



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Natural Resources TITLE-SERIES: 58-47
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 58-47 Prohibitions When Hunting and Trapping

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §20-1-7(31)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§20-7-1(31) provides agency rule making authority for Chapter 20 powers and duties

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/10/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

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

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes prohibitions in the pursuit or taking of wildlife within the boundaries of this State. Changes to this rule include a clarification to allowable State Park controlled deer hunts under §20-2-5 and a prohibition of baiting or feeding wildlife on public lands at any time. A penalty provision was also added to clarify W. Va. Code location of already existing penalties.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule establishes prohibitions in the pursuit or taking of wildlife within the boundaries of the State.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There are no anticipated changes to revenue.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There are no anticipated changes to administrative costs.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There are no anticipated changes to administrative costs or revenue.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Wesley H 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 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING

§58-47-1. General.

1.1. Scope and Purpose. -- This rule establishes prohibitions in the pursuit or taking of wildlife within the boundaries of this State.

1.2. Authority. -- W. Va. Code §20-1-7(~~3031~~).

1.3. Filing Date. -- ~~April 20, 2016.~~

1.4. Effective Date. -- ~~April 20, 2016.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further effect or force upon the expiration of five years from its effective date.

§58-47-2. Definitions.

2.1. "Bow" means a longbow, recurved bow, or compound bow that is hand-held, hand-drawn and held at full draw without the aid of any mechanical device. Triggering devices or release aids are legal.

2.2. "Modified Bow" means a longbow, recurve bow, or compound bow that has been modified or manufactured to hold the bow at full draw to accommodate a physical impairment of the user.

2.3. "Trap" is a device that is used to catch and hold animals. A trap may be legally used during the trapping season to catch fur-bearing animals and coyotes. The term includes leg foot hold traps, killer type or body gripping traps, box traps, encapsulating traps and snare. Legal and illegal traps are further defined ~~in the Division's Rule, General Trapping, 58CSR53~~ W. Va. Code of State Rules, Title 58 Series 53, General Trapping.

~~2.4. 2.5.~~ All other terms in this rule have the meaning prescribed in the W. Va. Code of State Rules, §58-46 Title 58 Series 46, Defining the Terms Used In All Hunting and Trapping, 58CSR46.

§58-47-3. Prohibitions.

3.1. Hunting is prohibited in State Parks and wildlife refuges, in safety zones in State Forests, and in safety zones in State Wildlife Management Areas, except State Park controlled deer hunts may be conducted in accordance with W. Va. Code §20-2-5(15).

3.1.a. Federal regulations prohibit hunting in Harpers Ferry National Historical Park.

3.2. Notwithstanding the provisions of W. Va. Code §20-2-5(2), woodchucks may be controlled by digging them out, cutting them out or smoking them out on private land by the landowner, his or her resident children or resident parents, or a bona fide resident tenant.

3.3. Except as provided in ~~Subdivisions 3.3.a~~ subsections 3.3.1. and 3.3.2. of this rule, it is illegal to use poisons, chemicals, or explosives in taking any furbearing animal, game animal, game bird, protected bird, or protected mammal.

~~3.3.a.~~ 3.3.1. Woodchucks may be controlled by poison, chemicals or explosives on private land by the landowner, his or her resident children or resident parents, or a bona fide resident tenant during the period commencing each year on April 1 and ending on September 30.

~~3.3.b.~~ 3.3.2. Redwing blackbirds, grackles, pigeons, starlings, brownheaded cowbirds and English sparrows may be controlled by chemicals registered with the West Virginia Department of Agriculture and the United States Environmental Protection Agency when prescribed and authorized by the director in writing. Authorized users shall follow avicide label instructions and take all possible precautions in order to protect nontarget species of wildlife.

3.4. It is illegal to hunt from, or by means of, a motorized watercraft unless the motor has been completely shutoff and the watercraft's progress from the motor has ceased.

3.5. It is illegal to use or possess a fully automatic rifle, fully automatic shotgun, or a fully automatic pistol while hunting or pursuing wildlife at any time.

3.6. It is illegal to catch, capture, take, or kill, or attempt to do so, by seine, net, bait, trap, deadfall, snare, or like device of any kind, any ~~bear~~, migratory bird, protected bird, protected mammal, or wild boar.

~~3.6.a.~~ 3.6.1. The Director considers an area to be baited for 10 days after the removal of the bait.

3.7. It is illegal for a person to have in his or her possession solid ball ammunition or shotshells containing shot larger than No. 4 during the muzzleloading season, except for a person legally hunting bear or legally hunting deer with a muzzleloader firearm. The use of .22 caliber rimfire for small game hunting is legal during the muzzleloading season.

~~3.7.a.~~ 3.7.1. Persons legally hunting waterfowl during the muzzleloader deer season may possess nontoxic shot shells containing larger than No. 4 shot but may not possess solid ball ammunition.

3.8. It is illegal to use any solid ball ammunition during the two-week bucks only deer season in those counties that are closed to bucks only hunting.

3.9. It is illegal to hunt between ½ hour after sunset and ½ hour before sunrise with a pistol, revolver or rifle larger than .22 caliber centerfire, a shotgun using solid ball ammunition or a shotgun using shot shells larger than #2 shot.

3.10. It is illegal to use tree stands, except for portable tree stands, on public lands.

3.11. It is illegal to transport or possess wildlife or parts of wildlife, which were killed by another hunter unless the wildlife is accompanied by a paper or tag filled out in plain English bearing the following information from the hunter that killed the wildlife: The hunter's signature, address, hunting license number (if required), game tag number (if required), the date of kill, the species, and the number, and/or quantity of wildlife.

3.12. It is illegal for any person to feed bears at any time.

3.13. It is illegal to shoot at wildlife with either a bow, crossbow, or firearm after alighting from a motor vehicle along any public road or highway, unless the shooter is at least 25 yards from the motor vehicle.

3.14. It is illegal to take, or attempt to take, any deer, bear, or boar by the aid or use of any electronic call.

3.15. It is illegal for any person to use a modified bow for the purpose of hunting or fishing unless he or she possesses a special permit to do so issued by the director. A person may apply for a special permit on forms issued by the Division. These forms shall include a section for a licensed physician to certify that the applicant requires a modified bow.

~~3.15.a.~~ 3.15.1. The physician's examination and certification shall be completed within the six months immediately preceding the date of the application.

~~3.15.b.~~ 3.15.2. The applicant shall authorize, by written release, his or her medical provider to disclose to the director of the Division of Natural Resources and the medical provider shall, upon receipt of the written release, disclose to the director of the Division of Natural Resources, that portion of the applicant's medical records which substantiates the applicant's physical impairment qualifying the applicant for the issuance of a special permit for use of a modified bow. The director shall: restrict access to medical records submitted to him or her; maintain the records in a secure locked cabinet; and not share this information with other federal, state, or local agencies or entities, or any register or data bank.

~~3.15.c.~~ 3.15.3. This special permit shall be accompanied by a valid resident or non-resident statewide hunting and/or fishing license unless otherwise exempted from the license requirements as provided in ~~Chapter 20 of the~~ W. Va. Code §20-1-1 et seq.

3.16. It is illegal to bait or feed any wildlife on public land ~~between September 1 and December 31 and during the spring gobbler seasons.~~ at any time.

§58-47-4. Penalties.

4.1. Any person violating the provisions of this rule is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.