

Clearinghouse Rule 24-045

The statement of scope for this rule, SS 041-23 was approved by the Governor on June 15, 2023, published in Register No. 810A3 on June 19, 2023, and approved by the Natural Resources Board on December 13, 2023. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **amend** NR 10.01 (3) (i), 10.37 (3) and 19.60 (3) (a) 1; to **repeal and recreate** NR 10.11 (2), 10.111 and 10.37 (1) and (2); relating to elk management.

WM-05-23

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: The chapter on wild animals and plants, in s. 29.014 (1) Stats., “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game.

Additionally, s. 29.182 (1) Stats., provides that the department may “issue elk hunting licenses and limit the number of elk hunters and elk harvested in any area of the state.” Additionally, it provides the department may establish by rule areas of the state where elk hunting is prohibited.

2. Statutory Authority: The promulgation of this rule order is authorized by ss. 29.014 and 29.182 (1), Stats.

3. Explanation of Agency Authority: The chapter on wild animals and plants, in s. 29.014, Stats., “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to hunting regulations.

Additionally, s. 29.182 (1) Stats., grants the department the ability to regulate the issuance of elk hunting licenses.

4. Related Statutes or Rules: There are no currently active related administrative rules.

5. Plain Language Analysis:

SECTION 1 creates a single, continuous elk hunting season. It also corrects language concerning elk carcass tags.

SECTION 2 specifies that elk tags may be only valid in a specific unit within an elk management zone. This SECTION also updates elk population goals. Instead of a numeric population goal, each management zone each will be given a population objective to either increase, decrease or maintain the elk population which is similar to how white-tailed deer are managed. It also changes how elk quotas are established, moving away from a formula and instead relying on metrics that are identified in the elk management plan.

SECTION 3 amends the elk population goals for each elk management zone.

SECTIONS 3 AND 4 rename the elk management zones, updates their boundaries and creates units within the zones.

SECTION 5 clarifies that when material placed for feeding wild birds and small mammals near homes is being utilized by elk it must be altered to prevent elk from accessing that feeding device.

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

States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including 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. If Held, Summary of Comments Received During Preliminary Comment Period

and at Public Hearing on the Statement of Scope: The department held a preliminary public hearing on the statement of scope on Thursday, October 5th at 1 p.m. virtually through Microsoft Teams. No members of the public attended the hearing. Also, no members of the public submitted written comments regarding the scope statement.

8. Comparison with Similar Rules in Adjacent States: Only Michigan and Minnesota have regulated elk seasons. Minnesota has four separate hunting zones encompassing existing herds. Hunting is currently only allowed in two zones (20 and 30), with the majority of hunting in zone 20. Minnesota has five consecutive nine-day long seasons that take place from August 22 through November 1 plus an additional 9-day season from December 5-13. Michigan has three separate hunting "periods". Period one is Sept 1-4, Sept 18-21, and Oct 2-5. Period two is Dec 12-20. Period three is Jan 13-17. In Michigan, Elk Management Units X, H, I. Units H and I (core elk range) are closed for hunting in the September/October periods but open in the December period. Unit X is comprised of 10 counties while Units H and I combined are about half of a county in total. Michigan has a statewide elk population goal of 500-900 and Minnesota's population goal is 230-300

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

Current rules establish two elk ranges that serve a dual purpose as elk management zones. They include the Clam Lake zone and the Black River zone. Hunters were previously allowed to harvest elk in any part of an elk management zone that is open to hunting. This rule changes the names and boundaries of these zones, and further divides them by creating elk hunting units within these zones. The creation of units, combined with an ability to specify the unit(s) or zone(s) where an elk carcass tag is valid, may provide an ability to reduce hunting pressure on elk.

The elk season is statutorily required to begin on the Saturday nearest October 15th. Under current rules it runs for thirty consecutive days and then reopens on the second Thursday in December and continued for nine consecutive days. This rule eliminates the closed period during the season and instead offers a single, consecutive season which ends on the Sunday nearest December 15th. There was no biological reason to have a split season, and this will be a simpler season framework for hunters and other outdoor recreationists to remember.

Since reintroduction, the elk population has been managed using a numeric goal as a long-term population goal to guide management efforts, which allows for little population size flexibility and adaptation with conflict or nuisance. The elk management plan proposes to manage the elk population using adaptive

management by adopting an objective-based approach. This approach aligns population ranges with associated objectives and is founded by managing elk towards a density of 1 elk/sq. mile across each management zone. A list of metrics is utilized to guide management decisions based on current elk status on the landscape. A numeric population goal offers less flexibility to direct or react to the direction the elk population is trending. It also offers less flexibility to address elk nuisance and conflict at the herd level. An adaptive approach would allow the elk population to grow to an increased size while addressing localized conflict.

This rule also expands both the north and central elk management zones boundaries. The boundary expansions allow for increased management opportunity.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: These rules, and the legislation which grants the Department rule-making authority, do not have fiscal effects on the private sector or small businesses. No costs to the private sector or small businesses are associated with compliance to these rules.

11. Effect on Small Business (initial regulatory flexibility analysis): These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have an economic impact on a substantial number of small businesses under s. 227.24(3m), Stats.

12. Agency Contact Person: Josh Spiegel, Wildlife Biologist, 715-558-0648, joshua.spiegel@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission: Written comments may be submitted at the public hearings, by regular mail, or email to:

Scott Karel
Department of Natural Resources
P.O. Box 7921 Madison, WI 53707
Scott.karel@wisconsin.gov 608-267-2452
608-267-7857 (fax)

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department’s website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 10.01 (3) (i) is amended to read:

Kind of Animal and Locality	Open season (all dates inclusive)	Limit
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<p>NR 10.01 (3) (i) Elk (gun and bow seasons) 1. Each elk management zone established in s. NR 10.37</p>	<p>Beginning on the Saturday nearest October 15 and continuing for 30 consecutive days <u>through the Sunday nearest December 15</u>, when the department determines, based on scientific metrics, that the local elk population metrics established in s. NR 10.111 (2), that the elk population in an elk management zone can sustain a hunting season.</p> <p>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 can sustain a hunting season.</p>	<p>One bull elk or antlerless elk as authorized by antlerless the elk carcass tag in s. NR 10.111 (5) (e) <u>s. NR 10.111 (3) (b).</u></p>
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SECTION 2. NR 10.11 (2) and 10.111 are repealed and recreated to read:

NR 10.11 (2) TAGS.

- (a) The department shall issue a carcass tag with each hunting license. While hunting, no person may possess a validated carcass tag unless it is attached to a legally killed elk.
- (b) Carcass tags are valid in the management zone under s. NR 10.37 and unit specified on the harvest authorization. Tags may be valid in more than one unit.

NR 10.111 Elk population management.

- (1) ELK POPULATION OBJECTIVES. An elk population objective shall be established for each management zone except for tribal reservation units identified in s. NR 10.37. Elk population objectives will be expressed as a goal statement to do one of the following:
 - (a) Increase the elk population.
 - (b) Maintain the current elk population.
 - (c) Decrease the elk population.
- (2) ANNUAL ELK HARVEST QUOTAS. The department shall establish a statewide elk harvest quota and allocate such quota among the elk management zones through elk hunting units, based on the status of elk populations in relation to management objectives as outlined in a species management plan. The species management plan will identify metrics, objectives and guidelines that the department will use to establish a quota. These metrics may include:
 - (a) Population estimates and trends.

- (b) Elk-related conflict levels and trends.
- (c) The projected impacts of elk harvest quotas on the elk population.
- (d) Outcomes of previous harvest seasons.
- (e) The economic benefits of non-consumptive elk recreation.

(Note). The department acknowledges and considers the off-reservation treaty rights established under *Lac Courte Oreilles Indians v. State of Wis.*, 775 F. Supp. 321, 323 (W.D. Wis. 1991) and on-reservation jurisdiction of Native American tribes when establishing elk harvest quotas.

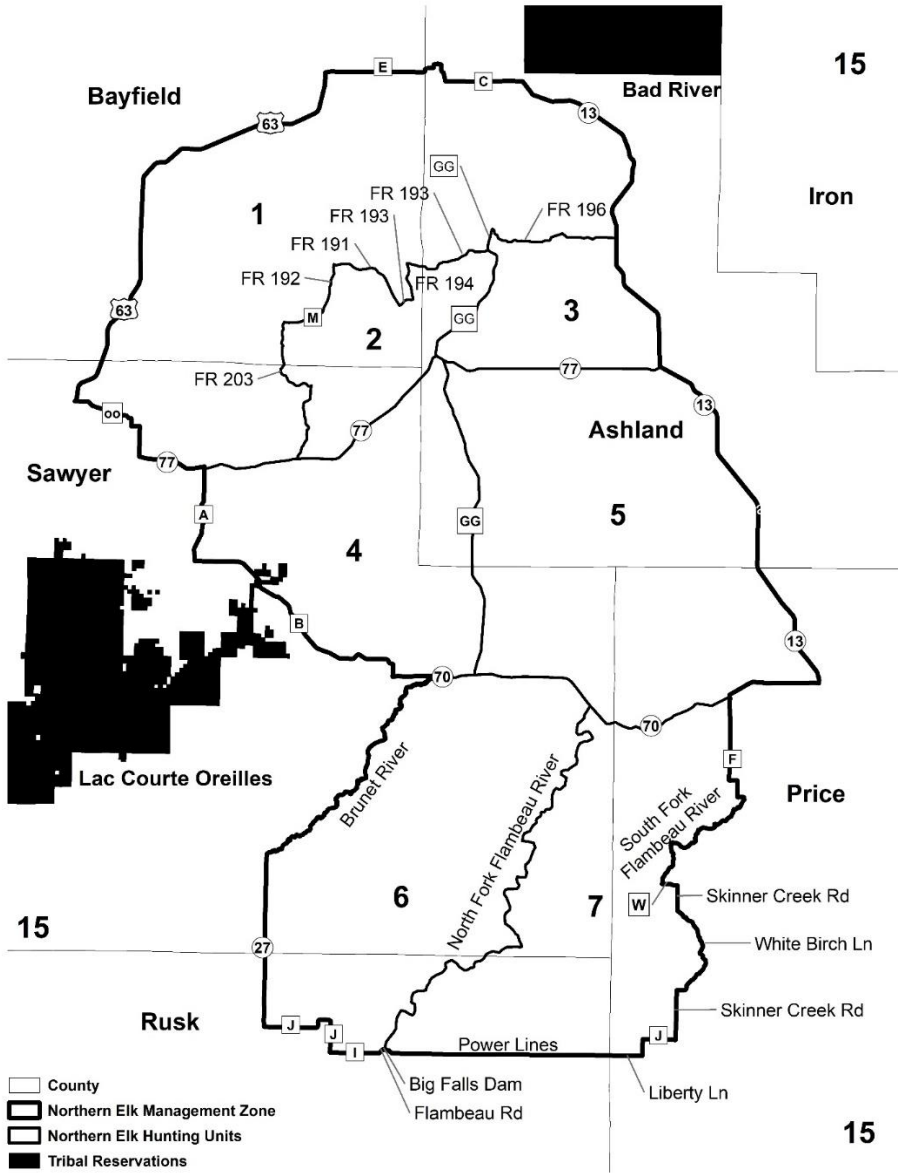
(3) ELK LICENSES.

- (a) *Purpose*. The department may issue antlerless and bull elk licenses in numbers and in a manner consistent with the elk population objectives for each zone under sub. (2). Except where no previous history of success rates exists, the department shall consider the hunter success rates from previous seasons to determine the number of elk licenses to be issued to harvest the desired number of elk for each elk management zone.
- (b) *License issuance*. The department shall issue only one elk carcass tag per elk license issued. Carcass tags shall be valid for either an antlerless or an antlered elk.
- (c) *License requirements*. The department shall issue elk hunting licenses only to those persons who have completed a hunter education program and earned a certificate of accomplishment under s. 29.595, Stats., and have obtained authorization for either a bull tag or antlerless elk tag, or are otherwise exempt. Successful applicants will be limited to one elk license per lifetime as established in s. 29.182 (4m), Stats. The department may reissue an elk license if the license is returned or if the applicant fails to or cannot comply with s. 29.182., Stats. and the requirements of this section. The department shall select eligible licensees by random drawing.

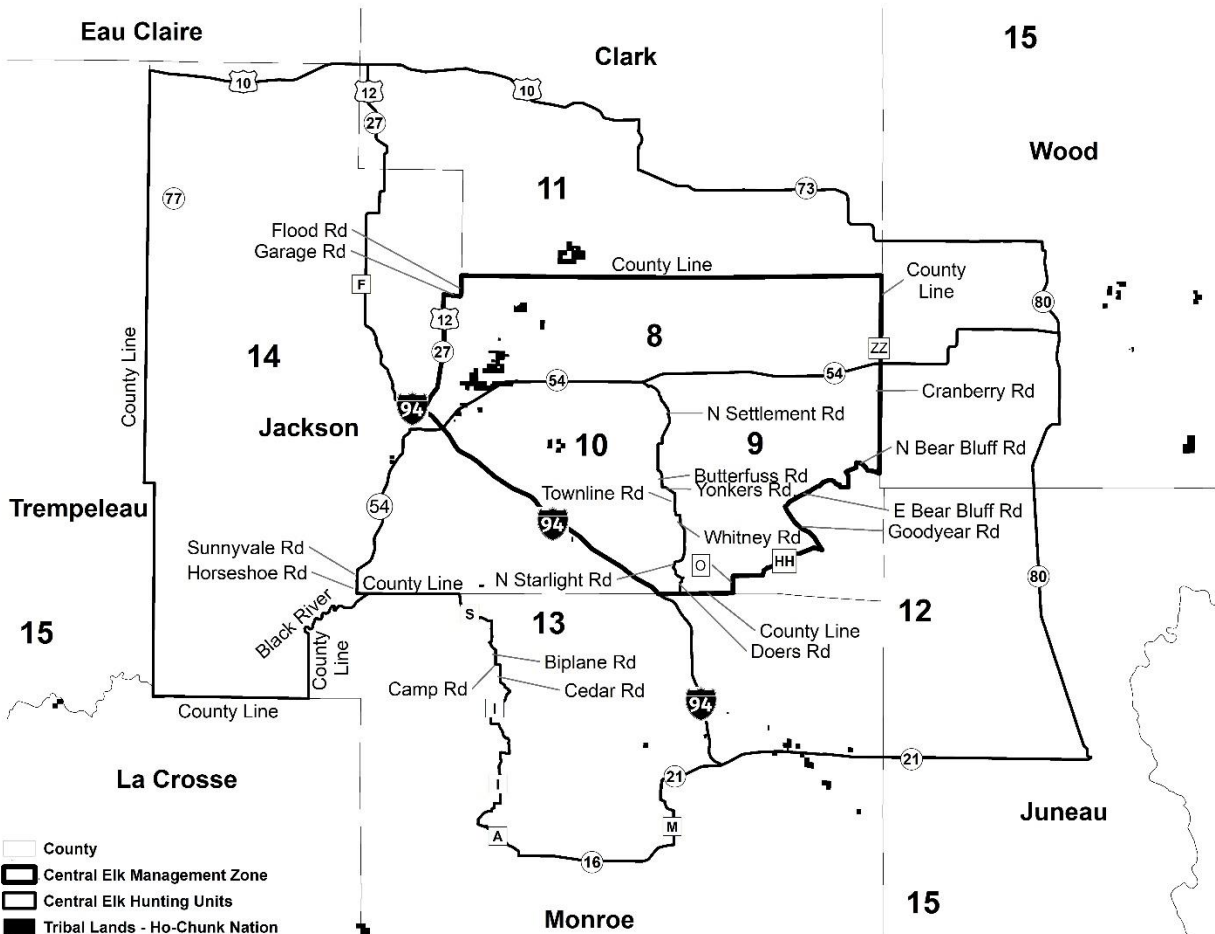
- (4) APPLICATION PROCEDURE. Applications for elk licenses shall be on forms provided by the department. Applications shall be submitted online no later than the deadline date indicated on the form or received by a department service center location no later than those dates to be considered for selection.

SECTION 3. NR 10.37 (1) and (2) are repealed and recreated to read:

NR 10.37 Elk management zones (1) NORTHERN.



(2) CENTRAL.



SECTION 4. NR 10.37 (3) is amended to read:

3) ~~ZONE X~~ UNIT 15. Elk ~~management zone X~~ hunting unit 15 includes the entire state except areas which are part of the ~~Clam Lake and Black River Falls elk management zones~~ hunting units 1-14.

SECTION 5. NR 19.60 (3) (a) 1. is amended to read:

1. Material placed solely for the purpose of attracting and feeding wild birds and small mammals when placed in bird feeding devices and structures at a sufficient height or design to prevent access by deer or elk and only when the structures and devices are no further than 50 yards from a dwelling devoted to human occupancy unless authorized by the department. If the department determines that wild deer or elk are utilizing bird feeding devices or structures, the devices or structures shall be enclosed or elevated higher to prevent access by deer.

SECTION 6. 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 7. 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

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Steven Little, Deputy Secretary