# WEST VIRGINIA SECRETARY OF STATE JOE MANCHIN, III ADMINISTRATIVE LAW DIVISION

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CINCLES TYSTA

Form #3

# NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

| AGENCY: BOC, DNR - Wildlife Resources Section          | TITLE NUMBER: 58 |
|--|------------------|
| CITE AUTHORITY: 20-1-7(30)                             | ·                |
| AMENDMENT TO AN EXISTING RULE: YES X NO                |                  |
| IF YES, SERIES NUMBER OF RULE BEING AMENDED: 47        | -                |
| TITLE OF RULE BEING AMENDED: Prohibitions When Hunting | and Trapping     |
| <u> </u>   |                  |
|  |                  |
| IF NO, SERIES NUMBER OF RULE BEING PROPOSED:           |                  |
| TITLE OF RULE BEING PROPOSED:                          |                  |
|  |                  |
|  |                  |

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature



# TITLE 58 LEGISLATIVE RULE DIVISION OF NATURAL RESOURCES

### SERIES 47 PROHIBITIONS WHEN HUNTING AND TRAPPING

### **SUMMARY OF THE RULE**

Title 58, Series 47, Prohibitions When Hunting And Trapping establishes prohibitions for the pursuit or taking of wildlife within the boundaries of this State.

## TITLE 58 LEGISLATIVE RULE DIVISION OF NATURAL RESOURCES

### SERIES 47 PROHIBITIONS WHEN HUNTING AND TRAPPING

### CIRCUMSTANCES REQUIRING THE PROPOSED RULE

The Division of Natural Resources proposes to modify in 3.6.1. that it is illegal to feed and/or take, or attempt to take, by the aid of baiting any game animal or game bird on any public lands at any time.

The Division of Natural Resources proposes to clarify in 3.7.1. that persons legally hunting waterfowl during the muzzleloader deer season may possess nontoxic shot shells containing larger than No. 4 shot but may not possess solid ball ammunition.

The Division of Natural Resources proposes to modify in 3.14. that it is illegal to take, or attempt to take, any deer, bear or boar by the aid or use of any electronic call.

The Division of Natural proposes to clarify in 3.15., 3.15.1, 3.15.2, 3.15.3. that it is illegal for any person to use a modified bow for the purpose of hunting or fishing unless he or she possesses a special permit to do so issued by the director.

### FISCAL NOTE FOR PROPOSED RULE

| Type of Rul | e <u>X</u>      | Legislative           | Interpretive             | Procedural |  |
|-------------|-----------------|-----------------------|--------------------------|------------|--|
| Agency _    | Division of     | Natural Resources, Wi | Idlife Resources Section |            |  |
| Address _   | Capitol Complex |                       |                          |            |  |
| _           | Building 3,     | Room 842              | 2222222                  |            |  |
|             | Charleston      | WV 25305              |                          |            |  |

### 1. Effect of Proposed Rule

|                       | ANNUAL   |          | FISCAL YEAR |      |            |
|-----------------------|----------|----------|-------------|------|------------|
|                       | INCREASE | DECREASE | CURRENT     | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST  | 0        | 0        | 0           | 0    | 0          |
| PERSONAL SERVICES     |          |          |             |      |            |
| CURRENT EXPENSE       |          |          |             |      |            |
| REPAIRS & ALTERATIONS |          |          | <u> </u>    |      |            |
| EQUIPMENT             |          |          |             |      |            |
| OTHER                 |          |          |             |      |            |

- 2. Explanation of above estimates: No cost to enact and enforce this rule.
- 3. Objectives of these rules: Establishes prohibitions for the pursuit or taking of wildlife within the boundaries of this state.
- 4. Explanation of overall Economic Impact of Proposed Rule.
  - A. Economic Impact on State Government: No impact.

Rule Title: Series 47, Prohibitions When Hunting and Trapping

- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: No impact.
- C. Economic Impact on Citizens/Public at Large: No impact.

Date: 7-24-02

Signature of Agency or Authorized Representative:

ED HAMRICK, DIRECTOR

### **QUESTIONNAIRE**

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

| DATE: | . <u>J</u>     | uly 26, 2002  |
|-------|----------------|---|
| TO:   | LF             | EGISLATIVE RULE-MAKING REVIEW COMMITTEE   |
| FROM  | [:( <i>A</i> g | gency Name, Address & Phone No BOC - DNR - Wildlife Resources Section   |
|       |                | 1900 Kanawha Blvd., E.  |
|       |                | Charleston, WV 25305  |
| LEGIS | LA             | TIVE RULE TITLE: Prohibitions When Hunting and Trapping   |
| 1.    | Au             | thorizing statute(s) citation 20-1-7(30)  |
| 2.    | a.             | Date filed in State Register with Notice of Hearing or Public Comment Period:  June 14, 2002  |
|       | b.             | What other notice, including advertising, did you give of the hearing?  No public hearing was held. There was a 30 day comment period which was also advertised |
|       |                | in a statewide News Release distributed June 19, 2002   |
|       | c.             | Date of Public Hearing(s) <i>or</i> Public Comment Period ended:  July 15, 2002   |
|       | d.             | Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  |
|       |                | Attached X No comments received   |

|            | lic hearing: (be exact)  |
|------------|--|
| N/A        |  |
|            | ne, title, address and phone/fax/e-mail numbers of agency person(s) to receive written correspondence regarding this rule: (Please type)   |
| Cur        | tis Taylor, Chief  |
| DN         | R Wildlife Resources Section   |
| <u>Car</u> | oitol Complex, Bldg. 3, Room 842   |
| Cha        | arleston, WV 25305   |
|            | nber(s) of agency person(s) who wrote and/or has responsibility for the contents of this : (Please type)   |
|            |  |
|            |  |
|            |  |
|            | ute under which you promulgated the submitted rules requires certain findings and tions to be made as a condition precedent to their promulgation:   |
|            |  |
| termina    | tions to be made as a condition precedent to their promulgation:  Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be          |
| termina    | tions to be made as a condition precedent to their promulgation:  Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided. |
| termina    | tions to be made as a condition precedent to their promulgation:  Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided. |

3.

| b. | Date of hearing or comment period:   |
|----|--|
|    | N/A  |
| c. | On what date did you file in the State Register the findings and determinations required together with the reasons therefor? |
|    | N/A  |
| d. | Attach findings and determinations and reasons:  |
|    | Attached N/A   |



### **DIVISION OF NATURAL RESOURCES**

Wildlife Resources Section
Capitol Complex, Building 3, Room 812
1900 Kanawha Boulevard, East
Charleston WV 25305-0664
Telephone (304) 558-2771
Fax (304) 558-3147
TDD 1-800-354-6087

Bob Wise Governor Ed Hamrick Director

July 15, 2002

Mr. William R. Hamons Rural Route 1, Box 304F Marlinton, West Virginia 24954

Dear Mr. Hamons:

Thank you for taking the time to provide written comment on the proposed Division of Natural Resources' rule to make it illegal to feed and bait game birds and game animals on all public lands in the state. We are pleased to receive your comments and provide you with the following information as it relates to this matter.

This proposed regulation change was presented to sportsmen, landowners and other interested members of the public during the Division of Natural Resources' Sectional Meetings which were held last March. This proposal received strong support from the public, with 69% of the individuals and 75% of the clubs voting to support this proposed rule change. As a result, the Division of Natural Resources filed Legislative Rule 58CSR47 on June 14, 2002 to allow for the implementation of this proposal. Based on the strong support for this proposal, it is the Division of Natural Resources' intention to file the rule with the Legislative Rule Making Committee as submitted.

Pursuant to your request for information relating to the Division of Natural Resources' decision for recommending this proposed rule change, I am pleased to enclose a Briefing Report entitled: A Proposal to Prohibit Baiting and Feeding of Game Birds and Game Animals on Public Lands. Should you have any questions or require additional information in this regard, please contact my office.

Sincerely.

Curtis I. Taylor, Chief

Wildlife Resources Section

Attachments

cc: Billie Shearer (with attachments)

Wildlife Resources
Chiefs Office

Coe 62 87 17 915

MR. TAYLOR

I am writing you in regards to hunting deer over bait on public land. I do not see where it create's any problems and I am 100% in favor of hunter's being allowed to hunt deer over bait. I really don't understand why you want to Stop this, you say we need to harvest more deer and lets make it harder to do so all in the same breath. Bow hunter's can legally take three deer per year with the purchase of the two additional deer archery stamps, but if you stop the hunting of deer over bait on public lands I can't see you selling many additional Stamps. If a bow hunter can hunt deer over bait they know their chances of seeing and harvesting deer is much greater because they can place the bait at a distance which they feel confident of making a good shot which results in a clean Kill and recovery of the deer. As a hunter and a landowner I hope you will reconsider and let the hunter's Continue to hunt deer over bait.

"IF it's not broken, don't Fix it "

Thanks.

William R. Hamond



### **DIVISION OF NATURAL RESOURCES**

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Capitol Complex, Building 3, Room 812
1900 Kanawha Boulevard, East
Charleston WV 25305-0664
Telephone (304) 558-2771
Fax (304) 558-3147
TDD 1-800-354-6087

Bob Wise Governor Ed Hamrick Director

July 12, 2002

Mr. Danial L. Sharp Rural Route 1, Box 304D Marlinton, West Virginia 24954

Dear Mr. Sharp:

Thank you for taking the time to provide written comment on the proposed Division of Natural Resources' rule to make it illegal to feed and bait game birds and game animals on all public lands in the state. We are pleased to receive your comments and provide you with the following information as it relates to this matter.

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Sincerely,

Curtis I. Taylor, Chief Wildlife Resources Section

Attachments

cc: Billie Shearer (with attachments)

Danial L. Sharp RR1 Box 304d Marlinton WV. 24954

Mr. Taylor I am writing you this letter in reguards to the new law that is being sent to the law makers . I don't understand how stopping the baiting of deer will help in any form in fact it helps the deer herd as much as any thing I know it provides food . You take a year like this one going to be there is not going to be no mast for the game no apples. The only complaints I have ever heard about baiting have come from bear hunters they believe that bowhunters are killing there bear over bait this is already against the law so is baiting turkeys and boar . My question is why are we the bowhunters of WV. Being punished? The baiting of deer for the bowhunter brings the deer in close for a humaine kill after all don't the DNR want the deer kill up because of the number of deer? Everyone is talking about this change and are very unhappy about it . Please take it off the list of new laws . Thank you!

Danial L Sharp

Daniel L. Shand (3.4) 799-6907





### DIVISION OF NATURAL RESOURCES

Wildlife Resources Section
Capitol Complex, Building 3, Room 812
1900 Kanawha Boulevard, East
Charleston WV 25305-0664
Telephone (304) 558-2771
Fax (304) 558-3147
TDD 1-800-354-6087

Bob Wise Governor Ed Hamrick Director

July 15, 2002

Ms. Marylee Grismmett HC 37, Box 252 Lewisburg, West Virginia 24901

Dear Ms. Grismmett:

Thank you for taking the time to provide written comment on the proposed Division of Natural Resources' rule to make it illegal to feed and bait game birds and game animals on all public lands in the state. We are pleased to receive your comments and provide you with the following information as it relates to this matter.

This proposed regulation change was presented to sportsmen, landowners and other interested members of the public during the Division of Natural Resources' Sectional Meetings which were held last March. This proposal received strong support from the public, with 69% of the individuals and 75% of the clubs voting to support this proposed rule change. As a result, the Division of Natural Resources filed Legislative Rule 58CSR47 on June 14, 2002 to allow for the implementation of this proposal. Based on the strong support for this proposal, it is the Division of Natural Resources' intention to file the rule with the Legislative Rule Making Committee as submitted.

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Sincerely,

Curtis I. Taylor, Chief Wildlife Resources Section

Attachments

cc:

Billie Shearer (with attachments)

Wildlife Resources Wildlife Resouce Section. Building 3. Boy 842. Capital Compley. Charleston WY 25305. Dear me Taylor I would like to make a statement afout Feeding Uses on public Lond. all of puffic Lord that suronds us have Roads that you Can drive though of you Want a quiet place to hast you will have to walk afout a mile DEEL are not like Bear, a DEEL well not Come to the highway it they 5 mill a Dead animal. There has been a fow as for back as a con remember that you could feed DEEL. Bo why not leave it at that so the DEE will Stry in woods of not in people yords of Dardens in Search for food. most of Land around here is buttered for Farmar & rest is lease by Hunt Clubs. which wonit let you hunt. Jimber Cutting are cutting all of timber & Lond Devolopment are bruging rest of Please to cord With Dogs bring truining 12 month of year The you Deer Do not france a Chonce. of anywhere to go. The Farmers Would lather get Crop domage permit & Kill The DEE ther let people hunt, I who Knows what become of DEE afte May are Killed A rules they are telled an highway they do a lat of Domone to Velides,

Off Street a away from Druge tohy not get them dontersted in Hunting of getting out doors But no Kiel Want to Bet all day in woods of not see a clear. So why not let us Feed the DEER 4 Keep thehr This State of country would be a better Place to live in if more people would be out bunting and it would be more Human to place a well aimed Shot & Kell it then trying to hit one surring through woods, only to cripple it or loose it in woods grumpe of Junior delich in 7002. all Same Station say it was way down. But they Will say it because of Doys been trained you around. So please let people Jeed the DEER, fecause of late Freeze this year there will be no mass bor them to Ext.

> Thomp you Mary les Siments HC 37 Box 252 Lew isturg w V 24901

### A Proposal to Prohibit Baiting and Feeding of Game Birds and Game Animals on Public Lands

**A Briefing Report** 

Prepared by:
West Virginia Division of Natural Resources
Wildlife Resources Section
February 2002

### A Proposal to Prohibit Baiting and Feeding of Game Birds and Game Animals on Public Lands

### Proposal:

Prohibit baiting and feeding of game birds and game animals on public lands.

### Background:

West Virginia permits feeding wildlife for observational purposes. Taking advantage of artificially concentrated populations of certain game species at bait sites by hunters in West Virginia is generally prohibited. Bait has been defined to include cereal grains or other foodstuffs, and salt or sugar based products that serve as an enticement or attractant to deer (Shipes unpbl. 1993). West Virginia defines bait as: shelled, shucked, or unshucked corn, wheat or other grain, or any other feed or edible enticement. For at least the past 40 years, it has been illegal to catch, capture, take, or kill any gallinaceous bird (wild turkeys, ruffed grouse and bobwhite quail) over bait. The U.S. Fish and Wildlife Service and our conservation officers enforce laws prohibiting baiting for all migratory birds. Black bear laws were overhauled and baiting was prohibited in 1986. West Virginia laws and regulations are not consistent because non-furbearing animals including rabbits, squirrels, and white-tailed deer are allowed to be taken over bait. Current regulations prohibiting baiting are difficult to impossible to enforce in West Virginia mainly because deer are exempt. This paper examines the impacts of baiting and feeding.

In 1999, the Georgia Department of Natural Resources (GA DNR) conducted a nationwide survey of state wildlife agencies to examine the practice of baiting (GA DNR 1999). In the Southeast, 10 of the 16 states permit baiting with or without restrictions i.e., temporal, geographic, land ownership, and food type. More recently, a survey conducted by the National Wild Turkey Federation in 2001 indicated 61% (30 of 49 states reporting) restrict baiting of deer. Twenty-four states (49%) prohibit baiting entirely, and 6 states (12%) allow baiting only in a portion of their state or on private lands.

Surveys of 2,000 randomly selected Michigan hunters were conducted in 1984 and 1991. These surveys showed that hunters using bait increased from 199,388 in 1984 to 328,000 in 1991. Similarly, bait distribution increased from 16.3 bushels per hunter to 40.0 during the same time. Baiting in Michigan has turned into a multi-million dollar industry. Hunters spent in excess of 50 million dollars on bait in 1991. The escalation of baiting led to an increase in harvest over bait, but did not increase the total deer harvest. In 1984, 17% of all deer were killed over bait; by 1991, this figure had doubled. Winterstein et al. (1994) predicted this number would continue to increase, as 32% of their survey participants did not know baiting was legal.

Of our neighboring states, Kentucky and Maryland are the only ones that permit baiting and Maryland restricts it to private land. Virginia not only prohibits baiting but feeding deer as well.

Mississippi Department of Wildlife, Fisheries and Parks does not permit baiting of deer, and a 1998 survey showed 64% of their hunters opposed hunting deer over bait (MS Dept. of Wildlife, Fisheries and Parks, undated).

Unanticipated sociological impacts may occur as baiting increases (Winterstein et al. 1994). It is expected the same phenomenon will occur in West Virginia as hunters become more familiar with the practice. The increase in baiting has led to hunter conflicts on public lands in Wisconsin, Michigan and Georgia. Hunters employing bait have become territorial, resulting in baiters running other hunters out of "their" area. After baiting increases, new laws will become necessary to control the practice. Michigan recently has had to enact laws regulating the amount of bait to be dispensed and restricting feeding of deer and elk. Hunters were placing massive piles of bait and competition for baited sites on public lands necessitated controls. Laws had to be enacted to control the distance feeding may be permitted from a residence in attempts to reduce disease outbreaks.

Hunting deer over bait will more than likely lead to a negative influence on non-hunter attitudes toward hunting. Non-hunter perception of "unsporting" behaviors can create a poor image of those who participate in or allow the practice and thus erode credibility of a wildlife agency and its hunting constituents (Peyton 1998). Sixty-nine percent of Mississippi residents in general opposed a change in hunting regulations that would allow hunting deer over bait (24% supported, 8% no opinion). Even in Michigan, a state with a history of baiting, baiting has remained a contentious issue. Fifty-eight percent of the non-hunting public, who are not against hunting, find hunting deer over bait unacceptable.

The controversy surrounding baiting for bears and ethics of baiting has even been reported in the national news media (Begley and Glick 1996). Based on the number of antibaiting initiatives that have appeared on state ballots, baiting is viewed as unsportsmanlike conduct among many people in general. The common perception among hunters is that the practice of baiting constitutes an unfair advantage (Kurzejeski and Vangilder 1992).

Legalizing hunting of deer over bait increases conflicts and polarization among hunters (hunters that bait versus hunters that do not bait) and this further weakens the unity and strength of the hunting community, which is already a minority of the general public. Hunter conflicts arise from baiting competition between adjoining landowners attempting to attract and hold deer or other wildlife on their property.

Feeding of wildlife tends to have social consequences perhaps even more far reaching than baiting. Wildlife is owned by all citizens, but feeding can blur the distinction of wild versus domestic and free-ranging versus private (Williamson 2000). Citizens who feed wildlife tend to start assuming ownership of the animals they feed. Many people who generally support hunting may become inclined to change their mind when "their animals" are subject to hunting.

The future of wildlife depends on wild places that support diverse, healthy, sustainable wildlife populations. Williamson (2000) wrote that feeding is no "shortcut" in providing habitat, and feeding can cause society to disregard the larger issues of wildlife habitat loss and degradation.

Feeding violates a number of basic tenets of the wildlife management profession (Williamson 2000). For example, supplemental feeding of wildlife by private citizens focus on individual animals, not populations. Supplemental feedings is not a natural process and can disrupt existing natural processes. Supplemental feeding reduces wild animals and birds to a semi-domestic state, compromises inherent wildness, and decreases the value of wildlife to society.

No doubt hunters bait because they believe baiting improves hunting success. Research on this subject is conflicting. Although Synatzske (1981) and Winterstein (1992) found an increase in hunter success when done in conjunction with baiting, Langenau et al. (1985) and Wisconsin Bureau of Wildlife Management (1993) found that hunters that did not use bait were just as effective in harvesting deer as those that baited.

Hunter numbers are not often restricted on public land so baiting could easily become uncontrollable as hunters try to out-compete each other. Baiting on public land can lead to hunters claiming individual locations they have baited (Mississippi Department of Wildlife, Fisheries and Parks, undated). The West Virginia Division of Natural Resources strives to manage its land to be exemplary wildlife management areas and encourages other managers of publicly owned land to do the same. This management requires habitat management and improvement with regulated hunting to maintain wildlife in balance with what the habitat will support. Artificial feeding and baiting simply conflicts with these proven wildlife management practices.

The impact of deer on vegetation (Hough 1965, Tilghman 1989) is well documented. Concentrating deer at or near bait or feeding sites during poor mast years intuitively results in increased herbivory in that localized area. Doenier et al. (1997) determined that deer have a strong affinity to feeding sites, remaining within 300 meters of the feeding station throughout the winter. This affinity led to an increase in browse damage on and near feed areas to tree regeneration compared to areas without feeding sites. Numerous counties throughout the State support deer populations at or exceeding carrying capacity; therefore, bait and feed sites may serve to expedite this localized over browsing. Changes in tree species composition, retarded forest regeneration, and delayed development of forest stands from over browsing will impact habitat and wildlife for future generations of hunters to enjoy.

Differential utilization of bait sites has been observed in Mississippi (Darrow unpbl. M.S. Thesis, 1993). Bucks and does utilized the baited areas disproportionate to their occurrence in the population, which was similar to findings by Synatzske (1981) in Texas. Unlike adult visitation to bait which exhibited peaks in use, Darrow (1993) found fawns consistently coming to bait and earlier in the evening, thus increasing their susceptibility to harvest. The harvest of male fawns exceeded that of female fawns at bait sites in Texas (Synatzske 1981). Examining use of bait sites on a 24-hour period, less than 4% of the activity occurred during the legal shooting hours for each age and sex group (Darrow 1993). Differential use of bait favoring bucks and fawns and their concomitant harvest further compounds our herd reduction efforts.

Recent results in West Virginia suggest a potential relationship of baiting and illegal harvest of black bears. Prior to the legalization of baiting for white-tailed deer, bowhunter harvests had no relationship with food abundance. But since baiting has been legal for deer, bear archery harvests

have increased during years of food shortages. This suggesting baiting for deer increases the visitation of bears to baited deer areas during years of mast shortage and that some bowhunters are taking bear illegally over "deer" bait.

An indirect impact of deer baiting and feeding is the attraction this area has for raccoons and other mammalian predators. Cooper and Ginnett (1997) established 200 artificial turkey nests in conjunction with a supplemental feeding experiment. Preliminary results indicated the treatment area had a nest predation level twice that of the control. Raccoons not only ate the corn, but they were drawn to a specific site and spent more time foraging in that area. Obviously this problem would occur with year-round supplemental feeding and baiting regimes.

Perhaps the greatest problem associated with baiting and feeding is the potential for spreading diseases. When deer concentrate their activities around a bait pile, the chance that diseases may be spread increases through additional nose-to-nose contact, sneezing, coughing, breathing, and salivation. Ingesting waste contaminated foodstuffs may also spread disease. Food plots established for the purposes of hunting attract deer similar to bait piles, but because of their size do not promote the intimate contact required to spread disease (Sperling 1999). Additionally, the available food in an agricultural field is relatively short lived, once its gone no more is available until the next planting season. Bovine tuberculosis (TB) exists in wild deer herds in Michigan and is believed maintained by the practice of feeding and baiting (Schmitt et al. 1997). Baiting and feeding promote the inhalation of bovine TB bacteria or consumption of contaminated (from infected animals) feed. This disease, which is spread from deer to cattle, cost the agricultural industry 16 million dollars in 1999 to contain. The success of this containment is questionable with the discovery in February 2000 of an infected dairy herd in the northeastern portion of Michigan, which is outside the quarantined area.

Chronic Wasting Disease is a neurological disorder related to scrapie in sheep and bovine spongiform encephalopathy (mad-cow disease) in cows. It occurs primarily in deer and elk from Colorado, Nebraska, and Wyoming. Transmission occurs by animal to animal contact or through contaminated foods. Unlike TB, there is no known diagnostic test or treatment for living animals. Although this disease is restricted to the West and Canada, its introduction into West Virginia is only one illegally imported deer or elk away.

Mycotoxins are toxins produced by fungus, typically growing on moldy/spoiled grain. Much of the grain sold for bait and for wildlife feeding is unfit for human consumption or feeding to livestock (Williamson 2000). Unused or contaminated bait can contribute to the introduction of the fungus Aspergilluus and its corresponding aflatoxin (type of mycotoxin) into wildlife populations. These aflatoxins cause liver damage and its impact to deer is considered minimal unless the wildlife have access to large quantities of heavily contaminated grain (Davidson and Nettles 1997). Fisher et. al. (1995) found aflatoxin levels in 51% of 39 submitted samples of shelled corn picked up at deer bait piles in North and South Carolina. Aflatoxins can kill or cause undesirable physiological changes to wild turkeys such as reduced weight gains, liver enzyme alterations, liver damage and most importantly reduced immunity to other diseases. Quist et al. (2000) recommended that wild turkeys not be exposed to feeds containing aflatoxins, and Quist et. al. (1997) and Stewart (1985) indicated that the threat of aflatoxicosis to wildlife is real albeit not well studied. Aflatoxins can also cause mortality of bobwhite quail, songbirds and mourning doves.

Blackhead is the most dreaded and devastating disease to wild turkeys. A protozoan causes this disease and wild turkeys are extremely susceptible to this disease anytime they concentrate around an infected food source. Direct transmission of the parasite can occur when turkeys consume contaminated feed, water or gravel.

Baiting and feeding with corn and apples can cause acidosis and enterotoxemia, referred to as corn toxicity. Corn toxicity can kill deer not use to this readily digestible food high in carbohydrates. Mortality is rapid and no treatment is effective. Numerous other diseases effecting deer like epizootic hemorrhagic disease, vesicular stomatitis, anthrax etc., may spread more rapidly through high deer concentrations from baiting and feeding.

Hunters and concerned citizens that bait and feed deer believe they are increasing the survival of deer and other wildlife. If in fact they do increase productivity and survival, they will raise wildlife population levels much higher than the natural habitat can support. This will prevent maintaining wildlife populations within limits of the habitat carrying capacity which is probably the single most effective means of reducing density dependent problems including infectious diseases (Davidson 1981). The potential for disease outbreaks is frequently discounted by lay people in areas where disease outbreaks have been rare, but given the fact that hunting is a multi-million dollar business in West Virginia, baiting and feeding risk damaging hunting recreation for our big game wildlife species.

Humans providing "handouts" to wildlife by feeding and baiting sometimes cannot resist the novelty of hand-feeding wildlife. This can result in serious injury to humans and wildlife. When bears are fed, they quickly adapt to people and lose their instinctual fear of humans. The end result can be scary and tragic outcomes. Fed bears have attacked humans (Weaver 1999). Anytime bears and people are in close proximity, the risk of attack is present. Usually before a risk escalates into an attack, the bear's behavior or damage causes the bear to be killed. It is a common saying in the wildlife profession that "a fed bear is a dead bear."

The basis for support or opposition to baiting among hunters seems to be largely based on perception of ethical standards and hunter success. As long as baiting is allowed, conflict among hunters and non-hunting public who ethically believe it is wrong or right will remain. Hunters are still accorded a measure of respect by non-hunters. Continuation of laws permitting baiting are a risky activity, and if the public begins to view hunting as a man sitting over a bait pile, the future of hunting will likely be in danger. The conflicts that have already arisen over baiting are evidence of the problems that can be created among hunters and between non-hunters and hunters. The positive attributes of baiting (increased hunting success and total harvest) and feeding are questionable and are far outweighed by negative attributes of baiting and feeding. Lastly, the preponderance of scientific evidence indicates that baiting and supplemental feeding of big game is a threshold that should not be crossed.

### Advantages of the Proposal:

1. Reduce hunter conflicts resulting from baiting.

- 2. Help to resolve the issue that continued legalization of baiting will have a negative influence on non-hunters and become a contentious issue among hunters and non-hunters.
- 3. Help to resolve the issue that continued legalization of baiting will lead to increased conflict and polarization of hunters.
- 4. Eliminate the passage of more laws to control baiting on public lands as it becomes more popular.
- 5. Reduce the conflict with maintaining deer populations in balance with habitat.
- 6. Minimize the issue that baiting and feeding causes society to disregard the larger issues of wildlife habitat loss and degradation.
- 7. Strengthen the importance of professional wildlife management practices on public lands.
- 8. Reduce the negative effect baiting and feeding has on deer, deer populations and wildlife habitat.
- 9. Make it easier to enforce baiting laws on other wildlife species.
- 10. Reduce predator kills of wildlife at bait sites.
- 11. Eliminate the spread of diseases in wildlife populations caused from concentration at feeding sites.
- 12. Promote better human health and safety.
- 13. Return the perception of fair chase to hunting on public land as viewed by most hunters and the general public.
- 14. Reduce the potential transmission of diseases from wildlife to livestock.

### Disadvantages of the Proposal:

- 1. Prohibits those presently feeding and baiting from continuing their activity on public land.
- 2. Slightly reduces the economic benefits of wholesalers and retailers selling bait and feed to hunters.

### Financial Impacts:

No significant economic impact is expected.

#### Recommendation:

It is recommended that baiting and feeding of game birds and game animals be prohibited on all public lands.

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# TITLE 58 LEGISLATIVE RULE DIVISION OF NATURAL RESOURCES

RECEIVED

### SERIES 47 02 JUL 26 PM 2: 03 PROHIBITIONS WHEN HUNTING AND TRAPPING

OFFICE OF STATE STATE

### §58-47-1. General.

- 1.1. Scope and Purpose. -- This rule establishes prohibitions in the pursuit or taking of wildlife within the boundaries of this State.
  - 1.2. Authority. -- W. Va. Code §20-1-7(30).
  - 1.3. Filing Date. --
  - 1.4. Effective Date. --

### §58-47-2. Definitions.

- 2.1. "Bow" means a longbow, recurved bow, or compound bow that is hand-held, and hand-drawn and held at full draw without the aid of any mechanical device. Triggering devices or release aids are legal.
- 2.2. "Modified Bow" means a longbow, recurve bow, or compound bow that has been modified or manufactured to hold the bow at full draw to accommodate a physical impairment of the user.
- 2.<u>+3</u>. All <u>other</u> terms in this rule have the meaning prescribed in the <del>Division of Natural Resources rule, Regulations Code of State Rules, §58-46, Rules Defining The Terms To Be Used Concerning All Hunting and Trapping <del>Regulations (58 C.S.R. 46)</del> <u>Rules</u>.</del>

### §58-47-3. Prohibitions.

- 3.1. Hunting is prohibited in State Parks and wildlife refuges, in safety zones in State Forests, and in safety zones in State Wildlife Management Areas.
  - 3.1.1. Federal regulations prohibit hunting in Harpers Ferry National Historical Park.
- 3.2. Notwithstanding the provisions of W. Va. Code §20-2-5(2), woodchucks may be controlled by digging them out, cutting them out or smoking them out on private land by the landowner, his or her resident children or resident parents, or a bona fide resident tenant.
- 3.3. Except as provided in Subdivisions 3.3.1 and 3.3.2 of this rule, it is illegal to use poisons, chemicals, or explosives in taking any furbearing animal, game animal, game bird, protected bird, or protected mammal.
- 3.3.1. Woodchucks may be controlled by poison, chemicals or explosives on private land by the landowner, his or her resident children or resident parents, or a bona fide resident tenant

during the period commencing each year on April 1 and ending on September 30.

- 3.3.2. Redwing blackbirds, grackles, pigeons, starlings, brownheaded cowbirds and English sparrows may be controlled by chemicals registered with the West Virginia Department of Agriculture and the United States Environmental Protection Agency when prescribed and authorized by the director in writing. Authorized users shall follow avicide label instructions and take all possible precautions in order to protect nontarget species of wildlife.
- 3.4. It is illegal to hunt from, or by means of, a motorized watercraft unless the motor has been completely shutoff and the watercraft's progress from the motor has ceased.
- 3.5. It is illegal to use or possess a fully automatic, rifle, shotgun, or pistol while hunting or pursuing wildlife at any time.
- 3.6. It is illegal to catch, capture, take, or kill, or attempt to do so, by seine, net, bait, trap, deadfall, snare, or like device of any kind, any bear, migratory bird, protected bird, protected mammal, or wild boar.
- 3.6.1. It is illegal to feed and/or take, or attempt to take, by the aid of baiting any game animal or game bird on any public lands at any time.
- 3.6.1. 3.6.2. It is illegal to take, or attempt to take, the species listed under Subsection 3.6 of this rule, by the aid of baiting. The Director considers an area to be baited for 10 days after the removal of the bait.
- 3.7. It is illegal for a person to have in his or her possession solid ball ammunition and lead or steel shotshells containing shot larger than No. 4 during the muzzleloading season, except for a person legally hunting bear or legally hunting deer with a muzzleloader firearm. The use of .22 caliber rimfire for small game hunting is legal during the muzzleloading season.
- 3.7.1. Persons legally hunting waterfowl during the muzzleloader deer season may possess nontoxic shot shells containing larger than No. 4 shot but may not possess solid ball ammunition.
- 3.8. It is illegal to use any solid ball ammunition during the two week bucks only deer season in those counties that are closed to bucks only hunting.
- 3.9. It is illegal to hunt between ½ hour after sunset and ½ hour before sunrise with a pistol, revolver or rifle larger than .22 caliber rimfire, a shotgun using solid ball ammunition or a shotgun using shot shells larger than #4 shot.
  - 3.10. It is illegal to use tree stands, except for portable tree stands, on public lands.
- 3.11. It is illegal to transport wildlife or parts of wildlife, which were killed by another hunter unless the wildlife is accompanied by a paper or tag filled out in plain English bearing the following information from the hunter that killed the wildlife: The hunter's signature, address, hunting license number (if required), official game checking tag number (if required), the date of kill, the species, and the number, and/or quantity of wildlife.
  - 3.12. It is illegal for any person to feed bears.

- 3.13. It is illegal to shoot at wildlife with either a bow or firearm after alighting from a motor vehicle along any public road or highway, unless the shooter is at least 25 yards from the motor vehicle.
- 3.14. It is illegal to take, or attempt to take, any deer, bear or boar by the aid or use of any electronic call.
- 3.15. It is illegal for any person to use a modified bow for the purpose of hunting or fishing unless he or she possesses a special permit to do so issued by the director. Application will be on forms issued by the Division of Natural Resources. These forms will include a section for a licensed physician to certify that the applicant requires a modified bow.
- 3.15.1. The physician's examination and certification must have been completed within the six months immediately preceding the date of the application.
- 3.15.2. The applicant must authorize, by written release, an examination of all medical records regarding the applicant's impairment.
- 3.15.3. This special permit must be accompanied by a valid resident or non-resident Statewide hunting and/or fishing license unless otherwise exempted from the license requirements as provided in chapter twenty of the West Virginia Code.