

Meeting Date: November 20, 2020

Agenda Item No. 5A

Agenda Item: Limiting NR participation in general season deer and elk hunts

Bureau Chief Approval: ES

Prepared by: Jon Rachael, Southwest Regional Supervisor, and Rick Ward, Deer and Elk Program Coordinator

Background:

Nonresident Tag Limitations

In March 2020 the Commission was granted authority to limit the number of tags available for nonresident hunters in general season hunts in a zone or game management unit to no less than 10% of the average number of hunters estimated for that zone or unit during the previous 5 years.

Resident hunters have been increasingly concerned about hunter congestion, and specifically the number of nonresident hunters in general season deer and elk hunts. The total number of general season deer and elk tags that may be issued to nonresidents is limited and is set annually by administrative rule (IDAPA 13.01.04.600); that number of nonresident deer and elk tags has changed little in 30 years (12,815 elk tags and 15,500 total deer tags). However, the nonresident tag quotas don't affect distribution of hunters. As a result, there is uneven distribution and some units or zones have a disproportionately high representation of nonresident hunters. The Commission and Department have not had the ability to manage the distribution of nonresident hunters in general season hunts. Some popular game management units and elk zones have a very high percentage of nonresident hunters during the general season (e.g., even exceeding the number of resident hunters), whereas other units or zones have a low percentage of nonresidents.

Unlike in general season deer and elk hunts, the Commission has managed the proportion of nonresidents who may participate in controlled hunts for decades. Idaho Code 36-408 authorizes the Commission to limit, or prohibit entirely, the participation of nonresidents in controlled hunts, and IDAPA 13.01.08.255.01 sets limits on the number of controlled hunt tags that may be issued to nonresidents to no more than 1 tag in hunts with 10 or fewer tags, and to not more than 10% of the tags in hunts with more than 10 tags. Further, the Commission was granted authority in 2018 to limit the number of tags available to nonresident hunters in unlimited controlled hunts to no less than 10% of the average number of tags drawn annually during the previous 5yr period.

The elk zone management system and A and B tags were developed and implemented in 1998 as a tool to manage hunter distribution within a general season, over-the-counter tag sales framework as an alternative to using controlled hunts to limit hunting pressure. Rules enabled the Commission to "cap" the number of A or B tags offered within a zone if hunting pressure prevented the Department from meeting elk population objectives. By administrative rule (IDAPA 13.01.04.505.01(b)), when caps were implemented for an A tag or B tag to restrict the number of hunters within a zone, the total number of tags was allocated proportionally among resident hunters, non-outfitted nonresident hunters, and outfitted hunters based on their participation in the zone during the preceding 5 year period when the number of tags was unrestricted. The first elk zone cap was implemented

in 1998 on the Lolo B tag. Today caps are in place in 14 Elk Zones (Lolo A and B, Selway A and B, Middle Fork A and B, Dworshak B, Elk City A and B, Diamond Creek A, Sawtooth A and B, Salmon B, Bear River B, Weiser River B, Pioneer B, Smoky-Bennett B, South Hills B, and Big Desert B).

Because tags are allocated among resident, nonoutfitted nonresident, and outfitted hunters in capped zones in proportion to their participation prior to hunter numbers being restricted, a high proportion of tags is allocated to nonresident hunters in some zones. In rare cases the number of tags allocated to nonoutfitted nonresidents exceeds the number of tags allocated to resident hunters (e.g., Lolo A tag, Selway A tag).

The Commission was granted authority in 2013 to reduce the number of tags allocated to nonresident hunters in capped zones to not less than 25% of the tags if the proportional allocation resulted in a percentage of nonresidents exceeding 25% (IDAPA 13.01.04.505.01(b)). The Commission exercised this authority in 2015 when they reduced the proportion of nonoutfitted nonresident hunters in the Diamond Creek A tag hunt from 42% to 35%. The Commission further reduced the proportion of nonresidents in the Diamond Creek A tag hunt to 25% for the 2020 hunting season. The Commission also reduced nonresident participation in the capped Salmon B tag from 33% to 25% effective for the 2020 hunting season.

Capped elk zones account for 3,861 of the 12,815 available general season nonresident elk tags each year. Also, each year 2,400 of the 12,815 nonresident general season elk tags are set aside for hunters with a signed contract to hunt with an outfitter, leaving the balance of 6,554 nonresident tags available within the quota for non-outfitted nonresident hunters in uncapped elk zone A and B tag hunts.

At Commission direction, the Department completed rule-making during 2019 to provide the Commission authority to implement a program to manage the proportion of nonresident general season deer and elk hunters by game management unit or zone to no less than 10% of the average hunter participation estimated for that zone or unit during the previous 5 years. That authority was granted to the Commission in March 2020.

Based on hunter participation estimates generated from mandatory hunter reports, staff calculated the average number and percentages of resident and nonresident hunters in each game management unit for regular deer tag hunters and white-tailed deer tag hunters, and for A and B tag hunters in each uncapped elk zone over the previous 5 year period (2015 – 2019 hunting seasons). Staff developed and evaluated a range of options for implementing limitations on the proportion of nonresident hunters participating in each game management unit for regular deer and white-tailed deer tags and by zone for A and B tags in uncapped elk zones.

For uncapped elk zones, staff will propose implementation of a sliding scale model for the 2021 and 2022 general elk seasons for A and B tag hunts that will limit nonresident tag numbers at 15% for those zones with $\geq 15\%$ nonresidents in the previous 5 years, and will limit nonresident A and B tags at 10% for those zones with $< 15\%$ nonresidents during the previous 5 years.

Staff will propose implementation of a similar sliding scale model for the 2021 and 2022 general deer seasons that will reduce nonresident participation to 15% of the 5yr average number of regular deer tag hunters or white-tailed deer tag hunters in each game management unit in which nonresidents have comprised $\geq 15\%$ of the total hunters. In units with nonresident participation of $\geq 10\%$ but $< 15\%$ during the previous 5 years, nonresident tags would be limited at 10%. To protect against the possibility of redistributing a large number nonresident hunters to units that currently have low participation by nonresidents, units with $< 10\%$ nonresidents will be also be limited at 10%. Certain backcountry units would be limited at their current 5yr average number of nonresident hunters.

Outfitter Tag Allocation

In anticipation of the Commission implementing this rule to manage the percentage of nonresident hunters, the outfitting industry developed legislation to provide the Commission the opportunity to allocate tags for use by outfitted hunters in any game management unit or zone where outfitting operations exist and the number of tags is limited.

When the Commission establishes a limit on nonresident deer or elk tags, it shall set aside a maximum of 25% of the statewide nonresident tag limits (IC 36-408(3)). These tags may be allocated for use by outfitted hunters in capped hunts and general season hunts. By administrative rule (IDAPA 13.01.04.500), each year 1,985 deer tags and 2,400 elk (A or B tags) are set aside for sale to persons that have entered into an agreement to use the services of a licensed outfitter. Outfitter set-aside tags are a subset of the total nonresident deer and elk tag quotas (15,500 total deer tags and 12,815 elk tags), not an addition to the total nonresident deer and elk tag quotas. The 1,918 tags allocated to outfitters in capped elk zones are a subset of the outfitter set-aside quotas above. The current outfitter set-aside represents 13% of the tags in the statewide nonresident deer tag quota and 19% of the tags in the nonresident elk tag quota.

When setting big game seasons, if the Commission limits the number of deer or elk tags available for use in any game management unit or zone, the Commission *may* allocate a number of deer and elk tags from the outfitter set aside tags for use by hunters that have entered into a signed agreement to use an outfitter (IC 36-408(4)). In addition to the Commission's administrative rules on allocation (IDAPA 13.01.04.505), in capped hunts the Commission *may* allocate the number of outfitted hunter elk and deer tags based on the highest number within each of the last 2 years of all elk or deer tags using the service of an outfitter in each capped hunt. Any additional tags above the original outfitted hunter quota may come from the nonresident outfitted hunter set-aside or the nonresident quota in the capped hunt, not to exceed 50% of the nonresident quota for each capped hunt (IC 36-408(4)).

Of the statewide outfitter set-aside of 2,400 elk tags, 1,918 tags are already allocated to the existing capped elk zone A and B tag hunts, leaving a balance of 482 tags to allocate to outfitted hunters in uncapped elk zone A and B tag hunts. All 1,985 deer tags in the outfitter set-aside would be available to allocate as either regular deer tags or white-tailed deer tags to outfitted hunters.

Staff used outfitter use report data from the Idaho Outfitters and Guides Licensing Board for the two previous hunting seasons for which data were available on hunter participation and outfitted hunter use (2018 and 2019) to calculate, based on our best ability to interpret, the highest outfitter use for regular and white-tailed deer tags by game management unit and elk tags by uncapped elk zone A and B tag. This highest year of use value was used to project potential outfitter allocation for each of the options developed for managing the percentage of nonresident hunters.

Staff will propose an allocation of tags for use by outfitted clients based on the number of tags available through the sliding scale proposal for managing the percentage of nonresident tags for uncapped elk zone A and B tags and the highest reported outfitter use in the previous 2 years. However, because the balance of outfitter set-aside tags (482 tags) is insufficient to meet the sum of the total highest use for all A and B tag zones (547 A tags + 272 B tags = 819 tags), the high use value would be pro-rated by 0.588 for each zone.

Staff will propose an allocation of tags for use by outfitted clients based on the number of tags available through the sliding scale proposal for regular deer tags and white-tailed deer tags and the highest reported outfitted use in the last 2 years, as long as that total does not exceed 50% of the total nonresident tags for that unit. In any unit where the highest outfitted use exceeds 50% of the total number of nonresident tags available, allocation would be set at 50% of the number of nonresident tags.

Statutory Authority and/or Policy Issues:

Idaho Code 36-103 declares that all wildlife are property of the state and shall be preserved, protected, perpetuated, and managed, and shall only be taken at such times or places, under conditions, means or manner as will preserve, protect, and perpetuate such wildlife, and *provide for the citizens of this state and, as by law permitted to others*, continued supplies of wildlife for hunting, fishing, and trapping.

Idaho Code 36-408 authorizes the Commission to limit, or prohibit entirely, the participation of nonresidents in controlled hunts, and IDAPA 13.01.08.255.01 sets limits on the number of controlled hunt tags that may be issued to nonresidents to no more than 1 tag in hunts with 10 or fewer tags, and to not more than 10% of the tags in hunts with more than 10 tags.

Rules addressing implementation of caps and allocation of tags in capped general hunt zones and controlled hunts appear in IDAPA 13.01.04.505 Deer and Elk Tag Allocation.

The Commission's authority to set limits on nonresident tags in uncapped general season hunts appears in IDAPA 3.01.08.255.01.

IDAPA 13.01.08.255.01 Nonresident Tag Limitations.

d. In general hunts, the Commission may limit by proclamation the number of tags available for nonresident hunters in a zone or big game hunting unit to no less than ten percent (10%) of the average hunter participation estimated for that zone or unit during the previous five (5) year period. If the Commission adopts tag limits in a zone or big game hunt unit for non-residents under this subsection 01.d, without limiting residents,

the provisions of IDAPA 13.01.04.505.02, “Rules Governing Licensing,” applicable to controlled hunts with limited nonresident tags and unlimited resident tags will apply to deer and elk tag allocation instead of the provisions of IDAPA 13.01.04.505.01.
(3-20-20)

Commission authority and options for allocating general season deer and elk tags to clients of licensed outfitters appear in Idaho Code 36-408 and IDAPA 13.01.04.505.

Public Involvement Process:

The Department and Commission have received input from deer and elk hunters year round, in the field, by phone and email, and through input received through surveys and online and at public meetings and open houses during season setting processes, management plan development, and through testimony at Fish and Game Commission meetings. Comments were solicited during multiple formal public input periods during the administrative rule-making process and Commission meetings in 2019 and 2020. Department staff worked closely with Idaho Outfitters and Guides Association leadership on allocation legislation introduced in the 2019 and 2020 legislative sessions and during development of implementation proposals since that time.

Justification:

Commission action is required to establish limits to manage nonresident deer and elk hunter participation and distribution in general season regular deer tag hunts, White-tailed deer tag hunts, and in uncapped Elk Zone A and B tag hunts. Commission action is also required to allocate tags in these hunts for use by hunters with a signed contract with a licensed outfitter.

Staff Recommendation:

Nonresident Tag Limits.-- Staff recommends the Commission adopt the sliding scale proposal to limit the proportion of nonresident elk tags in uncapped elk zone A and B tag hunts and to set a limit on the proportion of nonresident regular deer tags and nonresident white-tailed deer tags by Game Management Unit.

The proposed sliding scale is summarized as follows:

Uncapped Elk Zone A and B tag hunts:

- In uncapped elk zone A and B tag hunts with nonresident participation of $\geq 15\%$ during the previous 5 years, nonresident tags would be limited at 15% of the average number of hunters in the previous 5 years.
- In uncapped elk zone A and B tag hunts with nonresident participation of $< 15\%$ during the previous 5 years, nonresident tags to be limited at 10% of the average number of hunters in the previous 5 years.

Regular deer tag and White-tailed deer tag hunts:

- In Units with nonresident participation of $\geq 15\%$ during the previous 5 years, nonresident tags to be limited at 15%.
- In Units with nonresident participation of 10% to $< 15\%$ during the previous 5 years, nonresident tags to be limited at 10%.
- In Units with nonresident participation of $< 10\%$ during the previous 5 years, nonresident tags to be limited at 10% of the average number of hunters in the previous 5 years.
- In backcountry game management units 7, 9, 10, 12, 16A, 17, 19, 20, 20A, 26, and 27, nonresident tags to be limited at status quo for previous 5 yr % of nonresidents.
- Each nonresident regular deer tag and each nonresident white-tailed deer tag would be valid only in one game management unit. Resident regular and white-tailed deer tags would still be valid in all units with an open hunt for that tag type.

Outfitter Tag Allocation.—Staff recommends the Commission allocate tags for use by clients of licensed outfitters as summarized below:

- Uncapped Elk Zone A and B tags - allocation of tags for use by outfitted clients would be based on the sliding scale proposal for managing the proportion of nonresident tags for uncapped elk zone A and B tags and the highest reported outfitter use in the previous 2 years. The highest reported use would be pro-rated at 58.8% because the high reported use exceeds number of available set-aside elk tags.
- Regular Deer Tags -- allocate tags for use by outfitted clients based on the sliding scale proposal for regular deer tags and the highest reported outfitted use in the last 2 years, as long as the highest use does not exceed 50% of the total nonresident tags for that unit. In any unit where the highest outfitted use exceeds 50% of the total number of nonresident tags available, allocation would be set at 50% of the number of nonresident tags.
- White-tailed deer Tags -- allocate tags for use by outfitted clients based on the sliding scale proposal for regular deer tags and the highest reported outfitted use in the last 2 years, as long as the highest use does not exceed 50% of the total nonresident tags for that unit. In any unit where the highest outfitted use exceeds

50% of the total number of nonresident tags available, allocation would be set at 50% of the number of nonresident tags.

Sample Motion on Nonresident Management: *That the Commission adopt staff recommendations for managing nonresident general season uncapped Elk Zone A and B tags and regular and white-tailed deer tags with a sliding scale to cap the proportion of nonresident participation by Zone A or B tag hunt for elk and by game management unit for deer.*

Sample Motion on Outfitter allocation for elk tags: *That the Commission adopt staff recommendations to allocate tags for use by outfitted clients based on the sliding scale proposal for managing nonresident tags limits for uncapped elk zone A and B tags and the highest reported outfitter use in the previous 2 years pro-rated at 58.8%.*

Sample Motion on Outfitter allocation for deer tags: *That the Commission adopt staff recommendations to allocate tags for use by outfitted regular deer tag and white-tailed deer tag hunters based on the sliding scale proposal and the highest reported outfitted use in the last 2 years, as long as that total does not exceed 50% of the total nonresident tags for that unit. In any unit where the highest outfitted use exceeds 50% of the total number of nonresident tags available, allocation would be set at 50% of the number of nonresident tags.*