

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

Form #2

Do Not Mark In This Box

APR 28 2 10 PM '92
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DCL&ER, Division of Natural Resources

TITLE NUMBER: 47

RULE TYPE: Legislative

CITE AUTHORITY § 20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

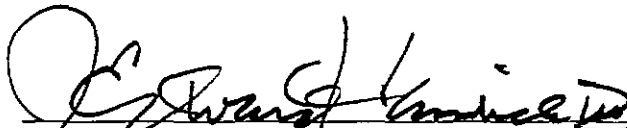
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13A

TITLE OF RULE BEING PROPOSED: Special Waterfowl Hunting Regulations

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 31, 1992 AT 4:00 pm

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS Bob Miles, Chief, Division of Natural Resources, Wildlife Resources Section, Capitol Complex, Building 3, Room 812, Charleston, West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



J. Edward Hamrick III, Director
Division of Natural Resources

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

2.90



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 22, 1992

RECEIVED
JUL 23 1992

J. Edward Hamrick III, Director
Division of Natural Resources
Building 3, Room 669
Charleston, West Virginia 25305

WATER RESOURCE SECTION

RE: Proposed Rules - Title 47, Series 11A, 11B, 11C, 11D,
11E, 11F, 11G, 11H, 11I, 12A & 13A (Regulations relating
to Wildlife Resources)

Dear Ed:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb
B:RULDNR-W.RUL

PREAMBLE TO A PROPOSED RULE
CONCERNING
SPECIAL WATERFOWL HUNTING REGULATIONS

AGENCY: Department of Commerce, Labor, and Environmental Resources; Division of Natural Resources.

REGULATION: Title 47, Series 13A, "Special Waterfowl Hunting Regulations."

ACTION: Filing of a thirty day Public Comment Period Notice for the proposed rule.

SUMMARY: This rule establishes regulations applicable to the hunting of waterfowl in West Virginia.

Written comments received prior to 4:00 pm August 31, 1992 will be accepted. Written comments should be sent to:

Bob Miles, Chief
Division of Natural Resources
Wildlife Resources Section
Capitol Complex
Building 3, Room 812
Charleston, West Virginia 25305

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Special Waterfowl Hunting Regulations, 47 C.S.R. 13A

Type of Rule: X Legislative ___ Interpretive ___ Procedural

Agency: Division of Natural Resources

Address: Building 3, State Capitol Complex, Charleston, West Virginia

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$				
Personal Services	\$				
Current Expenses	\$				
Repairs & Alterations	\$			No Change	
Equipment	\$				
Other	\$				

2. Explanation of above estimates: There is no change anticipated to administrative expenses as a result of this rule.

3. Objectives of this rule: This rule establishes regulations applicable to the hunting of waterfowl in West Virginia.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. No impact.

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: July 27, 1992

Signature of Agency Head or Authorized Representative


Director, Division of Natural Resources

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

SERIES 13A
SPECIAL WATERFOWL HUNTING REGULATIONS

§ 47-13A-1. General.

1.1. Scope and Purpose. -- This regulation establishes provisions that provide for the proper management of waterfowl with respect to the hunting of waterfowl in West Virginia.

1.2. Authority. -- West Virginia Code § 20-1-7(30).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Seasons in General. -- All seasons are subject to change under the provisions of W. Va. Code § 20-1-7(7). Opening and closing dates are inclusive and the time periods are prevailing time unless otherwise noted in these regulations. Sunday hunting is illegal.

§ 47-13A-2. Definitions.

2.1. "Aggregate" means the total bag or possession limit of similar kinds of waterfowl.

2.2. "Bait" means shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed.

2.3. "Baited Area" means any area where baiting occurs.

2.4. "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of bait so as to constitute for waterfowl a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them.

2.5. "Blind Area" means the area within seventy-five (75) yards of the hunter's assigned blind.

2.6. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

2.7. "Permanently Disabled in the Lower Extremities" means an individual who is a paraplegic, who is missing both legs, or who has a disability affecting both legs which requires permanent use of a wheelchair or crutches.

2.8. "Prevailing Time" means either Eastern Standard Time or Eastern Daylight Time as established by the United States Congress.

2.9. "Waterfowl" means members of the family Anatidae (ducks, geese, mergansers, and swans) and members of the family Rallidae (coots and gallinules) for which open seasons are prescribed in Section 4 of these regulations.

2.10. "Wildlife Management Area" means any public access area, public hunting area, public fishing area, public hunting and fishing area, public shooting ground, or public wildlife management area that is administered, leased, or owned by the State of West Virginia.

2.11. "Zone 1" means the entire State except Zone 2.

2.12. "Zone 2" means the following area:

2.12.1. Beginning at the West Virginia-Maryland boundary line, the eastern boundary of Zone 2 extends south along U.S. Route 220 through Keyser, West Virginia to the intersection with U.S. Route 50 and follows U.S. Route 50 to the intersection with State Route 93. The eastern boundary then follows State Route 93 south to the intersection of State Route 42 and continues south on State Route 42 to Petersburg. At Petersburg, the eastern boundary follows State Route 28 South to Minnehaha Springs and then follows State Route 39 west to U.S. Route 219. The eastern boundary then follows U.S. Route 219 south to the intersection with Interstate 64.

2.12.2. The southern boundary of Zone 2 follows Interstate 64 west to the intersection with U.S. Route 60 then follows U.S. Route 60 west to the intersection with U.S. Route 19.

2.12.3. The western boundary of Zone 2 follows U.S. Route 19 north to the intersection with Interstate 79 and then follows Interstate 79 north to the intersection with U.S. Route 48.

2.12.4. The northern boundary of Zone 2 follows U.S. Route 48 east to the West Virginia-Maryland boundary line.

§ 47-13A-3. General Waterfowl Hunting Rules.

3.1. Dual Violation - Violation of any provision of these regulations is also a violation of federal migratory bird hunting regulations under 50 C.F.R. Part 20, Subpart H.

3.2. Illegal Methods of Taking Waterfowl.

3.2.1. No person may take waterfowl with a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10-gauge, punt gun, battery gun, machine gun, fish hook, poison, drug,

explosive, or stupefying substance.

3.2.2. No person may take waterfowl with a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler which is incapable of removal without disassembling the gun.

3.2.3. No person may take waterfowl from a sink box (i.e., a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water).

3.2.4. No person may take waterfowl from or with the aid or use of a motor vehicle, other land conveyance, or an aircraft of any kind, except as provided in Section 3.2.4.a of these regulations.

3.2.4.a. A person who is permanently disabled in the lower extremities and who holds a valid Class Q special resident hunting permit may take waterfowl from a stationary motor vehicle provided that he is the only occupant of that vehicle, that the engine of the vehicle is not operating, and that the vehicle is not parked on the right-of-way of any public road or highway.

3.2.5. No person may take waterfowl from or by means of any motorboat or sailboat unless the motor has been completely shut off or the sail furled and the progress therefrom has ceased.

3.2.6. No person may take waterfowl by the use or aid of live birds as decoys.

3.2.6.a. All live, tame, or captive ducks and geese must have been removed from the hunt area for a period of ten (10) consecutive days prior to hunting and confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such tame birds from the sight of migratory waterfowl.

3.2.7. No person may take waterfowl by the use of records or tapes of waterfowl calls or sounds, or recorded or electrically-amplified imitations of waterfowl calls.

3.2.8. No person may take waterfowl by concentrating, driving, rallying, or chasing such birds with any motorized land, water, or air conveyance or any sailboat.

3.2.9. No person may take waterfowl by the aid of baiting, or on or over any baited area. Hunters should be aware that a baited area is considered to be baited for ten (10) days after the removal of the bait, and it is not necessary for the hunter to know an area is baited to be in violation of federal regulations and Section 3.2 of these regulations.

3.3. Tagging - No person may give, put, or leave waterfowl at any place, or in the custody of another person, unless the birds are tagged by the hunter with the following information:

3.3.1. The hunter's signature; address; total number of birds involved, by species; and the date on which each bird was killed.

3.4. Field Dressing - No person may completely field dress waterfowl and then transport the birds from the field. The head or one fully-feathered wing must remain attached to all such birds while being transported from the field to one's home or to a migratory bird preservation facility, as defined in 50 C.F.R. § 20.11.

3.5. Shipment - No person may ship waterfowl unless the package is marked on the outside with the following information:

3.5.1. The name and address of the person sending the birds;

3.5.2. The name and address of the person to whom the birds are being sent; and

3.5.3. The number of birds, by species, contained in the package.

3.6. Importation - For information regarding the importation of waterfowl in another country, hunters should consult 50 C.F.R. §§ 20.61 through 20.66. One (1) fully-feathered wing must remain attached to all waterfowl being transported between the port of entry and one's home or to a migratory bird preservation facility, as defined in 50 C.F.R. §20.11. No person may import waterfowl killed in any foreign country, except Canada, unless such birds are dressed (except as required in 50 C.F.R. §20.63), drawn, and the head and feet removed. No person may import waterfowl belonging to another person.

3.7. Federal Migratory Bird Hunting and Conservation Stamp - Each waterfowl hunter sixteen (16) years of age and over must carry on his person a valid federal Migratory Bird Hunting and Conservation Stamp (i.e., "duck stamp") signed in ink across the face. This stamp is not needed in order to hunt coots or gallinules.

3.8. West Virginia Migratory Waterfowl Conservation Stamp - Each waterfowl hunter sixteen (16) years of age and over, except those persons exempt by statute from the payment of hunting license fees, must carry on his person a valid West Virginia Migratory Waterfowl Conservation Stamp (i.e., a "state duck stamp") signed in ink across the face. This stamp is not needed in order to hunt coots or gallinules.

3.9. Mandatory Use of Steel Shot - Use of steel shot is mandatory when hunting waterfowl. Only steel shot size "T" or smaller shall be used, or in the hunter's possession, while hunting waterfowl.

3.10. Concurrent Waterfowl Hunting - Concurrent hunting of waterfowl on major rivers, lakes, and reservoirs is legal during the bucks-only deer season if the season for such waterfowl is also open.