

4/25/2019

To: Fish and Game Commission

Re: Elk Shoulder Season

The elk shoulder season was created because the elk population in over 40 hunting districts has grown to exceed management objective as determined by FWP biologist before 2003 when the legislature passed the law in MCA 87-1-323 that directed FWP to manage the elk population in all hunting districts to objective by 2009.

Governor Bullock vetoed SB245 on May 4, 2015 because FWP had the authority without the law to establish cow elk hunts outside of the 5 week rifle season to help manage elk to objective. In his veto, Governor Bullock directed FWP "Working in good faith with landowners, ... to step up its efforts to work with affected landowners to mitigate impacts and allow for greater elk harvest and public opportunity".

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The "Final Elk Season Guidelines ...." Introduction" stated that "The guidelines respect and reflect private property rights and landowner decisions .....".

With this background I am requesting the FWP director and FWP Commission that the elk shoulder season is to be managed in "GOOD FAITH WITH LANDOWNERS" and is to "RESPECT AND REFLECT PROPERTY RIGHTS AND LAND OWNER DECISIONS".

*The Final Elk Season Guidelines adopted 10/8/2015" by the FWP Commission does NOT do that.*

1. It should be noted that FWP has previously authorized various tools in their attempt to manage elk to objective, but this is the 1<sup>st</sup> one to focus on working with landowners and it is the first one with harvest criteria and the 1<sup>st</sup> one that has been threatened to be sunset before the goal of bringing the elk population to management objective has been met. ? Why is that? Could it be because this supports landowners?
2. Under Shoulder season Harvest Criteria page 5 (5) "If lack of access during the general season is the main reason for not meeting harvest criteria, then the hunting district(s) or a portion of the hunting district may, at the Commission's discretion, shift to antlerless only." (1)  
This statement does not respect and reflect private property rights and landowner decisions.
3. Under "Fundamental Objectives" "Balancing private property rights and public trust management, they reflect the different concerns and values of private landowners and the general public". Private property rights are stated in montana law. What is public trust management? Public trust management is not defined in this document. This "public trust" does not override private landowner property rights and clearly goes against the directive of Governor Bullock's veto letter of May 4, 2015. (2)
4. Under "Fundamental Objectives" " all fundamental objectives cannot be maximized". (3)  
There is only one objective in Governor Bullock's veto letter of May 4, 2015. "to step up its efforts to work with affected landowners to mitigate impacts and allow for greater elk harvest and public opportunity".



I am requesting the FWP Commission to base the elk shoulder season management as follows:

1. the only performance measure is to bring elk to management objective in each hunting district.
2. only use science and the expertise of FWP biologists
3. eliminate any reference to the public trust
4. eliminate any threats to private landowner due to landowner decisions regarding access to their property during the 5 week rifle season

These changes will improve landowner relations and increase hunting opportunity for the general public.

Brian McCullough, Meat Hunter  
2217 9<sup>th</sup> Ave  
Helena, Mt 59601



Cell 406-431-4311 please text due to bad hearing

Attached:

Governor Bullock's May 4 2015 veto letter of SB245  
Final Elk Season Guidelines 10/8/2015



OFFICE OF THE GOVERNOR  
STATE OF MONTANA

STEVE BULLOCK  
GOVERNOR



ANGELA McLEAN  
LT. GOVERNOR

May 4, 2015

The Honorable Linda McCulloch  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 245 (SB 245), "AN ACT PROVIDING FOR POSTSEASON ELK POPULATION MANAGEMENT THROUGH AN ANTLERLESS ELK HUNT; CLARIFYING THE DUTIES OF THE FISH AND WILDLIFE COMMISSION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; REQUIRING ANNUAL REPORTS FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS REGARDING SUSTAINABLE POPULATION NUMBERS FOR BIG GAME AND THE POSTSEASON HUNTS; AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-321, 87-1-323, 87-1-324, 87-1-325, 87-2-501, AND 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

~~How?~~  
SB 245 is unnecessary. The Fish and Wildlife Commission (Commission) currently possesses the authority to implement the sort of elk harvest management option represented in SB 245. Placing such a provision in statute may inadvertently constrain new harvest management options, and interfere with an ongoing, comprehensive review and implementation of new tools for addressing elk population concerns.

The Department of Fish, Wildlife and Parks (FWP) and the Commission understand the concerns over elk populations that are exceeding established objectives. They are also fully mindful that the current season structure has not been as effective as is necessary. In response to my mandate for improving landowner, agency, and sportsmen relationships, FWP has initiated a comprehensive effort to assess the current elk harvest tools available, to review and apply lessons from management experience and research to date, and to develop new and innovative tools to better address over objective populations. This ongoing constituent and landowner-based effort to identify better options (including "shoulder seasons" where appropriate) is the preferred method for reaching a full understanding of both public and landowner needs and expectations.

I am very sensitive to balancing the interests of landowners and sportsmen, which are unfortunately too often portrayed as a zero sum game. Working in good faith with landowners, sportsmen, and other stakeholders associated with our wildlife resources is a critical component of providing effective wildlife management in our state. I am directing FWP to step up its efforts to work with affected landowners to mitigate impacts and allow for greater elk harvest and public opportunity, and

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Secretary McCulloch

May 4, 2015

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will ask the Private Lands/Public Wildlife Council to work with FWP and the Commission to take up this issue for further public discussion and to assist in providing recommendations. I also fully expect that FWP will keep the interim Environmental Quality Council apprised of these efforts and their measured effectiveness.

For these reasons, I veto SB 245.

Sincerely,



STEVE BULLOCK  
Governor

cc: Legislative Services Division  
Debby Barrett, President of the Senate  
Austin Knudsen, Speaker of the House





**Final Elk Season Guidelines**  
**Flexible season structure with performance-based shoulder seasons**  
**Adopted 10/08/2015 FW Commission**

Introduction

These guidelines were developed to improve elk harvest management and bring more elk populations to objective. The guidelines respect and reflect private property rights and landowner decisions as well as public trust responsibilities associated with elk management. They also emphasize flexibility with outside constraints using all currently available harvest tools (existing season structures, license/permit types, game damage hunts, management seasons, and season extensions) and add A7 licenses and antlerless permits (or apply comparable restrictions in district-specific definitions of general or antlerless licenses), and performance-based shoulder seasons as options. These guidelines alone do not require implementation of any one option. Season proposals that might include one or more of these options will continue to be initiated by regional staff. If adopted these guidelines will remain in place as formal guidance for both the Fish and Wildlife Commission ("Commission") and Fish, Wildlife and Parks staff ("FWP") until/unless they are formally adjusted by the Commission and public review. This shall include fundamental objectives, performance criteria, and periodic Commission/public review of season performance against those elements.

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PAGE 5  
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A "shoulder season" here is defined as: *any firearm season printed in the hunting regulations that occurs outside the 5-week general firearm season between August 15 and February 15 in one or more hunting districts or portion(s) thereof*. Examples might include B licenses or general seasons extended early or late or additional sets of B licenses or permits valid early or late. Shoulder seasons here do not include early backcountry hunts, primitive weapon hunts, game damage hunts, management seasons, or season extensions.

Shoulder Season Intent

Shoulder seasons are designed to supplement existing harvest, not replace or reduce harvest during the existing general archery and firearm seasons. They are a management tool to support the general seasons and are not presented here or intended to be an end objective. Performance-based harvest criteria described later in these guidelines have been developed to reflect this intent, to describe the harvest necessary to reduce elk populations, and to help ensure transparent and consistent assessment of how shoulder seasons are performing. The criteria will also be used by the Commission and the Department to propose, continue, adjust, or remove shoulder seasons. If shoulder seasons do not meet established harvest criteria, they become inconsistent with their described intent and may actually exacerbate problems with elk populations and/or distribution.



### Reasons to Implement, Maintain, and Remove Shoulder Seasons

These guidelines do not require shoulder seasons in any one district. FWP may propose and the commission may adopt performance-based shoulder seasons where populations have been over objective and liberal antlerless harvest seasons have been present for at least four years. In these areas the primary intent of shoulder seasons is to reduce the population to objective. In this regard, these shoulder seasons would be proposed for removal and so acted upon by the Commission when the district reaches objective or if the harvest criteria (see below) are not being met. These shoulder seasons must also be consistent with fundamental objectives listed below. \*

FWP may also propose and the commission may adopt shoulder seasons to address specific local circumstances. Examples of such local circumstances include areas where elk are absent during the general hunting season or the landscape is dominated by multiple small ownership parcels making it difficult to safely harvest elk or respond to game damage. These shoulder seasons must also be consistent with fundamental objectives listed below.

Shoulder seasons may be proposed to continue and so adopted by the Commission if:

- harvest criteria listed below are met and there is overall positive performance relative to the fundamental objectives listed below and the elk population is moving toward objective,
- local circumstances relative to landownership sizes or seasonality of elk presence are present (see above) and there is overall positive performance relative to fundamental objectives listed below, or
- broad, expressed support from landowners, sportsmen, FWP, and the Commission and there is overall positive performance relative to fundamental objectives listed below. The Devil's Kitchen Working Group represents one example of this sort of significant and diverse collaboration. While the Devil's Kitchen Working Group is not the only possible manifestation of diverse and significant support it does represent the intended level of collaboration and is identified here as a standard against which other collaborations/support will be measured.<sup>d</sup>

### Shoulder Season Placement, Timing, and Sex of Harvest

Shoulder seasons will typically be directed to private land across all or portions of an entire hunting district or group of hunting districts, except where clear boundaries necessarily include small amounts of state or federal lands. For example, a Forest Service administrative boundary

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may be an effective and clear boundary but might also include some peripheral Forest or BLM lands with private lands in an early shoulder season. Montana state land parcels other than FWP Wildlife Management Areas (WMAs) are another example of public lands that might be included with private lands in an early shoulder season due to the need for clear boundary definitions.

In some areas significant amounts of public land may need to be included in late shoulder seasons (outside of the archery only season) to achieve prescribed harvest if elk are expected to move off private lands such that harvest is effectively precluded. In these circumstances public land harvest will be limited where appropriate to avoid overharvesting elk on public land.

Shoulder seasons could be early and/or late and could overlap the current archery season on private land (with exception of small amounts of public land, see above).

Shoulder seasons may include antlered and/or antlerless options (see criteria below). Where antlered harvest during shoulder seasons is needed to facilitate meeting population objectives bull harvest opportunity will be allocated via limited permits.

#### Shoulder Season Proposal, Adoption, and Review

The Commission and Department will conduct annual public review of shoulder season performance relative to criteria and fundamental objectives and will review shoulder seasons and associated decisions in scheduled season-setting processes. Individual shoulder seasons will be proposed and adopted with definitive "sunset" dates consistent with performance criteria review and season-setting cycles. While this would typically occur when three years of data are available any shoulder season could be reviewed and acted upon at any season-setting if circumstances warrant (reached objective, clear and likely continued failure of criteria). The sunset date will serve to remove any shoulder seasons from the remaining general season definition for that hunting district. This general season definition will then represent the status quo season entering any season setting process. This then will require a specific proposal and Commission adoption for change directly identifying and addressing any individual shoulder season to continue that shoulder season beyond its sunset date. If no such specific proposal and Commission adoption is made only the general season is included as the "status quo" for that hunting district and the shoulder season will be effectively removed. Shoulder seasons may be specifically removed before the sunset date and before three years of harvest data is acquired if objectives are met or if it is clear performance is failing the criteria and will continue to fail. Once removed, a shoulder season may be proposed again using general season harvest criteria as *entry* criteria OR there is broad, expressed support from landowners, sportsmen, FWP, and the Commission as described in criteria 6 below.<sup>d</sup>

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## Shoulder Season Performance

The primary intent of a shoulder season is to help reduce the population in a hunting district or group of hunting districts. Shoulder seasons are designed to supplement existing harvest, not replace or reduce harvest during the existing general archery and firearms seasons. To reduce a population in a given year, the total harvest for all seasons combined – archery-only, 5-week general and shoulder season – must exceed the number of calves “recruited” or added into the population the previous spring. That is, annual harvest must exceed annual recruitment (annual “calf crop”). To assess shoulder season performance the following harvest criteria will be used to assess performance. This performance assessment will be used to determine whether FWP proposes to maintain or remove shoulder seasons and will also be used by the Commission in assessing the decision to maintain, adjust, or remove shoulder seasons. Annual performance information will be posted on the public website and will be part of annual reviews with the Commission and any associated season-setting process. While shoulder seasons will be focused primarily on private lands, implementation and assessment will be done at the hunting district(s) level. For the first shoulder season proposal in a specific hunting district, criteria are not used as entry criteria but are assessed in the years following implementation. While the criteria are couched in the context of three years, performance information will be posted annually for public review and the Commission may remove a shoulder season at any time it is determined criteria are not and will not be met. Subsequent shoulder season proposals in the same area would require meeting general season harvest criteria as *entry* criteria unless the proposal is otherwise consistent with fundamental objectives and enjoys broad, expressed support from landowners, sportsmen, FWP, and Commission. <sup>d</sup>

### *Shoulder Season Harvest Criteria*

1. During the past 3 years<sup>a</sup> the number of bulls harvested during the archery-only and 5-week general seasons combined (not including the shoulder season) is more than half (>50%) the number of bulls recruited<sup>b,c</sup> during that 3-year period **AND**
2. During the past 3 years<sup>a</sup> the number of cow elk harvested during the archery-only and 5-week general seasons combined (not including the shoulder season) is more than half (>50%) the number of cows recruited<sup>b,c</sup> during the 3-year period **AND**
3. During the past 3 years<sup>a</sup> total harvest of cows during all seasons combined (archery-only, 5-week general and shoulder season) is greater than the total number of cows recruited<sup>b,c</sup> during the 3-year period **AND**
4. During the past 3 years<sup>a</sup> total harvest of all elk during all seasons combined (archery-only, 5-week general and shoulder season) is greater than the total number of all elk recruited<sup>b,c</sup> during the 3-year period **OR**





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5. If harvest criteria have not been met due to clear and widely accepted extenuating circumstances (e.g., weather, forest fire, etc.), the shoulder season may be continued, as long as access to elk during the general season is not considered to be the main reason harvest criteria are not being met. If lack of access during the general season is the main reason for not meeting harvest criteria, then the hunting district(s) or a portion of the hunting district may, at the Commission's discretion, shift to antlerless only. (1)

OR:

6. Other shoulder seasons not subject to the above harvest criteria are allowed if they are consistent with the fundamental objectives and have broad, expressed support from landowners, sportsmen, FWP and the Commission. The Devil's Kitchen Working Group represents one example of this sort of significant and diverse collaboration. While the Devil's Kitchen Working Group is not the only possible manifestation of diverse and significant support it does represent the intended level of collaboration and is identified here as a standard against which other collaborations/support will be measured. To ensure this standard of broad and diverse collaboration is met, the Commission shall review the nature and amount of landowner and hunter support when considering any shoulder season proposal under this guidance.<sup>d</sup>

### Fundamental Objectives

These guidelines also include "fundamental objectives" meant to describe management success and to help ensure a transparent assessment of how overall elk harvest management is progressing. Fundamental objectives address more than just population status and offer multiple metrics for the Commission to consider in their season setting decisions. Balancing private property rights and public trust management, they reflect the different concerns and values of private landowners and the general public. Given inherent different values across landowners and hunters, all fundamental objectives cannot be maximized. However, fundamental objectives can be optimized if landowner and hunter participation is sufficient to increase harvest during general and shoulder seasons in areas over objective. Shoulder seasons can only be successful at reducing elk numbers and should only be maintained in those areas where key landowners are committed to reducing elk to the identified objective. If that commitment is absent or subordinate to other interests shoulder seasons cannot be successful and fundamental objectives cannot be comprehensively addressed. Fundamental objectives are listed below and have no individual priority ranking. The intent of this proposal is for fundamental objectives to be generally achieved when shoulder season harvest criteria are met. An overall failure to meet fundamental objectives, or specific objectives acutely failing even while harvest criteria are met would prompt a review of harvest criteria. Status of fundamental objectives would be routinely assessed using direct measures (for example, number of districts at objective), public experiences

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(for example, access offered/received), and FWP field staff inputs (for example, landowner/hunter interactions).

## **FUNDAMENTAL OBJECTIVES**

### **Elk considerations:**

- **Manage elk populations to objective as rapidly as possible.**
- **Increase harvest of elk, where appropriate.**

### **Hunter and landowner considerations:**

- **Address problematic distributions of elk and elk harvest.**
- **Enhance free public access to bulls and cows on private land during the general seasons.**
- **Reduce exclusive access to elk.**
- **Enhance landowner flexibility to manage elk hunting on their property.**
- **Reduce game damage.**
- **Reduce hunter impacts on landowners (e.g., cost of hiring additional staff, loss of productivity, property damage from hunters, etc.).**
- **Simplify rules and regulations.**

### **Logistical considerations:**

- **Balance statewide consistency with local flexibility of regulations, rules, and policies.**
- **Keep staff time and cost down.**

<sup>a</sup> To account for annual variability in hunting conditions that might affect harvest and to account for variability in recruitment rates, a moving 3-year window is used with recruitment and harvest summed across those three years. While criteria identify a 3-year window, the Commission may remove any shoulder season any time it is determined criteria are not and will not be met.

<sup>b</sup> This applies if elk are present during the archery-only and 5-week general season. The intent is that most of the total annual harvest from all seasons combined occurs during the archery-only and 5-week general season and that shoulder season harvest adds to this rather than replaces it. Therefore, a number of bull elk and antlerless elk that is more than half the annual bull and cow recruitment, respectively, must be taken each year during the combined archery-only and 5-week general seasons. Harvest criteria for both bulls and cows must be met in order to propose maintaining any shoulder season unless it is broadly supported (see criteria 6 above). Once a shoulder season is removed from the regulations general season harvest criteria must be met before any shoulder season is re-proposed unless it is broadly supported (see criteria 6 above). Any proposed bull harvest during a shoulder season must be consistent with management objectives, must be by permit only and must meet the need to reduce bulls in areas that are over objective.

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<sup>c</sup> "Recruitment" is the estimated number of 11-12 month old calves in the population in late winter or spring. Annual recruitment for both bulls and cows will be determined by the area biologist using best available data. To estimate the total number of cow and bull calves recruited s/he will need:

- Survey data or another estimator of herd size and composition
- An estimate of sightability
- An estimate of bull:cow ratio among 11-12 month old calves

Example: Using herd count and composition data and adjusting for sightability, a biologist estimates that during the past three years a total of 300 (an average of 100 per year) 11-12 month old calves were recruited. Using check station data, information from wildlife literature, or other data it was estimated that 60%, or 180, of the calves were cow calves and 40%, or 120, were bull calves. Using harvest survey point estimates more than half of the number of animals, or more than 90 cows (an average of 30 per year) and 60 bulls (an average of 20 per year), had to be taken during the combined archery-only and 5-week general seasons over that same three year period. In addition, at least 180 cow elk (an average of 60 per year) and at least 300 total elk (an average of 100 per year) had to be taken during all seasons combined (archery-only, 5-week general and shoulder season) to justify continuing the shoulder season.

<sup>d</sup> The intent is to expand the opportunity to address elk numbers and distribution problems that have not been effectively addressed with this or other season structures. It is not the intent to create an opportunity to continue shoulder seasons in districts where lack of reasonable public harvest opportunities during the general season is the primary cause of elk numbers exceeding population objectives.

