

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 12.9.1301, 12.9.1302,)
12.9.1303, 12.9.1304, and 12.9.1305)
regarding gray wolf management)
NOTICE OF PUBLIC HEARINGS ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 2, 2013, at 6:00 p.m., the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks' Region 3 Office, 1400 South 19th, Bozeman, Montana, to consider the proposed amendment of the above-stated rules.

On December 3, 2013, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks' Headquarters Office, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

On December 3, 2013, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks' Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed amendment of the above-stated rules.

On December 3, 2013, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks' Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed amendment of the above-stated rules.

On December 4, 2013, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks' Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed amendment of the above-stated rules.

On December 9, 2013, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks' Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed amendment of the above-stated rules.

On December 10, 2013, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks' Region 6 Office, 54078 US Highway 2 West, Glasgow, Montana, to consider the proposed amendment of the above-stated rules.

On December 10, 2013, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks' Region 7 Office, 352 I-94 Business Loop, Miles City, Montana, to consider the proposed amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than November 15, 2013, to advise us of the nature

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Ravalli County Commissioners

of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.9.1301 COMMITMENT TO PRESERVATION OF THE GRAY WOLF AS RESIDENT WILDLIFE IN NEED OF MANAGEMENT (1) The department has management authority of the gray wolf, a resident native wildlife species, and is dedicated to the conservation of wolf populations within the state of Montana. Pursuant to the definition of management under the Nongame and Endangered Species Conservation Act, 87-5-102, MCA, the department will implement conservation and management strategies to make sure that wolves continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department will manage wolves to ~~assure~~ ensure that recovery criteria are met or exceeded. Montana will ensure maintenance of at least 15 breeding pairs and assist natural dispersal and connectivity between gray wolf populations in Canada, Montana, Idaho, and Wyoming. The department uses an adaptive management framework for the gray wolf, meaning that if the statewide number of wolves exceeds 15 breeding pairs, the department may, as outlined in these rules, approve lethal control of wolves. If there are fewer than 15 breeding pairs, the department will allow only conservative management of the wolf populations so that the number of breeding pairs does not go below 10 but may still approve lethal control. These rules set out the comprehensive structure governing control of the gray wolf so that all control actions fall within the department's adaptive management considerations. The commission has authority, when the statewide number of wolves exceeds 15 breeding pairs, to adopt a ~~hunting~~ harvest season ~~with quotas~~ for wolves and will exercise that authority as part of the adaptive management framework for the gray wolf. The department's management decisions will be guided by the principles of maintaining and enhancing Montana's contribution to the overall northern Rocky Mountain gray wolf population and the gray wolf's connectivity between contiguous populations in Canada, Idaho, Montana, and Wyoming.

~~(2) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1302 DEFINITIONS The following definitions apply to this subchapter:

(1) "Adaptive management" means wolf conservation and management strategies that will maintain a recovered population and ~~assure~~ ensure natural connectivity and genetic exchange among the wolf populations in Canada, Montana, Idaho, and Wyoming. It establishes resource objectives such as maintenance of a

recovered population; it monitors progress towards meeting those objectives through ~~wolf numbers, distribution, dispersal, genetic diversity, and consideration of disease;~~ and it adjusts management decisions to meet these resource objectives. Adaptive management directs selection of more conservative or liberal management tools, accordingly. ~~If wolf numbers, natural connectivity, or genetic exchange ever become conservation concerns, a~~ Adaptive management allows the department a full range of tools to ensure a recovered and connected population, ~~including more conservative lethal control, smaller regulated harvest quotas, and human-assisted genetic exchange.~~

(2) and (3) remain the same.

(4) "Breeding pair" means an adult male and an adult female wolf ~~that have produced and~~ at least two pups that survived until December 31 of the year of their birth, during the previous breeding season.

(5) "Confirms", "confirmed", or "confirmation" means an incident where the department or USDA Wildlife Services determines through a field investigation of dead or injured livestock that there is reasonable physical evidence that the animal was actually attacked and/or killed by a wolf. ~~The primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, and/or eye-witness accounts of the attack may help identify the specific species or individual responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include blood spilled or sprayed at a nearby attack site or other evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on the animal that has been largely consumed.~~

(6) through (8) remain the same.

(9) "Livestock" means bison as defined in 81-1-101, MCA, cattle, calf, hog, pig, horse, mule, sheep, lamb, llama, goat, herding or guarding animals, rhea, emu, ostrich, donkey, and certain breeds of dogs commonly used for herding or guarding livestock.

(10) through (14) remain the same.

~~(15) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1303 CONTROL METHODS OF THE GRAY WOLF INCLUDE NONLETHAL AND LETHAL MEANS (1) These rules address when and how the department may carry out nonlethal and lethal control of wolves.

(2) To undertake control actions that are consistent with this rule and the Montana Gray Wolf Conservation and Management Plan, ~~the department may:~~

~~(a) take control actions;~~

~~(b) pursuant to an interagency cooperative agreement, may authorize USDA Wildlife Services to undertake control actions pursuant to an interagency cooperative agreement; or~~

~~(c) pursuant to an interagency cooperative agreement, may authorize the Department of Livestock pursuant to an interagency cooperative agreement; or to undertake control actions that are consistent with this rule and the Montana Gray Wolf Conservation and Management Plan.~~

~~(d) issue permits to individuals pursuant to ARM 12.9.1305.~~

~~(3) The department is responsible for any lethal control decision and for the status, conservation, and management of the gray wolf population as a state species in need of management, game animal, or a furbearer as guided by the Montana Gray Wolf Management Plan, administrative rules, and statutes.~~

~~(3) (4) Control of the gray wolf by an agency or an individual may include nonlethal and lethal actions. The department shall address wolf conflicts on a case-by-case basis, connecting response to the conflict in both time and location to direct nonlethal and lethal actions to a wolf or wolves with the highest likelihood of having injured or killed the livestock.~~

~~(4) (5) The department shall take an incremental approach to lethal control.~~

~~(5) (6) Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to 87-1-102, 87-1-125, 87-5-106, and 87-5-111, 87-6-201, and 87-6-203, MCA, as applicable.~~

~~(6) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1304 ALLOWABLE NONLETHAL CONTROL OF THE GRAY WOLF

(1) through (1)(f) remain the same.

(g) working with interested individual livestock owners and private landowners, watershed groups, interested groups, state and federal land managing agencies, USDA Wildlife Services, and the Montana Livestock Loss Reduction and Mitigation Board and its coordinator to provide technical assistance and to assist with selection and implementation of proactive nonlethal controls on both public and private lands when and where livestock are present, either seasonally or yearlong. ~~Examples include: allotment management or annual operating plans; Wildlife Management Area or other state land grazing leases; and, predator deterrent~~

~~programs offered through the United States Department of Agriculture Natural Resource and Conservation Service Environmental Quality Incentive Program.~~

~~(2) remains the same.~~

~~(3) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1305 ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF

~~(1) On a case-by-case basis, the commission delegates its authority to the department to may authorize lethal control of problem wolves. only the department may authorize the following to conduct lethal control of problem wolves:~~

~~(a) agency control by the department;~~

~~(b) USDA Wildlife Services, or the Department of Livestock pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;~~

~~(c) Department of Livestock pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;~~

~~(b) (d) control by a livestock owner, immediate family members, or employees, or other person authorized by the department with a permit issued by the department under the conditions authorized and specified on the permit; and~~

~~(e) (e) control to protect human safety; or~~

~~(f) control pursuant to 87-1-901, MCA.~~

~~(2) and (3) remain the same.~~

~~(4) If the department or USDA Wildlife Services confirms that a wolf killed the livestock, the department will consider input from USDA Wildlife Services and the livestock owner and decide the best course of action. The department may authorize incremental lethal control for problem wolves for up to 45 days from the date of confirmation by USDA Wildlife Services, assessing each conflict on a case-by-case basis and after considering the following factors:~~

~~(a) pack size and pack history of conflict;~~

~~(b) livestock operation;~~

~~(c) age and class of livestock killed;~~

~~(d) location of conflict;~~

~~(e) potential for future conflict;~~

~~(f) status and distribution of prey;~~

~~(g) season;~~

~~(h) number of breeding pair within the state;~~

~~(i) effectiveness and prior use of nonlethal control; and~~

~~(j) verification that wolves are not intentionally baited or drawn to the area, wolves are routinely present, and that nonlethal tools are unlikely to prevent further incidents of injured or dead livestock.~~

~~(5)~~ (4) The department has the discretion to lethally remove or authorize removal of a gray wolf if the department determines that the wolf is:

(a) bold;

(b) food conditioned;

(c) habituated to humans or livestock;

(d) ~~demonstrates~~ demonstrating abnormal behavior patterns or physical characteristics indicative of a wolf-dog hybrid or of captive origin; or

(e) ~~if it poses~~ posing an immediate or ongoing threat to human safety.

(6) through (8) remain the same but are renumbered (5) through (7).

~~(9)~~ (8) The department may authorize a livestock owner, immediate family members, or employees by a permit to take a problem wolf under the following circumstances and conditions as part of a coordinated agency response to confirmed livestock damage due to wolves:

(a) when the department or USDA Wildlife Services confirms that a wolf killed the livestock; ~~and when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock;~~

~~(b) the department has authorized USDA Wildlife Services to implement lethal control to resolve conflict;~~

~~(c)~~ (b) when the department or USDA Wildlife Services determines that the wolf was not purposefully or intentionally fed or baited to a site;

~~(d)~~ (c) the permit may last for a maximum of 45 days from the date the department or USDA Wildlife Services confirms the wolf caused damage and any wolf killed within the 45 days will be counted towards the number specified on the permit;

(e) through (h) remain the same but are renumbered (d) through (g).

~~(10)~~ (9) The permit must specify:

(a) its duration and expiration date;

(b) total number of wolves that may be lawfully killed through the combined actions of the individuals named on the permit or other department authorization and the department or USDA Wildlife Services;

(c) the geographic area where the permit is valid; and

(d) that wolves may be killed using means of take authorized by the commission for wolf harvest seasons from the ground and in a manner that does not entail the use of intentional live or dead baits, scents, or attractants or deliberate use of traps or snares, or poisons; or use of radio telemetry equipment.

~~(11)~~ (10) As allowed by ~~87-3-130~~ 87-1-901 and 87-6-106, MCA, any person may kill without permit or license a wolf that is attacking, killing, or threatening to kill a person or livestock, or that is in the act of attacking or killing a domestic dog. A person may not intentionally bait a wolf with domestic dogs or livestock for the purpose of killing the wolf.

(a) remains the same.

(11) A landowner or landowner agent, pursuant to 87-1-901, MCA, may take a wolf on the landowner's property without permit or license when the wolf is a potential threat to human safety, livestock, or domestic dog until the quota established by the commission under 87-1-901, MCA, is met.

(a) Wolves representing a potential threat to human safety, livestock, or dogs do not include wolves that might routinely use an area as free-ranging wildlife.

(b) This landowner or landowner's agent shall:

(i) notify the department within 24 hours;

(ii) preserve the scene;

(iii) leave the carcass where it was killed until the department investigates the scene; and

(iv) surrender the hide, skull, and carcass to the department.

(c) Any take after the quota established by the commission under 87-1-901, MCA, is met is subject to criminal penalties pursuant to 87-5-106, 87-5-111, 87-6-201, and 87-6-203, MCA, as applicable.

~~(12) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-1-901, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-1-901, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

Reasonable Necessity: The rules regarding management of the gray wolf in Montana were adopted in 2008 prior to the gray wolf being removed from the list of endangered species. The commission is proposing to remove the language pertaining to the rule being applied upon delisting to address the removal of the gray wolf from the endangered species list. The commission is proposing to amend ARM 12.9.1301 to clarify the commission's authority to establish harvest seasons. The proposed amendments to ARM 12.9.1302 are to remove language addressing specific management objectives and tools. The purpose of this is not to move away from the utility of those elements but to clarify the ability and flexibility to secure management functionality and wolf conservation with other possible methods. Domestic bison are also proposed to be added to the definition of livestock to address the potential depredation of domestic bison by wolves. This proposed amendment is not intended to include bison migrating from Yellowstone National Park or the bison that have been subject to the quarantine feasibility study. The commission is proposing to amend ARM 12.9.1303 to clarify the department's responsibility and general oversight of wolf conservation and management without having to be directly involved in every lethal control decision made by USDA/APHIS Wildlife Services. The department was directly involved and responsible for each depredation response prescription in the past. However, an interagency memorandum of understanding has been established assigning the day-to-day decisions to Wildlife Services with reporting requirements. The Montana Livestock Loss Board changed its name and the commission is proposing to amend ARM 12.9.1304 to reflect this change and to remove extraneous language citing specific elements of nonlethal control. The proposed deletions are not meant to reflect a movement away from those elements but rather to ensure the list is not read as being complete or exclusive. In 2013, the Montana Legislature passed SB 200, codified at 87-1-901, MCA, allowing lethal control by landowners and the

commission is proposing amendments to clarify the different methods and process for lethal control by the department, other agencies, and now landowners.

4. Concerned persons may present their data, views, or arguments either orally or in writing, at any one of the hearings. Written data, views, or arguments may also be submitted to Fish, Wildlife and Parks, Wildlife Division, PO Box 200701, Helena, MT, 59620-0701; fax 406-444-4952; e-mail fwpwld@mt.gov, and must be received no later than December 20, 2013.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearings.

6. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notices and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1712 9th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on September 30, 2013.

8. With regard to the requirements of 2-4-111, MCA, the commission has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Dan Vermillion
Dan Vermillion, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State October 21, 2013