



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: 58-58
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Special Waterfowl 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 provisions regarding the proper management of waterfowl with respect to the hunting of waterfowl in West Virginia. Revisions to this rule include the elimination of the definition of permanently disable in the lower extremities, which is no longer needed due to changes in WV Code 20-2-46e Class Q special hunting permit for disable persons during the 2019 Legislative Session; modification to definition of bait; and several minor technical changes.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is necessary to establish provisions for the proper management of waterfowl with respect to hunting of waterfowl 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 economic impact on the revenue of the state as a result of this rule.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no anticipated economic impact on special revenue accounts 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)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0	0	0

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

There are no anticipated changes to cost or revenue 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 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(~~3031~~).

1.3. Filing Date. -- ~~May 17, 2017~~.

1.4. Effective Date. -- ~~May 22, 2017~~.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect ~~on May 22, 2022~~ 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 the time periods are prevailing time unless otherwise noted in this rule.

§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-~~ , 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 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)~~ 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.~~

~~2.76.~~ "Prevailing Time" means either Eastern Standard Time or Eastern Daylight Time as established by the United States Congress.

~~2.87.~~ "Sinkbox" means a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water.

~~2.98.~~ "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~~ W. Va. Code of State Rules, Title 58 Series 57, Waterfowl Hunting Rule.

~~2.109.~~ "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~~ pursuant to Migratory Bird Hunting, 50 C.F.R. Part 20 Subpart H.

3.2. Illegal Methods of Taking Waterfowl.

3.2.~~a~~1. 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, fishhook, poison, drug, explosive, or stupefying substance.

3.2.~~b~~2. 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~~3. No person may take waterfowl from a ~~sink box~~ sinkbox.

3.2.~~d~~4. 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.~~ 3.2.4.a. of this rule.

3.2.~~d.14~~a. 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~~5. 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~~6. No person may take waterfowl by the use or aid of live birds as decoys.

3.2.~~f.16~~a. 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)~~ 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~~7. 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~~8. 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~~9. 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)~~ 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~~1. 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 hunter's home or to a migratory bird preservation facility, as defined in Migratory Bird Hunting, 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~~1. The name and address of the person sending the birds;

3.5.~~b~~2. The name and address of the person to whom the birds are being sent; and

3.5.~~c~~3. 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 Migratory Bird Hunting, 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 Migratory Bird Hunting, 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 Migratory Bird Hunting, 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)~~ 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 Season. Youth hunters must be ~~fifteen (15)~~ 15 years of age or younger to participate in the Youth Waterfowl Hunting Season. Youth hunters must be accompanied by

a licensed adult ~~eighteen (18)~~ 18 years of age or older as defined in ~~Division of Natural Resources Rule~~ W. Va. Code of State Rules, Title 58 Series 46, Defining the Terms Used in All Hunting and Trapping, 58CSR46, who may not take, shoot or kill any wildlife while so accompanying the youth hunter.

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~~ Migratory Bird Hunting, (50 C.F.R. §20.20).

3.11.a~~1~~1. The hunter shall carry current proof of annual enrollment while hunting waterfowl.