



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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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: 58-56  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Special Migratory Game Bird Hunting

**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:

§20-1-7(31) provides statutory authority to the Director of the Division of Natural Resources to promulgate rules to implement and make effective the powers and duties vested in him or her by the provisions of Chapter 20 and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of Chapter 20.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/29/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/28/2020

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: Yes

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

agency press release

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

The purpose of this rule is to establish regulations when hunting migratory game birds in West Virginia. The revision modifies the definition of bait to include any edible enticement or any non-edible facsimile of an edible enticement; and the inclusion of drones and unmanned aircraft in language pertaining to the prohibitions of the methods of take, and other minor technical changes.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is necessary to effectively regulate the hunting of migratory game birds in West Virginia.

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 is no anticipated effect on the revenue of the state as a result of this rule.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no anticipated effect on special revenue accounts of the state as a result of this rule.

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

There is no anticipated economic impact on the state or its residents as a result of this rule.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>	0	0	0

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

There are no cost or revenue changes anticipated as a result of this rule.

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 56  
SPECIAL MIGRATORY GAME BIRD HUNTING

**§58-56-1. General.**

1.1. Scope. -- This rule establishes regulations when hunting migratory game birds in West Virginia.

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

1.3. Filing Date. -- ~~May 7, 2018~~.

1.4. Effective Date. -- ~~May 7, 2018~~.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect ~~on May 7, 2023~~  
upon the expiration of five years from its effective date.

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 time periods are prevailing time unless otherwise noted in this rule. Sunday hunting is legal in accordance with the provisions of W. Va. Code §20-2-5.

**§58-56-2. Definitions.**

2.1. "Aggregate" means the total bag or possession limit of similar kinds of migratory game birds.

2.2. "Bait" means shelled, shucked, or unshucked corn, wheat or other grain, salt, ~~or any~~ any other feed or edible enticement, or any non-edible facsimile of an 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 migratory game birds 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. "Migratory Game Birds" means doves, rails, snipe, and woodcock for which open seasons are prescribed in Section 4 of the ~~Division of Natural Resources Rule, Migratory Bird Hunting (58CSR55)~~  
W. Va. Code of State Rules, Series 58 Title 55, Migratory Bird Hunting.

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

**§58-56-3. General Migratory Bird Hunting Rules.**

3.1. Dual Violation. Violation of any provision of this rule is also a violation of federal migratory bird hunting regulations ~~under~~ pursuant to Migratory Bird Hunting, 50 C.F.R. Part 20 Subpart H.

3.2. Illegal Methods of Taking Migratory Game Birds.

3.2.1. No person may take migratory game birds with a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10-gauge, punt gun, battery gun, machine gun, fishhook, poison, drug, explosive, or stupefying substance.

3.2.2. No person may take migratory game birds 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 migratory game birds from a sinkbox (i.e., a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water).

3.2.4. No person may take migratory game birds from or with the aid or use of a motor vehicle, other land conveyance, or an aircraft of any kind, including a drone or other unmanned aircraft.

3.2.5. No person may take migratory game birds from or by means of any motorboat or sailboat unless the motor has been completely shut off or the sail furled and progress from the motor or the sail has ceased.

3.2.6. No person may take migratory game birds by the use or aid of live birds as decoys.

3.2.7. No person may take migratory game birds by the use of records or tapes of bird calls or sounds, or recorded or electrically-amplified imitations of bird calls.

3.2.8. No person may take migratory game birds by concentrating, driving, rallying, or chasing the birds with any motorized land, water, or air conveyance, including a drone or other unmanned aircraft, or any sailboat.

3.2.9. No person may take migratory game birds 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 is not necessary for the hunter to know an area is baited to be in violation of federal regulations and ~~Sub~~ section 3.2. of this rule.

3.3. Wanton Waste. A hunter shall retrieve all migratory game birds killed or crippled, if possible and retain them in his or her custody in the field.

3.4. Tagging. No person may give, put, or leave migratory game birds at any place, or in the custody of another person, unless the birds are tagged by the hunter with the following information:

3.4.1. The hunter's signature;

3.4.2. The hunter's address;

3.4.3. The total number of birds involved, by species; and

3.4.4. The date on which each bird was killed.

3.5. Field Dressing. No person may completely field dress migratory game birds, except doves and band-tailed pigeons, 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 hunter's home or to a migratory bird preservation facility, as defined in Migratory Bird Hunting, 50 C.F.R. §20.11.

3.6. Shipment. No person may ship migratory game birds unless the package is marked on the outside with the following information:

3.6.1. The name and address of the person sending the birds;

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

3.6.3. The number of birds, by species, contained in the package.

3.7. Importation. For information regarding the importation of migratory game birds killed in another country, hunters should consult Migratory Bird Hunting, 50 C.F.R. §20.61 through §20.66. One ~~(1)~~ fully-feathered wing must remain attached to all migratory game birds being transported between the port of entry and the hunter's home or to a migratory bird preservation facility, as defined in Migratory Bird Hunting, 50 C.F.R. §20.11. No person may import migratory game birds killed in any foreign country, except Canada, unless the birds are dressed (except as required in Migratory Bird Hunting, 50 C.F.R. §20.63), drawn, and the head and feet removed. No person may import migratory game birds belonging to another person.

3.8. Migratory Bird Harvest Information Program. No persons, except those legally exempt from purchasing a hunting license, may take or attempt to take migratory game birds 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~~ (Migratory Bird Hunting, 50 C.F.R. §20.20).

3.8.1. The hunter shall carry current proof of annual enrollment while hunting migratory game birds.