

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,

Chris Bachman, Conservation Director
Yaak Valley Forest Council
Troy, MT

Nick Gevock, Field Organizing Strategist, Northern Rockies Wildlands and Wildlife
Sierra Club
Helena, MT

Derek Goldman, Field Director and Northern Rockies Sr. Field Rep.
Endangered Species Coalition
Missoula, MT

Keith Hammer, Chair
Swan View Coalition
Kalispell, MT

Patrick Kelly, Montana and Washington Director
Western Watersheds Project
Missoula, MT

Sarah Lundstrum, Glacier Senior Program Manager
National Parks Conservation Association
Whitefish, MT

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

Peter Metcalf, Executive Director
Glacier-Two Medicine Alliance
East Glacier Park, MT

Amy McNamara, Northern Rockies Director
Natural Resources Defense Council
Bozeman, MT

Arlene Montgomery, Program Director
Friends of the Wild Swan
Bigfork, MT

Lizzy Pennock, Carnivore Coexistence Attorney
WildEarth Guardians
Missoula, MT

Andrea Zaccardi, Carnivore Conservation Legal Director, Senior Attorney
Center for Biological Diversity
Victor, ID



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LOCATIONS IN MONTANA, IDAHO & WYOMING

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November 19, 2023

Via email to:
fwpwld@mt.gov

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

Re: Grizzly Bear ARM- New rules and 12.9.1401 Amendment

Dear Director Temple and Montana Fish and Wildlife Commission,

Thank you for the opportunity to comment on the adoption of new rules and amendment of ARM 12.9.1401 pertaining to grizzly bears, hereafter referred to as 'the draft grizzly ARM' or 'draft rules.' The Greater Yellowstone Coalition (GYC) is a regional conservation organization based in Bozeman, Montana. Its five field offices, strategically placed in Idaho, Wyoming, and on the Wind River Indian Reservation, create opportunities to work with all people to protect the lands, waters, and wildlife of the Greater Yellowstone Ecosystem now, and for future generations. For more than 40 years, GYC and our 100,000 supporters from across the country have advocated for a science-driven, collaboration-focused, and forward-thinking approach to keeping lands wild, rivers free-flowing, and iconic wildlife moving throughout a connected and vibrant landscape. GYC's supporters have a strong interest in ensuring future state management of grizzly bears builds upon the remarkable conservation success of grizzly bear recovery in our region.

During the 2023 Montana Legislative Session GYC opposed Senate Bill 295. While we can appreciate the benefits of establishing sideboards tied to take of grizzly bears in incidences impacting livestock, we are confident that the bill fell short in providing the safeguards that we would deem necessary to ensure long-term conservation of grizzly bears in Montana. We appreciate the opportunity to comment on the draft grizzly ARM, as the proposed rules illuminate more detail around how the policy set forth in SB 295 would be applied. GYC works closely with livestock producers to support projects and programs that reduce and prevent grizzly conflicts. We recognize that grizzly depredation on livestock poses real challenges for the working ranches that provide important wildlife habitat in Montana. At the same time, we believe there is an opportunity to strike a balance in management that ensures both people and grizzlies thrive on shared landscapes. It is through this lens of balance that GYC evaluated the draft grizzly ARM.

GYC supports the following components of the draft rules:

5-year post delisting delay prior to implementation of a hunting season: GYC opposes sport hunting grizzly bears because there is no clear biological or management justification for the practice. In the event of a future
AMERICA'S VOICE FOR A GREATER YELLOWSTONE

grizzly bear hunt, the season structure should not undermine the commitments of Montana Fish, Wildlife & Parks (FWP) to sustained recovery of grizzly bears and achieving connectivity between population cores. A 5-year delay prior to implementing a hunting season will provide an opportunity to evaluate grizzly mortality from other sources of management. We appreciate this conservative approach and believe it will help support a lasting and sustainable transition to state management.

Counting probable grizzly mortalities against the quota and mortality threshold for the relevant recovery ecosystem: This is a prudent measure to ensure a conservative accounting of grizzly bear mortality. Grizzly bears are slow to reproduce and as a result the difference between sustainable and unsustainable mortality for a population can be small.

GYC recommends improvement to the following elements of the draft rules:

Subjective terminology and places where policy direction is lacking important clarity:

Because the Demographic Monitoring Areas (DMAs) encompass smaller geographies that the recovery ecosystems they sit within, we are unclear how the draft rules ensure grizzly bear mortalities within a broader recovery ecosystem do not undermine the stated objective of the Department 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 II, ARM 12.9.1405 (1)). The draft rules seem to imply that grizzly mortalities outside of DMAs will not count against the established quota for the relevant recovery ecosystem. Therefore, we are unclear how the term ‘recovery ecosystem’ comes into play regarding mortality limits and quotas in this policy. **Recommendation: Clearly indicate how mortalities outside of DMAs will be treated in relation to established quotas.**

The term ‘recovery levels’ is used to describe the goal of mortality thresholds (i.e., maximum mortality a population can withstand without falling below recovery levels). This term is vague and has different meanings for different stakeholders. The lack of specificity around this term makes it challenging to thoroughly evaluate the implications of the proposed policy in the draft rules. **Recommendation: define what is meant by ‘recovery levels’ in relation to the stated conservation and management objective for grizzly bears.**

We are encouraged by the inclusion of a requirement that non-lethal preventative measures be in place prior to issuing a permit for grizzly take in public land settings. During the 2023 Montana Legislative Session, we pointed out that for a large portion of the interested public, allowing citizen take of grizzly bears to protect private property on public lands is not a palatable solution. We recommended that non-lethal preventative measures be a requirement to secure a take permit in public land grazing scenarios. While we appreciate the effort to address this issue, we are still concerned that the draft rule language is vague about the process for verification of such measures. More specificity regarding who will assess eligibility and what criteria will be considered is needed to understand whether this requirement will be both effective in encouraging non-lethal conflict prevention efforts, while also reasonable for livestock producers doing the best they can. **Recommendation: specify that bear management specialists will confirm the use of non-lethal preventative measures and clarify a variety of practices that could qualify.**

The language in Senate Bill 295 indicated that grizzly bear threats due to, “Presence or proximity to people or inhabited dwellings” would be exempt from a quota system. During the 2023 Montana Legislative Session, GYC expressed concern that this exemption could undermine the value of having a quota system, unless there is substantial cushion between established quotas and mortality thresholds for a given recovery ecosystem. The application of this component of the new statute in the draft rules is vague. The draft rule language indicates that take by the Department, Wildlife Services, or in self-defense does not count against quotas (New Rule III,

ARM 12.9.1406 (2)). It is unclear how the term 'self-defense' relates to the description of 'presence or proximity to people or inhabited dwellings' within new statute. Given 'threatening' behavior, and 'presence' or 'proximity' are likely to be interpreted widely and may include circumstances different from acting in self-defense, it is critical that there be some accountability mechanism built into this form of take, via its application toward quotas. **Recommendation: clarify rule language regarding how take in response to 'threatening' behavior toward people relates to quotas. New Rule V, ARM 12.9.1408 (1) could be modified to include grizzly bears taken pursuant to 87-6-106(4) in counts of mortalities against quotas.**

The term 'threatening' is vague and lacking clear definition. 'Threatening' is also a very subjective term- what one person perceives as a threat may not feel threatening to another. So, for some people it may be a rare occurrence to encounter a grizzly bear threatening their livestock, while for others it may happen more frequently. This lack of definition creates substantial uncertainty around the number of grizzly bears that might be removed because of this policy. This ambiguity is problematic because it weakens the state's regulatory framework for sustainably managing grizzly bear mortality, thus undermining endeavors to delist grizzly bears. State management direction for grizzly bears should be clear and specific enough to distinguish between perceived and real conflict. **Recommendation: define the term 'threatening.'**

Safeguards within recovery ecosystems:

The draft rules indicate that mortality thresholds will inform annual quotas but do not guarantee a cushion between the two numbers. Such a buffer is critical to accounting for inevitable grizzly mortalities resulting from agency management actions, natural causes, and unreported take. If the state has an interest in delisting grizzly bears, demonstration of adequate regulatory mechanisms for sustainably managing grizzly bear mortality is crucial. **Recommendation: Add rule language requiring a cushion between established quotas and mortality thresholds to account for mortalities resulting from agency management actions, natural causes, and unreported take.**

Process for citizen take of grizzly bears:

One of our concerns regarding Senate Bill 295 during the 2023 Montana Legislative Session was that the bill authorized the Montana Fish and Wildlife Commission to adjust the grizzly bear quota at any time, without any high-level guidance regarding grizzly bear conservation assurances and thus guidelines within which the Commission should operate. We recognize that it is important that the Commission have the flexibility to adjust quotas based on circumstances on the ground. That said, it is critical that any adjustment of quotas should not undermine the Department's conservation commitments in relevant management plans or interagency agreements. **Recommendation: Revise draft rule language to clarify that any adjustment to annual quotas should be subject to the status of discretionary mortality in relation to established mortality thresholds.**

We are concerned that establishing the director of FWP as the lead on fielding complaints regarding grizzly bears that are 'threatening' livestock is unrealistic and undermines the expertise of bear management staff within the agency. This process could also undermine the current role of Wildlife Services in Montana as the primary responder to grizzly/livestock conflicts. It is also very difficult to identify the utility of such a process in a remote public land grazing scenario. The lag time between an incident and a response from the FWP director could result in management action targeted toward a different bear than that posing the original threat. **Recommendation: limit authorization of grizzly bear take surrounding livestock incidences to those circumstances where grizzly bears are in the act of attacking or killing livestock.**

Safeguards for grizzly bears between recovery ecosystems:

With the two largest grizzly bear populations in the lower-48 states and connective lands between, Montana is uniquely positioned to ensure lower-48 grizzly bears persist long into the future. The draft rules indicate grizzly bear mortalities outside of DMAs will not count against take quotas. It is important that management direction captures a conservative approach that is consistent with the stated objectives for connectivity between grizzly bear populations within both the draft Montana grizzly bear management plan and the recommendations from the Grizzly Bear Advisory Council. Including connectivity areas within the geographies where grizzly bear mortalities apply against the take-quota could improve public opinion of- and trust in- the idea of state management. Importantly, safeguards for grizzly bears in connectivity areas are important to the long-term conservation success of the species in the lower-48 states. Given grizzly bears were listed under the ESA as Threatened in the *contiguous* lower-48 states, it is critical that state regulatory frameworks and management plans are conducive to interconnected populations of grizzly bears. In a recent letter to FWP regarding the Department's draft statewide grizzly bear management plan and EIS, the U.S. Fish and Wildlife Service emphasized the importance of demographic connectivity between grizzly populations. ***Recommendation: Include connectivity areas between recovery ecosystems in the geographies where grizzly bear mortalities resulting from citizen take would count against quotas.***

The new rules governing grizzly bear management in Montana will play an important role in maintaining a remarkable conservation success story under state management authority. Thank you for considering our recommendations, as we believe they would make for a more robust management framework for ensuring sustained grizzly bear recovery over time.

Sincerely,
Brooke Shifrin
Wildlife Conservation Coordinator
Greater Yellowstone Coalition

November 19, 2023

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

Re: the adoption of NEW RULES I through XIII and the amendment of ARM 12.9.1401 pertaining to grizzly bears

Comments submitted via email to: fwpwld@mt.gov

Dear Responsible Montana State Officials:

I am writing to provide comment on the New Rules pertaining to grizzly bears. Unfortunately, sections of the new rule are likely to undo the decades of public investment in restoring grizzly bear populations in Montana. I oppose the rules as written and I encourage the Fish and Wildlife Commission to reject the rules as written. I request that the MFWP and the Fish and Wildlife Commission broaden their perspective and think long term for the benefit of future generations of the grizzly bear and the public and not just short term for the perceived benefit of special interest(s).

Summary of Comments: I support the writing and adoption of new rules pertaining to grizzly bears if the rules are based on best available science and sound principles of grizzly bear management. I oppose lethal removal measures by any private person(s), including but not limited to livestock owners, on public lands. Additionally, I opposed quotas tailored to accommodate the special interests of any person(s) or economic sector(s). Finally, all grizzly bear deaths, regardless of cause, must be counted towards the quota if the quota is to be based on biological reality.

Comment on New Rule III Quotas and New Rule 1 (10) definition of "Take": The take quota should be based solely on best available science and data regarding grizzly populations, grizzly bear distribution, and, grizzly mortality from all causes. I support the inclusion of the Mortality Threshold (New Rule IV) as a relevant factor for establishing the quota. I oppose tailoring the quota to accommodate the special interests of any person(s) or economic sector(s) including but not limited to livestock owners. Additionally, all grizzly bear deaths should count towards the quota including grizzly bears taken in self-defense (New Rule III (2)). Finally, there is no biological basis for limiting the definition of "Take or taken" to only the killing of grizzly bears by firearm (New Rule 1 (10)). I encourage the Commission to reject the definition of "Take" as written.

I oppose the following language in New Rule III (noted with red font and strikethrough) and encourage the Commission to reject the rule as written.

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.~~

Comment on New Rule IV:

As written the rule would allow the take of grizzly bears on public lands by a livestock owner. Any post-delisting authority to take grizzly bears on public lands should rest solely with Montana Fish Wildlife and Parks in should be coordinated with federal agencies as circumstances warrant. In addition, when a take by MFWP is in response to livestock depredation, the take should occur only after MFWP has investigated the circumstances of a purported depredation and reached a determination that lethal removal of a grizzly bear is necessary to protect human safety.

I strongly support and encourage the MFWP and the Commission to allocate substantial resources to enable MFWP to proactively work with landowners, including but not limited to livestock owners, to develop and implement non-lethal management plans to avoid human caused grizzly bear deaths. I encourage the MFWP to continue to build upon the strong relationships with other agencies, entities, and individuals that the department has developed over the years through the department's work with the Interagency Grizzly Bear Committee.

I oppose the following language (noted with red font and strikethrough) and encourage the Commission to reject the rule as written.

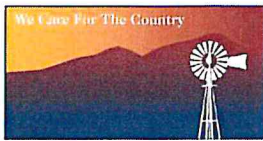
NEW RULE VII (ARM 12.9.1410) ALLOWABLE LETHAL MANAGEMENT OF THE GRIZZLY BEAR (1) The commission authorizes the department to use lethal control of depredating grizzly bears. ~~(2) Pursuant to 87-5-301(3), MCA, a livestock owner or other authorized person may take, without a permit or license, a grizzly 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.~~

Comment regarding December 13 Commission meeting: It has been reported that comments on this matter will be addressed in the adoption notice at the December 13 Commission meeting (Missoula Current, 11/19/23). However, the MFWP website shows that on December 13 the Commission will hold a special meeting solely for purpose of completing court-mandated training for the Commissioners. Please confirm when this matter will come before the Commission and provide reasonable advance public notice.

Thank you for the opportunity to comment on these New Rules pertaining to grizzly bears.

Mary B. Price
222 Lawrence Street
Missoula, MT 59801



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Montana Department of Fish Wildlife and Parks

1420 East Sixth Avenue, P.O. Box 200701

Helena, MT 59620-0701

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

Dear Montana Fish Wildlife & Parks Commissioners:

Thank you for the opportunity to comment on the draft administrative rule regarding grizzly bear management. Since 1997, the Montana Farm Bureau Federation has had lasting policy on Grizzly bear management being returned to the state of Montana. Being the largest Agricultural organization, Montana Farm Bureau policy reflects over 20,000 member families across the state. Our grassroots organization is excited at the possibility of Montana grizzly bear management coming to fruition.

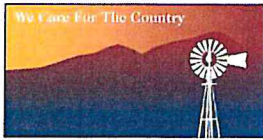
We appreciate the department's due diligence in ensuring that bear populations remain in a place where state management can persist. We recognize that maintaining populations is an important objective. Along with this, our membership would like to add an additional objective to support preventing human and grizzly bear conflict. Section 2 a & c of Montana Code Annotated 87-5-301 both speak of managing grizzly bears to minimize human and livestock conflict. This should be addressed directly as a priority in the rule, as managing to minimize human conflict makes a safer place for both grizzly bears and humans.

We are grateful that the rule gives ranchers the right to defend their livestock. Giving ranchers the ability to take a bear when needed is a vital part of long-term grizzly bear co-habitation.

We have concerns about the addition of New Rule VII sect 3c. Preventative measures are not always viable options and are not always effective. The rule lacks clarity on how preventative measure efforts will be defined. Some wording in the rule implies that producers would be asked to do more. An example of this is an increase in human presence. We also are concerned that it is left up to the sole discretion of the department. There should also be a process for producers to object to the department's determinations regarding preventative measure efforts. The public will also need to have some responsibility to make sure that preventative measures can be implemented. Should the public interfere with the preventative measures taken it should not fall to the liability of the producer.

Regarding rule eight, we appreciate that conflict prevention measures are still a valuable tool for comprehensive grizzly bear management. We would encourage the department to continue to allocate resources and support grant programs to make these prevention tools more accessible to private landowners, farmers and ranchers.

We Care for the Country



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In new rule nine, we appreciate that “normal livestock operations” are not considered baiting. We would encourage the department to change the wording to “normal agricultural operations.” This is closer to the intent of the rule. Farm products such as seed or harvested crops can be attractants for grizzly bears. A farmer having seed out at planting or grain in at harvest is certainly normal practice. However, as the rule is currently written, these activities could be inadvertently categorized as baiting.

Regarding rule ten, we would encourage additional clarification that hunting or harvesting is not the same as livestock owners defending livestock. Our membership supports the state regulated hunting of delisted grizzly bears.

The Grizzly Bear Annual Report should include first year cubs in the population estimate as first year cubs are included in mortality counts should they or their mother’s parish. We appreciate your willingness to make human conflict data public. We recognize that sharing this information is difficult, but we truly appreciate your understanding of the public’s right to know. In correlation with that, we would also encourage you to begin including what management actions have been taken with grizzly bears. We would encourage you to also share genetic connectivity information with the public as a part of the annual report.

Thank you again for your work managing grizzly bears and the opportunity to comment. We look forward to supporting the rule with amendments to include human conflict prevention as an objective; normal agricultural operations be classified as not baiting; removal of additional requirements on public land and other small adjustments to improve clarity and transparency.

Sincerely,

Scott Kulbeck

Executive Vice President

We Care for the Country



Wildlife Division
ATTN: Grizzly Bear ARM
Montana Fish, Wildlife and Parks
PO Box 200707
Helena, MT 59620-0701

RE: Grizzly Bear ARM-SB 295 Rulemaking

Dear Director Temple and Commissioners,

Thank you for the opportunity to submit written comment on draft grizzly bear ARM. I respectfully submit these comments on behalf of Glacier-Two Medicine Alliance and our more than a thousand members and supporters across northwest Montana. These comments reflect our verbal testimony on Friday, November 17th and are in addition to the those we submitted jointly with other organizations.

NEW RULE I (ARM 12.9.1404) DEFINITIONS

A definition for the word “Threatening” needs to be crafted. Whether a grizzly bear is “threatening” livestock is the key criteria for determining whether to issue a permit to kill a grizzly bear. Without a definition, what is judged to be “threatening” behavior will vary widely. Could a bear whose home range keeps it in close proximity to cattle that graze public land but has never attacked cattle be deemed to be threatening? Public comments offered during the state legislative session indicated that some people would say yes. Such key criteria need to be defined to ensure consistent application.

NEW RULE II (ARM 12.9.1405) GRIZZLY BEAR MANAGEMENT OBJECTIVE

We suggest adding the phrase “natural genetic and demographic” to the last sentence so that it reads: “ 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 *natural genetic and demographic* connectivity between populations in and outside Montana.” Both types of connectivity are necessary to establish and maintain a viable, persistent meta-population of grizzly bears in Montana. The addition of the word natural properly clarifies that FWP objective is to manage for the conditions where bears can connect on their own, and not rely on trapping and relocation indefinitely.

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

As written, it is unclear what data or other criteria the commission may use to establish the quota. This should be clarified and based on the level of human-caused mortality the current grizzly bear population can sustain

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as estimated by the best available science. Furthermore, the rule should clarify that the quota may be adjusted in light of other human-caused mortality so that the department can, as stated in New Rule II, "ensure that recovery is maintained."

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

The language needs to be clarified that grizzly bears taken pursuant to the permit/quota system count toward the quota and mortality threshold no matter where they occur. As written, it sounds like grizzly bears taken under this permit system will only count toward mortality thresholds if they are taken in the DMA. We are concerned this narrow application will result in unsustainable levels of mortality for grizzly bears in so-called connectivity zones, bears critical to the long-term recovery and persistence of grizzly bears in Montana.

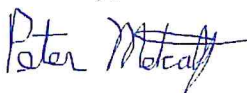
NEW RULE VII (ARM 12.9.1410) ALLOWABLE LETHAL MANAGEMENT OF THE GRIZZLY BEAR

We strongly support the addition of (3)(c), which requires the use of non-lethal measures prior to the issuance of a permit. Public lands and the wildlife they support belong to all of us. Grazing livestock on public lands is a privilege that carries responsibilities to the public to be good stewards of the resource they are utilizing. Thus, it is proper that they must utilize non-lethal conflict prevention measures prior to the issuance of a permit. However, we believe the language needs to be strengthened. The rule should clarify that FWP must document in writing the use of at least (2) non-lethal measures defined in New Rule VII for a sufficient length of time to be effective deterrence prior to considering the issuance of a permit. This will demonstrate good faith efforts and generate greater trust by the public in the process. Furthermore, we believe that the requirement to utilize non-lethal measures should extend to private lands. Grizzly bears are, after all, the public's wildlife. Montana landowners take pride in being good stewards of public resources; a commitment to utilize non-lethal measures first reflects this responsibility and neighborly value.

That said, we strongly believe the permit system should not apply to public lands. There is no analog for issuing a permit to a private person to kill wildlife on public land for real or potential loss of livestock, let alone a recently de-listed, slow reproducing species like grizzly bears.

Thank you for recognizing the importance of grizzly bears to all Montanans and for working to find an appropriate balance between a livestock owners rights and interests and the rights and interests of the public to whom grizzly bears belong when it comes to managing for a healthy, robust population of grizzly bears in Montana and elsewhere in the lower-48 states. We believe these suggestions, along with those we submitted with our partners and presented in public testimony previously, get us closer to finding that golden balance than the draft Rules as presently written.

Sincerely,



Peter Metcalf
Executive Director

My name is Trina Jo Bradley, and I am a livestock producer in northern Montana. Our cattle ranch is situated on the southern border of the Blackfeet Reservation, and is home to many iconic wildlife species, including grizzly bears.

I have long been a proponent of state-managed grizzly bears, and I was a huge supporter of SB 295 during the 2023 legislative session.

I have a few specific concerns/suggestions:

1. New Rule I: I would suggest adding the following definition for “threat” - A person or livestock that is perceived to be in imminent danger of bodily harm or death.
2. New Rule I: I would suggest adding the following definition for “threatening” - A grizzly bear or bears that is/are perceived to intend bodily harm or death to humans or livestock.
3. New Rule II: I would suggest editing the first sentence to say, “The department will implement management strategies to ensure grizzly bears continue to thrive and are integrated as a valuable part of Montana’s wildlife heritage, while also recognizing that Montana’s working lands are a vital part of those management strategies.”
4. New Rule III, Sections 4 and 5: Night time is a gray area here. What if the quota is met and posted at 11 p.m., and a producer gets up at 2 a.m. to check cows and shoots a grizzly bear? I would suggest adding language about a grace period that is up to the discretion of the Director or his designee.
5. New Rule VII, Section 3, Subsection B: Opponents to SB 295 and these Rules could make claims that livestock is bait. I’d like to see a clarification that livestock on the landscape does not constitute baiting. I am aware that fact is stated in New Rule IX, but I’d like to see it both places.
6. New Rule VII, Section 3, Subsection C: I’d like to see a notation that sometimes there are no non-lethal measures that are appropriate or possible for some areas, but that doesn’t mean the producer isn’t trying to protect his/her livestock.
7. New Rule VII, Section 3, Subsection C: As quickly as grizzly bears are expanding, they may turn up on private or public land where no one expected them, and thus did not have non-lethal measures in place because they weren’t aware they were even needed. I would guess that discretion would also be left up to the Director or his designee, but should also be noted.

8. New Rule VII, Section 3, Subsection C: Opponents will argue that permits should not be allowed on public land, but having consistent rules across private and public lands - especially where state land is interspersed with private land - is important.

Montana's working lands provide valuable habitat and connectivity opportunities for grizzly bears and other wildlife. To keep these lands viable, agricultural producers need every tool available to them - both lethal and non-lethal. These proposed rules will provide another valuable tool - as well as peace of mind - for producers.

After reading the proposed rules and amendments, and clarifying points with Fish, Wildlife, and Parks leadership, I fully support the adoption of New Rules I through XIII, and the amendment of ARM 12.9.1401, with the edits that I previously noted.



PEOPLE AND CARNIVORES

Solutions that work for people and wildlife

November 17, 2023

Montana Department of Fish, Wildlife & Parks
Montana Fish and Wildlife Commission
Delivered via fwpwld@mt.gov

Re: New Rules and ARM 12.9.1401 Amendments Pertaining to Grizzly Bears

To the Montana Fish and Wildlife Commission:

Thank you for your work on behalf of Montana citizens and wildlife. Please accept this letter as input from People and Carnivores on proposed new rules and amendment of ARM 12.9.1401 pertaining to grizzly bears.

As background on our role in grizzly bear conservation and management, People and Carnivores has been working in the field to reduce conflicts between large carnivores and Montanans for the last 15 years. We are the only organization focusing solely on conflict prevention as a means of conserving large carnivores, facilitating ecological connectivity, safeguarding people and property, and helping preserve rural communities and livelihoods. We partner with agencies and landowners to design, implement, and maintain proactive solutions on the ground that keep carnivores separated from people or attractants. We value our strong relationships with federal and state agencies, including the Department of Fish, Wildlife & Parks.

We have submitted comments throughout this rule change process, starting during the legislative session on SB295. We last submitted comments ahead of the Commission's August 17 meeting at which it discussed rule language pertaining to grizzly bears.

We want to thank the Commission for adding (3)(c) to New Rule VII. This is a positive change that promotes conflict prevention methods and tools. We know from our extensive experience working with communities and private landowners that conflict prevention methods and tools are effective. Notably, on nearly all of our hundreds of projects, once we apply preventative tools, we see no losses for humans, property, or bears. We understand that lethal control is a necessary tool for grizzly bear management. That said, we see this tool as a last resort after proactive solutions are exhausted, and conflict prevention tools like livestock guardian dogs, range riders, and scare devices are often more effective and should be more prominent within the Department's management toolbox.

We urge the Commission to continue to improve the new rule language in similar ways to that of VII(3). Below, we reiterate our previous comments on ways in which these new rules can be further amended to protect people and grizzlies and lessen the need for lethal control.

Concerning Amendment of ARM 12.9.1401

In outlining rules around depredations, section (1)(d)(iv) states that grizzlies that do not directly endanger human life but that cause “non-livestock related property losses” shall be evaluated on a case-by-case basis. This provision needs more detail on what is meant or included in “non-livestock property.” For example, even on a case-by-case basis, it would not be reasonable to spend agency resources or consider killing a grizzly bear that, for example, damaged a tree, dug up a garden, broke a fence or a window and the like; even getting into certain crops. Further, responses to these scenarios would be reactive, and therefore, more costly and less effective in terms of management. Instead of promoting reactive responses, preventive actions should be emphasized, such as deterrence strategies, tools, and practices/education. Proactive prevention ensures property losses do not happen in the first place, property does not need to be replaced, humans stay safe, and bears do not need to be removed. This is more efficient and economical.

Concerning Adoption of New Rules I through XIII

New Rule III

All grizzlies taken or killed should count toward the quota of bears taken in response to conflicts. The rule states that bears taken by livestock owners count toward the quota, but bears taken by the Department, Wildlife Services, or by a person in self-defense do not. Bears killed by livestock owners should not be separated from those killed by the Department or Wildlife Services, especially when all individuals and entities are taking bears for the same reason (responding to livestock conflicts). A quota is meaningless if all kills do not contribute to it. Not only are quotas not accounting for all bears removed, but they can be adjusted by the Commission ((1)(6)). More information needs to be added to this rule to specify situations in which it is appropriate to adjust the quota. Without adding detail, the quota is again made meaningless, as it can be changed, and guidelines for such changes are unclear.

New Rule IV

Section (1) states that the mortality threshold is the maximum number of bears the population “can withstand.” This phrase must be defined or reconsidered. As currently written, this provision implies that grizzly populations can be reduced to the recovery level, which would allow for huge reductions in the population. Sitting at or near the recovery level (a low population of bears) would also create bigger risk of re-listing the species, creating unhealthy populations, and reducing natural connectivity potential between populations.

New Rule VII

Again, we thank the Commission for adding (3)(c) to this rule to promote proactive conflict prevention over reactive lethal control. There is still opportunity to improve this rule by further prioritizing the use of conflict prevention tools and methods, like under sections (1) and (2).

Beyond being able to further emphasize conflict prevention, New Rule VII contains multiple vague definitions about lethal management that should be defined in detail under New Rule I. In section (2), “attacking” should be changed to “physically attacking” and provide specific behaviors that constitute an attack. In section (3)(a), “threatens” and “poses a threat” are again overly vague and can be broadly interpreted and applied to allow for the removal of more bears.

Additionally, within this rule, any take of a bear should be reported immediately. The 24-hour period to notify the Department ((5)(a)) that a grizzly has been killed should be shortened to the day of the killing, or, if after business hours, by noon of the next day. Lastly, concerning section (7), consistent with comments above about New Rule IV, any deaths should be counted toward both the mortality threshold and quota.

New Rule VIII

Within section (1)(a), we request that scare devices (which include flashing lights and alarms) be added to the list of husbandry practices. Throughout our work, we have found scare devices to be an effective and invaluable tool for preventing conflicts. We also ask that “removing other nearby attractants” be added to this list, as an inclusive approach to attractant management creates less overall potential for conflict.

We also ask that section (1)(f) be placed first on this list of preventative measures. This provision of working with individuals and partnering with groups and agencies is at the core of conflict prevention work. Individual landowners and livestock owners and other groups and agencies are the ones responsible for using on-the-ground tools and putting prevention methods into practice.

New Rule XI

In publishing an annual report, in addition to publishing the “number, types, and locations of human-bear conflicts” ((2)(e)), the outcome of conflicts; tools used, not used, or put in place; and attractants in the area and that may have led to the conflict should also be listed. Including this information will create a more holistic understanding of the conflicts and what can be done to prevent similar situations in the future.

New Rule XII

This rule should be removed. Rather than using resources to capture and move bears (which would have to be done in perpetuity) from one population to another, bears should be managed to allow for natural movement between populations. This can be accomplished by promoting and applying conflict-prevention methods in grizzly travel corridors between recovery zones. Translocating bears creates a false impression of healthy, connected populations, as island populations can remain and reactive killing of bears dispersing from recovery zones can occur at high rates. Genetically healthy and resilient populations of bears require connected populations.

We appreciate all of your work on behalf of Montanans. Please let us know if you have any questions about our comments. Thank you for the opportunity to share our input.

On behalf of People and Carnivores, and Sincerely,

A handwritten signature in cursive script, appearing to read "L. Upson".

Lisa Upson,
Executive Director