

## COMMISSION MEETING AGENDA BRIEFING

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Meeting Date: August 9, 2024

Agenda Number: 7

Presenter: Stewart Liley

Corroborator: N/A

Agenda Title: Hearing on the Bighorn Sheep Rule 19.31.17 NMAC.

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### 1. Summary of Agenda Item

The Department will present a proposed amendment to extend the Bighorn Sheep Rule for two more years as it is set to expire on March 31, 2025. This extension would align the Bighorn Sheep Rule with the expiration of the other Big Game rules and future rule development.

### 2. Background Information

During the previous rule development process the duration of the bighorn rule was shortened from four years to two years during the rule hearing. The decision to shorten the rule was based on potential proposed legislation from individuals or groups outside of the Department, to change the draw quota statute as it pertains to bighorn sheep. No legislative changes have occurred pertaining to the draw quota statutes and the Department is recommending continuing issuing bighorn licenses as it currently does.

### 3. Strategic Plan References and Possible Impacts of Agenda Item

The process as presented to the Commission meets the Conservation Services Program Objectives 1, 2 and 5 of the Department's Strategic Plan: FY 2019 – FY 2023

### 4. Considerations Regarding Duplications and/or Conflicts with Existing Rules or Statutes

None

### 5. Description and Summary of Public Involvement Process and Results

The Department posted proposed changes to the Bighorn Sheep Rule on its website and opened a public comment period.

#### Suggested Motion

The Department respectfully suggests the following motion unless Commission discretion indicates a different course of action:

“Move to amend 19.31.17 NMAC, as presented by the Department and allow the Department to make minor corrections to comply with filing this rule with State Records and Archives.”

**CHAPTER 31 HUNTING AND FISHING**  
**PART 17 BIGHORN SHEEP**

**19.31.17.1 ISSUING AGENCY:** New Mexico department of game and fish.  
[19.31.17.1 NMAC - Rp, 19.31.17.1 NMAC, 4/1/2025]

**19.31.17.2 SCOPE:** Sportspersons interested in bighorn sheep management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.  
[19.31.17.2 NMAC - Rp, 19.31.17.2 NMAC, 4/1/2025]

**19.31.17.3 STATUTORY AUTHORITY:** Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.  
[19.31.17.3 NMAC - Rp, 19.31.17.3 NMAC, 4/1/2025]

**19.31.17.4 DURATION:** April 1, 2023 through March 31, **2025 2027**.  
[19.31.17.4 NMAC - Rp, 19.31.17.4 NMAC, 4/1/2025]

**19.31.17.5 EFFECTIVE DATE:** April 1, 2023 unless a later date is cited at the end of a section.  
[19.31.17.5 NMAC - Rp, 19.31.17.5 NMAC, 4/1/2025]

**19.31.17.6 OBJECTIVE:** Establishing open hunting seasons and regulations, rules, and procedures governing the distribution and issuance of bighorn sheep licenses by the department.  
[19.31.17.6 NMAC - Rp, 19.31.17.6 NMAC, 4/1/2025]

**19.31.17.7 DEFINITIONS:**

- A. **“Department”** shall mean the New Mexico department of game and fish.
- B. **“Director”** shall mean the director of the New Mexico department of game and fish.
- C. **“Either sex” or “ES”** shall mean any one animal of the species.
- D. **“Ewe”** shall mean any female bighorn sheep.
- E. **“Game management unit” or “GMU”** shall mean those areas as described in 19.30.4 NMAC

Boundary Descriptions for Game Management Units.

- F. **“Ram”** shall mean any male bighorn sheep.
- G. **“Wildlife management areas” or “WMAs”** shall mean those areas as described in 19.34.5

NMAC Wildlife Management Areas.

[19.31.17.7 NMAC - Rp, 19.31.17.7 NMAC, 4/1/2025]

**19.31.17.8 ADJUSTMENT OF LICENSES:** The director, with the verbal concurrence of the New Mexico state game commission chairperson or their designee, may adjust the number of bighorn licenses to address significant changes in population levels or to address critical department management needs. The director may change or cancel any or all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.  
[19.31.17.8 NMAC - Rp, 19.31.17.8 NMAC, 4/1/2025]

**19.31.17.9 BIGHORN SHEEP LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:**

A. **Rocky mountain bighorn sheep ram once-in-a-lifetime hunts:** It shall be unlawful for anyone to apply for a Rocky mountain bighorn sheep ram license if one has previously held a license to hunt a Rocky mountain bighorn sheep ram in New Mexico, except those who have held a youth-only, private land-only (not obtained through the public draw), population management license for ram or ES that the director, with verbal concurrence of the chairperson or their designee, has decided does not qualify as once-in-a-lifetime, auction, and/or raffle bighorn ram license(s). A person that has received the youth-only ram license is eligible for this hunt only

once as a youth (under age 18), but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible.

**B. Desert bighorn sheep ram once-in-a-lifetime hunts:** It shall be unlawful for anyone to apply for a desert bighorn sheep ram license if one has previously held a license to hunt a desert bighorn sheep ram in New Mexico, except those who have held a youth-only, private land-only (not obtained through the public draw), population management license for ram or ES that the director, with verbal concurrence of the chairperson or their designee, has decided does not qualify as once-in-a-lifetime, auction, and/or raffle bighorn ram license(s). A person that has received the youth-only ram license is eligible for this hunt only once as a youth (under age 18), but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible.

**C. Rocky mountain bighorn sheep ewe hunts:** This hunt is not a once-in-a-lifetime hunt. A person that has previously held a license to hunt Rocky mountain bighorn rams or ewes is eligible to apply for this hunt. [19.31.17.9 NMAC - Rp, 19.31.17.9 NMAC, 4/1/2025]

**19.31.17.10 SEALING OF RAM HORNS:** A seal shall be affixed to a horn of every bighorn sheep ram head taken in New Mexico, imported into New Mexico, or found in the field in New Mexico subsequent to August 17, 1973. Bighorn sheep heads found in the field within New Mexico shall remain the property of the state until disposed of by permit from the director. The seal shall authorize possession and transportation of the head within New Mexico.

**A.** Such sealing shall be done within ten days after the bighorn sheep ram head is taken, imported, or found in the field and before the bighorn sheep head is exported from New Mexico. Bighorn sheep ram heads not so declared shall be seized. Only legally taken and possessed bighorn sheep ram heads from New Mexico shall be sealed.

**B.** Bighorn sheep ram heads legally sealed in other countries, states, tribal entities, provinces, and territories, and possessing a valid visible seal attached, are exempted.

**C.** It shall be unlawful to possess any bighorn sheep ram head which has not been sealed as described in this section. [19.31.17.10 NMAC - Rp, 19.31.17.10 NMAC, 4/1/2025]

**19.31.17.11 BIGHORN SHEEP HUNTING SEASONS:** The 2023-24 through 2026-27 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms, number of licenses, and bag limit. Additional eligibility requirements and restrictions are defined in Section 9 of 19.31.17 NMAC above.

**A.** Rocky mountain bighorn ram hunt for any big game sporting arms (BHS-1-201). Hunters applying for BHS-1-201 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-201 will be up to 60 with a bag limit of one ram.

open GMUs or areas for BHS-1-201	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
6	8/10-8/24	8/10-8/24	8/10-8/24	8/10-8/24
	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
14, 18	TBD	TBD	TBD	TBD
16B, 22, 23, 24: including Double E WMA	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31
45	8/4-8/13	8/9-8/18	8/8-8/17	8/7-8/16
	8/18-8/27	8/23-9/1	8/22-8/31	8/21-8/30
45, youth only	8/18-8/27	8/23-9/1	8/22-8/31	8/21-8/30
53 south of NM 38 and east of NM 522	8/6-8/15	8/6-8/15	8/6-8/15	8/6-8/15
	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	8/4-8/13	8/9-8/18	8/8-8/17	8/7-8/16
	8/18-8/27	8/23-9/1	8/22-8/31	8/21-8/30
49, 50, 53 west of NM 522	8/10-8/24	8/10-8/24	8/10-8/24	8/10-8/24
	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15

	11/1-11/15	11/1-11/15	11/1-11/15	11/1-11/15
55 north of NM 196/FS Rd 1950	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027
58	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027

**B.** Private land Rocky mountain bighorn ram hunt for any big game sporting arms. The number of licenses available will be up to 6 with a bag limit of one ram.

<b>open GMUs or areas</b>	<b>2023-2024 hunt dates</b>	<b>2024-2025 hunt dates</b>	<b>2025-2026 hunt dates</b>	<b>2026-2027 hunt dates</b>
55 north of NM 196/FS Rd 1950	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027
58	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027

**C.** Rocky mountain bighorn ewe hunt for any big game sporting arms (BHS-1-202). Hunters applying for BHS-1-202 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-202 will be up to 150 with a bag limit of one ewe.

<b>open GMUs or areas for BHS-1-202</b>	<b>2023-2024 hunt dates</b>	<b>2024-2025 hunt dates</b>	<b>2025-2026 hunt dates</b>	<b>2026-2027 hunt dates</b>
45	9/16-9/20	9/21-9/25	9/20-9/24	9/19-9/23
	9/30-10/4	10/5-10/9	10/4-10/8	10/3-10/7
45, youth only	9/30-10/4	10/5-10/9	10/4-10/8	10/3-10/7
49, 50, 53 west of NM 522	10/14-10/22	10/12-10/20	10/11-10/19	10/10-10/18
	11/18-11/26	11/16-11/24	11/15-11/23	11/21-11/29
	12/9-12/17	12/14-12/22	12/13-12/21	12/12-12/20
49, 50, 53 west of NM 522, youth only	11/18-11/26	11/16-11/24	11/15-11/23	11/21-11/29
53 south of NM 38 and east of NM 522	9/23-9/27	9/21-9/25	9/20-9/24	9/19-9/23
	10/7-10/11	10/5-10/9	10/4-10/8	10/3-10/7
53 south of NM 38 and east of NM 522, youth only	9/23-9/27	9/21-9/25	9/20-9/24	9/19-9/23
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	9/16-9/20	9/21-9/25	9/20-9/24	9/19-9/23
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, youth only	9/16-9/20	9/21-9/25	9/20-9/24	9/19-9/23

**D.** Rocky mountain bighorn ewe hunt for bow only (BHS-2-203). Hunters applying for BHS-2-203 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-2-203 will be up to 60 with a bag limit of one ewe.

<b>open GMUs or areas for BHS-2-203</b>	<b>2023-2024 hunt dates</b>	<b>2024-2025 hunt dates</b>	<b>2025-2026 hunt dates</b>	<b>2026-2027 hunt dates</b>
45	9/1-9/10	9/6-9/15	9/5-9/14	9/4-9/13
49, 50, 53 west of NM 522	9/16-9/30	9/16-9/30	9/16-9/30	9/16-9/30
53 south of NM 38 and east of NM 522	9/11-9/17	9/11-9/17	9/11-9/17	9/11-9/17
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	9/2-9/15	9/7-9/20	9/6-9/19	9/5-9/18
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, youth only	9/2-9/15	9/7-9/20	9/6-9/19	9/5-9/18

E. Desert bighorn ram hunt for any big game sporting arms (BHS-1-204). Hunters applying for BHS-1-204 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-204 will be up to 60 with a bag limit of one ram.

open GMUs or areas for BHS-1-204	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
13, 17	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15
	12/16-12/31	12/16-12/31	12/16-12/31	12/16-12/31
19	12/14-12/21	12/14-12/21	12/14-12/21	12/14-12/21
	12/27/2023-1/3/2024	12/27/2024-1/3/2025	12/27/2025-1/3/2026	12/27/2026-1/3/2027
20: south of NM 51	11/16-11/30	11/16-11/30	11/16-11/30	11/16-11/30
	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15
20: north of NM 51	8/18-8/27	9/13-9/22	8/15-8/24	9/11-9/20
		10/11-10/20		10/9-10/18
20: north of NM 51, youth only	11/17-11/26		11/21-11/30	
26, west of NM 81	9/15-9/30	9/15-9/30	9/15-9/30	9/15-9/30
	10/1-10/15	10/1-10/15	10/1-10/15	10/1-10/15
26, east of NM 81	9/15-9/30	9/15-9/30	9/15-9/30	9/15-9/30
	10/1-10/15	10/1-10/15	10/1-10/15	10/1-10/15
27	11/1-11/15	11/1-11/15	11/1-11/15	11/1-11/15
	11/16-11/30	11/16-11/30	11/16-11/30	11/16-11/30

F. Private land desert bighorn ram hunt for any big game sporting arms. The number of licenses available will be up to 6 with a bag limit of one ram.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
20: north of NM 51	9/15-9/24	8/16-8/25	9/12-9/21	8/14-8/23
	10/13-10/22	11/22-12/1	10/10-10/19	11/20-11/29

[19.31.17.11 NMAC - Rp, 19.31.17.11 NMAC, 4/1/2025]

**19.31.17.12 SPECIAL BIGHORN SHEEP HUNTING OPPORTUNITIES: Bighorn sheep enhancement program:**

**A. Program description:** The director shall collect all proceeds generated through the auction and lottery of special bighorn sheep permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit bighorn sheep and for costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the conservation, restoration, utilization, and management of bighorn sheep.

**B. Requirements for issuance of special bighorn sheep licenses:**

(1) The state game commission authorizes the director to issue not more than four special bighorn sheep licenses in any one license year to take one ram per license. The director shall allow the sale of one Rocky Mountain bighorn sheep authorization and one desert bighorn sheep authorization through auction to the highest bidder, and one Rocky Mountain bighorn sheep authorization and one desert bighorn sheep authorization to a person selected through a random drawing of a lottery ticket. The drawing will be conducted by the department or an incorporated, non-profit organization dedicated to the conservation of bighorn sheep.

(2) Unless their hunting privileges have been revoked pursuant to law, any person is eligible to submit a bid for the special bighorn sheep auction authorization or purchase lottery tickets in an attempt to be selected for the special bighorn sheep lottery authorization.

(3) The special bighorn sheep authorizations issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals only to other individuals qualified to hunt.

(4) Special bighorn sheep licenses granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' licenses.

**C. Enhancement hunts:** These licenses shall be valid for any big game sporting arms statewide where hunting is allowed. The bag limit shall be one ram.

**(1)** Holders of the auction licenses must declare their exclusive hunt area by June 30 annually to hunt the designated subspecies in one of the open hunt areas. Each holder of the raffle license must declare their exclusive hunt area by July 20 annually to hunt the designated subspecies in one of the open hunt areas not declared by the auction hunter.

**(2)** The remaining hunt units open to bighorn hunting not declared by the auction or raffle hunter as their exclusive hunt area, may be hunted by either the auction or raffle hunter.

**(3)** The hunt dates for the auction and raffle licenses shall be 8/1-12/31 annually, except GMU 53 south of NM 38 and east of NM 522 is closed 8/16 to 8/31 annually to all bighorn sheep hunters. [19.31.17.12 NMAC - Rp, 19.31.17.12 NMAC, 4/1/2025]

**19.31.17.13 BIGHORN SHEEP POPULATION MANAGEMENT HUNTS:**

**A.** The director, with verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may authorize population management hunts for bighorn sheep when justified in writing by department personnel and must be based on biological information or a potential to compromise population viability.

**B.** The director shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

**C.** In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

**D.** In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

**E.** The director, with verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may deem some ram or either sex population management licenses not once-in-a-lifetime; a person that has held a once-in-a-lifetime ram license(s) is not disqualified from this hunt.

[19.31.17.13 NMAC - Rp, 19.31.17.13 NMAC, 4/1/2025]

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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April 5, 2022

The Honorable Nathan P. Small  
Representative D-Doña Ana, District 36  
PO Box 697  
Doña Ana, New Mexico 88032  
Email: Nathan.small@nmlegis.gov

Re: Opinion Request – New Mexico State Game Commission’s  
Application of the term “Hunt Code”

Dear Representative Small:

You have requested an Attorney General opinion regarding whether the New Mexico State Game Commission’s application of the statutorily defined term “hunt code” to its rule regulating the hunt of bighorn sheep is lawful. More specifically, we understand you are asking whether multiple hunts for Desert bighorn sheep and Rocky Mountain bighorn sheep, both subspecies of the bighorn sheep species *Ovis canadensis*, in various locations throughout the state over the course of several days may be properly conducted under a single “hunt code”, as that term is defined by Section 17-2A-1. Based on our examination of the relevant constitutional, statutory and case law authorities, as well as the information available to us at this time, the short answer is yes.

As a preliminary matter, there are three basic rules of statutory construction that guide my analysis. The first rule is that the plain language of a statute is the primary indicator of legislative intent. Courts generally give the words used in a statute their ordinary meaning unless the legislature indicates a different intent. The court will not read into a statute language which is not there, particularly if it makes sense as written. The second rule is to give persuasive weight to long-standing administrative constructions of statutes by the agency charged with administering them. The third rule dictates that where several sections of a statute are involved, they must be read together so that all parts are given effect. *Filippi v. Board of County Commissioners of Torrance County*, 2018-NMCA-050,

¶ 7 (internal citations omitted). In this instance, these rules mean examining the Commission's and the Department's own interpretations of its enabling statutes as well as past practices.

For the purposes of Article 17 of the New Mexico Statutes Annotated, governing the regulation of game and fish and outdoor recreation in the state, the term "hunt code" is defined as "a description used to identify and define the species, weapon type and time frame authorized for a specific hunt". NMSA 1978, § 17-2A-1(A) (1996).<sup>1</sup> Next, "hunt code" subsequently appears in only one other statute in the whole of Article 17 governing the allocation of licenses for special drawings. See NMSA 1978, § 17-3-16 (1964, as amended through 2012). There, within the context of specifying how the fees for nonresident licenses issued in a special drawing in a high-demand hunt shall be assessed, the Legislature used the term "hunt code" in defining the term "high-demand hunt".<sup>2</sup> Aside from these two instances - one defining the term "hunt code" and the other using it in the context of defining "high-demand hunt" - the laws governing hunting licenses and permits do not otherwise dictate or circumscribe how the term "hunt code" should be used, leaving it to the discretion of the Commission and the Department to determine how to apply it, provided only that any hunt code include "the species, weapon type and time frame authorized for a specific hunt." See *Phelps Dodge Tyrone v. New Mexico Water Quality Control Commission*, 2006-NMCA-115, ¶ 25 (internal citations omitted) (courts will give administrative agencies considerable discretion to carry out the purposes of their enabling legislation and afford deference to an agency's interpretation of its own regulations).

In addition to ensuring that hunt codes contain all the information required by law, the Commission is also cognizant of and must give effect to the resident and nonresident allocations set forth in Section 17-3-16(B) when licenses are issued from special drawings. That is, special drawings require that at least eighty-four percent (84%) of the licenses must be issued to New Mexico residents, ten percent (10%) to nonresidents and residents who will be contracted with a New Mexico outfitter prior to application, and six percent (6%) to nonresidents who are not required to be contracted with an outfitter. NMSA 1978, § 17-3-16(B). While

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<sup>1</sup>The term "specific hunt" is not otherwise defined or used elsewhere in Article 17, but it would be fair to say that the specific hunts being discussed herein relate to the Rocky Mountain bighorn sheep (ram or ewe) and Desert bighorn sheep (ram) hunting seasons. See 19.31.7 NMAC.

<sup>2</sup>A high-demand hunt is one in which "(1) a hunt where the total number of nonresident applicants for a *hunt code* in each unit exceeds twenty-two percent of the total applicants and where the total applicants for a hunt exceeds the number of licenses available based on application data indicating that this criteria occurred in each of the two immediately preceding years; or (2) an additional *hunt code* designated by the department of game and fish as a quality hunt." NMSA 1978, § 17-3-16 (E) (emphasis added).



not at issue here, the statute also specifies that the fees for “a nonresident license for a special drawing in a high-demand hunt covered in Subsection B of this section” and provides for circumstances where the applications for licenses issued in a special drawing do not constitute the allocated licenses for either category in subsection B. NMSA 1978, § 17-3-16 (C)-(E). There is no question, however, that the Commission must factor the Section 17-3-16(B) allocation requirements into how hunt codes are applied to licenses issued from a special drawing, as licenses for bighorn sheep hunts are.

The suggestion that the manner in which the Commission assigns hunt codes for the bighorn sheep hunting season may be somehow inappropriate or illegal may stem from the fact that the assignment of hunt codes for bighorn sheep hunting seasons differs from the assignment of hunt codes for other game hunting seasons. For example, the hunt codes for elk, deer, barbary sheep, oryx or other game hunting seasons differ from the hunt codes for bighorn sheep in that the hunt codes for hunting other game are further assigned down to the hunt areas or GMUs and hunt dates. *See, for example*, 19.31.13.14 NMAC (deer hunts); 19.31.12.11 NMAC (barbary sheep); 19.31.12.12 NMAC (oryx); 19.31.14.12 NMAC (elk). Department Chief Stewart Liley has explained that, unlike bighorn sheep, the population levels of these other game animals, as demonstrated by the number of licenses available in each hunt area or GMU, support a greater number of hunters that can then be allocated between resident and nonresident hunters, as required by Section 17-3-16(B).

The same may not be said about the Rocky Mountain and Desert bighorn sheep population levels, again as evidenced by the number of licenses available, which are significantly less than the number of licenses available for most other game. This is especially true for bighorn sheep *ram* hunts, where there are only between one (1) and five (5) draw licenses available in a hunt area over a ten (10) to fourteen (14) day hunt window, compared to, for example, sixty five (65) draw licenses available for oryx in a single GMU or as many as two hundred and fifty (250) draw licenses available for Barbary sheep in a single GMU.<sup>3</sup> Again, Chief Liley has explained that in order to meet the mandated minimum of 84% of special draw licenses for bighorn sheep hunts allocated to New Mexico residents and one tag to an outfitted hunter (nonresident or resident), there would have to be at least seven (7) licenses available in each hunt area under a single hunt code. Similarly, in order to meet the minimum 84% allocation for resident hunters and still be able to provide one tag for an outfitted hunter and one tag for a

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<sup>3</sup> See **2022-2023 New Mexico Hunting Rules and Information (hereinafter referred to as “NM Hunting Rules”)** at [https://www.wildlife.state.nm.us/download/publications/rib/2022/hunting/2022\\_2023-New-Mexico-Hunting-Rules-and-Info.pdf](https://www.wildlife.state.nm.us/download/publications/rib/2022/hunting/2022_2023-New-Mexico-Hunting-Rules-and-Info.pdf)

nonresident hunter, there would have to be at least fourteen (14) licenses available in each hunt area under a single hunt code. As mentioned previously, however, the population levels of Rocky Mountain and Desert bighorn sheep simply do not allow for the allocation of licenses under separate hunt codes for each of the hunt areas.

Hence, in order to satisfy the allocation requirements for resident and nonresident hunters set forth in Section 17-3-16(B), the Department has recommended and the Commission is being asked to approve, as it has before, rules for a bighorn sheep hunting season that combines the Rocky Mountain bighorn sheep (species) by sex and weapon type (the specific hunt) in several hunt areas and over several hunt windows under one hunt code. Similarly, it groups the hunting season for Desert bighorn rams in several hunt areas and over several hunt windows under one hunt code.

The Commission's current regulation governing the management and hunting of bighorn sheep in the 2022-2023 hunt season, is able to achieve compliance with Section 17-3-16 (B) by creating four (4) separate hunt codes that each identify the species, weapon type and time authorized for a specific hunt. 19.31.7 NMAC. Hunt Code BHS-1-201 prescribes hunting Rocky Mountain bighorn ram [the species], using legal sporting arms [weapon type], during various hunt dates [the time frame], in designated hunt areas. The only difference between Hunt Code BHS-1-202 and Hunt Code BHS-1-203 for Rocky Mountain bighorn ewes is the weapon type [the former legal sporting arms; the latter bow only] and the hunt dates. Finally, Hunt Code BHS-1-204 prescribes hunting Desert bighorn ram [the species], using legal sporting arms [weapon type], during various hunt windows [the time frame] in designated hunt areas. In practice, this means that the Department was able to offer twenty-six (26) licenses – twenty-two to residents and four (4) for nonresidents under Hunt Code BHS -1-201; forty-one (41) licenses under Hunt Code BHS-1-202 - thirty-four (34) to residents and seven (7) to nonresidents; seventeen licenses under Hunt Code BHS 1-203 - fourteen (14) to residents and three (3) to nonresidents; and twenty-four (24) licenses under Hunt Code BHS-1-204 - twenty (20) to residents and four (4) to nonresidents.

In sum, the current population levels of Rocky Mountain and Desert bighorn sheep make it impossible for the Commission and the Department to assign a single hunt code to each hunt area during each hunt window for the bighorn sheep hunting season without running afoul of the statutory allocation requirements for resident and nonresident hunters dictated by Section 17-3-16(B). We therefore believe that a court would agree that the Commission's application of the term "hunt code" to its rules regulating the bighorn sheep hunting season is lawful, in that it incorporates the elements [species, weapon

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type, time frame, specific hunt] that make up the definition of "hunt code", while also giving effect to the requirements of Section 17-3-16 (B).

Please be advised that this opinion is a public record, not subject to the attorney client privilege. As such, we may provide copies to the public. If this office may be of further assistance, or if you have any questions regarding this opinion, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in blue ink that reads "Sally Malavé". The signature is written in a cursive, flowing style.

Sally Malavé  
Assistant Attorney General  
Director, Open Government Division

Cc: New Mexico State Game Commission  
Michael Sloane, Director, New Mexico Department of Game and Fish