

**Meeting Date:** August 8, 2016

**Agenda Item No. 4E**

**Agenda Item:** Grizzly Bear Administrative Rules  
(Action Item)

**Bureau Chief Approval:** \_\_\_\_\_

**Prepared by:** Jeff Gould

**Background:**

**See Agenda Item No. 4D regarding Tri-State MOA edits; Proclamation Limiting Take of Grizzly Bears in the Greater Yellowstone Ecosystem (GYE).**

**The Commission is not proposing to open a hunting season for grizzly bear in the GYE, and the Department is not making any recommendation to open such a hunting season.**

However, in conjunction with the delisting process, staff recommended that the Commission adopt rules related to the administration of potential take through hunting should the Commission open a season after delisting. Examples of administrative rules include methods of take, tagging requirements, evidence-of-sex requirements, and controlled hunt eligibility requirements.

Following an information briefing to the Idaho Fish and Game Commission on May 17, 2016 the Department submitted a Notice of Intent to initiate negotiated rule making for publication in the July 6, 2016 issue of the Administrative Bulletin. The publication contained seven rule proposals, which were made available for public review on the Department's website. Public comments were gathered during the July 6, 2016 Commission hearing, and via email, Department website, and direct mail during a 21-day comment period running from July 6-27, 2016.

The rule proposals included:

<b>IDAPA 13.01.08.260.03.</b> Establish rule to limit harvest of a grizzly bear in Idaho to once per lifetime.	A rule limiting eligibility to individuals who have not previously harvested a grizzly bear is consistent with hunts for other big game species for which hunt opportunity is extremely limited and over-subscribed.
<b>IDAPA 13.01.08.300.</b> Establish that either sex Grizzly Bears may be taken, Except adults accompanied by young, and young accompanying adults, may not be taken.	Create take restrictions consistent with Tri-state MOA and 2002 Idaho Grizzly Bear Plan to protect grizzly bear population productivity.
<b>IDAPA 13.01.08.320.</b> Establish that immediately after harvest of a grizzly bear, the tag must be validated and securely attached to the hide.	Tagging requirement consistent with other big game animals (black bears, mountain lions, gray wolves).
<b>IDAPA 13.01.08.350.</b> Add grizzly bear to the list of species for which evidence of sex must be left naturally attached to the hide until mandatory check requirement has been fulfilled.	Evidence of sex requirement consistent with black bears, mountain lions, and wolves.
<b>IDAPA 13.01.08.422.</b> Establish requirement that any hunter who kills a grizzly bear must report harvest within 24 hours by calling a toll free Grizzly Reporting Number.	Rapid reporting of harvest by hunters is required-- regulatory mechanism to allow updating of quota or closure of season.

<b>IDAPA 13.01.08.420.</b> Establish mandatory check requirement for grizzly bears. Skull and hide must be presented to IDFG conservation officer or at IDFG regional office for checking within 5 days of harvest.	Require physical check of hide and skull for collection of biological data, including confirmation of sex, retention of premolar for age determination, tagging of pelt, and completion of Big Game Mortality Report form.
<b>IDAPA 13.01.08.500.</b> Add grizzly bear to the list of species that may not be hunted within 200 yards of any designated dump ground or landfill.	Consistent with rules for take of black bears and gray wolves.

### **Statutory Authority and/or Policy Issues:**

Idaho Code 36-104(b)(2) and 36-105 grant authority to the Commission to set seasons and limits through proclamation and adopt IDAPA rules and orders. Rules governing the taking of big game animals are provided in IDAPA 13.01.08. Idaho Code, title 67, chapter 52 (Idaho Administrative Procedure Act) governs the rulemaking process to adopt, amend, or repeal IDAPA rules.

### **Public Involvement Process:**

The Commission received briefings regarding the proposed rulemaking during May 17, 2016 and July 7, 2016 meetings. Opportunity for public comment to the Commission occurred in conjunction with both of these meetings. The notice of rulemaking and method of public participation was formally published in the Idaho Administrative Bulletin on July 6, 2016, under Docket No. 13-0108-1601. Rule proposals were made available for public review on the Department's website and comments were accepted during a 21-day comment period, July 6-27, 2016.

During the public comment period the Department received approximately 12,000 comments. The Department received approximately 11,000 of these comments via email to Department/Commissioner employee email addresses; these comments appear to have originated from advocacy group campaigns providing individuals with template messages and directions to email comments. In general, these comments did not address the rule proposals; they addressed subjects outside of the scope of the rule proposals.

Some of the template comments addressed the merits of the delisting of the GYE grizzly bear; although the Commission supports delisting, this decision is the purview of the U.S. Fish and Wildlife Service. Many of the comments addressed the merits of opening a season for hunting of grizzly bear, geographic locations for such seasons, and limits on harvest. The Commission is not proposing to open a hunting season. Some of these comments did reference the take of female bear, and female bear with young, in the context of stating opposition to any hunting of grizzly bear.

Of the 12,000 comments, the Department received approximately 500 through the Department website or direct mail. Some of these comments were comparable to the 11,000 comments described above, also appearing to have originated from advocacy group campaigns based on template messages that were outside the scope of the rule proposals. A small number of organizations submitted longer letters/emails on behalf of their members, with content generally addressing subjects outside the scope of the rule proposals. Approximately 50 comments referenced the rule proposals with any specificity. Comments regarding the specific rule proposals in the context of administering a hunting season involved few, and relatively minor, recommendations differing from the rule proposals.

Comments included requests to participate in negotiated rulemaking, public hearings, and extensions of the comment period. These requests were made in conjunction with

comments opposed to delisting, opening hunting seasons for grizzly bear, or similar contexts outside the scope of the rule proposals. As a result, the Department recommends that the Commission find negotiated rulemaking infeasible. The publication of proposed rules would provide an additional 21-day comment period, and the Department recommends that a public hearing conducted by a hearing officer be held on the proposed rules during the public comment period.

**Staff Recommendation:**

The Department recommends that the Commission determine negotiated rulemaking is infeasible and that the Commission approve proposed administrative rules modifying IDAPA 13.01.08 as presented in the accompanying handout. The handout addresses the above rule proposals, as well as modifications to two additional sections to eliminate duplicative language and ensure consistency.

With the approval of proposed administrative rules and their subsequent publication in the administrative bulletin (publication date of October 5, 2016), there will be an additional 21-day comment period on the proposed rules. The Department recommends that a public hearing conducted by a hearing officer be held on the proposed rules during the public comment period.

**Suggested Motion:**

I move the Commission determine that negotiated rulemaking is not feasible and that the Commission approve the publication of proposed rules to modify IDAPA 13.01.08 as presented.