

FAQ on tribal treaty hunting rights and bison

- **What are tribal treaty hunting rights?**

Most Native American Tribes entered into treaties with the United States Government in the 1800s that reserved the tribes' hunting and fishing rights. Treaty-reserved hunting and fishing rights can be exercised on Indian reservations and in certain areas outside the reservation in the state of Montana. For example, the Salish & Kootenai and Nez Perce Tribes entered into the Hellgate Treaty under the Stevens administration in 1855 which stated, in relevant part, *“The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”*

- **What do these treaty rights have to do with hunting bison near Yellowstone National Park?**

Five Native American tribes have demonstrated their aboriginal right to hunt bison in Montana near Yellowstone National Park (YNP) under treaties that were negotiated with the U.S. Government. These are legal hunting rights, and tribes hunt during seasons and under regulations established through their own regulatory processes. At times, these hunts may occur outside of Montana's regulated hunting seasons.

- **How do these treaty rights relate to state hunters hunting with a license issued by Montana Fish, Wildlife and Parks to hunt bison?**

Montana law and the tribal treaties address hunting in different ways. Under Montana law, hunting is a personal privilege. Under treaty law, hunting is a treaty right. The difference may seem subtle, but it is important. Montana hunters maintain the personal privilege of hunting allowed through state regulation. That privilege may be revoked for reasons such as the violation of state fish and game laws. Tribes as a group have a hunting right, protected by a treaty and recognized by the U.S. and Montana governments and further defined through court proceedings. This right isn't a personal right, but rather a tribal right, with each tribe's governance process determining who is allowed to exercise this right.

- **Which tribes currently have demonstrated treaty rights to hunt bison in Montana and are now hunting bison in Montana?**

Confederated Tribes of the Umatilla Indian Reservation, Confederated Salish and Kootenai Tribes, the Nez Perce Tribe, Shoshone-Bannock Tribes, and the Confederated Tribes of the Yakama Nation.

- **How does the state of Montana decide which tribes can hunt?**

Montana officials do not “decide” which tribes have treaty rights and which do not; that right is secured through treaty language. Rather, tribes are asked to demonstrate two

things in order to be recognized as a tribe with a treaty right to harvest animals: 1. Their treaty language concerning hunting; and, 2. An account of their historic use of the area for hunting.

- **Where can treaty tribes hunt?**

They can hunt “open and unclaimed lands,” which are not universally defined by the courts, but are generally considered those federal public lands that are not set aside for uses incompatible with hunting, such as a national park. Many Forest Service and Bureau of Land Management lands constitute open and unclaimed lands.

- **Can tribal members take any game species on open and unclaimed lands anywhere, or only around YNP?**

What species may be taken and where tribes may take them depends upon specific treaty language and historical use. Under the language of the treaties, and in accordance with case law defining treaty rights, tribes can hunt animals they traditionally harvested. This may mean a specific hunt for bison that includes opportunistic taking of other animals, like elk. As with all other hunting, success varies from year to year. FWP continues to collaborate with tribal officials on conservation, safety, and legal jurisdictions surrounding the hunts.

- **Are there limits to how many bison, elk, or other species tribal hunters can take? How is that monitored?**

The number of bison killed by tribal hunters is monitored and reported to the other tribes and FWP on an annual basis. There is currently no bison harvest cap mutually recognized by all the tribes and the state of Montana.

The state of Montana has specific conservation concerns about a variety of sensitive game species, including mountain goats, moose and big horn sheep. FWP has worked with the tribes to help ensure that we sensitively manage species in need of conservation. While this includes FWP advocating no additional harvest of some species beyond the established Montana hunting seasons for species like sheep and elk, there are currently no mutual formal agreements in place to limit tribal harvest. In the absence of any formal agreements, Montana has been attempting to work cooperatively with Tribes to honor treaty rights, while ensuring there are not negative impacts to sensitive wildlife species.

- **As FWP works on strategies to manage elk in Hunting District 313, including limiting bull elk permits, why are tribal hunters still allowed to take elk as they come out of YNP into the hunting district?**

Although FWP and the tribes have discussed elk management strategies in HD 313, there has been no agreement to limit elk harvest in the area. The state has no mechanism to mandate that tribes limit the harvest of elk. FWP officials continue to communicate with the tribes about public concern surrounding this specific issue.

- **Will opportunities for Montana hunters be limited because of tribal take? Why not issue more licenses to public hunters?**

Opportunities for Montana hunters to hunt bison are limited by a variety of factors: the number of bison on the landscape, the number of tribal hunters actively hunting, and the bison population outside the park in areas designated for hunting. The simple fact is that when bison are outside the park in areas where they can be hunted, hunters, both tribal and state, congregate. When hunter density increases, so do potential conflicts. Given that all the tribes and Montana have not mutually agreed to hunter or harvest limits, limiting state hunter opportunities is one of the few tools FWP has to preemptively address conflicts between tribal and state hunters in the field, while trying to assure a fair chase hunt. Montana does currently limit Montana hunters to minimize conflict over finite bison harvest opportunities shared with tribal hunters.

- **How does treaty hunting affect the bison hunt managed by FWP?**
The state takes into account the tribes' treaty rights to hunt bison when it considers its own regulations. FWP sets bison seasons through its regular season setting process, which includes season structure, management objectives, and public comment. As with all seasons, management objectives address a variety of concerns. These take into account biological, social, and environmental constraints, and include the number of tribal treaty hunters that could be present in any given year.
- **How do the tribes assign bison hunting rights and regulate their hunts?**
Tribal governments regulate their hunts as each tribe sees fit. Each of the four tribes involved in the bison hunts near Yellowstone National Park has its own fish and wildlife division, and each provides law enforcement personnel to help monitor hunters. Tribal hunters have permits issued by their Tribal government specifying what animals they are allowed to take and how many. FWP game wardens work with tribal enforcement officers, along with law enforcement officers from other agencies, to monitor hunters. FWP wardens, along with their counterparts from the tribes, have the authority to cite all hunters for violations related to public safety, waste of game and trespass laws. Wardens also work with tribal officers in ensuring only enrolled tribal members with appropriate tribal permits are hunting.
- **Can Tribal wardens cite Montana-licensed hunters?**
Tribal wardens can check Montana hunter licenses, and if a law was violated, the tribal warden would defer to a state officer for issuing a citation. Tribal wardens cannot directly issue citations to state hunters.
- **Do the tribes and the state of Montana participate in a formal process to review and assess previous hunts and discuss potential adjustments to future hunts?**
Each spring tribal and FWP officials hold an annual meeting to discuss the tribal bison hunts and address issues any of the entities may have.

FWP officials also communicate regularly with tribal, Forest Service and YNP officials on the number of bison and elk on the landscape. All parties pay close attention to bison moving in and out of the park on an annual and seasonal basis.

