

The statement of scope for this rule, SS 095-23 was approved by the Governor on October 26, 2023, published in Register No. 814B on October 30, 2023, and approved by the Natural Resources Board on April 10, 2024. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 10.72 (3) and (4); to **renumber and amend** NR 10.104 (9m) (a) and (e) and (note); to **amend** NR 10.104 (9m) (title) and (intro.), (b), (c), and (d), 10.72 (title), (1) (intro.), (a), (c), and (d); to **repeal and recreate** NR 10.70, 10.71, 10.72 (1) (f), and (2), and 10.73; and to **create** NR 10.104 (9m) (am), relating to the deer management assistance program.

WM-18-23

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Section 29.020, Wis. Stats., requires the department to establish a deer management program and provides that the department may establish fees for participation.

2. Statutory Authority: The promulgation of this rule order is authorized by s. 29.020, Wis. Stats.

3. Explanation of Agency Authority: Section 29.020, Wis. Stats., requires the department to establish a deer management assistance program under which deer management assistance is given to participating landowners and provides that the department may establish fees for participation. It also directs the department to provide a method for collecting information from participating landowners about deer health and populations in the state. The section authorizes the department to promulgate rules to implement the program.

4. Related Statutes or Rules: There are no currently active rules related to this rulemaking.

5. Plain Language Analysis:

SECTIONS 1-4 updates the language regarding permits issued under the Deer Management Assistance Program (DMAP) to implement a new program structure. It also provides that the fee for bonus deer permits issued under the DMAP is half the ordinary cost of bonus deer permits that are issued over the counter to the general public. This change will have the effect of raising the cost of a nonresident bonus deer permit issued through DMAP from \$6 to \$10. Finally, this Section updates the purpose of the DMAP program to include better collaboration between the department and private landowners regarding deer management.

SECTION 5 moves a section of code dealing with reporting requirements for DMAP members who receive bonus deer permits to a more appropriate section of code where other reporting requirements are found for elective benefits.

SECTION 6 creates new definitions and removes some definitions from code that are no longer necessary due to the restructuring of DMAP.

SECTIONS 7-9 restructure the DMAP program. Instead of having three levels which all receive different benefits DMAP will instead have "Members." All landowners will be eligible to participate as a DMAP

Member while elective benefits will be an additional level of participation offered only to landowners of 40 acres or more. There will be reduced fee should a landowner choose to reenroll for elective benefits. Fees for elective benefits will be based on the size of the property enrolled. Additionally, this SECTION limits benefits that are available to public land managers who apply for elective benefits. It also allows the department to cap the number of properties receiving elective benefits based on department capacity.

SECTION 10 updates the fee structure for DMAP participation. DMAP members, which replace Level 1 membership under the current rules, will now be charged a fee of \$50 for the three-year term. Fees for elective benefits will be based on the acreage of the property enrolled. There will be a reduced fee should a landowner choose to receive elective benefits in subsequent years.

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, February 1, 2024, at 2 p.m. virtually through Teams. No members of the public attended the hearing. The department received one written comment during the open public comment period. The sole comment came from a representative of the Wisconsin Animal Protection Society. They requested that the department explore alternatives to the harvesting of deer for the purpose of deer management, including deer relocation and immunocontraception.

8. Comparison with Similar Rules in Adjacent States: Illinois, Minnesota, and Iowa do not have a program comparable to DMAP. Michigan does have a deer management assistance program. However, this program only offers antlerless permits to landowners and no other management assistance. Antlerless permits issued under Michigan's program cannot be used by anyone other than the landowner or the authorized designee of the land and cannot be transferred to another person.

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

Current administrative rules establish the structure, benefits, and eligibility requirements for the Deer Management Assistance Program (DMAP). The established rule bases DMAP's structure on the size of the enrolled property regardless of previous program involvement or landowner needs. Based on feedback received from focus group sessions representing 5 stakeholder groups, this rule change aims to restructure the program based on participant needs and previous program involvement in addition to property size. Specifically, it separates DMAP membership from on-site benefits. This enables members to select if and when they want on-site benefits. Additionally, it allows members electing to receive on-site benefits the ability to customize these benefits by enrolling based on their previous program involvement (new from returning members) and property size (small, medium, and large acreage parcels).

Program benefits under the current rules limit on-site benefits to properties with at least 160 acres. Given that the average parcel size of family-owned land in Wisconsin is 26 acres the current rule misses the majority of the program's target audience and/or forces them into large group cooperatives, which are less likely to implement habitat management. To better serve Wisconsin's landowners and hunters, and improve alignment between the program's mission and benefits, the new rule reduces minimum acreage requirements for on-site services from 160 to 40 acres. Additionally, it provides expanded services to members not receiving on-site services such as property-specific annual harvest reports.

Under current state statute, DMAP is to be a partnership program where members provide data to support deer management in exchange for on-site benefits by DNR staff. The established code, however, does not incorporate this component and DMAP members, per member surveys and focus groups, want it emphasized. To account for this, the new rule incorporates data sharing as an eligibility component for continued on-site benefits.

The structural changes outlined within the new code necessitate the need for an updated fee structure. To align with the new structure and member's ability to elect if and when they want on-site benefits, the new code separates program membership fees from those for on-site benefits. On-site benefit fees are further divided based on previous program enrollment to account for services selected and data sharing. DMAP fees were originally set in 2014. Modest fee increases for on-site benefits are included as part of the proposed rule to adjust for inflation and were supported by stakeholder focus groups. All fees are directly invested back into the DMAP.

Finally, in order to focus the program on private lands and adjust for unused program benefits, the new code refines the benefits available to public land. The current rules establishes that public land may enroll in the DMAP and receive habitat management recommendations as well as antlerless tags. However, in the 10 years since the program was established, no public land permits have been authorized through the DMAP. Given this information and that the intent of the permits are to help private landowners manage deer at the local level, the new code limits public land involvement to on-site benefits related to habitat management.

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. These rules are applicable to landowners who enroll in the DMAP impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. However, per member requests during our program review process, the department anticipates instituting modest increases to our membership fees.

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), Wis. Stats.

12. Agency Contact Person: Haley Frater, DMAP/ Private Lands Coordinator, haley.frater@wisconsin.gov, 920-765-0049

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

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.wisconsin.gov/calendar>. 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 10.104 (9m) (title) and (intro.) are amended to read:

NR 10.104 (9m) BONUS DEER PERMITS UNDER THE DEER MANAGEMENT ASSISTANCE PROGRAM. The department may issue ~~antlerless~~ bonus deer permits to ~~level 2 and level 3 participants~~ members of the deer management assistance program established under Subchapter II who receive elective benefits pursuant to s. NR 10.72 (2) and to individuals authorized by level 2 and level 3 participants such members, in the deer management assistance program established under Subchapter II. All of the following apply to the issuance and use of bonus deer permits under this section:

SECTION 2. NR 10.104 (9m) (a) is renumbered NR 10.104 (9m) (ar) and amended to read:

(ar) Issuance. Permits shall be issued in the number prescribed by the department or its agents following ~~evaluation and harvest recommendations~~ a property assessment under s. NR 10.72 (2) ~~(b) (d) or (4) (b).~~

SECTION 3. NR 10.104 (9m) (am) is created to read:

NR 10.104 (9m) (am) In this subsection:

1. “Authorized representative” has the meaning given in s. NR 10.71 (1).
2. “DMAP member” has the meaning given in s. NR 10.71 (3).
3. “Enrolled property” has the meaning given in s. NR 10.71 (4).

SECTION 4. NR 10.104 (9m) (b), (c), and (d) are amended to read:

(b) Fee. The fee for bonus deer permits issued under this subsection shall be ~~\$6.00~~ half of the cost of a bonus deer permit established under s. 29.563 (2) (c) and (d), Stats.

(c) Bonus deer permit distribution. 1. A ~~landowner or his or her authorized representative for an individually enrolled property~~ DMAP member who received bonus deer permits pursuant to s. NR 10.72 (2) may distribute ~~the~~ such permits to persons who are authorized to hunt on the enrolled property or portion of the property or may retain the permits for ~~their~~ the DMAP member’s own use. ~~The primary contact or authorized representative for a cooperative or an individually enrolled property with multiple~~

~~owners may distribute the permits to persons who are authorized to hunt on the enrolled property or portion of the property and may retain a portion of the allotted permits for their own use. No person may charge any form of a fee for bonus deer permits issued under the deer management assistance program except that the primary contact or authorized representative under subch. H DMAP members who is ~~transferring~~ transfer a bonus deer permit to other hunters for use on an enrolled property may collect no more than ~~\$6.00~~ the amount of bonus deer permit's fee for each permit in order to recover actual cost of the bonus deer permit and when there is no monetary benefit to the transferrer.~~

2. The department may issue the bonus deer permits directly to ~~people~~ persons who are authorized by the ~~landowner or the landowner's authorized representative~~ DMAP member for an ~~individually~~ enrolled property to purchase ~~them~~ the permits.

(d) *Locations and times when valid.* ~~Bonus deer permits~~ Permits are valid for use only on the ~~enrolled property or group of properties authorized by the department~~ for which the permit was issued during any firearm, archery, or crossbow deer season.

SECTION 5. NR 10.104 (9m) (e) and (note) is renumbered to NR 10.72 (2) (e) 2. and (note) and amended to read:

NR 10.72 (2) (e) 2. Every ~~landowner, primary contact, or authorized representative~~ DMAP member who receives or distributes permits issued under ~~this subsection~~ s. NR 10.104 (9m) shall keep a current, correct and complete record of the use or transfer of all such bonus deer permits, and report any data as required by the department ~~on electronic or paper forms made available by the department~~. Records of bonus permit distribution shall be provided to the department ~~by required deadlines or upon request~~. A violation of this paragraph shall be treated as a violation of s. 29.961 (2), Stats.

Note: ~~The number of permits distributed will be determined by the department following a site visit by a wildlife biologist and a forester. Bonus antlerless deer permits issued under this subsection are available only to level 2 and level 3 participants in the Deer Management Assistance Program established in s. NR 10.72. Deer Management Assistance Program enrollees~~ DMAP members are exempt from the restriction against purchasing no more than one bonus deer permit daily on a first-come-first-served basis that is established in s. NR 10.104 (8) (a).

SECTION 6 NR 10.70 and 10.71 are repealed and recreated to read:

NR 10.70 Purpose. The purpose of this subchapter is to establish the structure, procedures, and fees related to the deer management assistance program under s. 29.020, Stats.

10.71 Definitions. In this subchapter:

(1) “Authorized representative” means the person a landowner has designated to act and make decisions on the landowner's behalf for purposes of the deer management assistance program including granting access to the landowner's property for department staff to conduct on-site consultation visits.

(2) “DMAP” means the deer management assistance program established by s. 29.020, Stats.

(3) “DMAP member” means the landowner or the landowner’s authorized representative, or in case of public lands, the property manager associated with an enrolled property.

(4) “Enrolled property” means an individual property with one or multiple owners or a group cooperative that has a DMAP membership.

(5) “Group cooperative” means an association of individual property owners or their representatives who are not organized as a business entity but are organized for the purposes of managing deer and other wildlife resources. Properties involved in a group cooperative must be adjoining and may not include more than 3 individual properties.

SECTION 7 NR 10.72 (title), (1) (intro.), (a), (c), and (d) are amended to read:

NR 10.72 Deer management assistance program ~~levels~~participants.

(1) ~~LEVEL 1 MEMBERS. The first level for participation in the deer management assistance program is designed to increase communication with landowners and hunters. Any landowner or, in the case of public lands, property manager may enroll as DMAP member. Membership in the DMAP is for a period of 3 years beginning on the date of enrollment. A landowner whose term as a DMAP member is ending or has ended may reenroll as a DMAP member in the manner determined by the department. The department shall provide all of the following to Level 1 participants~~members:

(a) ~~Deer management assistance program~~ DMAP educational resources.

(c) Annual ~~program~~DMAP reports.

(d) ~~An opportunity~~Opportunities to attend ~~annual~~ workshops organized by the department or its partners.

SECTION 8 NR 10.72 (1) (f) and 10.72 (2) are repealed and recreated to read:

NR 10.72 (1) (f) Reports summarizing data collected by DMAP members.

NR 10.72 (2) ELECTIVE BENEFITS. A DMAP member who is eligible to receive on-site DMAP benefits for the enrolled property may apply to receive such benefits in the manner determined by the department.

(a) *Application.* An application for elective benefits shall identify the acreage of the DMAP member's enrolled property and include any other information requested by the department.

(b) *Eligibility.* To receive elective benefits, a DMAP member shall meet the following requirements:

1. The DMAP member's enrolled property shall be not less than 40 acres in size.
2. The DMAP member shall not have received an on-site visit under par. (d) for the enrolled property within the last three years.
3. If the DMAP member has received elective benefits in the past, the DMAP member shall have complied with all applicable requirements under par. (e).

(c) *Participation limit.* In any given year, the department may limit the number of enrolled properties accepted to receive elective benefits based on department capacity. If the department establishes a limit, the department may give preference to private lands over public lands.

(d) *Benefits.* A DMAP member who is accepted to receive elective benefits may select to receive any of the following:

1. An on-site visit conducted by a wildlife biologist and a forester. For subsequent visits, the department will determine the natural resource professionals involved in the on-site visit based on the elective benefits selected by the DMAP member.
2. Written deer management recommendations.
3. A property assessment to determine if the issuance of bonus deer permits is appropriate.
4. Except for public land managers, annual bonus deer permits established under s. NR 10.104 (9m) when deemed appropriate by the department based on the property assessment under par. (c).

(e) *Reporting requirements.* 1. If the DMAP member received the benefit under par. (d) 2., the DMAP member shall report to the department on the management actions taken, including the management implemented and the acreage in which it was implemented, and any other information requested by the department. The report shall be submitted in a manner determined by the department and is due by the end of the membership term.

SECTION 9 NR 10.72 (3) and (4) are repealed.

SECTION 10. NR 10.73 is repealed and recreated to read:

NR 10.73 Fees.

- (1) The fee to enroll as a DMAP member is \$50.
- (2) No DMAP member may receive any elective benefit described in s. NR 10.72 (2) (c) for an enrolled property unless the DMAP member has paid the applicable additional fee based on the acreage of the enrolled property as follows:
 - (a) Properties with at least 40 but less than 160 acres, \$150.00.
 - (b) Properties with at least 160 but less than 640 acres, \$200.00.
 - (c) Properties with at least 640 acres, \$250.00
- (3) The department may discount the fees for elective benefits for DMAP members who have previously received elective benefits. Discounts shall be based on the specific benefits to be received. Any discounts shall be described on the elective benefits application form.
- (4) Applicable fees shall be paid within 30 days of enrollment as a DMAP member or notification by the department that the DMAP member's application for elective benefits has been accepted.
- (5) The department may waive any applicable fee for governmental organizations or owners of other lands that the department determines are open to the public for hunting.

SECTION 11. 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 12. 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 _____

Steven Little, Deputy Secretary