



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

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8/26/2016 3:08:35 PM

OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Natural Resources**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**

RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 58-58



Rule Id: 10253



Document: 28908



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)**

AGENCY **Natural Resources**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**

RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

**PRIMARY CONTACT**

Billie Shearer  
324 4th Avenue

So. Charleston, STATE ZIP

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)**

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RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

AUTHORIZING STATUTE(S) CITATION

**W. Va. Code §20-1-7(30).**

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD

**Monday, July 25, 2016**

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

**News Release**

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED

**Thursday, August 25, 2016**

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)**

AGENCY **Natural Resources**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**

RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,  
AMENDMENTS, REASONS FOR AMENDMENTS.

**No comments received**

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE  
FOLLOWING PUBLIC HEARING: (BE EXACT)

**Monday, August 29, 2016**

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in  
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 3)**

AGENCY **Natural Resources**

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RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. 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.

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)**

AGENCY **Natural Resources**

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RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS  
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS

**None**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in  
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY **Natural Resources**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**  
RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

**PRIMARY CONTACT**

Billie Shearer  
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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY **Natural Resources**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**  
RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

**There is no change anticipated to the administrative expenditures as a result of this rule.**

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 58-58



Rule Id: 10253



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)**

AGENCY **Natural Resources**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**  
RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

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.

<b>Effect Of Proposal</b>	<b>Current Increase/Decrease (use ' - ')</b>	<b>Next Increase/Decrease (use ' - ')</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>ESTIMATED TOTAL COST</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>PERSONAL SERVICES</b>			
<b>CURRENT EXPENSES</b>			
<b>REPAIRS AND ALTERATIONS</b>			
<b>ASSETS</b>			
<b>OTHER</b>			
<b>ESTIMATED TOTAL REVENUES</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)**

AGENCY **Natural Resources**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**

RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

**3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.**

**None anticipated**

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)**

AGENCY **Natural Resources**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**  
RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

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.

**This rule makes minor changes by modifying the language relating to hunting on Sundays, as well as clarifying language pertaining to the Youth Waterfowl Hunting Season.**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY **Natural Resources**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-58**  
RULE NAME **Special Waterfowl Hunting**

CITE AUTHORITY **W. Va. Code §20-1-7(30).**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Series 58 revises the current Special Waterfowl Hunting Rule. Revisions to this rule include language which modifies the language relating to hunting on Sundays, as well as clarifying language pertaining to the Youth Waterfowl Hunting Season.

CIRCUMSTANCES: The purpose of this rule is to establish provisions regarding the proper management of waterfowl with respect to the hunting of waterfowl in West Virginia.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 58-58



Rule Id: 10253



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TITLE 58  
LEGISLATIVE RULES  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES

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. -- ~~June 6, 2013.~~

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

1.5. Sunset Date. -- This rule will sunset 5 years after the rule becomes effective.

1.6. 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.~~ Waterfowl hunting is prohibited on Sundays except on privately owned lakes, ponds or impoundments and private land in those counties where Sunday hunting has not been prohibited by local election.

**§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 Season. ~~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 Season. 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~~ may not hunt or possess a firearm.

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.