

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

RECEIVED

05 JUL 29 PM 3:37

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**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 NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 58

TITLE OF RULE BEING AMENDED: Special Waterfowl Hunting Rule

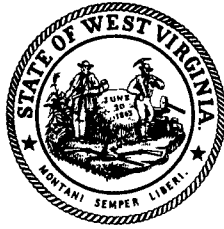
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

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.

Brian Helmick

Authorized Signature



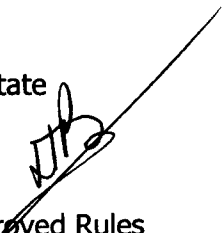
L. Thomas Bulla, Secretary
Department of Commerce
State Capitol
Building 6, Room 525
Charleston, WV 25305-0311

State of West Virginia
Joe Manchin III
Governor

Telephone: (304) 558-2234
Toll Free: (800) 982-3386
Fax: (304) 558-1189
Email: tbulla@wvdo.org
www.boc.state.wv.us

MEMORANDUM

TO: Betty Ireland, Secretary of State

FROM: L. Thomas Bulla, Secretary 

SUBJECT: Approval to File Agency Approved Rules
Division of Natural Resources Series 58

DATE: July 28, 2005

Permission is hereby granted for the Division of Natural Resources to file the following agency approved rules:

58CSR12	Whitewater Rule
58CSR25	Boating Rule
58CSR31	Rules Governing Public Use of West Virginia State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources
58CSR46	Rule Defining the Terms to be Used Concerning All Hunting and Fishing Rules
58CSR52	Wild Boar Hunting
58CSR58	Special Waterfowl Hunting Rule
58CSR64	Miscellaneous Permits and Licenses
58CSR65	Falconry Rules
58CSR67	Lifetime Hunting, Trapping and Fishing Licenses Rules

If you have any questions, please feel free to contact me. Thank you for your assistance in this matter.

LTB:ffh

cc: Brian Helmick, Deputy Secretary
Frank Jezioro, 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: 7/29/05

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Curtis I Taylor
Division of Natural Resources
Wildlife Resources Section
1900 Kanawha Blvd., E.
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Special Waterfowl Hunting

1. Authorizing statute(s) citation 20-1-7(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 28, 2005

b. What other notice, including advertising, did you give of the hearing?
News Release to state papers, web site, public meetings and outdoor writers columns

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 28, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2005

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Curtis I. Taylor
Division of Natural Resources
Wildlife Resources Section
1900 Kanawha Blvd., E.
Capitol Complex, Bldg. 3, Room 842
Charleston, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

- 3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. 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.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 58
SPECIAL WATERFOWL HUNTING RULE**

SUMMARY

Title 58, Series 58, Special Waterfowl Hunting Rule establishes provisions regarding the proper management with respect to the hunting of waterfowl in West Virginia.

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 58
SPECIAL WATERFOWL HUNTING RULE**

CIRCUMSTANCES

The Division of Natural Resources proposes to delete Subsection 3.8 relating to West Virginia Migratory Waterfowl Conservation Stamp.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 58-58 Special Waterfowl Hunting Rule

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources, Wildlife Resources Section

Address: 1900 Kanawha Blvd., E., Capitol Complex, Bldg. 3, Room 842, Charleston, WV
25305

Phone Number: 558-2771 Email: billieshearer@wvdnr.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The 2005 Legislature eliminated the Class MW Migratory Waterfowl Stamp and incorporated the opportunity for hunters to hunt migratory waterfowl in the base hunting licenses.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	<i>2006</i> Increase/Decrease (use "-")	<i>2007</i> Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: 58-58 Special Waterfowl Hunting Rule

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

No costs will be incurred to implement this rule.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The incorporation of the opportunity for hunters to hunt migratory waterfowl in the base hunting licenses requires the deletion of Section 3.8 of this rule.

Date: 7-29-05

Signature of Agency Head or Authorized Representative

Brian Helmeid

TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

RECEIVED
05 JUL 29 PM 3:37
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 58
SPECIAL WATERFOWL HUNTING

§58-58-1. General.

1.1. Scope and Purpose. -- This rule establishes provisions regarding the proper management of waterfowl with respect to the hunting of waterfowl in West Virginia.

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

1.3. Filing Date. -- ~~April 16, 1998~~

1.4. Effective Date. -- ~~April 16, 1998~~

1.5. Seasons in General. -- All hunting 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 this rule. Sunday hunting is illegal.

§58-58-2. 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.~~

~~2.7.2.6. "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.~~ as defined in Section 2 of the Division of Natural Resources Rule, Rule Defining the Terms to be Used Concerning all Hunting and Trapping Rules 58 C.S.R. 46.

~~2-8.2.7.~~ "Prevailing Time" means either Eastern Standard Time or Eastern Daylight Time as established by the United States Congress.

~~2-9.2.8.~~ "Sinkbox" means a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water.

~~2-10.2.9.~~ "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 the Division of Natural Resources Rule, Waterfowl Hunting (58 C.S.R.57).

~~2-11.2.10.~~ "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.

~~2-12.2.11.~~ "Zone 1" means the entire State except Zone 2.

~~2-13.2.12.~~ "Zone 2" means the following area:

~~2-13.1.2.12.1.~~ 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.

~~2-13.2.2.12.2.~~ 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.

~~2-13.3.2.12.3.~~ 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 Interstate 68.

~~2-13.4.2.12.4.~~ The northern boundary of Zone 2 follows Interstate 68 east to the West Virginia-Maryland boundary line.

§58-58-3. General Waterfowl Hunting Rules.

3.1. Dual Violation. Violation of any provision of this rule 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 being removed without disassembling the gun.

3.2.3. No person may take waterfowl from a sink box.

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 paragraph 3.2.4.a. of this rule.

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 or she 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 from the motor or sail 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 shall have been removed by the landowner 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 the 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 the 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 Subsection 3.2 of this rule.

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 and address; the 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 birds while being transported from the field to the hunters 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 from 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 the 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 or her 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 exempted by W.Va. Code §20-2-63 from the payment of hunting license fees, shall carry on his or her 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.~~

3-9.3.8. Mandatory Use of nontoxic Shot . Use of nontoxic shot approved by the United States Fish and Wildlife Service is mandatory when hunting waterfowl. Only nontoxic shot size "T" or smaller shall be used or in hunter's possession while hunting of waterfowl.

3-10.3.9. 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 the waterfowl is also open.

3-11.3.10. Youth Waterfowl Hunting Day. In accordance with federal regulation (50 C.F.R.20.105f) youth hunters must be fifteen (15) years of age or younger to participate in the Youth Waterfowl Hunting Day. Youth hunters must be accompanied by a licensed adult twenty-one (21) years of age or older. The accompanying adult cannot hunt waterfowl.

3-12.3.11. Migratory Bird Harvest Information Program. No persons, except those legally exempt from purchasing a hunting license, may take or attempt to take waterfowl in West Virginia after July 1, 1998, unless they are enrolled annually in the Federal Migratory Bird Harvest Information Program as required by federal regulation (50 C.F.R. 20.20)

3-12.1.3.11.1. The hunter shall carry current proof of annual enrollment while hunting waterfowl.