Henning, Jocelyn P.

From: jstark@glifwc.org
Sent: Wednesday, November 21, 2012 12:04 PM
To: Williams, Quinn L - DNR; Milligan, Diane L.
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Subject: RE: Lac Courte Oreilles Indians v. State of Wisconsin - Enacted Tribal Night Hunting Regulations/Commission Order 2012-05
Attachments: Commisison Order. Night Hunting Regulations. Final Signed.pdf

Boozhoo Mr. Williams:

As previously discussed, the Commission on behalf of the Voigt Intertribal Task Force desires to inform the Department of their implementation of the attached Commission Order 2012-05 that establishes the Tribes Night Hunting Regulations for the Wisconsin portion of the 1837 and 1842 ceded territory, recently issued and effective on November 26, 2012, pursuant to the authority granted by §3.33 of the Tribes' Off-Reservation Conservation Codes, which authorizes each Tribal Conservation Department to amend §3.14, §6.12, and §6.20 of each Tribe's Code.

Please do not hesitate to contact me (ext. 2106) at any time if you have questions, if I can be of any further assistance.

Kekek Jason Stark
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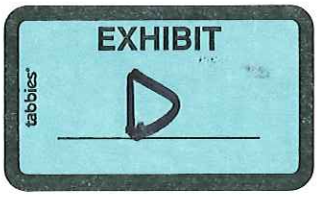

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

P. O. Box 9 • Odanah, WI 54861 • 715/682-6619 • FAX 715/682-9294

• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band
Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Fond du Lac Band
Mille Lacs Band

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION ORDER

Order No. 2012-05

Wisconsin 1837 and 1842 Ceded Territory Tribal Night Hunting Regulations

This Commission Order amends the Tribes' night hunting regulations for the Wisconsin portion of the 1837 and 1842 ceded territory pursuant to the authority granted by §3.33 of the Tribes' Off-Reservation Conservation Codes, which provides for the issuance of a Commission Order to provide tribal members more treaty harvest opportunities in line with state harvesters.

Sec. 1: Authority and Applicability; Terms Used and Definitions.

Subd. 1.1: This Order is issued in accordance with the provisions of the Tribes' Off-Reservation Conservation Codes (hereinafter "Code" or "Codes") that codify the provisions of §3.33 of the Tribes' Model Code and authorizes each Tribal Conservation Department to amend §3.14, §6.12, and §6.20 of each Tribe's Code. Upon the issuance of this Order, unless a Tribe chooses to adopt more restrictive measures, the regulations established herein shall be the Tribe's regulations as provide in each Tribe's Code.

Subd. 1.2: This Order is issued to establish culturally appropriate regulations to provide tribal members with treaty harvest opportunities in line with state harvesters in the implementation of *Section III.A.* of the *Stipulation for Technical, Management and Other Updates: Second Amendment of the Stipulation Incorporated into the Final Judgment* and as amended *Section E* of the *Stipulation for the Deer Trial* (Docket Number 1167). The Wisconsin Legislature recently enacted 2011 Wisconsin Act 169, which changed state hunting hours and provided for the use of a light at the point of kill for a big game animal (wolves). In addition, the State has utilized night sharpshooting (hunting) in its CWD deer management efforts. Likewise, the National Park Service has employed night sharpshooting (hunting) in the implementation of its deer management plan within the Apostle Islands National Lakeshore. These State/Federal management practices along with this change in State law are less restrictive than current tribal regulations. Thus, this Order is an appropriate mechanism to provide the tribes with more harvest opportunities in a manner that is the least restrictive possible.

Subd. 1.3: Terms used in the Codes shall be given the meaning set forth in the Codes when used in this Order.

Sec. 2: Tribal Night Hunting Regulations. Starting on November 26, 2012, and for each year thereafter unless and until changed by a subsequent order, mandatory reversion is required, or the parties make permanent the provisions of this order, the following parameters for tribal deer hunting at night including the use of a flashlight at the point of kill, shall apply:

Subd. 2.1: Illuminating or Shining Animals Definitions. The definitions of illuminating, shining, point of kill, and stationary are as follows.

Subsubd. 2.1.1: Illuminate Definition. Illumination is defined as the casting of rays of a flashlight on a field, forest, or other area to light up a wild animal whose position or location is known by the hunter.

Subsubd. 2.1.2: Point of Kill Definition. Point of kill is defined as the location at which a light is used to illuminate and kill a wild animal whose position or location is known by the hunter.

Subsubd. 2.1.3: Shining Definition. Shining is redefined as the casting of rays of light on a field, forest, or other area for the purpose of searching for, locating, or attempting to locate wild animals.

Subsubd. 2.1.4: Safe Zone of Fire Definition. Safe zone of fire is defined as the area in which a hunter may safely discharge a weapon.

Subsubd. 2.1.5: Stationary Definition. Stationary is defined as not moving.

Subd. 2.2: Shining General Presumption. The general prohibition on shining presumption is revised as follows: a person casting the rays of light on a field, forest or other area which is frequented by wild animals is rebuttably presumed to be shining wild animals, unless in possession of a valid night hunting permit.

Subd. 2.3: Illuminating or Shining While Hunting or Possessing Weapon General Prohibition. The general prohibition on shining is revised as follows: a member may not use or possess with intent to use a light for illuminating or shining wild animals while the member is hunting or in possession of a firearm, bow and arrow or crossbow except as otherwise provided in this ordinance.

Subsubd. 2.3.1: Illuminating While Hunting Exception. An exception to the general prohibition on shining is created as follows: a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting pursuant to the express provisions of this ordinance which allow illuminating during the open season for the animals hunted.

Subsubd. 2.3.2: Authorized Ordinance Provisions Exception. An exception to the general prohibition on shining is created for a member engaged in hunting authorized by Section 6.20 or a member engaged in fishing authorized by Section 9.06 of this ordinance.

Subd. 2.4: General Prohibition on Illuminating or Shining After 10 P.M. During Certain Times of the Year. The general prohibition on shining is revised to provide that a member may not use or possess with intent to use a light for illuminating or shining wild animals between 10 p.m. and 7 a.m. from the day after labor day to the first Sunday following New Years Day or as otherwise provided by a GLIFWC Commission Order.

Subsubd. 2.4.1: Illuminating While Hunting Exception. An exception to the general prohibition on shining after 10 p.m. during certain times of the year is created as follows: a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting pursuant to the express provisions of this ordinance which allow illuminating during the open season for the animals hunted

Subsubd. 2.4.2: Finding Your Way Exception. An exception to the general prohibition on shining after 10 p.m. during certain times of the year is created to allow a member to use a flashlight to find their way.

Subsubd. 2.4.3: Authorized Ordinance Provisions Exception. An exception to the general prohibition on shining after 10 p.m. during certain times of the year is created for a member engaged in hunting authorized by Section 6.20 or a member engaged in fishing authorized by Section 9.06 of this ordinance.

Subd. 2.5: Hunting Hours Exception for Hunting or Illuminating Deer at Night. An exception to the general deer hunting hours is established as provided in section 6.20 [Deer Night Hunting].

Subd. 2.6: Hunting or Illuminating Deer at Night. A member may hunt or illuminate deer between 50 minutes after sunset and one hour before sunrise as follows:

Subsubd. 2.6.1: The tribal conservation department may issue permits that authorize hunting deer at night, including illuminating deer, provided that no such permit shall be effective beginning the night before the middle deer season established pursuant to Section 6.07(3) until the night of the day following the middle deer season; except:

Sub-subsubd. 2.6.1.1: No member 10 years of age or older but under 16 years of age may hunt under this section unless at all times while hunting, the person is a mentored hunter who meets the requirements of section 3.17(3) of this ordinance.

Subsubd. 2.6.2: A member hunting or illuminating deer at night under this section must be in possession of a signed and certified shooting plan and a deer night hunting permit. Any member hunting or illuminating deer is subject to all terms and conditions of this section and the permit as conditioned by the tribal conservation department, as well as all other provisions of this ordinance regulating hunting, unless expressly provided otherwise;

Subsubd. 2.6.3: A member hunting or illuminating deer at night under this section shall:

Sub-subsubd. 2.6.3.1: only illuminate deer from a stationary position at the point of kill, or to trail a wounded animal;

Sub-subsubd. 2.6.3.2: only discharge a firearm, bow and arrow or crossbow from a stationary position at the point of kill once the member has accurately identified the deer and thereby safely aimed the weapon for the purpose of killing the deer;

Sub-subsubd. 2.6.3.3: only hunt or illuminate deer from October 15 to the first Sunday following New Years Day or as otherwise provided by a GLIFWC Commission Order;

Sub-subsubd. 2.6.3.4: only use a firearm, bow and arrow or crossbow if the member has received a marksmanship proficiency rating for the particular method to be utilized.

Sub-subsubd. 2.6.3.5: only use a projectile with a soft point or which is an expanding bullet type;

Subsubd. 2.6.4: A member hunting or illuminating deer at night under this section may but is not required to:

Sub-subsubd. 2.6.4.1: hunt or illuminate deer at night with the aid of electronic or other calling techniques or hunt over bait as otherwise authorized by this ordinance;

Sub-subsubd. 2.6.4.2: hunt or illuminate deer at night with the use

of an infrared scope, night vision scope, or thermal imagining scope;

Sub-subsubd. 2.6.4.3: illuminate deer with a flashlight, which may include but is not limited to high-powered lights held by hand, helmet lights, scope lights, thermal imaging lights, infrared lights, or lights mounted on a firearm, bow or crossbow.

Subsubd. 2.6.5: Before issuing a deer night hunting permit, the tribal conservation department shall ensure the receipt of a shooting plan valid from April 1 to March 31, as follows:

Sub-subsubd. 2.6.5.1: A member hunting or illuminating deer at night shall submit a signed and certified shooting plan to the tribal conservation station prior to receiving a deer night hunting permit. The member must have visited the area detailed in the shooting plan during daytime hours and the shooting plan shall clearly mark the "safe zone of fire" and detail within a quarter-mile the following locations:

Sub-sub-subsubd. 2.6.5.1.1: an area including the grounds of a school plus 1,000 feet in all directions;

Sub-sub-subsubd. 2.6.5.1.2: school forest, public landfill, or public gravel pits where hunting is prohibited and where notice of the prohibition is clearly posted;

Sub-sub-subsubd. 2.6.5.1.3: road;

Sub-sub-subsubd. 2.6.5.1.4: residence, building or dwelling;

Sub-sub-subsubd. 2.6.5.1.5: designated public campgrounds, public beaches, or public picnic area;

Sub-sub-subsubd. 2.6.5.1.6: lake or waterbody;

Sub-sub-subsubd. 2.6.5.1.7: ATV or snowmobile trail;

Sub-sub-subsubd. 2.6.5.1.8: open area;

Sub-sub-subsubd. 2.6.5.1.9: private property;

Sub-sub-subsubd. 2.6.5.1.10: all closed portions of state

parks as described in the *Tribal State Park Hunting Opportunities in the Wisconsin portion of the 1837 and 1842 Ceded Territories* document;

Sub-sub-subsubd. 2.6.5.1.11: any other area as determined by the tribal conservation department.

For purposes of compliance with this section, no member shall include the locations specified in this section within the "safe zone of fire" on any shooting plan [unless an adequate backstop is present]. Members must take reasonable precautions to prevent against the establishment of a non-compliant shooting plan.

Sub-subsubd. 2.6.5.2: A member possessing a valid disabled hunter permit pursuant to Section 3.32 of this ordinance, hunting or illuminating deer at night shall submit a shooting plan to the tribal conservation station prior to receiving a deer night hunting permit. The shooting plan shall clearly mark the "safe zone of fire" and if hunting from a roadway, the shooting plan shall detail the stretch of road and locations within a quarter-mile as provided in Sub-subsubd. 2.6.5.1.

Sub-subsubd. 2.6.5.3: When submitting a shooting plan, no member shall provide false or misleading information or otherwise fail to complete a shooting plan in the manner required by this section and the tribal conservation department;

Sub-sub-subsubd. 2.6.5.3.1: The tribal conservation department shall issue no further permits under this section for the remainder of the season to any member who has provided false or misleading information or otherwise failed to complete a shooting plan in the manner required by the tribal conservation department;

Sub-subsubd. 2.6.5.4: A member hunting or illuminating deer at night shall only discharge a firearm, bow and arrow or crossbow within the "safe zone of fire" as identified within the plan.

Subsubd. 2.6.6: A member hunting deer at night under this section may pursue and take a deer wounded by the member while shooting from a stationary position, provided that a light may be used to trail the wounded animal and/or at the point of kill for the purpose of accurately identifying the deer and safely aiming the weapon and killing the wounded deer between 50 minutes after sunset and one hour before sunrise when the wounded animal is within the safe zone of

fire designated on the member's shooting plan, however the wounded deer may not be dispatched with a firearm prior to one-half hour before sunrise when the wounded animal is located outside the safe zone of fire designated on the member's shooting plan.

Subsubd. 2.6.7: A deer night hunting permit may only be issued to members who have completed an advanced hunter safety course and received marksmanship training and a marksmanship proficiency rating from their tribe, except as follows:

Sub-subsubd. 2.6.7.1: the member has completed an advanced hunter safety course and received marksmanship training and a marksmanship proficiency rating from another tribe, state or province and the course, training and proficiency rating is substantially similar to the Tribe's course, training and proficiency rating; or

Sub-subsubd. 2.6.7.2: the member has completed an advanced hunter safety course from the tribe or a substantially similar course from another tribe, state or province and received marksmanship training and a marksmanship proficiency rating from the U.S. Armed Forces, Reserves, National Guard, or law enforcement agency.

Subsubd. 2.6.8: Once a permit under subsection (1) has been issued, the tribal conservation department shall at a minimum provide advance notice to appropriate federal, state and local officials.

Sec. 3: Reservation of Each Tribe's Authority. Nothing in this order is intended to, or shall be construed to, limit the authority of each Tribe to establish tribal night hunting regulations or other measures that are more restrictive than what is provided in this Order.

Dated this 21st day of November, 2012.

James E. Zorn, Executive Administrator
Great Lakes Indian Fish and Wildlife Commission

Model Code Amendment – Tribal Night Hunting Regulations

Model Code revision regarding tribal night hunting regulations [§3.14 (Illuminating or Shining Animals), §6.12 (Hunting Hours), §6.20 (Deer Night Hunting. ~~Shining Prohibited~~)]are (deletions shown by ~~strikeout~~ and additions by redline):

3.14 Illuminating or Shining Animals.

(1) Definitions. As used in this ordinance:

(a) **"Flashlight"** means a battery operated light designed to be carried and held by hand.

(b) **"Illuminate"** means the casting of rays of a flashlight on a field, forest, or other area to light up a wild animal whose position or location is known by the hunter.

(c) ~~(b)~~ **"Light"** includes flashlights, automobile lights and other lights.

(d) **"Point of Kill"** means the location at which a light is used to illuminate and kill a wild animal whose position or location is known by the hunter.

(e) ~~(c)~~ **"Shining"** means the casting of rays of light on a field, forest, or other area for the purpose of searching for, ~~illuminating,~~ locating, or attempting to ~~illuminate or~~ locate wild animals.

(f) **"Safe Zone of Fire"** means the area in which a hunter may safely discharge a weapon.

(g) **"Stationary"** means not moving.

(2) Presumption. A person casting the rays of light on a field, forest or other area which is frequented by wild animals is rebuttably presumed to be shining wild animals, unless in possession of a valid night hunting permit.

(3) Shining Wild Animals While Hunting or Possessing Weapons Prohibited.

(a) Prohibition. Except as otherwise provided in subs. (b), no member shall use or possess with intent to use a light for illuminating or shining wild animals while the member is hunting or in possession of a firearm, bow and arrow or crossbow.

(b) Exceptions. This subsection shall not apply to:

(i) a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting pursuant to the express provisions of this ordinance which allow illuminating during the open season for the animals hunted;

(ii) ~~(i)~~ a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting on foot pursuant to the express provisions of this ordinance which allow shining during the open season for the animals hunted;

(iii) ~~(ii)~~ a person authorized to enforce the provisions of this ordinance on official business;

(iv) ~~(iii)~~ an employee of the Tribe or the Commission on official business; ~~or;~~

(v) ~~(iv)~~ a person authorized by the Tribe or the Commission to conduct a game census;

(vi) a member engaged in hunting authorized by Section 6.20 of this ordinance; or

(vii) a member engaged in fishing authorized by Section 9.06 of this ordinance.

(4) Shining Wild Animals After 10 P.M. During Certain Times of the Year Prohibited.

(a) Prohibition. Except as otherwise provided in subs. (b), no member shall use or possess with intent to use a light for illuminating or shining wild animals between 10 p.m. and 7 a.m. from the day after labor day ~~September 15~~ to the first Sunday following New Years Day or as otherwise provided by a GLIFWC Commission Order ~~December 31~~.

(b) Exceptions. This subsection shall not apply to:

(i) a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting pursuant to the express provisions of this ordinance which allow illuminating during the open season for the animals hunted;

(ii) ~~(i)~~ a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting on foot pursuant to the express provisions of this ordinance which allow shining during the open season for the animals hunted;

(iii) ~~(ii)~~ a member who possesses a flashlight or who uses a flashlight while on foot and training a dog to track or hunt raccoons, foxes or other unprotected animals;

(iv) a member who possesses a flashlight or who uses a flashlight to find their way;

(v) ~~(iii)~~ a person authorized to enforce the provisions of this ordinance on official business;

(vi) ~~(iv)~~ an employee of the Tribe or the Commission on official business;

(vii) ~~(v)~~ a person authorized by the Tribe or the Commission to conduct a game census; or

(viii) ~~(vi)~~ if the tribe's governing body specifically permits a member to use or possess a light for shining wild animals during these times.

(ix) a member engaged in hunting authorized by Sections 6.20 of this ordinance; or

(x) a member engaged in fishing authorized by Section 9.06 of this ordinance.

* * * * * * *

6.12 Hunting Hours.

(1) No member shall hunt deer except during the following hours (dates and times are inclusive and all times refer to Central Standard Time and should be adjusted one hour as necessary to account for Daylight Savings Time):

(a) The day after Labor Day ~~July 1~~- close of the deer "regular season; One-half hour before sunrise to 20 minutes after sunset or as otherwise provided by a GLIFWC Commission Order, except as provided in Section 6.20 of this ordinance.

(2) Lawful deer hunting hours shall be determined in accordance with the Tribal Hunting Hours Zone/Table attached to this ordinance after Chapter 14.

* * * * * * *

6.20 Deer Night Hunting. ~~Shining Prohibited.~~

~~No member shall hunt deer while shining as defined in Section 3.14.~~

(1) The tribal conservation department may issue permits that authorize hunting deer at night, including illuminating deer, between 50 minutes after sunset and one hour before sunrise, provided that no such permit shall be effective beginning the night before the middle deer season established pursuant to Section 6.07(3) until the night of the day following the middle deer season; except:

(a) No member 10 years of age or older but under 16 years of age may hunt under this section unless at all times while hunting, the person is a mentored hunter who meets the requirements of section 3.17(3) of this ordinance.

(2) No member shall hunt or illuminate deer at night under this section unless in possession of a signed and certified shooting plan and a permit issued pursuant to subs. (1). Any member hunting or illuminating deer under this section shall be subject to all terms and conditions in this section and in the permit issued pursuant to subs. (1) as otherwise conditioned by the tribal conservation department, as well as all other provisions of this ordinance regulating hunting, unless expressly provided otherwise in this section.

(3) No member hunting or illuminating deer at night under this section shall:

(a) illuminate deer between 50 minutes after sunset and one hour before sunrise except from a stationary position at the point of kill, or to trail a wounded animal;

(b) discharge a firearm, bow and arrow or crossbow between 50 minutes after sunset and one hour before sunrise except from a stationary position at the point of kill once the member has accurately identified the deer and thereby safely aimed the weapon for the purpose of killing the deer;

(c) hunt or illuminate deer between 50 minutes after sunset and one hour before sunrise from the first Monday following New Years Day to October 14;

(d) use a firearm, bow and arrow or crossbow unless the member has received a marksmanship proficiency rating for the particular method to be utilized.

(e) use a projectile other than one with a soft point or which is an expanding bullet type;

(4) A member hunting or illuminating deer at night under this section may but is not required to:

(a) hunt or illuminate deer between 50 minutes after sunset and one hour before sunrise with the aid of electronic or other calling techniques or hunt over bait as otherwise authorized by this ordinance;

(b) hunt or illuminate deer between 50 minutes after sunset and one hour before sunrise with the use of an infrared scope, night vision scope, or thermal imagining scope;

(c) illuminate deer between 50 minutes after sunset and one hour before sunrise with a flashlight, which may include but is not limited to high-powered lights held by hand, helmet lights, scope lights, thermal imaging lights, infrared lights, or lights mounted on a firearm, bow or crossbow.

(5) Before issuing a permit pursuant to subs. (1), the tribal conservation department shall ensure the receipt of a shooting plan valid from April 1 to March 31, as follows:

(a) A member hunting or illuminating deer at night shall submit a "signed and certified" shooting plan to the tribal conservation station prior to receiving a permit

pursuant to subs. (1). The member must have visited the area detailed in the shooting plan during daytime hours and the shooting plan shall clearly mark the "safe zone of fire" and detail within a quarter-mile the following locations:

(i) an area including the grounds of a school plus 1,000 feet in all directions;

(ii) school forest, public landfill, or public gravel pits where hunting is prohibited and where notice of the prohibition is clearly posted;

(iii) road;

(iv) residence, building or dwelling;

(v) designated public campgrounds, public beaches, or public picnic area;

(vi) lake or waterbody;

(vii) ATV or snowmobile trail;

(viii) open area;

(ix) private property;

(x) all closed portions of state parks as described in the *Tribal State Park Hunting Opportunities in the Wisconsin portion of the 1837 and 1842 Ceded Territories* document;

(xi) any other area as determined by the tribal conservation department.

For purposes of compliance with this section, no member shall include the locations specified in this section within the "safe zone of fire" on any shooting plan [unless an adequate backstop is present]. Members must take reasonable precautions to prevent against the establishment of a non-compliant shooting plan.

(b) A member possessing a valid disabled hunter permit pursuant to Section 3.32 of this ordinance, hunting or illuminating deer at night shall submit a shooting plan to the tribal conservation station prior to receiving a permit pursuant to subs. (1). The shooting plan shall clearly mark the "safe zone of fire" and if hunting from a roadway, the shooting plan shall detail the stretch of road and surrounding locations within a quarter-mile pursuant to subs. (5)(a);

(c) When submitting a shooting plan, no member shall provide false or misleading information or otherwise fail to complete a shooting plan in the manner required by the tribal conservation department;

(i) The tribal conservation department shall issue no further permits under this section for the remainder of the season, to any member who has provided false or misleading information or otherwise failed to complete a shooting plan in the manner required by this section and the tribal conservation department.

(d) No member hunting or illuminating deer at night shall discharge a firearm, bow and arrow or crossbow except within the "safe zone of fire" as identified within the plan.

(6) A member hunting deer at night under this section may pursue and take a deer wounded by the member while shooting from a stationary position, provided that a light may be used to trail the wounded animal or at the point of kill for the purpose of accurately identifying the deer and safely aiming the weapon and killing the wounded deer between 50 minutes after sunset and one hour before sunrise when the wounded animal is within the safe zone of fire designated on the member's shooting plan, however the wounded deer may not be dispatched with a firearm prior to one-half hour before sunrise when the wounded animal is located outside the safe zone of fire designated on the member's shooting plan.

(7) A permit may be only issued to members pursuant to subs. (1) who have completed an advanced hunter safety course and received marksmanship training and a marksmanship proficiency rating from the tribe, except as follows:

(a) the member has completed an advanced hunter safety course and received marksmanship training and a marksmanship proficiency rating from another tribe, state or province and the course, training and proficiency rating is substantially similar to the Tribe's course, training and proficiency rating; or

(b) the member has completed an advanced hunter safety course from the tribe or a substantially similar course from another tribe, state or province and received marksmanship training and a marksmanship proficiency rating from the U.S. Armed Forces, Reserves, National Guard, or law enforcement agency.

(8) Once a permit pursuant to subs. (1) has been issued, the tribal conservation department shall at a minimum provide for the advance notification of appropriate federal, state and local officials.