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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

Gordon C Robertson
Natural Resources
Wildlife Resources Section
State Capitol Bldg 3 RM 825
Charleston, WV 25305

HB 4268 authorizing, **Title 58, Series 58, Special Waterfowl Hunting Rule** passed the Legislature on **March 8, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4268** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4268 Section 64-10-2(h)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

**TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES**

**SERIES 58
SPECIAL WATERFOWL HUNTING RULE**

§58-58-1. General.

1.1. Scope and Purpose. -- This rule 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. -- May 10, 1996

1.4. Effective Date. -- May 10, 1996

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

2.10. "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 this regulation.

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

2.13. "Zone 2" means the following area:

2.13.1. 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. 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. 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. 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 regulation 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 subdivision 3.2.4.a. of this regulation.

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 must 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 regulation.

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 exempt by §20-2-63 from the payment of hunting license fees, must 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. 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. 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.

SENATE BILL NO. 209

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

*Natural Resources;
Judiciary*

58-58

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10 A BILL to amend and reenact section two, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate legislative rules relating to special
15 waterfowl hunting.

16 Be it enacted by the Legislature of West Virginia:

17 That section two, article ten, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO**

22 **PROMULGATE LEGISLATIVE RULES.**

23 **§64-10-2. Division of natural resources.**

24 (a) The legislative rules filed in the state register

1 on the fourteenth day of July, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five-a, article eleven, chapter twenty, of this code,
4 modified by the division of natural resources to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the eighth day of
7 September, one thousand nine hundred ninety-four, relating
8 to the division of natural resources (recycling assistance
9 fund grant program, 58 CSR 43 5), are authorized.

10 (b) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 seven, article one, chapter twenty, of this code, modified
14 by the division of natural resources to meet the objections
15 of the legislative rule-making review committee and refiled
16 in the state register on the fourteenth day of October, one
17 thousand nine hundred ninety-four, relating to the division
18 of natural resources (West Virginia wildlife management
19 areas, 58 CSR 6 43), are authorized with the following
20 amendments:

21 On page four, section 6.4.3, before the word "No" by
22 inserting "Except for persons who are under sixteen years
23 of age and who have a valid West Virginia hunting
24 license,";

1 And,

2 On page four, section 6.4.3, by deleting the capital
3 letter "N" and substituting in lieu thereof the lower case
4 "n."

5 (c) The legislative rules filed in the state register
6 on the twelfth day of August, one thousand nine hundred
7 ninety-four, authorized under the authority of section
8 seven, article one, chapter twenty, of this code, modified
9 by the division of natural resources to meet the objections
10 of the legislative rule-making review committee and refiled
11 in the state register on the fourteenth day of October, one
12 thousand nine hundred ninety-four, relating to the division
13 of natural resources (special bear hunting regulations, 58
14 CSR ~~48~~ 48), are authorized.

15 (d) The legislative rules filed in the state register
16 on the twelfth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section
18 seven, article one, chapter twenty, of this code, modified
19 by the division of natural resources to meet the objections
20 of the legislative rule-making review committee and refiled
21 in the state register on the fourteenth day of October, one
22 thousand nine hundred ninety-four, relating to the division
23 of natural resources (wild boar hunting regulations, 58 CSR
24 ~~52~~ 52), are authorized.

1 (e) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 seven, article one, chapter twenty, of this code, modified
5 by the division of natural resources to meet the objections
6 of the legislative rule-making review committee and refiled
7 in the state register on the fourteenth day of October, one
8 thousand nine hundred ninety-four, relating to the division
9 of natural resources (special fishing rule, 58 CSR ~~21~~ 61),
10 are authorized with the following amendment:

11 On page four, section 58-21-5, paragraph 5.1.1, by
12 deleting the numeral "15" and inserting in lieu thereof the
13 numeral "13".

14 (f) The legislative rules filed in the state register
15 on the second day of December, one thousand nine hundred
16 ninety-four, authorized under the authority of section
17 seven, article one, chapter twenty, of this code, modified
18 by the division of natural resources to meet the objections
19 of the legislative rule-making review committee and refiled
20 in the state register on the sixteenth day of December, one
21 thousand nine hundred ninety-four, relating to the division
22 of natural resources (rules governing public use of West
23 Virginia state parks, state forests and state wildlife
24 management areas under the division of natural resources,

1 58 CSR ~~58~~ 31), are authorized with the following amendment:

2 On page five, section 2.23, line four, before the word
3 "chartered" by inserting the word "A" and by deleting the
4 letter "s" at the end of the word "foundations".

5 (g) The legislative rules filed in the state register
6 on the twelfth day of August, one thousand nine hundred
7 ninety-four, authorized under the authority of section
8 seven, article one, chapter twenty, of this code, modified
9 by the division of natural resources to meet the objections
10 of the legislative rule-making review committee and refiled
11 in the state register on the fourteenth day of October, one
12 thousand nine hundred ninety-four, relating to the division
13 of natural resources (prohibitions when hunting and
14 trapping, 58 CSR ~~44B~~ 47) are authorized with the following
15 amendments:

16 On page two, by striking out section 3.5 and
17 renumbering the remaining sections;

18 In section 3.7, after the word "net" by inserting the
19 word "bait" and after the word "any" by inserting the word
20 "deer";

21 And,

22 By striking out subsection 3.7.1 and renumbering the
23 remaining sections.

24 (h) The legislative rules filed in the state register

1 on the thirty-first day of July, one thousand nine hundred
2 ninety-five, authorized under the authority of section
3 seven, article one, chapter twenty, of this code, modified
4 by the division of natural resources to meet the objections
5 of the legislative rule-making review committee and refiled
6 in the state register on the twentieth day of September,
7 one thousand nine hundred ninety-five, relating to the
8 division of natural resources (special waterfowl hunting,
9 58 CSR 58), are authorized.

10

11 NOTE: The purpose of this bill is to authorize the
12 Division of Natural Resources to promulgate legislative
13 rules relating to special waterfowl hunting.

14
15 Strike-throughs indicate language that would be
16 stricken from the present law, and underscoring indicates
17 new language that would be added.

0877

H. B. 4280

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(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)
(Introduced January 29, 1996 ; referred to the
Committee on Agriculture and Natural Resources then)
the Judiciary)

58-58

10 A BILL to amend and reenact section two, article ten,
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23 **§64-10-2. Division of natural resources.**

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4280

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2 ninety-four, authorized under the authority of section
3 five-a, article eleven, chapter twenty, of this code,
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5 objections of the legislative rule-making review committee
6 and refiled in the state register on the eighth day of
7 September, one thousand nine hundred ninety-four, relating
8 to the division of natural resources (recycling assistance
9 fund grant program, 58 CSR ~~43~~ 5), are authorized.

10 (b) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
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11 in the state register on the fourteenth day of October, one
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13 of natural resources (special bear hunting regulations, 58
14 CSR ~~46~~ 48), are authorized.

15 (d) The legislative rules filed in the state register
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22 of natural resources (rules governing public use of West
23 Virginia state parks, state forests and state wildlife
24 management areas under the division of natural resources,

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3 "chartered" by inserting the word "A" and by deleting the
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4 by the division of natural resources to meet the objections
5 of the legislative rule-making review committee and refiled
6 in the state register on the twentieth day of September,
7 one thousand nine hundred ninety-five, relating to the
8 division of natural resources (special waterfowl hunting,
9 58 CSR 58), are authorized.

10

11 NOTE: The purpose of this bill is to authorize the
12 Division of Natural Resources to promulgate legislative
13 rules relating to special waterfowl hunting.

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15 Strike-throughs indicate language that would be
16 stricken from the present law, and underscoring indicates
17 new language that would be added.



FILED

WILLIAM H. HARRINGTON
Chief of Staff

OCT 17 1 59 PM '96

JUDY COOPER
Director, Administrative Law

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Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

TO: ~~BILL DANIEL~~ Gordon C. Robertson

AGENCY: NATURAL RESOURCES -- Wildlife Resources

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 3, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 58 TITLE: 58 NATURAL RESOURCES

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Gordon C. Robertson

TITLE OF PERSON SIGNING: Deputy Chief Wildlife Resources

DATE: 10/17/96

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.