

MONTANA GRIZZLY BEAR REGULATORY MECHANISMS

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MONTANA GRIZZLY BEAR REGULATORY MECHANISMS

The following are federal and state statutes, administrative rules, management plans, and regulation framework that demonstrate regulatory powers and mechanisms of the State of Montana, Montana Fish, Wildlife and Parks, and the Montana Fish and Wildlife Commission to conserve and manage grizzly bears within the State of Montana. (Some key elements have been highlighted in yellow.)

ENDANGERED SPECIES ACT 16 U.S.C 1531 et. seq. (Federal Statute)

Purpose: The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section. 16 U.S.C. 1531(b).

Definitions:

Endangered: Any species which is in danger of extinction throughout all or a significant portion of its range . . . 16 U.S.C. 1532(6)

Threatened: Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. 16 U.S.C. 1532 (20)

ESA Sec. 4 Determination of Endangered and Threatened Species 16 U.S.C. 1533(a)(1):

The Secretary shall ... determine whether any species is an endangered species or a threatened species because of any one of the following factors:

- A. The present or threatened destruction, modification, or curtailment of its habitat or range;
- B. Overutilization for commercial, recreational, scientific, or educational purposes;
- C. Disease or predation;
- D. The inadequacy of existing regulatory mechanisms; or
- E. Other natural or manmade factors affecting its continued existence.

Listing Determinations 16 U.S.C. 1532(19): The Secretary shall make listing determinations solely on the basis of the best scientific and commercial data available to him "after conducting a review of the status of the species and *after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.*"

ESA Sec. 9 Prohibited Acts 16 U.S.C. 1532 (19): (a)(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to –

(B) Take any such species within the United States

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.

ESA Sec. 4(d): Whenever any species is listed as a threatened species . . . the Secretary shall

issue such regulations as he deems necessary and advisable to provide for the conservation of such species.

50 CFR 17.40(b) (Federal Regulation)

(b) Grizzly bear (*Ursus arctos horribilis*) --

(1) Prohibitions. The following prohibitions apply to the grizzly bear:

(i) Taking.

(A) Except as provided in paragraphs (b)(1)(i)(B) through (F) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported by the individual who has taken the bear or his designee within 5 days of occurrence . . . Grizzly bears taken in self-defense or in defense of others, including the parts of such bears, shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

(C) Removal of nuisance bears. A grizzly bear constituting a demonstrable but non immediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(1) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(2) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears; and

(3) The taking is reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(D) Federal, State, or Tribal scientific or research activities. Federal, State, or Tribal authorities may take grizzly bears for scientific or research purposes, but only if such taking does not result in death or permanent injury to the bears involved. Such taking must be reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) [Reserved]

(F) National Parks. The regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

MONTANA CODE ANNOTATED (State Statute)

All state statutes are available for review at: http://leg.mt.gov/bills/mca_toc/

1-1-508. State animal. The grizzly bear, *Ursus arctos horribilis*, as preferred by a vote of Montana schoolchildren, is the official Montana state animal.

TITLE 87 FISH AND GAME

Chapter 1 Organization and Operation:

87-1-201. Powers and duties. (1) Except as provided in subsection (11), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing

animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection (11), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(7) Except as provided in subsection (11), the department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

(11) The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

- (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or
- (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

87-1-301. Powers of commission. (1) Except as provided in subsections (7) and (8), the commission:

(a) shall 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 for the fulfillment of all other responsibilities of the department related to fish and wildlife as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and the board and shall adopt rules authorized by law to implement those policies.

87-1-214. Disclosure of information -- legislative finding -- large predators. (1) Except for information that is required by law to be reported to state or federal officials, the department may not disclose any information that identifies any person who has lawfully taken a large predator as defined in **87-1-217** during a hunt without the written consent of the person affected. Information that may not be disclosed includes but is not limited to a person's name, address, phone number, date of birth, social security number, and driver's license number.

(2) The legislature finds that the prohibition on disclosure of information pursuant to subsection (1) is necessary to protect an individual's privacy, safety, and welfare.

87-1-217. Policy for management of large predators -- legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

(a) protect humans, livestock, and pets;

(b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and

(c) preserve citizens' opportunities to hunt large game species.

(2) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(3) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock if the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation.

(4) The department shall work with the livestock loss board and the United States department of agriculture wildlife services to establish the conditions under which wolf carcasses or parts of wolf carcasses are retrieved during wolf management activities and when those carcasses or parts of carcasses are made available to the livestock loss board for sale or auction pursuant to 2-15-3113.

(5) The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species.

(6) As used in this section:

(a) "consultation" means to actively provide information to a county or tribal government regarding proposed policy decisions on matters that may have a harmful effect on agricultural production or livestock operations or that may pose a risk to human health or safety in that county or on

those tribal lands and to seek information and advice from counties or tribal governments on these matters;

(b) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(c) "large predators" means bears, mountain lions, and wolves.

87-1-304. Fixing of seasons and bag and possession limits. (1) Subject to the provisions of 87-5-302 and subsection (7) of this section, the commission may:

(a) fix seasons, bag limits, possession limits, and season limits;

(b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101;

(c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf in those areas;

(d) subject to the provisions of 87-1-301(7), restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences; and

(e) declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals.

The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) Subject to the provisions of 87-5-302 and subsection (7) of this section, the commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

87-1-511. Sale of confiscated birds and animals -- disposition of seized grizzly bears. (1) Except as provided in 87-1-226(1), all birds, animals, fish, heads, hides, teeth, or other parts of any animal other than grizzly bear seized by any officer or warden or otherwise acquired by a department employee in the scope of employment may be sold, under the direction of the director or wardens, at a time, place,

and manner so as to receive the highest price. The sale must be at public auction to the highest and best bidder. The director or the wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice must be published at least once, and the sale may not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions that in the discretion of the officers seem conducive to securing full value.

(2) All grizzly bears or heads, hides, teeth, claws, or other parts of grizzly bears seized by any officer or warden may be donated to museums, educational institutions, government agencies, or persons conducting scientific studies, as approved by the commission. If approved under federal law, parts may be sold at public auction if, after approval by the commission, a reasonable attempt has been made to dispose of the parts.

Chapter 2 Fishing, Hunting and Trapping Licenses:

87-2-101. Definitions. As used in Title 87, chapter 3, and this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(4) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(6) "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

87-2-701. (Effective March 1, 2016). Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose--resident, \$125; nonresident, \$1,250;

(b) mountain goat--resident, \$125; nonresident, \$1,250;

(c) mountain sheep--resident, \$125; nonresident, \$1,250;

(d) antelope--resident, \$14; nonresident, \$200;

(e) grizzly bear--resident, \$150; nonresident, \$1,000;

(f) black bear--nonresident, \$350;

(g) wild buffalo or bison--resident, \$125; nonresident, \$1,250.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of \$50 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Except as provided in 87-5-302 for special grizzly bear licenses, special licenses must be issued in a manner prescribed by the department.

87-2-702. Restrictions on special licenses -- availability of bear and mountain lion licenses.

(3) Except as provided in 87-2-815, a person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

87-2-814. (Effective on occurrence of contingency) Auction or lottery of grizzly bear license. (1)

The commission may issue one grizzly bear license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the management of grizzly bears.

Chapter 3 Restrictions and Regulations:

87-3-131. Regulation of grizzly bear parts. A person who is responsible for the death of a grizzly bear shall deliver all parts of the grizzly bear required by department or commission regulation for scientific purposes to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the person any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

Chapter 4 Commercial Activities:

87-4-702. Possession of game by merchants, hotelkeepers, or restaurant keepers. (2) A merchant, hotelkeeper, or restaurant keeper may not offer for sale or sell any grizzly bear or any head, hide, teeth, claws, or other part of a grizzly bear.

Chapter 5 Wildlife Protection:

87-5-102. Definitions. As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in **87-5-121**.

(2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.

(3) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(5) "Management" means the collection and application of biological information for the purposes of conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, control, and education. The term also includes the periodic protection of species or populations as well as regulated taking.

(6) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state.

Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

(7) "Person" means an individual, firm, corporation, association, or partnership.

(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(9) "Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts of the animal.

87-5-103. Legislative intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds and declares all of the following:

(a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems;

(b) that species or subspecies of wildlife indigenous to this state that may be found to be endangered within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;

(c) that the state should assist in the protection of species or subspecies of wildlife that are considered to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless those actions will assist in preserving or propagating the species or subspecies.

87-5-105. Regulations to manage nongame wildlife. (1) On the basis of the determinations made pursuant to 87-5-104, the department shall issue management regulations. The regulations must set forth species or subspecies of nongame wildlife that the department considers to be in need of management pursuant to 87-5-104 through 87-5-106, giving their common and scientific names by species and subspecies.

(2) The department shall by regulation establish limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment considered necessary to manage nongame wildlife that is designated in need of management.

87-5-107. List of endangered species. (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state that are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as that list may be modified.

(2) (a) The department shall conduct a review of the state list of endangered species every 2 years. The department may propose specific legislation to amend the list by additions that are

considered appropriate and at times that are considered appropriate.

(b) Whenever a species or subspecies is removed from the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) and that species or subspecies is also on the state list of endangered species in ARM 12.5.201, the department shall amend the state list to remove that species or subspecies. The removal of a species or subspecies from the state list pursuant to this subsection (2)(b) does not require approval by the legislature.

(3) Except as otherwise provided in this part, it is unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States' list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as that list may be modified.

(4) Any species or subspecies of fish and wildlife appearing on any of the enumerated lists that is brought into the state from another state or from a point outside the territorial limits of the United States and that is transported across the state destined for a point beyond the state may be brought into the state and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) If the United States' list of endangered native fish and wildlife is modified by additions, the modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department proposes and the legislature accepts the modification for the state.

87-5-301. Grizzly bear -- findings -- policy. (1) The legislature finds that:

(a) grizzly bears are a recovered population and thrive under responsive cooperative management;

(b) grizzly bear conservation is best served under state management and the local, state, tribal, and federal partnerships that fostered recovery; and

(c) successful conflict management is key to maintaining public support for conservation of the grizzly bear.

(2) It is the policy of the state to:

(a) manage the grizzly bear as a species in need of management to avoid conflicts with humans and livestock; and

(b) use proactive management to control grizzly bear distribution and prevent conflicts, including trapping and lethal measures.

87-5-302. Commission regulations on grizzly bears. (1) The commission may:

(a) pursuant to subsection (2), regulate the hunting of grizzly bears, including the establishment of tagging requirements for carcasses, skulls, and hides; and

(b) establish requirements for the transportation, exportation, and importation of grizzly bears.

(2) When special grizzly bear licenses are to be issued pursuant to 87-2-701, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels and with the intent to meet population objectives for elk,

deer, and antelope. The provisions of this subsection do not affect the restriction provided in 87-2-702(3) that limits a person to the taking of only one grizzly bear in Montana.

87-5-716. Consultation with departments of agriculture, public health and human services, and livestock. The commission and the department shall consult with the departments of agriculture, public health and human services, and livestock in all matters relating to the control of wildlife species and exotic wildlife that may have a harmful effect on agricultural production or livestock operations in the state or that may pose a risk to human health or safety.

87-5-725. Notification of transplantation or introduction of wildlife. (1) When the decision to introduce or transplant a wolf, bear, or mountain lion is made pursuant to this part, the department shall:

(a) provide public notice on its website and, when practical, by personal contact in the general area where the animal is released; and

(b) notify the public through print and broadcast media of the availability of release information on the department's website.

(2) Prior permission from the landowner is required before any animal may be transplanted onto private property.

Chapter 6 Fish and Wildlife Criminal Provisions:

87-6-106. Lawful taking to protect livestock or person. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this title if the wildlife is attacking, killing, or threatening to kill a person or livestock. However, for purposes of protecting livestock, a person may not kill or attempt to kill a grizzly bear unless the grizzly bear is in the act of attacking or killing livestock.

(2) A person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog.

(3) A person who, under this section, takes wildlife protected by this title shall notify the department within 72 hours and shall surrender or arrange to surrender the wildlife to the department.

87-6-202. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal. (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, **except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;**

(6) The following penalties apply for a violation of this section:

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or **grizzly bear** or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the

privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in **77-1-101**, for recreational purposes for a period of time set by the court.

(8) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to **87-6-905** through **87-6-907**.

87-6-205. Waste of game animal, game bird, or game fish. (1) Except as provided in subsection (3), a person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely or knowingly waste the game by:

(a) detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal;

(b) transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field.

(2) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely or knowingly waste the game by:

(a) transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food.

(3) A person responsible for the death of a mountain lion, except as provided in **87-6-106**, may not abandon the head or hide in the field.

(4) A person responsible for the death of a grizzly bear wastes the game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes pursuant to **87-3-131**.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of a violation of this section may be fined not less than \$50 or more than \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period; and

(b) pay restitution pursuant to **87-6-905** through **87-6-907**.

(7) A person convicted of waste of game by abandonment in the field may be subject to the additional penalties provided in **87-6-901**.

87-6-206. Unlawful sale of game fish, bird, game animal, or fur-bearing animal. (1) A person may not purposely or knowingly sell, purchase, or exchange all or part of any game fish, bird, game animal, or fur-bearing animal.

(3) This section does not prohibit the:

(a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, **except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;**

(6) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

87-6-404. Unlawful use of dog while hunting. (1) Except as provided in subsections (3) through (6), a person may not:

(a) chase any game animal or fur-bearing animal with a dog;

87-6-413. Hunting or killing over limit. (1) A person may not attempt to kill, take, shoot, or capture or kill, take, hunt, shoot, or capture more than one game animal of any one species in any 1 license year unless the killing of more than one game animal of that species has been authorized by regulations of the department.

(2) If a person is convicted or forfeits bond or bail after being charged with hunting or killing over the limit of:

(a) mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or **grizzly bear**, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

87-6-907. Restitution for illegal killing, possession, or waste of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of purposely or knowingly illegally killing, taking, possessing, or wasting a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(2) elk with at least six points on one antler, as defined by commission regulation, **or any grizzly bear, \$8,000;**

TITLE 2 GOVERNMENT STRUCTURE AND ADMINISTRATION

2-15-3110. (Temporary) Livestock loss board -- purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf conservation and management plan, the Montana mountain lion management plan, and the Montana grizzly bear management plan and established in **2-15-3111** through **2-15-3113**, with funds provided through the accounts established in **81-1-110**, in order to minimize losses caused by

wolves, mountain lions, and grizzly bears to livestock producers and to reimburse livestock producers for livestock losses from wolf, mountain lion, and grizzly bear predation.

(2) The board consists of five members, appointed by the governor, as follows:

(a) three members who are actively involved in the livestock industry and who have knowledge and experience with regard to wildlife impacts or management; and

(b) two members of the general public who are or have been actively involved in wildlife conservation or wildlife management and who have knowledge and experience with regard to livestock production or management.

(3) The board is designated as a quasi-judicial board for the purposes of **2-15-124**. Notwithstanding the provisions of **2-15-124(1)**, the governor is not required to appoint an attorney to serve as a member of the board.

(4) The board is allocated to the department of livestock for administrative purposes only as provided in **2-15-121**.

(5) The board shall adopt rules to implement the provisions of **2-15-3110** through **2-15-3114** and **81-1-110** through **81-1-113**.

(6) The board shall prioritize grants for prevention of wolf and grizzly bear predation over those for mountain lion predation. (*Terminates June 30, 2023--sec. 6, Ch. 284, L. 2017.*)

2-15-3111. Livestock loss reduction program. The livestock loss board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf, mountain lion, and grizzly bear predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf, mountain lion, and grizzly bear predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant.

2-15-3112. Livestock loss mitigation program -- definitions. The livestock loss board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, mountain lions, and grizzly bears, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves, mountain lions, and

grizzly bears to cattle, swine, horses, mules, sheep, goats, llamas, and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to **2-15-3113(2)**.

(2)(a) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(b) Before the board may issue a reimbursement for losses to a livestock producer eligible for coverage for losses, the department of revenue shall certify that the livestock producer has paid per capita fees as required by **15-24-921**. Except for a tribal member or tribal entity participating in an authorized agreement pursuant to **2-15-3113**, a livestock producer may not receive a reimbursement for losses until the producer has paid any delinquent per capita fees.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves, mountain lions, or grizzly bears may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, mountain lion, or grizzly bear, including but not limited to the presence of bite marks indicative of the spacing of tooth punctures of wolves, mountain lions, or grizzly bears and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf, mountain lion, or grizzly bear predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional

verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred.

2-15-3113. Additional powers and duties of livestock loss board. (1) The livestock loss board shall:

- (a) process claims;
- (b) seek information necessary to ensure that claim documentation is complete;
- (c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;
- (d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;
- (e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;
- (f) prepare the annual budget for the board; and
- (g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf, mountain lion, or grizzly bear management plan for reservation lands that is consistent with the state wolf, mountain lion, or grizzly bear management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to **2-15-3111** and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to **2-15-3112**.

(3) The livestock loss board shall:

- (a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves, mountain lions, and grizzly bears;
- (b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves, mountain lions, and grizzly bears;
- (c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;
- (d) adjudicate appeals of claims;
- (e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;
- (f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish and wildlife commission, and the public regarding results of the programs established in **2-15-3111** through **2-15-3113**.

(4) The livestock loss board may sell or auction any carcasses or parts of carcasses from wolves or mountain lions received pursuant to **87-1-217**. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in **81-1-110** and used for the purposes of **2-15-3111** through **2-15-3114**.

TITLE 81 LIVESTOCK

81-1-110. Livestock loss reduction and mitigation accounts. (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in **17-2-102**.

(2)(a) All state proceeds allocated or budgeted for the purposes of **2-15-3110** through **2-15-3114**, **81-1-110**, and **81-1-111**, except those transferred to the account provided for in **81-1-112** [or **81-1-113**] or appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of **2-15-3111** through **2-15-3113** must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf, mountain lion, or grizzly bear depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of **2-15-3112**.

(3) The livestock loss board may spend funds in the accounts only to carry out the provisions of **2-15-3111** through **2-15-3113**. (*Bracketed language in subsection (2)(a) terminates June 30, 2023--sec. 6, Ch. 284, L. 2017.*)

ADMINISTRATIVE RULES OF MONTANA (ARM)

All state administrative rules are available for review at: <http://www.mtrules.org/>

TITLE 12 FISH, WILDLIFE AND PARKS:

12.3.404 ANIMALS UNFIT FOR HUMAN CONSUMPTION (1) In some instances, a hunter will shoot and tag a big game animal which is unfit for human consumption. Hunters who have shot such an animal may obtain a free replacement license. The replacement license replaces the license for the applicable license year only. No replacement license will be issued for use beyond the original license year or during any subsequent license year. In order to obtain a replacement license, a hunter may turn in the animal to a department biologist or warden for a determination that the animal is unfit for human consumption. The biologist or warden may make the determination or may refer the hunter to a licensed meat inspector or licensed veterinarian. If the hunter is referred to a meat inspector or veterinarian, a written statement from the meat inspector or veterinarian must be presented to the department for replacement. A hunter may go directly to, or may seek a second opinion from, a licensed meat inspector or a licensed veterinarian which would be honored by the department. No replacement license will be issued if the lack of fitness for human consumption is due to the hunter's improper

handling or care of the animal. The animal must have all horns, antlers, bones, hide, hoofs, and teeth. This section does not apply to black bears, grizzly bears, buffalo, or mountain lions.

12.8.806 FOOD STORAGE (1) In those state parks where it is required, food, food storage equipment, food preparation equipment, garbage, and other wildlife attractants must be secured in a hard-sided vehicle or camper, secured in a designated storage locker, or secured in an Interagency Grizzly Bear Committee (IGBC) approved bear resistant container, device, or system, at night or when attractants are not immediately attended.

(a) In a dispersed camping area where a designated storage locker or hanging device is not provided, items must be suspended at least ten feet vertically above the ground (from the bottom of the suspended item) and four feet horizontally from a tree trunk or other upright support, or secured in an IGBC approved bear resistant container, device, or system.

(b) In a dispersed camping area, stock feed, except baled or cubed hay without additives, must be properly secured as with any other food item, or within an IGBC approved portable electric fence.

(c) During the period of December 1 through March 15, these food storage regulations are not in effect, unless specifically posted based on known wildlife activity.

(2) The following is prohibited:

(a) disposal or burning of trash in fire rings;

(b) intentionally feeding or attracting wildlife; and

(c) creation or use of a hanging device in designated campgrounds.

12.9.1401 GRIZZLY BEAR POLICY (1) Whereas, the Montana fish and game commission has management authority for the grizzly bear, a resident wildlife species, and is dedicated to the preservation of grizzly bear populations within the state of Montana; and

Whereas, the secure habitat for the grizzly has been greatly reduced as a result of the human development and population growth from 1850 through 1950 in the bear's traditional range in all western states; and

Whereas, a significant portion of the remaining grizzly bear habitat and population is located in Montana and these Montana populations occur in wildlands such as wilderness, primitive areas, de facto wilderness areas, national forests, national parks, Indian reservations, and seasonally, on adjacent private lands.

Now, therefore, in order to promote the preservation of the grizzly bear in its native habitat, the commission establishes the following policy guidelines for the Montana department of fish, wildlife, and parks action when dealing with grizzly bear.

(a) Habitat. The department shall work to perpetuate and manage grizzly bear in suitable habitats of this state for the welfare of the bear and the enjoyment of the people of Montana and the nation. In performing this work the department should consider the following:

(i) the commission has the responsibility for the welfare of the grizzly and advocates the protection of the bear's habitat;

(ii) management of Montana's wildlands, including the grizzly bear habitat, is predominantly, but not exclusively, a responsibility of various federal agencies and private landowners;

(iii) land use decisions made by these agencies and individuals affect grizzly bear habitat, thus cooperative programs with these agencies and individuals are essential to the management of this species;

(iv) preservation of wildlands is critical to the protection of this species and the commission advocates wildland preservation in occupied grizzly bear habitat; and

(v) while some logging may not be detrimental to grizzly habitat, each logging sale in areas inhabited by grizzly bear should be carefully reviewed and evaluated.

(b) Research. It is recognized by the commission that research on the habitat requirements and population characteristics of the grizzly bear is essential for the welfare of the species. Departmental research programs and proposals directed at defining those habitat requirements, are encouraged and supported.

(c) Hunting and recreational use. The commission recognizes its responsibility to consider and provide for recreational opportunities as part of a grizzly bear management program. These opportunities shall include sport hunting, recreational experiences, aesthetics of natural ecosystems, and other uses consistent with the overall welfare of the species.

(i) The department should consider the variability of values between individuals, groups, organizations, and agencies when management programs for various grizzly bear populations are developed.

(ii) Sport hunting is considered the most desirable method of balancing grizzly bear numbers with their available habitat, minimizing depredations against private property within or adjacent to grizzly bear habitat, and minimizing grizzly bear attacks on humans.

(d) Depredations. Contacts between grizzly bear and humans, or property of humans, require delicate handling and careful consideration. When these contacts reach the stage for definite action, the following actions should be carried out:

(i) Grizzly bear, in the process of threatening or endangering human life, shall be captured or dispatched immediately.

(ii) Where no immediate threat to human life exists, individual bear encounters with humans shall be evaluated on a case-by-case basis and when the attack is abnormal or apparently unprovoked, the individual bear involved shall be captured or dispatched.

(iii) When the attack is normal (e.g., a female defending her cubs, any bear defending its food, or any bear defending itself) but the situation leads itself to no reasonable possibility of leaving the bear in place, then the bear should be removed.

(iv) Grizzly bear committing depredations that do not directly endanger human life but that are causing property losses shall be evaluated on an individual case basis.

(v) Where removal is determined to be the best resolution to the problem, depredating or nuisance bear shall be trapped, and if determined to be suitable for transplanting, shall be marked and released in suitable habitat previously approved with appropriate land management agencies.

(vi) Reasonable efforts shall be made to inform the public of the transplant program, fully explaining the reasons for the capturing and locations of the release area.

(vii) Upon request by an authorized scientific investigative agency or public zoological institution, a captured bear may be given to that agency or institution for appropriate nonrelease research purposes. A reasonable charge may be required to cover costs of handling.

(e) Depredating grizzly bear that are not suitable for release or research because of old age, acquired behavior, disease, or crippling, shall be killed and sent to the department's research facilities for investigation. The public shall be fully informed when these actions are taken and the reasons for these actions shall be fully explained.

(f) Coordination. The department shall consult with appropriate federal agencies and comply with applicable federal rules and regulations in implementation of this policy.

12.9.1403 GRIZZLY BEAR DEMOGRAPHIC OBJECTIVES FOR THE NORTHERN CONTINENTAL DIVIDE ECOSYSTEM (1) Upon delisting from the Endangered Species Act, management of the grizzly bear and its habitat in the Northern Continental Divide Ecosystem (NCDE) will be guided by the

Conservation Strategy for Grizzly Bears in the Northern Continental Divide Ecosystem (NCDE Conservation Strategy). The department and federal land management agencies will endorse and commit themselves to the NCDE Conservation Strategy by entering into a memorandum of understanding detailing their agreement to implement it. The department will be a signatory to the implementation memorandum.

(2) When and so long as the NCDE Conservation Strategy is in effect, the department and the commission shall, within their lawful authority to do so, maintain the recovered status of the grizzly bear in the NCDE by implementing interagency cooperation, population and habitat management and monitoring, and other provisions of the NCDE Conservation Strategy in accordance with the responsibilities described therein.

(3) Specific to population management in the NCDE, as described in the NCDE Conservation Strategy, the commission specifically adopts the following demographic objectives. The department shall:

(a) maintain a well-distributed grizzly bear population within the demographic monitoring area as described in the NCDE Conservation Strategy and maintain the documented presence of females with offspring in at least 21 of 23 bear management units of the primary conservation area and in at least six of seven occupancy units of Zone 1 at least every six years. Adherence to this objective will be evaluated by monitoring the presence of females with offspring (cubs, yearlings, or 2-year-olds) within defined geographic units of the NCDE;

(b) manage mortalities from all sources to support an estimated probability of at least 90% that the grizzly bear population within the demographic monitoring area remains above 800 bears, considering the uncertainty associated with all of the demographic parameter and further manage mortality within the following threshold objectives:

(i) using a 6-year running average, maintain estimated annual survival rate of independent females within the demographic monitoring area of at least 90% and a rate at or above the minimum level consistent with a projected probability of at least 90% that the population within the demographic monitoring area will remain above 800 bears based on population modeling;

(ii) using a 6-year running average, limit annual estimated number of total reported and unreported mortalities of independent females within the demographic monitoring area to a number that is no more than 10% of the number of independent females estimated within the demographic monitoring area based on population modeling and a number that is at or below the maximum level consistent with a projected probability of at least 90% that the population within the demographic monitoring area will remain above 800 bears based on population modeling;

(iii) using a 6-year running average, limit annual estimated number of total reported and unreported mortalities of independent males within the demographic monitoring area to a number that is no more than 15% of the number of independent males estimated within the demographic monitoring area based on population modeling.

(c) monitor demographic and genetic connectivity among populations by the following means:

(i) estimating spatial distribution of the NCDE grizzly bear population biennially; and

(ii) identifying the population of origin for individuals sampled inside and outside of the demographic monitoring area to detect movements of individuals to and from other populations or recovery areas.

TITLE 36 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, SECTION 11 – STATE FOREST LAND MANAGEMENT:

36.11.403 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(10) "Bear management unit or BMU" means a geographic analysis area previously designated by an interagency technical committee which is meant to accommodate the year long habitat needs of both male and female grizzly bears.

(22) "Denning period" (grizzly bear) means the period from November 16 through March 31.

(30) "Grizzly BMU sub-unit" means an administrative area designation related to grizzly bear recovery that approximates the home range size of a female grizzly bear.

(32) "Hiding cover" means vegetation that provides visual screening capable of obstructing from view 90% of an adult grizzly bear at 200 feet.

(46) "Non-denning period" (grizzly bear) means the period April 1 through November 15.

(54) "Open road density" means the percentage of a defined grizzly bear analysis area that exceeds one mile of open road or motorized trail per square mile.

(63) "Restricted road" (in areas other than grizzly security core) means a road on which motorized vehicle use shall be restricted seasonally or yearlong.

(68) "Road in security core areas" (grizzly bear) means roads within security core areas that have permanent closure devices (unless the security core designation is removed) .

(a) Examples of such closure devices shall include but are not limited to:

(i) tank traps;

(ii) large boulders; and

(iii) dense vegetation.

(74) "Seasonally secure area" means an area of high seasonal habitat quality that is seasonally secure from:

(a) motorized access and high non-motorized use; and

(b) approximates in size that portion of a female grizzly bear's home range where a concentration of use is expected to occur.

(75) "Security core areas" means areas typically greater than 2,500 acres that during the non-denning period:

(a) are free of motorized access;

(b) consider the geographic distribution of seasonal habitats important to grizzly bears;

(c) remain in place for long periods, preferably 10 years; and

(d) are at least 0.3 mile from the nearest access route that can be used by a motorized vehicle.

(87) "Total road density" means the percentage of a defined grizzly bear analysis area that exceeds two miles of:

(a) open roads;

(b) restricted roads; and

(c) motorized trails per square mile.

(90) "Visual obstruction" means that at least 90% of an adult grizzly bear is hidden from view.

(91) "Visual screening" (grizzly bear) means vegetation and/or topography providing visual obstruction that makes it difficult to see into adjacent areas from the roadbed. The distance required to provide visual screening, typically 100 feet, is dependent upon the type and density of cover available.

36.11.421 ROAD MANAGEMENT

(10) The department shall consider closure or abandonment of roads accessible to motorized vehicles:

- (a) that are non-essential to near-term future management plans; or
- (b) where unrestricted access would cause excessive resource damage.

(i) In the Swan River state forest, the department shall plan road closures in accordance with the terms of the Swan Valley Grizzly Bear Conservation Agreement, dated February 23, 1995.

36.11.431 THREATENED AND ENDANGERED SPECIES - GRIZZLY BEAR (1) The department shall include the following management considerations for grizzly bears:

(a) Refer to the Swan Valley Grizzly Bear Conservation Agreement (February 23, 1995) for lands administered by the swan unit field office. Specific definitions that pertain to management within the Swan River state forest are contained in the agreement. In the event that cooperative implementation of the agreement ceases, the department shall proceed to the extent practicable under the terms of the agreement in the Swan River state forest.

(i) Participate in annual monitoring and reporting of implementation of the Swan Valley Grizzly Bear Conservation Agreement (February 23, 1995) for the duration the agreement is in effect, or until the department otherwise terminates the agreement pursuant to applicable terms.

36.11.432 GRIZZLY BEAR MANAGEMENT ON BLOCKED STILLWATER UNIT LANDS (1) To minimize adverse impacts to grizzly bears when conducting forest management activities within the 90,517 acres of land area known as the Stillwater Block, as referenced in the Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan (DNRC HCP) the department shall:

- (a) establish seven security zones totaling 22,007 acres;
- (b) comply with the following restrictions within the established seven security zones:
 - (i) prohibit motorized activities, including public, administrative, or commercial forest management, during the grizzly bear "non-denning period" each year (see ARM 36.11.403(46) for "non-denning" definition);
 - (ii) permit motorized activities during the grizzly bear "denning period" each year (see ARM 36.11.403(22) for "denning" definition);
 - (iii) allow commercial forest management activities below 6,300 feet elevation during the denning period of each year;
 - (iv) prohibit any permanent road construction;
 - (v) construct and reclaim any temporary roads and/or skid trails in a manner preventing future use by motorized vehicles, including off-road vehicles, during the non-denning period;
 - (vi) minimize the duration of air- and ground-based harvest activities to the extent practicable when conducting commercial forest management activities near identified security zones during the non-denning period, particularly in known areas of seasonal importance for bears;
 - (vii) minimize the duration of administrative activities near security zones to the extent practicable;
 - (viii) make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security zones during the non-denning period, and/or known seasonally secure areas;
 - (ix) where practicable, design flight paths to occur greater than one mile from potentially affected security zones during the non-denning period, or areas of known seasonal importance;

(x) permit short-term disturbance, subject to (vi) and (vii), in any security zone at any time and for the necessary duration to address road sedimentation issues required by the Aquatic Conservation Strategies in the DNRC HCP and ARM 36.11.421; and

(c) comply with the following measures on the remaining 68,510 acres of blocked lands outside of security zones:

(i) implement access management and seasonal restrictions, and road construction requirements according to the DNRC HCP Transportation Plan measures that apply to Class B Lands as defined in the DNRC HCP; and

(ii) allow motorized public activities, commercial forest management activities, and administrative activities during the denning and non-denning periods, as allowed by the DNRC HCP Transportation Plan.

36.11.433 GRIZZLY BEAR MANAGEMENT ON OTHER WESTERN MONTANA LANDS

(1) When conducting forest management activities on scattered lands administered by the Stillwater unit, Kalispell unit, Missoula unit and Clearwater unit, within the NCDE, and in Plains and Libby unit lands within the Cabinet-Yaak ecosystem, the department shall adhere to the following:

(a) Design projects to result in no permanent net increase of open road density on parcels that exceed an open road density of one mile per square mile using simple linear calculations. This shall apply only during the non-denning period. Temporary increases are permissible for up to two consecutive operating seasons. The department shall make efforts to reduce total road density when compatible with other agency goals and objectives.

(b) Retain cover that provides visual screening adjacent to open roads to the extent practicable.

(c) Maintain hiding cover where available along all riparian zones.

(d) Prohibit CONTRACTORS and purchasers conducting contract operations from carrying firearms while operating.

36.11.434 GRIZZLY BEAR MANAGEMENT ON EASTERN MONTANA LANDS

(1) On Bozeman unit lands within the greater Yellowstone ecosystem, and Helena unit and Conrad unit lands within the NCDE, the department shall determine appropriate methods to comply with the Endangered Species Act, 16 U.S.C. Sections 1531 through 1544 and 77-5-116, MCA, on a project level basis. Factors to consider shall include, but not be limited to:

(a) cover retention;

(b) duration of activity;

(c) seasonal restrictions;

(d) hiding cover near riparian zones;

(e) food storage (where applicable); and

(f) road density.

GRIZZLY BEAR MANAGEMENT PLANS

Grizzly Bear Management Plan for Southwest Montana (December 2013) –

Available on FWP website at: <http://fwp.mt.gov/fishAndWildlife/management/grizzlyBear/grizEis.html>

This plan specifically deals with the goals for managing grizzly bear resources in southwestern Montana. These goals are:

1. To provide the people of Montana and visitors with optimum outdoor recreational opportunities emphasizing the tangible and intangible values of wildlife, and the natural and cultural resources in a manner that:
 - a. Is consistent with the capabilities and requirements of the resources,
 - b. Recognizes present and future human needs and desires, and,
 - c. Ensures maintenance and enhancement of the quality of the environment.
2. To protect, perpetuate, enhance, and regulate the wise use of wildlife resources for public benefit now and in the future.
3. To manage for a recovered grizzly bear population in southwestern Montana and to allow for grizzly populations in areas that are biologically suitable and socially acceptable.

Grizzly Bear Management Plan for Western Montana (2006) –

Available on FWP website at:

<http://fwp.mt.gov/fishAndWildlife/management/grizzlyBear/managementPlan.html>

Montana Fish, Wildlife and Parks (FWP) has released a management plan and final programmatic environmental impact statement (EIS) for grizzly bears in 17 counties located in western Montana. The plan was developed to address the future of grizzly bear management in western Montana outside the Greater Yellowstone Area. It focuses on grizzly bear populations or potential populations in the Northern Continental Divide, Cabinet-Yaak, and Bitterroot Ecosystems, as well as surrounding areas. In response to an increase in the number and distribution of bears in western Montana, FWP developed the programmatic EIS to evaluate current management programs and ensure the future success of grizzly bear conservation.

2007 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area:

Available on web at: http://www.fws.gov/mountain-prairie/es/species/mammals/grizzly/Final_Conservation_Strategy.pdf

Montana Fish, Wildlife and Parks is a signatory to this document, committing the agency to post delisting management of grizzly bears in the GYA, including population and demographic stipulations. The Strategy provides adequate assurance that Montana FWP and other participating agencies will implement the agreement, which is sufficient to meet the reasonableness required for regulatory mechanisms.

This document will be amended in 2016 to incorporate agreed upon modifications.

Tri State MOU

Montana Fish, Wildlife and Parks and the Montana Fish and Wildlife Commission have entered into a Memorandum of Understanding (MOU) with the Idaho Fish and Game Commission and the Wyoming Game and Fish Commission detailing the allocation of discretionary mortality in the GYA on an annual basis (Three State MOU).

HUNTING REGULATION FRAMEWORK

The following regulation framework identifies types of considerations that would be considered if/when FWP moved forward with a regulated hunting season for grizzly bears in the Greater Yellowstone Area

(GYA) Distinct Population Segment (DPS). Final regulations will be determined by the Fish and Wildlife Commission at the time of adoption.

Draft Montana Hunting Season Regulation Framework for Yellowstone Grizzly Bears

Guiding Principles:

- Maintain a viable grizzly bear population in Montana (Yellowstone) under state management.
- Increase broad public acceptance of sustainable harvest and hunter opportunity as an effective part of successful, long-term grizzly bear conservation.
- Maintain positive and effective working relationships with stakeholders.

Objective:

- Upon delisting, the states of Montana, Idaho, and Wyoming will manage the GYA grizzly bear population within the DMA at least at the 2002-2014 Chao2 average point estimate with 95% confidence intervals (600-747).

Allocation of Discretionary Mortality

- Allocation of discretionary mortality will be determined among the 3 states each year based on population monitoring and total mortality the previous year. Determination of allowable mortality will be done in conjunction with the states of WY and ID so as not to exceed male and female mortality threshold described in updated Conservation Strategy and delisting rule.

Season Setting

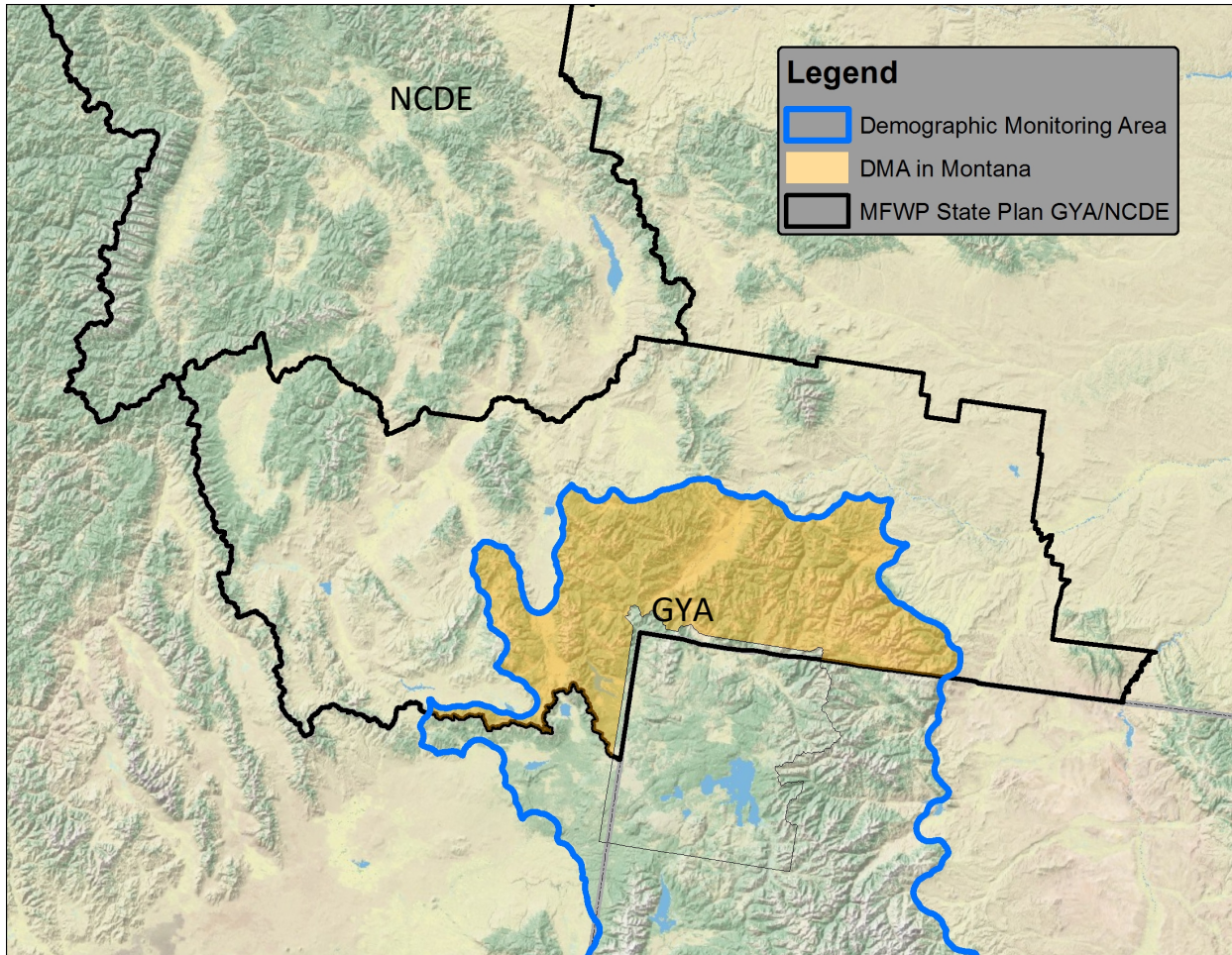
- The Grizzly Bear season structure and quotas will be set annually in December (tentative) – February (final) by the Fish and Wildlife Commission, consistent with the post delisting management plan (MOU) agreed upon by MT, ID, and WY; taking into consideration the population status, previous years' total mortality, allowable mortality, management issues, management objectives, public input, and other biological and social data.

Bear Management Units

- That portion of the GYA in Montana outside of YNP will be divided into at least two Bear Management Units (within the DMA and outside of the DMA). These may be divided into smaller BMUs depending on management objectives, bear distribution, etc.) (Figure 1).
 - a. Demographic Monitoring Area (DMA) - This is the area within which mortality limits will be closely observed and the sliding scale will apply. These areas can only be hunted via a limited number of licenses permits obtained through a random drawing of applicants.
 - b. Outside of DMA – Mortality limits are not strictly required outside the DMA. These areas would be hunted under a license/permit or harvest quota system as well. Quotas during spring here would encourage male harvest (closure via quota means pressure to hunt earlier).

- c. Auction License – 1 of allowable take auctioned to highest bidder, valid in any open unit, with funds dedicated to grizzly bear conservation or monitoring program.

Figure P Potential grizzly bear units in Montana.



Quotas

- For each Bear Management Unit, there will be a male and/or female quota (note: the quota for a specific gender within a BMU, or for the whole BMU, could be zero). Hunters will be required to report harvest within 24 hours. Upon reaching of the **female** quota, the BMU will close to further grizzly bear hunting within 12 hours. Quota status is available on line and through a phone recording. See example of online quota status at: <http://fwp.mt.gov/news/restrictions/>. Wording in regulations would be similar to this wording from the current Furbearer regulations: Current harvest status information may be obtained by calling 1-800-711-8727 or 406-444-9557, 24 hours a day or the FWP website at fwp.mt.gov. The toll free line and website are updated by 1 p.m. (MST) every day.

Season Date Considerations – Spring or Fall (TBD)

- Spring season would be less likely to over or under harvest targets. Once grizzlies have denned and all fall hunting related mortality is accounted for, the total allowable take remaining is

known. If fall human-caused mortality is higher than usual, we are less likely to go over. If fall human-caused mortality is lower, we can increase the number of permits activated. In both situations, we are dealing with more of a known entity that we would be if we conduct a fall season.

- Grizzly biology and the desire to limit female mortality indicate a spring season would be best. Female bears enter dens earlier and emerge later than males). The degree of separation is more pronounced for reproductive females. This biology allows season timing to reduce take of females. Percentage of females in black bear harvest in MT is lower in spring, 31% vs 37%. Yellowstone grizzly data suggest this effect is most evident during spring, and that the following dates would be most effective at filling male quotas prior to female quotas ending the season (see Figure 2).
 - a. Spring: March 1-April 21. Male grizzlies in GYA begin emerging in Feb, and by Mar 1 about 25% are out. By Apr 1, approximately 60% of male grizzlies have emerged from dens whereas less than 10% of females have emerged (almost zero females with cubs). By Apr 21, about 90% of males have emerged but only 40% of females with cubs. By May 1, almost all grizzlies have emerged. This is 7 weeks (though much during winter) with a high degree of separation by sex.
 - b. Fall: Oct 15 – Nov 7. The greatest degree of separation between males and females entering dens occurs Oct 15 – Nov 7. By Oct 15 about 10% of females have entered and almost no males. By Nov 1, 50% of females have entered and only 25% of males. By Nov 14 the degree of separation is insignificant and 70% of grizzlies are in dens. This is 3 weeks total without much separation by sex.
- The majority of Montana black bears are taken during spring (53%), when far fewer license holders are in the woods. This indicates that fall bears are more likely to be taken opportunistically as opposed to specifically bear hunting. Our bear hunters hunt during spring, and bear pelts are generally considered better in spring.

Figure 2. Yellowstone grizzly bear den entrance and emergence dates by sex and reproductive status. Taken from Haroldson et al. 2002.

Fall

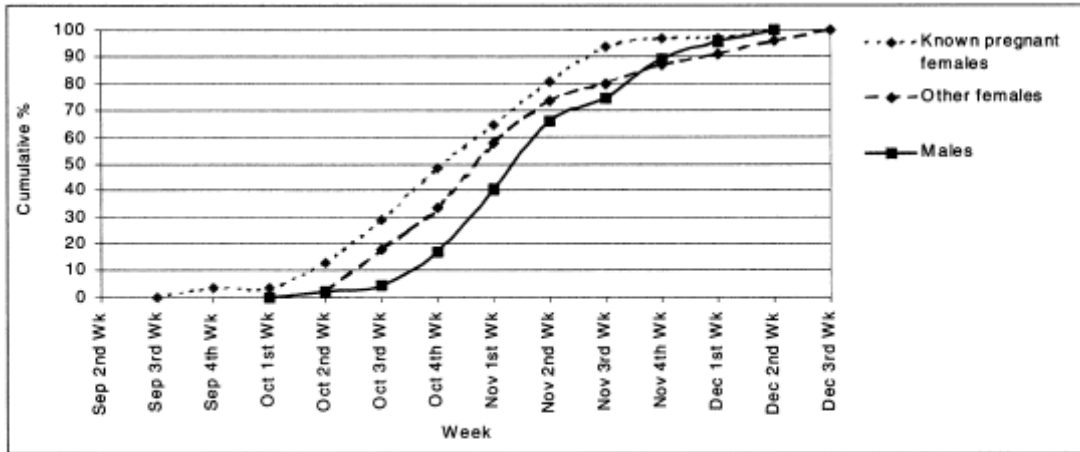


Fig. 2. Cumulative percent of grizzly bears denned by week in the Greater Yellowstone Ecosystem, 1975–99. Week of den entry was determined for bears if the days between their last known pre-den location and their first known date denned was ≤ 14 days.

Spring

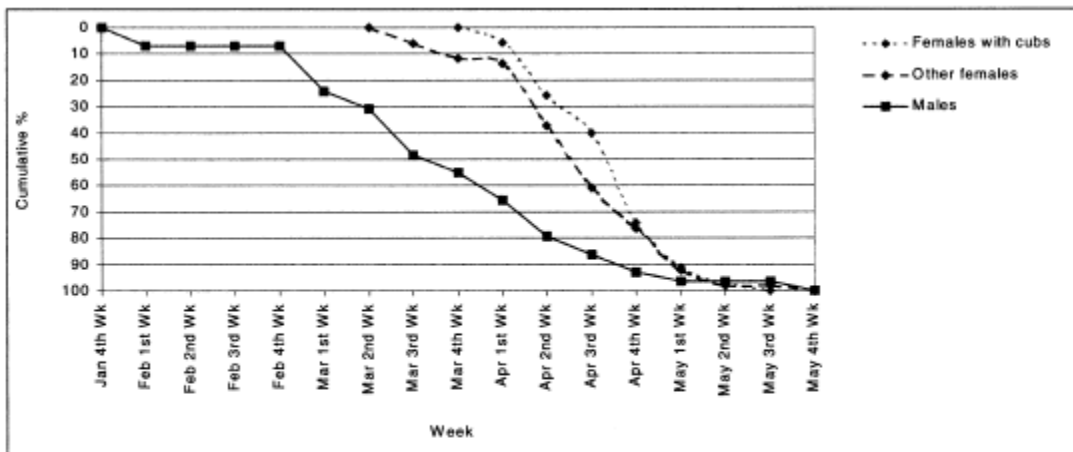


Fig. 3. Cumulative percent of bears emerged from dens by week in the Greater Yellowstone Ecosystem, 1975–99. Week of den emergence was determined for bears if the days between their last known location in dens and their first known active location was ≤ 14 days.

Other Regulations

- Hunter Education – All *applicants* for a grizzly bear license must have completed a hunter education course. Bowhunters must have completed a bowhunter education course.
- Bear Identification Test – Mandatory successful completion.
<http://fwp.mt.gov/education/hunter/bearID/>

The Bear Identification Program is intended to prevent the killing of grizzly bears as a result of mistaken identity. Black bear hunters in Montana are required to pass the Bear

Identification test to obtain a black bear license. Hunters must complete the program and have a validated certificate to purchase a black bear license. If purchasing your black bear license *after* the (April 15) spring or (August 31) fall deadline, there will be a 24-hour wait before you can use the license.

- License cost – Resident \$50, Non-resident \$1000.
- License availability – Max 10% non-resident for limited licenses.
- One license will be auctioned to the highest bidder each year and funds from the auction will be used to monitor the grizzly bear population.
- License Purchase Date – Must be purchased prior to season or prior to harvest by a minimum time period.
- Special License/Permit Drawing Date – Drawn prior to start of hunting season.
- Waiting Period – Minimum waiting period for successful applicants/license holders before they may apply or hunt again. (*not including auction*)
- Females with young – Females accompanied by young cannot be taken. Young are defined as cubs less than one year old, yearlings and 2-year olds
- Cubs and Yearlings – Cubs cannot be taken. *No take of young accompanying female.*
- Mandatory reporting requirements – Mandatory 24 hour reporting of grizzly bear harvest. Wounded bears that are not recovered or harvested bears that are lactating or have young must be reported as soon as possible not to exceed 12 hours unless backcountry conditions require 24 hours.
- Inspection – Within 5 days of harvesting a grizzly bear, successful hunters are required to present the hide and skull to provide evidence of sex (attached to hide) , allow tagging of the hide and skull, and collection of biological samples.
- Prohibited methods of hunting
 - Airplane – no locating or communication of information on the same day.
 - Unmanned Aerial Vehicles – prohibited.
 - Artificial light – prohibited.
 - Bait or scent attractants – prohibited.
 - Hounds – prohibited.
 - Electronic calls – prohibited.
 - Game Cameras – prohibited during season.
 - Night vision – prohibited.
 - Motorized vehicles – cannot shoot from motorized vehicle, cannot concentrate or chase from motorized vehicle.
 - Public roadways – cannot shoot from public roadway.
- Marked or radio-collared animals – Discouraged, but legal to take, must return tag or collar to MFWP.
- Hunting hours – Half hour before sunrise and after sunset.
- Kill site verification – Must return if requested by MFWP.
- Possession or sale of parts – Only hides, heads (skulls), or mounts may be legally sold.
- Restitution - \$8,000 fine for illegally taken grizzly bear.