

**Summary of Public Comment received in response to the
Notice of Intent to Promulgate Rules
Idaho Administrative Bulletin Docket No. 13-0108-1601
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This Notice of Intent to Promulgate Rules does not propose to make any decision to delist grizzly bears and does not propose to open any hunting season for grizzly bear in Idaho. This Notice involves seven rule proposals to administer grizzly bear hunting should the Idaho Fish and Game Commission authorize hunting after grizzly bear in the Greater Yellowstone Ecosystem (GYE) are taken off the federal endangered species list, on which grizzly bear are listed as threatened. The Idaho Department of Fish and Game (IDFG) expects any opportunity to hunt GYE grizzly bear after delisting would be extremely limited.

IDFG received approximately 12,000 comments in response to this Notice of Intent to Promulgate Rules. Most comments were outside the scope of the Notice; approximately 50 comments addressed rule proposals with any specificity. Most comments focused on the decision of whether to delist grizzly bears or whether to open a hunting season for grizzly bears.

Although the Idaho Fish and Game Commission supports delisting of GYE grizzly bear, a decision to delist GYE grizzly bear under the Endangered Species Act is the purview of a federal agency, the U.S. Fish and Wildlife Service (USFWS). USFWS published a draft delisting rule for GYE grizzly bear earlier this year. USFWS provided an opportunity for public comment on the draft delisting rule, and USFWS stated it would provide another opportunity for public comment after completing a peer review process and circulating additional information on regulatory mechanisms.

Based on the comments IDFG received, much confusion exists as to the status of state grizzly bear management and potential hunting seasons in Idaho. This confusion stems from the draft federal delisting rule's discussion of the adequacy of regulatory mechanisms should states authorize hunting.

There is no proposed grizzly bear hunting season in Idaho; all seasons remain closed for GYE grizzly bear.

The State of Idaho adopted a Yellowstone Grizzly Bear Management Plan in 2002 to provide direction for state management after delisting. Consistent with this 2002 plan, the State of Idaho is a party to a 2007 Conservation Strategy with the States of Montana, and Wyoming, and the U.S. Forest Service, U.S. Bureau of Land Management, U.S. National Park Service, U.S. Geological Survey, and U.S. Fish and Wildlife Service. The 2007 Conservation Strategy provides direction for management and monitoring of the GYE grizzly population and its habitat to ensure the population remains recovered. The 2007 Strategy is being updated in conjunction with USFWS' consideration of delisting.

Consistent with the 2002 Idaho Yellowstone Grizzly Bear Management Plan, the States of Idaho, Montana, and Wyoming, as managers of wildlife in their respective jurisdictions, have agreed to continue to work together after delisting to ensure the long-term health of the GYE grizzly bear population. The States have a written agreement regarding allocation of discretionary grizzly bear mortality among the States. The Idaho Fish and Game Commission would only consider whether to open a hunting season for GYE grizzly bear after a federal delisting decision, and the Commission's evaluation of whether to open a season would involve a separate administrative process in the future. The rule proposals presented in the Notice of Intent identified proposals for administration of a hunting season should the Commission make a decision to authorize hunting of GYE grizzly bear after delisting.

The Commission received briefings regarding proposed rulemaking during its May 17, 2016 and July 7, 2016 meetings. Opportunity for public comment to the Commission occurred in conjunction with both of these meetings. Of the 12,000 comments IDFG received, approximately 11,000 were sent via email to IDFG/Commissioner employee email addresses; these comments were from a broad geographic range and appear to have originated from advocacy group campaigns providing individuals with template messages and directions to email comments. In general, the comments based on template messages focused on opposition to delisting and hunting of grizzly bear and did not address the rule proposals.

Of the 12,000 comments, IDFG received approximately 500 through IDFG's 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.

Comments addressing the specific rule proposals are summarized below.

Rule Proposal #1: Establish that either sex grizzly bear may be taken, except adults accompanied by young, and young accompanying adult, may not be taken. (IDAPA 13.01.08.300.01)

Several organization comments and individual comments based on templates stated opposition to the take of female bear, and female bear with young, in the context of stating opposition to any hunting of grizzly bear. Some of these comments expressed concerns that cubs may not be visible. Two comments made in the context of supporting grizzly bear hunting recommended restrictions to boars only. One comment requested the regulation prohibit "bears traveling together." Some comments also referenced a need for numeric limits on the take of females. Comments opposing take of females included requests to participate in negotiated rulemaking.

The Commission uses administrative rules to establish general restrictions to apply to seasons. For example, administrative rules define antlered versus antlerless animals for moose, deer, and elk, or horn sizes for pronghorn and bighorn sheep. Administrative rules also establish limits on the take of black bear, mountain lion, and mountain goat accompanied by young. As described on Pages 5-6 of this summary, the Commission may use its authority to establish additional limits on numbers, sex, and size when it sets specific hunting seasons. For example, the Commission has found it appropriate to set numeric limits on harvest of female mountain lion in certain game management units.

The Commission may use its existing statutory authority in considering whether to open a season for GYE grizzly bear and may decide to: keep the season closed, open a season for males (boars) only, or set limits specific to females (sows).

Given the depth of the opposition expressed to delisting or any hunting of grizzly bear by nearly all of those requesting to participate in negotiated rulemaking, and the Commission's authority to consider numeric limits on females through future potential season-setting, IDFG recommends the Commission find negotiated rulemaking infeasible for this proposal.

Rule Proposal #2: Establish that immediately after harvest of grizzly bear, the tag must be validated and securely attached to the hide. (IDAPA 13.01.08.320.01)

Comments on this proposal were largely in the form of general support for all/most of the rule proposals, or in the form of general opposition to delisting/hunting. Noting a general opposition to hunting GYE grizzly bear and requesting negotiated rulemaking, one organizational letter supported this proposal. No

comments made any recommendations for specific changes to this rule proposal. Given the depth of the opposition expressed to delisting or any hunting of grizzly by nearly all of those requesting to participate in negotiated rulemaking, and the absence of any variations identified to specifics of this proposal, IDFG recommends the Commission find negotiated rulemaking infeasible for this proposal.

Rule Proposal #3: 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. (IDAPA 13.01.08.350)

Comments on this proposal were largely in the form of general support for all/most of the rule proposals, or in the form of general opposition to delisting/hunting. Noting a general opposition to hunting GYE grizzly bear and requesting negotiated rulemaking, one organizational letter supported this proposal. No comments made any recommendations for specific changes to this rule proposal. Given the depth of the opposition expressed to delisting or any hunting of grizzly by nearly all of those requesting to participate in negotiated rulemaking, and the absence of any variations identified to specifics of this proposal, IDFG recommends the Commission find negotiated rulemaking infeasible for this proposal.

Rule Proposal #4: Establish requirement that any hunter who kills a grizzly bear must report harvest within 24 hours by calling a toll-free Grizzly Reporting Number. (IDAPA 13.01.08.422).

Comments on this proposal were largely in the form of general support for all/most of the rule proposals, or in the form of general opposition to delisting/hunting. Noting a general opposition to hunting GYE grizzly bear and requesting negotiated rulemaking, one organizational letter supported a 12-hour reporting requirement, citing Montana's 12-hour reporting requirement. (Wyoming has a 24-hour reporting requirement.)

Five individuals expressed questions/concerns that the 24-hour telephone reporting requirement was too short a time span, citing potential unavailability of phone service, remote nature of backcountry areas, or an undue burden to hunters. None of these five commenters asked to participate in negotiated rulemaking. Three of these comments suggested deleting this requirements, two of which suggesting the 5-day mandatory check as sufficient. One commenter recommended a 48-hour telephone report.

Given the depth of the opposition expressed to delisting or any hunting of grizzly by nearly all of those requesting to participate in negotiated rulemaking, IDFG recommends the Commission find negotiated rulemaking infeasible for this proposal.

Rule Proposal #5: Establish mandatory check requirement for grizzly bear whereby any harvested grizzly bear skull and hide must be presented to an IDFG conservation officer or at an IDFG regional office for checking within 5 days of harvest. (IDAPA 13.01.08.420)

Comments on this proposal were largely in the form of general support for all/most of the rule proposals, or in the form of general opposition to delisting/hunting. Noting a general opposition to hunting GYE grizzly bear and requesting negotiated rulemaking, one organizational letter supported this proposal.

Three individuals believed a 10-day check was more appropriate. One of these comments indicated the 10-day check would be consistent with the black bear check requirement and avoid confusion between the species. One of these comments indicated the 10-day check was appropriate in conjunction with the 24-hour telephone report. None of these commenters requested to participate in negotiated rulemaking.

Under IDAPA 13.01.08.420, IDFG has experience in administering 5-day mandatory check requirements for management units that have a female mountain lion quota, and 10-day mandatory check requirements

for units that do not have a quota. Gray wolf, black bear, moose, mountain goat, mountain lion, and bighorn sheep also have 10-day mandatory checks requirements.

Given the depth of the opposition expressed to delisting or any hunting of grizzly by nearly all of those requesting to participate in negotiated rulemaking, and its administrative experience with the variation in 5-day versus 10-day checks, IDFG recommends the Commission find negotiated rulemaking infeasible for this proposal.

Rule Proposal #6: Add grizzly bear to the list of species that may not be hunted within 200 yards of any designated dump ground or landfill. (IDAPA 13.01.08.500)

Comments on this proposal were largely in the form of general support for all/most of the rule proposals, or in the form of general opposition to delisting/hunting. Noting a general opposition to hunting GYE grizzly bear and requesting negotiated rulemaking, one organizational letter supported this requirement, and one organizational letter thought the distance should be greater. Noting opposition to hunting GYE grizzly bear, one individual indicated two miles was a more appropriate distance.

This rule proposal uses the same language and prohibition that applies to black bear and gray wolf.

Given the depth of the opposition expressed to delisting or any hunting of grizzly by nearly all of those requesting to participate in negotiated rulemaking, IDFG recommends the Commission find negotiated rulemaking infeasible for this proposal.

Rule Proposal #7: Establish a rule to limit harvest of a grizzly bear in Idaho to once per lifetime. (IDAPA 13.01.08.260.03)

Comments on this proposal were largely in the form of general support for all/most of the rule proposals, or in the form of general opposition to delisting/hunting. Noting a general opposition to hunting GYE grizzly bear and requesting negotiated rulemaking, one organizational letter supported this proposal.

Two individuals suggested a 5-year wait period rather than a once-in-a lifetime restriction on eligibility. Neither of these individuals requested to participate in negotiated rulemaking.

IDFG expects opportunities for grizzly bear hunting to be more limited than hunts of other species that have a once-in-a lifetime harvest restriction.

Given the depth of the opposition expressed to delisting or any hunting of grizzly by nearly all of those requesting to participate in negotiated rulemaking, and its experience with eligibility restrictions for limited hunting opportunities, IDFG recommends the Commission find negotiated rulemaking infeasible for this proposal.

Negotiated Rulemaking

The requests IDFG received to participate in negotiated rulemaking were from entities or individuals expressing opposition to delisting of GYE grizzly bear, any hunting of grizzly bear whatsoever, or similar contexts outside the scope of the rule proposals. As discussed above, comments specific to the rules presented few, and relatively minor, recommendations differing from the rule proposals. As discussed

above, IDFG recommends that the Commission finds negotiated rulemaking infeasible and proceed with the adoption of proposed rules.

Additional Public Comment

Various comments requested extensions to the public comment period and public meetings. Should the Commission determine that negotiated rulemaking is infeasible and adopt proposed rules, there is an additional 21-day comment period following the publication of proposed rules in the Idaho Administrative Bulletin. IDFG has recommended that a public hearing for the acceptance of oral comments be held in conjunction with a public comment period for proposed rules.

Administrative Process related to the Take of Wildlife

Because several comments submitted by organizations and individuals indicated a lack of understanding of Idaho's regulation of the opening, closing and conduct of hunting seasons in Idaho, IDFG provides the following brief summary of existing mechanisms for regulating the take of wildlife in Idaho. For wildlife classified as game animals, Idaho law (Idaho Code Section 36-104(b)(2)) authorizes the Idaho Fish and Game Commission to open seasons for public take of wildlife, where it finds a season will not endanger the species of game, and the Commission may impose limits on the numbers, sex, size and species, along with identifying allowable methods of take. The Commission may choose to limit a season to certain number of hunters through a controlled hunt (Idaho Code Section 36-104(b)(5)). Both the Commission and IDFG Director have authority to close seasons when established limits are reached or in emergency situations (Idaho Code Sections 36-104(b)(3) and 36-106(6)).

Under Idaho Code Section 36-105(3), the Commission has authority to set seasons or limits for the take of wildlife by proclamation. A season proclamation identifies the time and place allowed for take of wildlife, along with any limits on numbers, sex, size and species the Commission may find appropriate. The Commission typically reviews and sets seasons on an annual or biennial basis with public input, but may review them more frequently as conditions warrants. To be responsive to biological factors, the season-setting process has greater administrative flexibility than rulemaking under the Idaho Administrative Procedure Act. For example, the big game season proclamation for 2015-2016 is available at: https://idfg.idaho.gov/sites/default/files/seasons-rules-big-game_2015-2016.pdf.

The Commission and IDFG have agreed to evaluate take of grizzly bear on an annual basis under a Memorandum of Agreement with their counterparts in Montana and Wyoming. The Commission is not proposing to open a season for grizzly bear at this time, and the Commission would only make such a decision after delisting.

The Commission also conducts rulemaking under the Idaho Administrative Procedure Act to establish administrative rules for classification of wildlife, allowances and restrictions for methods of take of wildlife, licensing requirements for take of wildlife, and other administrative aspects of wildlife take. The rule proposals that are the subject of this Notice (Docket No. 13-0108-1601) are rules for the administration of potential hunting seasons for grizzly bear after delisting.

Rule Proposal #1, described above, involves a general limitation on the sex and size (young) of grizzly bear. This proposal is for an administrative rule that may be used in combination with additional limits established through a Commission season/limit proclamation. For example, the Commission's general

administrative rule limitation on the take of female mountain lion with young is used in combination with numeric limits on female mountain lion established by proclamation in geographic areas where the Commission has found additional restrictions appropriate.

Because of confusion as to Commission authorities related to limits on take of GYE grizzly bear, IDFG has recommended that the Commission adopt a proclamation identifying limits for take of GYE grizzly bear to clarify its existing authorities and season closure process for GYE grizzly bear management.

Additional Information on State Legal Authorities Related to Comments Outside the NOI Scope

1. Comments related to federal delisting decision (see discussion on page 1)
2. Comments opposed to any hunting of grizzly bear (see discussion on page 1)

Some comments also specifically refer to opening of hunting seasons “immediately” upon delisting and proposals for spring bear hunts. Some comments included a recommendation for a 3- or 5-year moratorium on hunting after delisting.

As noted on Page 1 of this summary, the Commission has not made a decision to open a grizzly bear hunting season. The Commission does not establish multi-year moratoria by administrative rule; the Commission closes and opens seasons through its season-setting authority as described above.

3. Comments requesting geographic closures to hunting (e.g., Yellowstone National Park, lands adjacent to Yellowstone Park, the Primary Conservation Area, important food source areas such as cutworm moth sites, Centennial Mountains, connectivity areas)

The rule proposals under this Notice included a prohibition related to designated dump grounds or sanitary landfills, consistent with the administrative rule for black bear and gray wolf. In other limited instances, the Commission has adopted geographic closures to hunting by administrative rule. For example, Idaho state administrative rules (IDAPA 13.01.08.500.01.f) prohibit big game hunting in Yellowstone National Park in Idaho. The Commission is not considering revision of its rule regarding the closure of Yellowstone to big game hunting. Yellowstone National Park is also closed to hunting under federal legal authorities.

As described on Pages 5-6, the Commission considers geographic location in exercising its authority to set specific hunting seasons or limits.

4. Comments requesting seasonal closures to hunting (e.g., spring)

As described on Pages 5-6, the Commission considers appropriate dates for seasons in exercising its authority to set specific hunting seasons and limits.

5. Comments related to population size and hunting

As described on Pages 5-6, the Commission considers the condition of populations in exercising its authority to set specific hunting seasons and limits. The Commission has entered into a memorandum

of agreement with the Wyoming and Montana Commissions for managing the population based on certain population levels and mortality rates to maintain a recovered and healthy bear population.

6. Comments referencing “trophy hunting” (part of advocacy group templates and several organizational letters)

Idaho law defines certain big game animals as “trophy big game animals,” and the unlawful killing of these animals carries higher criminal and civil penalties under Idaho Code Title 36, Chapter 14. Idaho law does not define grizzly bear as a “trophy big game animal,” and any change to this statute is the purview of the Idaho legislature.

In addition to inclusion in the definition of “trophy big game animal,” moose, bighorn sheep and mountain goat are also referred to as trophy species in Idaho because they are subject to limited controlled hunts and once-in-a-lifetime harvest eligibility rules.

7. Comments regarding waste of meat

Idaho law (Idaho Code 36-202(a)(2)) prohibits the waste of edible portions of big game animals (hind and front quarters, loins and tenderloins). Idaho law exempts mountain lion, gray wolf, and black bear from this prohibition against waste of edible portions. Grizzly bear are classified as big game animals under IDAPA 13.01.06.100, and Idaho law does not exempt grizzly bear from the waste prohibition.

8. Comments related to use of dogs for hunting grizzly bear

Grizzly bear are included in general prohibitions against use of dogs for the take of big game animals. IDAPA 13.01.08.410.05.c. Grizzly bear are classified as big game animals. IDAPA 13.01.06.100. The rule proposals involve no changes to the prohibition against use of dogs for take of grizzly bear.

9. Comments related to trapping of grizzly bear

Grizzly bear are included in the general prohibitions against use of traps for the take of big game. IDAPA 13.01.08.410.05.d. Grizzly bear are classified as big game animals. IDAPA 13.01.06.100. The rule proposals involve no changes to the prohibition against trapping for the take of grizzly bear.

10. Comments related to bait of grizzly bears

Grizzly bear are included in the general prohibitions against use of bait for take of big game animals. IDAPA 13.01.08.410.05.b. Grizzly bear are classified as big game animals. IDAPA 13.01.06.100. Allowances for use of bait for hunting black bear do not apply to grizzly bear. See IDAPA 13.01.17.100. The rule proposals involve no change to the prohibition against use of bait for take of grizzly bear.

11. Comments related to bait of black bear

Idaho Administrative Rules (13.01.17) specify how bait may be used for the hunting of black bear. Bait for black bear is prohibited in certain units, and the biennial Commission big game season proclamation identifies where bait is prohibited for hunting black bear. Although the Commission

adopted a proposed rule in July 2016 to modify bait requirements for black bear, the proposed rule does not pertain to the geographic area containing the GYE grizzly bear. In 2014, a Notice of Intent to Promulgate Rules included a proposal to change bait requirements for black bear, but the Commission did not proceed with this proposal after review of public comment and IDFG staff recommendation.

12. Comments related to Cartridge Size

Idaho Administrative Rules (13.01.08) prescribe cartridge sizes for short-range hunts and muzzleloader hunts for various big game species; administrative rules do not prescribe cartridge sizes for other big game hunts. The rules do not prescribe any specific cartridge size for grizzly bear.

13. Comments related to Mandatory Bear Identification Education Requirement

IDFG provides bear identification education and testing on a voluntary basis, and several thousand individuals have viewed this program. In 2013, a Notice of Intent to Promulgate Rules included a proposal for mandatory education, but the Commission did not proceed with this proposal after review of public comment and IDFG staff recommendation.

14. Comments related to License and Tag Fees

Idaho law (Idaho Code Section 36-416) establishes the cost of hunting licenses and tags, and changes to these amounts are the purview of the Idaho Legislature.

15. Comments on Non-resident Tags

Should the Commission open a season with a controlled hunt, Idaho Administrative Rules (13.01.08) specify that in controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued.

16. Comments Related to Release of Hunter Names

Idaho law (Idaho Code 36-402) prohibits IDFG from releasing hunter names and other personal information without written consent. Changes to this law are the purview of the Idaho Legislature.

17. Comments on Enforcement

Criminal and civil penalties for violations of Idaho Fish and Game laws and rules are identified in Idaho Code, Title 36, Chapter 14. Changes to these laws are the purview of the Idaho Legislature.