

## Clearinghouse Rule 16-028

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

The statement of scope for this rule, SS 140-15, was approved by the Governor on December 17, 2015, published in Register No. 720B on December 28, 2015 and approved by the Natural Resources Board on January 27, 2016. This permanent rule was approved by the Governor on \_\_\_\_\_.

The Wisconsin Natural Resources Board proposes an order to repeal Ch. NR 10.11 (6); and to amend NR 10.06 (Index), 10.06, 10.07 (2) (b) 3. and 4., 10.12 (3) (d), 10.22 (3) (d) and (Intro.), 10.23 (4) (b) and (6) (b), 10.24 (4) (f) and (6) (b) to (d), 10.275 (2), 13.30 (2) (f), 13.42 (3), 18.04 (Note), 45.04 (2) (a) 2., and 45.09 (2) (a) and (b); and to create NR 45.09 (2) (a) (1) to (4), (d) to (f), and (Note), the 2016 wildlife management spring hearing rule related to tree stands and hunting hours.

WM-02-16

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

**Statutory Authority and Explanation of Agency Authority:** Related to the overnight placement of tree stands on department managed lands, the agency is generally charged with the care, protection, and supervision of state lands by s. 23.11 Stats. Under s. 23.09 (2) (d) related to conservation and department lands, the agency is directed to provide an adequate and flexible system for the use of outdoor resources in this state and may promulgate such rules as are necessary.

The chapter on wild animals and plants, in s. 29.014, “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 establish the periods of time during the day when hunting is allowed.

**Statutes Interpreted and Explanation:** Related to the overnight placement of tree stands on department managed lands, the agency is generally charged with the care, protection, and supervision of state lands by s. 23.11 Stats. Under s. 23.09 (2) (d) related to conservation and department lands, the agency is directed to provide an adequate and flexible system for the use of outdoor resources in this state and may promulgate such rules as are necessary.

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**Related Statute or Rule:** There are no directly related rules currently being promulgated and no recently enacted statutory direction.

**Plain Language Rule Analysis:** These rule changes will be the subject of voting at the 2016 spring fish and wildlife hearings held in each county. Specifically these rules would:

SECTIONS 1 to 3 and 5 to 13 replace the words “hunting hours” with “shooting hours” in all locations where the legal times for taking game are established or referenced.

SECTION 4 repeals a cross reference to the hunting hours for elk which may be superfluous language considering that similar cross references to the section establishing all hunting hours are not found where the regulations for other species are established.

SECTIONS 14 to 17 allow the unattended, overnight placement of portable stands and blinds on department owned and managed lands in areas North of State Highway 64 from September 1 through the following January 31.

**Federal Regulatory Analysis:** Federal regulations allow states to manage the wildlife resources and lands 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.

**Comparison with rules in Adjacent States:** These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild game and furbearer species and for the use of state owned lands for public hunting which are established based on needs that are unique to those state’s resources and public desires.

**Summary of Factual Data and Analytical Methodologies:** Currently the overnight, unattended placement of tree stands and ground blinds for hunting is not allowed on department managed lands. This regulation is designed to prevent the “staking out” or making advance claims to hunting locations in favor of a first-come-first served practice. However the overnight placement of stands is allowed on many other public lands which are not managed by DNR and may also be practical on department lands.

One policy alternative being evaluated through this rule process is a trial period of a number of years when the overnight placement of tree stands would be allowed on DNR managed lands north of State Hwy. 64. Use might be allowed during all seasons or could be more limited. This would provide experience to hunters who would be able to balance and compare the convenience of not having to carry and place a tree stand or blind for each hunt, especially for an aging demographic of hunters, with a philosophy of trying to reduce competition on public lands. Some hunters have observed that competition for hunting locations in areas north of Hwy. 64 is already reduced compared to times when people felt that deer were more abundant.

Under these rules, unattended tree stands would need to be marked with the owner’s department customer identification number or name and address. It would be illegal to cause damage to a tree, but careful pruning of limbs less than 1 inch in diameter would not be considered causing damage to the tree the stand is placed in. This would not permit cutting trees, brush and other vegetation for shooting lanes.

The rule addresses the types of questions that hunters will have about tree stand use on department lands. This proposal clarifies that any person may use a stand that is not occupied and being used by the owner and that stand placement does not reserve a location for exclusive use by any individual. However, the owner of the blind or stand would retain the authority to remove and relocate their stand at any time. It would be illegal to relocate a blind or stand that was lawfully placed by another.

The department would survey hunter's opinions and evaluate concerns that are identified during the trial period.

In statewide voting on a comparable advisory proposal at 2015 spring fish & wildlife hearings, voting was supportive with results of Ayes, 1,814; Noes, 1,687. The county vote included 45 in support, 26 opposed, and a tie in one. For counties with area north of State Hwy 64, support was stronger and included 15 in support, 5 opposed, and a tie vote in one.

For many species, the department has established "hunting hours" so that the times of day when hunting can occur are limited. Typically, hunting is only allowed from 30 minutes before sunrise until 20 minutes after sunset. For clarity of meaning, these rules would change the way the department describes the times of day when hunting is allowed for certain species, potentially identifying them as "shooting hours" rather than "hunting hours". In some people's view this would, for instance, clarify that it is legal to remain in a hunting blind or stand after hunting hours in order to observe game or prevent spooking game from an area as long as the person does not shoot.

**Anticipated Private Sector Costs and Economic Impact of Implementing the Rule:** No private sector costs or economic impacts are anticipated. The hunting regulations proposed in this rule related to the times when hunting is allowed and the use of department managed lands will not be significantly different those in place during previous seasons. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

Pursuant to the Governor's Executive Order 50, Section II, this will be a level 3 economic impact analysis for this permanent rule. A notice for Solicitation of comments on this analysis will be posted on the department's website in February 2016 and various interest groups may be contacted by email.

**Effects on Small Business:** No effects on small businesses are anticipated. The hunting regulations proposed in this rule related to the times when hunting is allowed and the use of department managed lands will not be significantly different those in place during previous seasons. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

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**Deadline for Written Comments:** The deadline for written comments is April 11, 2016

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**SECTION 1. NR 10 (Index) is amended to read:**

NR 10.06      Hunting Shooting hours

**SECTION 2. NR 10.06 (Intro.), (1) to (6) (Intro), and (7) to (9) are amended to read:**

**NR 10.06 Hunting Shooting hours.** (1) GENERAL HUNTING. All hunting shooting hours, when specified in this chapter, mean Central Standard Time, and the daily opening (a.m.) and closing (p.m.) hours listed shall apply to the entire state.

(2) ~~HUNTING SHOOTING~~ ZONES.

(a) *General.* Two general hunting shooting hour areas are established as follows: Northern area: all of the following counties and all counties north of them; Pierce, Dunn, Eau Claire, Clark, Marathon, Shawano, Oconto, and Door. Southern area: remainder of state. In addition, the following zones are established across the northern and southern areas:

Zone

A—all that part of the state lying east of 88°-00F longitude.

B—all that part of the state lying between 88°-00F and 89°-00F long.

C—all that part of the state lying between 89°-00F and 90°-00F long.

D—all that part of the state lying between 90°-00F and 91°-00F long.

E—all that part of the state lying between 91°-00F and 92°-00F long.

F—all that part of the state lying west of 92°-00F longitude.

(b) *General prohibition.* Except as provided in subs. (6) to (9), no person may ~~hunt or shoot~~ or shoot at any game species for which an open season is prescribed on any day during the open season before the a.m. times or after the p.m. times established in sub. (5).

(5) ~~HUNTING SHOOTING~~ HOURS. Hunting Shooting hours for bear, bow deer, deer with firearms, elk and small game are 30 minutes before sunrise through 20 minutes after sunset. Hunting Shooting hours for migratory game birds are 30 minutes before sunrise to sunset except for teal during a season for hunting teal species only. The hours for hunting shooting teal during a teal-only season shall be sunrise through 7:00 p.m. except on the first day when hunting shooting hours begin at 9:00 a.m. All pheasant hunting shooting starts at 9:00 a.m. on the first day of the pheasant hunting season established in s. NR 10.01 (2) (c). The department shall establish the specific opening and closing times annually in the hunting regulations pamphlets. Opening and closing times for zone A southern and northern areas shall be based on astronomical data collected by the U.S. naval observatory, Washington D.C., 20392-5420 for Sheboygan, Wisconsin and Powers, Michigan, respectively. The hunting shooting hours for the other zones shall be obtained by adding minutes to the Zone A a.m. and p.m. columns as follows:

(6) PHEASANT HUNTING. Except as provided in this subsection, pheasant hunting shooting hours are those hunting hours established for small game in sub. (5). Pheasant hunting shooting hours shall close at 2:00 p.m. on weekdays within the posted boundaries of the following state wildlife areas beginning the third day of the pheasant hunting season established in s. NR 10.01 (2) (c) and continuing through November 3:

(7) WILD TURKEY HUNTING. The hunting shooting hours for pursuing wild turkeys shall be the same as the hours established in sub. (5) except that spring season hunting shooting hours shall close at sunset daily.

(8) EXCEPTIONS. There are no hunting shooting hour restrictions for pursuing coyote, fox, raccoon and all wild animals for which no closed season is established except as follows:

(a) *Bear, deer, and elk seasons.* ~~Hunting~~ Shooting hours established in sub. (5) shall apply to archers and crossbow hunters pursuing any species during the black bear season established in s. NR 10.01 (3) (g), during the archery and crossbow deer seasons established in s. NR 10.01 (3) (em) and (ep), and during the elk season established in s. NR 10.01 (3) (i).

(b) *Gun deer season.* ~~Hunting~~ Shooting hours established in sub. (5) shall apply statewide to archer, crossbow and gun hunters pursuing any species, except migratory game birds listed in s. NR 10.01 (1), during the period beginning on the Saturday preceding the Thanksgiving day holiday and continuing for 9 consecutive days in the central farmland and forest deer management zones established in s. NR 10.28 (4).

**Note:** The shooting hours for deer hunting with firearms hours do not apply to persons hunting coyote, fox, raccoon, or other wild animals for which no closed season has been established during the muzzle-loader season, an extended gun deer season or the extended gun season dates following the 9-day deer gun season in a metro deer management unit or in the southern farmland deer management zone.

**(9) DAILY MIGRATORY BIRD REST PERIOD.**

(a) ~~Hunting~~ Shooting hours for certain species shall close at 1:00 p.m. daily within the posted boundaries of the following state wildlife areas on the following dates:

1. George W. Mead Wildlife Area (Wood, Portage, and Marathon Counties) for waterfowl beginning on the third day of the duck hunting season in s. NR 10.01 and continuing for 16 days.

2. Zeloski Unit of the Lake Mills Wildlife Area (Jefferson County) for migratory birds beginning on Sept 1 and continuing through the 16th day after the opening weekend of the duck season established in s. NR 10.01 except that normal statewide ~~hunting~~ shooting hours apply on the opening weekend of the duck season.

**SECTION 3. NR 10.07 (2) (b) 3. and 4. are amended to read:**

NR 10.07 (2) (b) 3. Scent may be used for hunting game and, except as allowed under subd. 4., the scent may not be placed or deposited in a manner in which it is accessible for consumption by deer or elk, and scents shall be removed daily at the end of ~~hunting~~ shooting hours for deer established in s. NR 10.06 (5).

4. Two ounces or less of scent may be placed, used or deposited in any manner for hunting game and does not need to be removed daily at the end of ~~hunting~~ shooting hours.

**SECTION 4. NR 10.11 (6) is repealed.**

**SECTION 5. NR 10.12 (3) (d) is amended to read:**

NR 10.12 (3) (d) *Blind removal.* All open water blinds shall be removed at the close of ~~hunting~~ shooting hours each day.

**SECTION 6. NR 10.22 (3) (d) and (Intro.) are amended to read:**

NR 10.22 (3) (d) *Hunting Shooting hours.* The ~~hunting~~ shooting hours for all species shall be the hours established in s. NR 10.06.

**SECTION 7. 10.23 (4) (b) and (6) (b) are amended to read:**

NR 10.23 (4) (b) Registration station hours shall begin one hour before the start of ~~hunting~~ shooting hours. Hunters shall report to such station immediately after the close of ~~hunting~~ shooting hours each day as established in sub. (6).

(6) SEASON AND ~~HUNTING~~ SHOOTING HOURS. (b) The commencement of the daily ~~hunting~~ shooting hours shall conform to those in s. NR 10.06 except that ~~hunting~~ shooting hours shall terminate at noon each day unless otherwise indicated by signs posted at the registration station.

**SECTION 8. NR 10.24 (4) (f) and (6) (b) to (d) are amended to read:**

**NR 10.24 (4) (f) *Check-in deadline.*** Any person who obtains a hunting permit reservation and arrives at the department's check-in station after the opening of ~~hunting~~ shooting hours shall forfeit such reservation. Any person with a waterfowl hunting permit reservation shall report at the department's check-in station no later than one-half hour before the opening of ~~hunting~~ shooting hours or forfeit the reservation. Any person may obtain a daily permit on a first-come, first-served basis provided a permit is available.

(6) (b) *Waterfowl and deer hours.* The daily opening of ~~hunting~~ shooting hours for waterfowl and deer are established in s. NR 10.06.

(c) *Pheasant season exception.* The daily opening of ~~hunting~~ shooting hours shall be in accordance with ss. NR 10.01 and 10.06 except during the pheasant season. During the pheasant season the daily opening of ~~hunting~~ shooting hours shall be as follows:

(d) *Special closure.* The daily closing of ~~hunting~~ shooting hours for all species is established in s. NR 10.06 except during pheasant season when all ~~hunting~~ shooting except for waterfowl south of state highway 142 and archery deer shall end at 2:00 p.m. after the Saturday nearest October 17.

**SECTION 9. NR 10.275 (2) is amended to read:**

**NR 10.275 (2) ~~HUNTING~~ SHOOTING HOURS.**

(a) Except as provided under pars. (b) and (c), the ~~hunting~~ shooting hours for pursuing small game at Governor Dodge, Mill Bluff and Mirror Lake state parks shall be the same as the hours established in s. NR 10.06 (5) except that ~~hunting~~ shooting hours will close at 12:00 noon daily at times when the Natural Resources Board has made a determination to generally prohibit hunting at other state parks under s. 29.089 (1m) (b) 2., Stats. Hunting is allowed under the specific season frameworks for these parks established in s. NR 10.01.

(b) The ~~hunting~~ shooting hours for pursuing migratory game birds at Governor Dodge and Mill Bluff state parks shall be the same as the hours established in s. NR 10.06 (5) except that ~~hunting~~ shooting hours shall close at 12:00 noon daily at times when the Natural Resources Board has made a determination to generally prohibit hunting under s. 29.089 (1m) (b) 2., Stats. Hunting is allowed under the specific season frameworks for these parks established in s. NR 10.01.

(c) The ~~hunting~~ shooting hours for pursuing migratory game birds at Mirror Lake state park shall be the same as the hours established in s. NR 10.06 (5).

**SECTION 10. NR 13.30 (2) (f) is amended to read:**

**NR 13.30 (2) (f)** Section NR 10.06 ~~Hunting~~ Shooting hours.

**SECTION 11. NR 13.42 (3) is amended to read:**

**NR 13.42 (3) ~~HUNTING~~ SHOOTING HOURS.** No ~~hunting~~ shooting hours apply for any open season authorized by this chapter from March 1 through August 31.

**SECTION 12. NR 18.04 (Note) is amended to read:**

**NR 18.04**

**Note:** Daily kill and possession limits, ~~hunting~~ shooting hours, and other small game rules established for hunting by chs. NR 10, 11, and 15 and ch. 29 Stats., apply.

**SECTION 13. NR 45.04 (2) (a) 2. is amended to read:**

**NR 45.04 (2) (a) 2.** Hunters or trappers entering department lands during an open hunting or trapping season on the land, provided the entry is no earlier than ~~one hour prior to the opening of hunting or trapping hours established in ch. NR 10~~ 90 minutes prior to sunrise. ~~If the department has not established hunting hours on the land, hunters may enter the land no earlier than one hour prior to sunrise.~~

**SECTION 14. NR 45.09 (2) (a) is amended to read:**

**NR 45.09 (2) (a)** ~~Except as provided in subd. (1) to (4), construct~~ Construct, occupy, place, or use any elevated or ground blind or other elevated device ~~except: that portable tree stands and blinds may be used provided they are removed from the property each day at the close of hunting hours. Unoccupied tree stands shall have the owner's department customer identification number or the owner's name and address, written in the English language attached to the tree stand in a manner so it is clearly visible to a person standing on the ground, and kept legible at all times.~~

**SECTION 15. NR 45.09 (2) (a) (1) to (4) are created to read:**

**NR 45.09 (2) (a) 1.** On any land that is part of the state park system, open to hunting, and located north of State Highway 64, portable tree stands and blinds may remain placed throughout the timeframe beginning seven days prior to, and ending seven days after, an established fall hunting period.

**2.** On any land not part of the state park system, open to hunting and located north of State Highway 64, portable tree stands and blinds may remain placed throughout the timeframe beginning September 1 and ending January 31.

**3.** On any land open to hunting not identified in (1) or (2), portable tree stands and blinds may remain placed only during the daily timeframe beginning one hour prior to, and ending one hour after, the shooting hours established in s. NR 10.06.

**4.** Portable tree stands and blinds may be occupied and used while lawfully placed under (1) to (3).

**SECTION 16. NR 45.09 (2) (b) is amended to read:**

**NR 45.09 (2) (b)** Cause damage to trees by the placement or erection of portable tree stands or by any other manner while climbing or hunting from a tree. Careful pruning of limbs less than 1 inch in diameter on a tree in which a tree stand is used shall not be considered causing damage to the tree.

**SECTION 17. NR 45.09 (2) (d) to (f) and (Note) are created to read:**

**NR 45.09 (2) (d)** Place, use, or own an unoccupied tree stand unless the owner's department customer identification number, or the owner's name and address, is written in the English language, attached to the tree stand in a manner so it is clearly visible to a person standing on the ground, and kept legible at all times.

**(e)** Prohibit any person from using a blind or stand that is not occupied and being used by the owner, except that the owner of the blind or stand retains the authority to remove and relocate their stand

at any time. A blind or stand placed on department lands does not reserve that location for the exclusive use of the owner or other person placing the blind or stand.

(f) Relocate a blind or stand that is lawfully placed by another.

**Note:** Section NR 45.04 (3) (g) prohibits any person from destroying, molesting, possessing without permission, removing or attempting to remove the property of another.

**SECTION 18. EFFECTIVE DATE.** This rule shall take 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 19. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on

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

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)