention requirement on public land, we remain strongly opposed to the application of SB 295 on public land. We urge the Commission to restrict permits issued under SB 295 to a livestock owner’s private land only. We recognize that occasionally a landowner—working alongside bear specialists at FWP and having applied appropriate non-lethal efforts to prevent grizzly bear conflict—might need a

¹ (2020, September 15). Washington Department of Fish & Wildlife. https://wdfw.wa.gov/sites/default/files/2020-09/20200915_wdfw_wolf_livestock_interaction_protocol.pdf

lethal solution for a dangerous or habituated bear on their own property. However, public land that is far from towns and ranches is a different scenario. Here, wildlife make their homes, while livestock graze only seasonally in areas that are funded, valued and recreated upon by the general public. We know of no other species managed by the Department for which private citizens can obtain a permit to kill, on public land, outside of any established hunting season. Yet, SB 295 creates this unprecedented authorization for our iconic state animal that is mortality-sensitive and one of the slowest-reproducing terrestrial mammals. Furthermore, restricting permits issued under this section to private land would add consistency to the Department's wildlife management protocol, by aligning this rule with a similar program for wolves as authorized under SB 200.

We are grateful to the Department for recognizing that grizzly bears are a “valuable part of Montana’s wildlife heritage,” as well as acknowledging the importance of non-lethal conflict prevention and connectivity between ecosystems. Indeed, according to the FWP and University of Montana Human Dimensions research, these views align with the vast majority of Montanans who overwhelmingly value grizzly bears and think that we need to value living with them.²

Thank you for considering these comments.

Sincerely,

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² <https://www.umt.edu/human-dimensions-lab/files/final-hd-research-summary-no-47-grizzly-bear-final-1.pdf>

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