

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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2013 JUN -6 AM 9:29

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: DOC, DNR, Wildlife Resources Section TITLE NUMBER: 58

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 58

TITLE OF RULE BEING AMENDED: Special Waterfowl Hunting

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

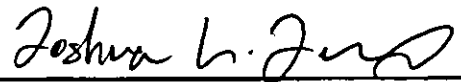
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 250

SECTION 64-10-4(g), PASSED ON April 13, 2013

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: June 6, 2013



Authorized Signature

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

2013 JUN -6 AM 9:29

**SERIES 58
SPECIAL WATERFOWL HUNTING**

OFFICE OF THE
SECRETARY OF STATE

§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. -- June 6, 2013.

1.4. Effective Date. -- June 6, 2013.

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, or any other feed or edible enticement.

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 or on any areas where hunters are attempting to take them. An area is considered baited for 10 days after the removal of the bait.

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

2.6. "Permanently Disabled in the Lower Extremities" is defined in Section 2 of the Division of Natural Resources Rule, Defining the Terms Used in all Hunting and Trapping, 58CSR46.

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

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

2.9. "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 58CSR57.

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.

§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.a. 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.b. 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.c. No person may take waterfowl from a sink box.

3.2.d. 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.d.1. of this rule.

3.2.d.1. 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.e. 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.f. No person may take waterfowl by the use or aid of live birds as decoys.

3.2.f.1. 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.g. 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.h. 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.i. 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.a. 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.a. The name and address of the person sending the birds;

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

3.5.c. 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. 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.

3.9. 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.

3.10. 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 eighteen (18) years of age or older as defined in Division of Natural Resources Rule, Defining the Terms Used in All Hunting and Trapping, 58CSR46. The accompanying adult cannot hunt waterfowl.

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)

3.11.a. The hunter shall carry current proof of annual enrollment while hunting waterfowl.