

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES X NO

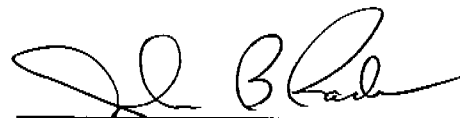
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 53

TITLE OF RULE BEING AMENDED: GENERAL TRAPPING REGULATIONS

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



JOHN B. RADER, DIRECTOR

52-80

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

SERIES 53
GENERAL TRAPPING REGULATIONS RULE

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§58-53-1. General.

1.1. Scope. -- The purpose of these this regulations rule is to establish standards that must be complied with when trapping wildlife or furbearing animals within the boundaries of this State.

1.2. Authority. -- W. Va. Code §20-1-7(30).

1.3. Filing Date. --

1.4. Effective Date. --

§58-53-2. Definitions.

2.1. All terms have the meaning prescribed to them in the Division of Natural Resources rule, Regulations Defining The Terms To Be Used Concerning All Hunting and Trapping Regulations (58 C.S.R. 46).

§58-53-3. General Trapping Rules.

3.1. Trapping 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 trapping in Harpers Ferry National Historical Park and on federally-owned land within the boundaries of the New River Gorge National River.

3.2. A trapping permit is required for State Wildlife Management Areas. This permit may be obtained from the district game biologist in the district in which the State Wildlife Management Area is situated.

3.3. All traps set during the month of February must shall be water sets only for the taking of beaver, mink, or muskrat.

3.4. A trapper must shall check and tend all traps each calendar day.

3.5. Foot snares are legal when the snare loop is at and horizontal to ground level and does not exceed six and one-half (6 1/2) inches in diameter.

3.6. It is illegal to use or set deadfalls for taking wildlife.

3.7. It is illegal to set or maintain any trap or trapping device on human foot trails or livestock paths.

3.8. It is illegal to set or use traps with an open jaw spread of more than six and one half (6 1/2) inches unless the trap is used under water for beaver.

3.9. It is illegal to use conibear or mohawk type traps for terrestrial trapping. Trappers may use conibear or mohawk type traps in water sets.

3.10. It is illegal to set or maintain ~~body gripping snares or spring pole snares for terrestrial trapping. Trappers may use neck or body-gripping snares in water sets.~~

3.11. It is illegal to use steel jaw traps with any teeth on or attached to them.

3.12. It is illegal to set or maintain any trap, trap set, or snare upon any tree, post, or other natural or man-made object at any point more than three (3) lineal feet from the surface of the earth (whether the surface is water, soil, or rock) measured at a right angle from the surface to the trap or trap set, except as provided in Subsection 3.13 of this regulation rule.

3.13. The provisions of Subsection 3.12 of this regulation rule do not apply to traps or trap sets that are set or maintained on natural earthen mounds, such as ant hills or muskrat houses, that were constructed without human assistance.

3.14. It is illegal to set traps or snares within 50 feet of ~~use animal or bird carcasses, or parts thereof, to lure an animal to a trap set unless the carcasses, or parts thereof of the carcasses,~~ are completely covered and concealed from sight.

3.15. It is illegal to take beaver, fisher, mink, or muskrat by any means other than by trap.

3.16. It is illegal for a person to have in his or her possession an untagged bobcat, or fisher hide, or parts thereof, longer than thirty (30) days following the close of the respective trapping season.

3.17. ~~Should~~ If any person unintentionally traps and kills more than the limit fixed by the Division of Natural Resources rule, The Hunting and Trapping Regulations (Exempt Rule) (58 C.S.R.45), as a season possession limit, he or she ~~must~~ shall (within twenty-four (24) hours ~~after the trapping or killing~~) thereafter deliver the excess animals to a conservation officer.

3.18. Each trapper ~~must~~ shall present bobcat or fisher pelts to an official game checking station or a representative of the ~~Department~~ Division within thirty (30) days after the close of the trapping season for that animal. ~~A~~ The trapper shall affix a tag provided by the division must be affixed to each bobcat or fisher pelt and ~~remain~~ keep the tag attached to the skin until the skin has been sold, tanned, or mounted.

3.19. It is legal to use snares for the purpose of taking furbearing animals and coyotes. A snare is defined as a trap and all rules pertaining to traps and trap sets apply to snares. All snares shall be made of multiple strand twisted steel cable.

3.20. Terrestrial snares shall be equipped with a relaxing type lock system with a breaking point of not greater than 350 pounds or a stop with a minimum loop diameter greater than or equal to 2 ½ inches. Set snares shall not have a loop diameter average greater than 15 inches. A trapper shall not use drags with terrestrial snares. He or she shall anchor them at the trap site.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

*State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840*

*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

July 14, 1998

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Gordon Robertson
Deputy Chief, Wildlife Resources
Capitol Complex
Building 3, Room 842
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

Proposed Rule: General Trapping Regulations, 58CSR53

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

X

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July 14, 1998

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If the first page of this form indicates that your agency has agreed to modify the proposed rule in accordance with a motion adopted by the Committee, your agency should consult with the Committee's counsel on the preparation of the modifications. By **Thursday, July 23, 1998**, your agency must file **1 copy** of your modified rule with the Secretary of State's office and **10 copies** with the LRMRC.

Please disregard this notice if you have already filed your final, modified rule. Committee rules state that a copy of this letter must be on file for each agency filing a rule.

Very truly yours,

A handwritten signature in cursive script that reads "Teri Anderson".

Teri Anderson
Administrative Assistant

LRMRC:tla

ANALYSIS OF PROPOSED LEGISLATIVE RULES

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Agency: Division of Natural Resources

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Subject: General Trapping Regulations, 58CSR53

PERTINENT DATES

Filed for public comment: May 29, 1998
Public comment period ended: July 1, 1998
Filed following public comment period: July 2, 1998
Filed LRMRC: July 2, 1998
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Subsection 3.10 has been amended to delete the prohibition against setting body gripping snares for terrestrial trapping.

Subsection 3.14 currently prohibits the use of animal or bird carcasses to lure an animal to a trap unless the carcasses are completely covered and concealed from sight. It has been amended to prohibit the setting of traps or snares within 50 feet of the carcasses.

Subsection 3.19 is new. It prohibits the use of snares for the purpose of taking furbearing animals and coyotes. It defines a snare as a trap.

Subsection 3.20 is new. It contains standards for terrestrial snares and set snares.

AUTHORITY

Statutory authority: W.Va. Code, §20-1-7, which provides, in part, as follows:

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

...(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.