

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED

JUL 20 9 44 AM '95

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 §§ 20-2-11, 20-2-47, 20-2-48

AMENDMENT TO AN EXISTING RULE: YES NO

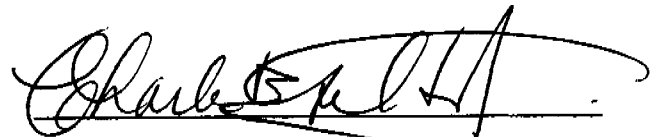
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: Commercial Sale of Wildlife

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.



TITLE 47 58
LEGISLATIVE RULES
~~DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES~~
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 23
COMMERCIAL SALE OF WILDLIFE

§ 47 58-23-1. General.

1.1. Scope. -- This legislative rule establishes regulations to govern the sale or transfer of wildlife raised or captured under licenses issued by the ~~Department~~ Division pursuant to W. Va. Code §§ 20-2-11, 20-2-47 and 20-2-48.

1.2. Authority. -- W. Va. Code §§ 20-2-11.

1.3. Filing Date. --

1.4. Effective Date. --

§ 47 58-23-2. Definitions.

2.1. "Facility" means the property on which a person engages in an activity for which one of the licenses listed in Section 2.2 of ~~these regulations~~ this rule is required by statute and includes, but is not limited to, buildings, enclosures, grounds, impoundments, and ponds.

2.2. "Licensee" means a person who has been granted one of the following permits and licenses issued by the ~~Department~~ Division:

2.2.1. A license for the operation of a private game preserve for the propagation of wild animals or wild birds for commercial purposes (W. Va. Code § 20-2-47). The Division will issue three categories of this license:

2.2.1.a. Commercial game farm license. This license authorizes the holder licensee to breed or raise ~~such~~ wild animals and wild birds as specified by the license, to sell the ~~same~~ wild animals and wild birds dead or alive, or to sell the eggs of birds in accordance with the provisions of ~~these regulations~~

this rule and under the terms and conditions of the license. This license does not include the acquisition or holding of foxes or raccoons trapped from the wild by a legal trapper (W. Va. Code § 20-2-11):

2.2.1.b. Hound coursing/training pen game farm license. This license authorizes the licensee to purchase, hold, and release into hound coursing/training pens in accordance with the provisions of this rule and under terms and conditions of the license, live foxes or raccoons obtained from the wild by a legal trapper (W. Va. Code § 20-2-11) or live wildlife obtained by means specified under Section 3 of this rule; and

2.2.1.c. Incorporated sportsmen club game farm license. This license authorizes incorporated sportsmen clubs in West Virginia to purchase, hold, and release in accordance with the provisions of this rule and under terms and conditions of the license, live foxes and raccoons obtained from the wild by a legal trapper (W. Va. Code § 20-2-11) or other means specified under Section 3 of this rule for the purpose of restocking; and

2.2.2. A license for the operation of a private plant, pond, or business for the propagation, sale, or purchase of fish, frogs, turtles, or other forms of aquatic life for commercial purposes (W. Va. Code § 20-2-48). This license authorizes the ~~holder licensee~~ to breed or raise such species as specified by the license and to buy and sell ~~the same~~ those species dead or alive or the eggs ~~thereof~~ of the species in accordance with the provisions of ~~these regulations~~ this rule.

2.3. "Wildlife" means wild animals, wild birds, fish, frogs ~~and other amphibians, turtles~~ reptiles, amphibians, mollusks, crustaceans, and all forms of aquatic life used as fish bait, whether dead or alive.

2.4. "Legal Trapper" means a trapper possessing a valid West Virginia trapping license or its equivalent (W. Va. Code §§ 20-2-27, 20-2-28).

2.5. "Hound Coursing/Training Pen" means a permanent enclosure of no less than forty (40) acres from which there is no reasonable expectation of escape of the animals placed within, except that fox hound coursing/training pens must enclose no less than 100 acres.

2.6. "Incorporated Sportsmen Club" means a club, organization, or group formed for a common purpose to further the tradition of hunting, fishing, or trapping and registered with the Secretary of State for that purpose.

2.7. "Native" means commonly accepted and documented in scientific literature to live in the wild as part of the present or historic natural fauna of this State.

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

§ 47 58-23-3. Wildlife Acquisition.

3.1. Wildlife held by a licensee shall have been:

3.1.1. Obtained from a person licensed by the Department Division to sell wildlife in this State;

3.1.2. Imported into this State under the provisions of W. Va. Code § 20-2-13; or

3.1.3. Born at the licensee's facility, the offspring of wildlife legally held by the licensee; or

3.1.4. Obtained from a legal trapper under the provisions of W. Va. Code § 20-2-11 and the animal captured within the county in which the licensee is to hold and release the animal or captured from counties specified by the Director for which inter-county sale or possession transfer may occur under terms and conditions of the license.

3.2. If a licensee acquires wildlife in the manner specified in Section 3.1.1 of ~~these regulations~~ this rule, a bill of sale from the supplying vendor must be retained by the licensee as proof of legal acquisition.

3.3. If a licensee acquires wildlife in the manner specified in Section 3.1.2 of ~~these regulations~~ this rule, the importation permit issued by the Department Division must be retained by the licensee as proof of legal acquisition.

§ 47 58-23-6. Inspections.

6.1. A licensee's facility, records, or wildlife may be inspected by an authorized representative of the director, on a case by case basis, to assure compliance with all requirements mandated by statute or regulation rule or by the terms and conditions of the licensee's permit or license.

§ 47 58-23-7. Possession For Commercial Purposes Prohibited.

~~The following species shall not be taken from the wild or possessed for any commercial purpose except as authorized pursuant to §§ 20-2-11, 20-2-47 or 20-2-48 of the W. Va. Code.~~

~~7.1. It is illegal to catch, capture, sell, trade, take or kill by seine, net, bait, trap, or any other means, Except persons possessing a license or permit issued for such purpose or specifically designated by authority of W. Va. Code § 20-2-11, it is illegal for any person to take, or attempt to take, from the wild or possess for commercial purposes any species of wildlife native to this State, either dead or alive, or to take or attempt to take by any means, or to sell, trade, barter, expose or offer for sale, trade or barter, or to possess or transport, or to have in one's possession with the intent, or to transport into or out of the state any native wildlife, of the following species of turtles or their eggs, or part thereof for commercial purposes:~~

~~Common snapping turtle (Chelydra serpentina serpentina),~~

~~Eastern painted turtle (Chrysemys picta picta),~~

~~Eastern river cooter (Pseudemys concinna concinna),~~

~~Eastern spiny softshell (Apalone spinifera spinifera),~~

~~Hieroglyphic turtle (Pseudemys concinna hieroglyphica),~~

~~Map turtle (Graptemys geographica),~~

~~Midland painted turtle (Chrysemys picta marginata),~~

~~Midland smooth softshell (Apalone mutica),~~

~~Ouachita map turtle (Graptemys pseudogeographica
ouachitensis),~~

~~Redbelly turtle (Pseudemys rubriventris),~~

~~Red eared slider (Trachemys scripta elegans),~~

~~Spotted turtle (Clemmys guttata),~~

~~Stinkpot (Sternotherus odoratus), and~~

~~Wood turtle (Clemmys insculpta).~~

§ 47 58-23-8. Penalties.

A violation of ~~these regulations~~ this rule constitutes a misdemeanor for each offense in accordance with W. Va. Code § 20-2-11 and for each misdemeanor offense ~~shall be~~ a person is subject to the penalties provided for in W. Va. Code § 20-7-9.



FILED

JUN 13 2 23 PM '95

West Virginia Legislature

Legislative Rule-Making Review Committee OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

June 12, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Charles B. Felton, Jr., Director
Division of Natural Resources
Building 3, Capitol Complex
Charleston, WV 25305-6087

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Commercial Sale of Wildlife

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 agencyX
- 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.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Bernie Dowler, Chief
Wildlife Resources Section



* M O D F I L E *