

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUL 12 3 32 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DIVISION OF NATURAL RESOURCES TITLE NUMBER: 18 58

RULE TYPE: PROCEDURAL; CITE AUTHORITY 20-2-22A

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18A (18)

TITLE OF RULE BEING AMENDED: BEAR DAMAGE REGULATIONS

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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 11, 1996 AT 4:30 P.M.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

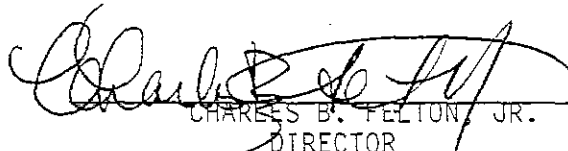
MAJOR W. B. DANIEL

DIVISION OF NATURAL RESOURCES

CAPITOL COMPLEX BLDG. 3, ROOM 837

CHARLESTON WV 25305-0668

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


CHARLES B. FELTON, JR.
DIRECTOR

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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TITLE 58
PROCEDURAL RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 18A

BEAR DAMAGE REGULATIONS

§58-18A-1. General.

1.1. Scope and Purpose. -- This rule establishes the procedures to be followed in presenting and deciding claims of bear damage under W. Va. Code §20-2-22a.

1.2. Authority. -- W. Va. Code §20-2-22a

1.3. Filing Date. -- July 22, 1988

1.4. Effective Date. -- September 1, 1988

§58-18A-2. Definitions.

2.1. "Conservation Officer" or "Officer" means a conservation officer who is a full-time employee of the West Virginia Division of Natural Resources.

2.2. "Director" means the director of the West Virginia Division of Natural Resources.

2.3. "Section" means the Wildlife Resources Section of the West Virginia Division of Natural Resources.

2.4. "Livestock" means cattle, goats, hogs, poultry, and sheep.

2.5. "Wildlife Biologist" or "Biologist" means an employee of the Wildlife Resources Section of the West Virginia Division of Natural Resources who, by reason of his/her knowledge of wildlife biology, acquired through a professional education or related practical experience, is qualified to investigate a bear damage complaint or supervise a bear damage hunt.

2.6. All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

§58-18A-3. Bear Damage Complaint Procedures.

3.1. A property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the injury to or death of livestock or the unborn issue thereof, caused by an act of a bear may complain to any conservation officer for the protection against such bear.

3.1.1. Bear damage involving beehives must be reported to a conservation officer within forty-eight (48) hours of its occurrence.

3.1.2. Bear damage involving fruit trees must be reported to a conservation officer within forty-eight (48) hours of its occurrence.

3.1.3. Bear damage involving livestock must be reported to a conservation officer within seventy-two (72) hours of its occurrence.

3.1.4. Bear damage involving miscellaneous real or personal property must be reported to a conservation officer within forty-eight (48) hours of its occurrence.

3.2. Upon receipt of a bear damage complaint, a conservation officer will immediately proceed to investigate the circumstances giving rise to such complaint.

3.2.1. If a conservation officer is unable to personally investigate a complaint, he or she may designate a wildlife biologist to investigate on his/her behalf.

3.3. The offal of all livestock killed by a bear will be removed or buried by the property owner immediately after the completion of the complaint investigation conducted under Section 3.2 of ~~these regulations~~ this rule.

§58-18A-4. Bear Damage Hunts.

4.1. If a bear damage complaint is found to be justified, the investigating conservation officer or wildlife biologist may, together with the property owner and other residents, proceed to hunt and destroy or capture and relocate the bear which is determined to have caused the property damage.

4.1.1. The investigating officer or biologist may organize a hunt only if more than one (1) confirmed instance of bear damage in a given locality has been reported to the Division within a thirty-day period.

4.1.2. Upon confirmation of the first report of bear damage in a given locality, the investigating officer or biologist will determine the hunters who will be utilized in the event that a bear damage hunt is conducted. Such hunters will be immediately contacted by the Division in order that a prompt response can be made should the need for a hunt arise.

4.1.3. A bear damage hunt may not be organized in cases where the confirmed bear damage occurred within the boundaries of a United States Forest Service Grazing Area.

4.2. If a bear damage hunt is organized, the investigating officer or biologist may summon or use dogs to effectuate the hunting and destruction or capture of the suspect bear.

4.2.1. The investigating officer or biologist may restrict the number of dogs that may be used in a hunt.

4.2.2. The investigating officer or biologist may restrict the number of hunters who may participate in a hunt.

4.3. The investigating officer or biologist must supervise the hunting party and remain in the area of the chase during a bear damage hunt.

4.3.1. One member of the hunting party may be designated by the investigating officer or biologist as the person in charge of the hunt.

4.3.2. The hunting party will be organized with the understanding that the party will be responsible for having a destroyed bear transported to a road for pick up by Section personnel. The hunting party must also assist the wildlife biologist in moving a tranquilized bear.

4.4. Only the investigating officer or biologist may determine if a bear should be destroyed or tranquilized and relocated, or whether, based upon the animal's size and other clues or circumstances relating to the offense, it appears that the bear being hunted is not the bear that caused the confirmed damage.

4.4.1. If the investigating officer or biologist determines that the bear being hunted is not the suspect animal, the hunt must be disbanded.

4.5. If a suspect bear is destroyed during a hunt which does not include a wildlife biologist, the investigating officer must notify the appropriate Section personnel so that biological information can be collected.

4.6. Section personnel are responsible for disposing of any bear destroyed during a bear damage hunt.

4.6.1. Section personnel shall determine whether the hide, teeth, gall bladder, or other parts of the destroyed bear that may have commercial value will be sold or destroyed. If offered for sale, such parts shall be sold in accordance with applicable State

laws and ~~regulations~~ rules governing the disposal of State property.

§58-18A-5. Bear Damage Claims Procedures.

5.1. When a property owner seeks restitution from the State for damage suffered as the result of an act by a bear, he or she must file a Division of Natural Resources Bear Damage Report with the director stating whether or not such bear was hunted and destroyed or relocated. If the bear was destroyed, this report must include the sex, weight, and estimated age of the subject bear.

5.2. In filing the report prescribed in Section 5.1 of ~~these regulations~~ this rule, the property owner must also submit an appraisal of the property damage occasioned by the subject bear, duly signed by three (3) competent appraisers, fixing the value of the property lost.

5.2.1. One appraiser will be selected by the property owner, one appraiser will be selected by the Division, and one appraiser will be selected jointly by the property owner and the Division.

5.2.2. The selected appraisers will promptly appraise the loss in accordance with the provisions of Section 6 of ~~these regulations~~ this rule.

5.2.3. Each appraiser will record his/her findings on a Division of Natural Resources Bear Damage Appraisal Form, attach the bear damage assessment form that he or she completed, and deliver the completed forms to the property owner.

5.2.4. The property owner must submit his/her completed Bear Damage Report form, with all of the completed appraisal and assessment forms attached, to the investigating officer within thirty (30) days of the date of damage reported under Section 3.1 of ~~these regulations~~ this rule.

5.3. The property damage appraisal will be ruled upon and the alleged damages examined by a three-member appraisal review commission composed of the complaining property owner, an officer of the Division, and a person to be selected jointly by the complaining property owner and the officer of the Division.

5.3.1. Upon receipt of the completed forms from the appraisers, the property owner must promptly contact the investigating officer so that a third person can be selected to serve on the appraisal review commission.

5.3.2. Each member of the appraisal review commission will decide if the damage claim is or is not valid.

5.3.2.a. If the appraisal review commission, by unanimous decision, decides that the damage claim is valid, the commission shall recommend a dollar amount to be paid to the property owner based upon the appraisal and assessment forms attached to the Bear Damage Report.

5.3.3. The appraisal review commission will submit the completed Bear Damage Report, with all of the completed appraisal and assessment forms attached, to the director within sixty (60) days of the date of damage reported under Section 3.1 of ~~these regulations~~ this rule.

5.4. Payment of a bear damage claim will be made upon the receipt of a completed Bear Damage Report from the appraisal review commission that recommends payment of a validated claim and complies with the provisions of ~~these regulations~~ this rule.

5.4.1. Bear damage claim payments shall be made in accordance with the provisions of W. Va. Code §20-2-22a.

5.4.2. If the director determines that either the selected appraisers or the appraisal review commission failed to properly comply with the provisions of ~~these regulations~~ this rule, he or she may direct the commission to reconsider its recommendation.

§58-18A-6. Bear Damage Appraisals.

6.1. In assessing a bear damage loss, the selected appraisers must follow the guidelines set forth on the appropriate bear damage assessment form provided by the Division.

6.2. In cases where pregnant livestock is killed by a bear, the total appraised value will be the sum of the values of the mother and the unborn issue had it been born.

FORMS MAY BE OBTAINED FROM SECRETARY OF STATE'S OFFICE