

## Clearinghouse Rule 18-010

DRAFT #1

11/15/17

### ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING AND REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 10.01(3) and 10.111(5)(b) relating to elk management.

WM-15-17

#### Analysis Prepared by the Department of Natural Resources

- 1. Statute Interpreted:** In promulgating this rule, s. 29.014 and 29.182 Stats. have been interpreted as providing the department the authority to establish seasons and bag limits while ensuring public hunting and recreational opportunities and conserving elk populations.
- 2. Statutory Authority:** Statutes that authorize the promulgation of this rule order include sections 29.014 and 29.182, Stats.
- 3. Explanation of Agency Authority:** Sections 29.014 and 227.11, Stats. grant rule-making authority to the department to establish seasons and bag limits for hunting that ensure continued hunting opportunities for citizens of the state. All rules promulgated under this authority are subject to review under ch. 227, Stats.
- 4. Related Statutes or Rules:** Ch. NR 10.11, Wis. Admin. Code, details the regulations for hunting methods, carcass tagging, transportation and registration of elk during an elk hunting season. Ch. NR 10.37 outlines the Clam Lake and Black River Falls elk management zones.
- 5. Plain Language Analysis:** Current rules establish that the department may not hold an elk hunting season until a certain population level is reached. Once that population level has been attained, the season may be held and a permit number equal to 5% of the total population must be issued. This proposal would repeal those season triggers and the requirement to issue permits based on a percentage of the total population, both of which have been codified since 2003. The department would be able to apply the most current herd data and consider other factors in determining when to initiate an elk hunting season.

Current regulations and management plans require at least 200 elk to be living in the Clam Lake elk range, and 150 to be living in the Black River elk range, before a public hunt may occur. No other species under the department's authority is managed based on a minimum number of animals, nor are permit levels required to follow a set percentage. If population analysis were to determine that a herd has a surplus of bull elk, it is possible that these bulls could be harvested through a limited draw hunt to provide recreational opportunity without causing any detrimental effects to the herd. Conversely, if population analysis indicated that a hunt would remove a limited supply of bulls, or other herd indicators suggested that a hunt would be somehow harmful to the long-term growth and sustainability of each herd, the department could delay the start of a season under the proposed rule. Removing the requirement that a minimum number of elk be present on the landscape before a hunt may occur would allow the start of a hunt to be determined by herd metrics.

The current regulation that limits elk permit issuance to 5% of the total population is also arbitrary and no other species is managed by the department in this way. Removing the 5% tag allocation requirement would eliminate a potential annual conflict as various interests provide opinions on overall herd size, which would determine permit levels. These rules may repeal that limit and allow permit levels to be set based on scientific data that informs the department and our partners based on the overall herd structure, population dynamics, winter severity, and other metrics.

Both rule changes may result in limited hunting opportunity and would allow excess bulls to be utilized sooner than current regulations allow, as well as generate revenue for the elk reintroduction effort and annual management needs through license sales and application fees.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

**7. Comparison with Similar Rules in Adjacent States:** Minnesota State Statutes allow an elk season to be held once the pre-calving population exceeds 20 elk, and elk management plans for increasing the herd may not be enacted unless evidence indicates that agricultural damage has not increased over the past two years. Michigan initiated an elk hunt in 1984. The Michigan Department of Natural Resources' Wildlife Conservation Order specifies a set number of antlerless and "any elk" licenses that the department may issue in each elk management unit. Other neighboring states do not have a wild elk herd.

**8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

The Clam Lake Elk Herd Management Plan of 2000 and 2012 Clam Lake and Black River Elk Management Plan Amendment present the goals for each of Wisconsin's elk herds and describe the methods for monitoring and managing the elk. The plan outlines potential conditions that indicate that the population could support a hunt, including declining productivity or survival, overbrowsing and increased dispersal or habituation. The plan also identifies hunting as a key method for managing elk in balance with their biological and social environment. Because the management plan calls for thorough and specific monitoring protocols, the department has reliable elk population estimates and a solid understanding of the Clam Lake and Black River herds' population dynamics and trends. This will allow the department to base a hunt on current population metrics.

Ch. NR 10, Wis. Admin. Code, establishes the rules for elk hunting and elk license issuance. The proposed rule modifies Ch. NR 10 to replace the predetermined population threshold required for a hunt with language stating that a hunt would be based on current scientific metrics and management principles. The rule also eliminates the requirement for issuing a number of bull elk permits equal to 5% of the total population, in favor of issuing a number of bull permits that will maintain the population at a sustainable level.

**9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

Implementation of the rule is not likely to have an economic impact because management of the elk herds will not change significantly.

It is possible that hunting seasons could occur earlier under the proposed rule than it would under current rules. If that happens, local economies would receive some economic gains from elk hunting. Hunters would be expected to spend money on food, lodging, fuel, and hunting equipment. However, hunting seasons are likely to occur in the near future under either the current or proposed harvest management scenario.

The positive impacts of the current elk-related tourism are noticeable in local communities and will continue into the future. The Cable Chamber of Commerce estimates that 1,200 people visit the Clam Lake area annually to view elk and contribute approximately \$175/day totaling approximately \$210,000 annually to the area. Elk-related tourism in Jackson County is expected to be higher due to the ease of accessing this area via the Interstate corridor between southern Wisconsin and the Twin Cities.

**10. Effect on Small Business (initial regulatory flexibility analysis):** These rules direct the department’s management activities and may have implications for individual hunters, but they impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

**11. Agency Contact Person:** Meredith Penthorn; 608-267-2948  
Kevin Wallenfang; 608-261-7589

**12. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Meredith Penthorn  
Department of Natural Resources  
PO Box 7921, Madison, WI 53707  
[Meredith.Penthorn@wisconsin.gov](mailto:Meredith.Penthorn@wisconsin.gov)  
608-267-2918 (phone)  
608-267-7857 (fax)

Written comments may also be submitted to the Department at  
[DNRAdministrativeRulesComments@wisconsin.gov](mailto:DNRAdministrativeRulesComments@wisconsin.gov).

Hearing dates and the comment submission deadline are to be determined.

**SECTION 1. NR 10.01 is amended to read:**

**10.01 Open and closed seasons.** A closed season is established year-round for each species of wild animal named in this section, except during the specified open season. Seasons open to legal hunting and trapping apply to the entire locality described, except as otherwise provided in chs. [NR 11](#) and [15](#). Whenever open and closed season areas are defined by highways, the boundary shall be the highway center line. No person may hunt, take, catch, or kill any animal specified in this section except during the specified open season.

10.01 (3) UPLAND GAME ANIMALS. See Table (3).

Table (3)

Kind of animal and locality	Open season (all dates inclusive)	Limit
(i) <i>Elk (gun and bow seasons).</i>		
1. The elk management zones established in s. NR 10.37	Beginning on the Saturday nearest October 15 and	One bull elk or antlerless elk as

continuing for 30 consecutive days, when the department determines, based on scientific metrics, that the local elk population estimate for zones A and B is at least 200 elk can sustain a hunting season.

authorized by antlerless elk tag in s. NR 10.111 (5) (c).

Beginning the second Thursday in December and continuing for 9 consecutive days, when the department determines, based on scientific metrics, that the local elk population estimate for zones A and B is at least 200 elk can sustain a hunting season.

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**SECTION 2. NR 10.111 is amended to read:**

**10.111 Elk population management.**

10.111 (5) ELK LICENSES.

10.111 (5) (b) *Bull elk tag formula.* The department shall determine the number of bull elk tags which shall be issued ~~by the formula:~~

~~Number of bull elk tags available = total elk population in a zone x 5%~~  
at a level that will maintain the elk population at the goal established for each elk management zone listed in sub. (3).

**SECTION 3. EFFECTIVE DATE.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

**SECTION 4. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

Daniel L. Meyer, Secretary

(SEAL)