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August 28th, 2020

Dear Game, Fish and Parks Commission
Joe Foss Building
523 East Capitol
Pierre, SD 57501
C/o Jon Kotilnek <Jon.Kotilnek@state.sd.us>

Dear Commissioners,

PETITION FOR RULEMAKING Submitted pursuant to SDCL 1-26-13.

Nancy Hilding and Prairie Hills Audubon Society of Western SD submit this petition. Nancy Hilding is a resident of Meade County, SD. Prairie Hills Audubon Society is a non-profit corporation registered in SD and as such is a person by SD law and Supreme Court decisions.

RULE TO BE AMENDED - SD beaver trapping-hunting rule(s) - Kotilnek version

Jon Kotilnek has been reviewing GFP's rules for sake of improving clarity. At the July 16-17th Commission meeting, the Commission adopted non-substantive changes to the existing beaver trapping rules, which consolidated several rules about beaver trapping (41:08:01:07 and 41:08:01:08). These rules were consolidated into one rule 41:08:01:07 and amended. On August 18th the Interim Rules Review Committee concurred and this rule will be published by the Secretary of State and become a formal SD rule on about September 7th. We submit this petition as an amendment to the rule

that will be in place in a few days and at finalization, rather than the two current rules that are currently in place, but will soon be gone.

Rule we seek to amend:

41:08:01:07. Beaver trapping and hunting season established. *The season is open from sunrise on November 1 through sunset on April 30 to catch, trap, or hunt beaver within the Black Hills Fire Protection District south of Interstate 90 and west of State Highway 79, except U. S. Forest Service lands where the beaver season is open from January 1 through March 31. The season is open year-round to catch, trap, or hunt beaver in the remaining portion of the Black Hills Fire Protection District. In all counties east of the Missouri River the season is open from sunrise on November 1 through sunset on April 30. The season is open year-round to catch, trap, or hunt beaver in all counties west of the Missouri River except the portion of the Black Hills Fire Protection District as described in this section.*

Source: *SL 1975, ch 16, § 1; 1 SDR 26, effective September 11, 1974; 3 SDR 22, effective September 23, 1976; 5 SDR 19, effective September 14, 1978; 6 SDR 14, effective August 23, 1979; 7 SDR 21, effective September 15, 1980; 8 SDR 19, effective August 31, 1981; 9 SDR 30, effective September 13, 1982; 10 SDR 12, effective August 17, 1983; 10 SDR 76, 10 SDR 102, effective July 1, 1984; 11 SDR 30, effective August 30, 1984; 12 SDR 22, effective August 21, 1985; 13 SDR 26, effective September 10, 1986; 14 SDR 40, effective September 23, 1987; 15 SDR 24, effective August 14, 1988; 16 SDR 32, effective August 20, 1989; 17 SDR 23, effective August 16, 1990; 18 SDR 33, effective August 19, 1991; 23 SDR 20, effective August 13, 1996; 32 SDR 31, effective August 29, 2005; 35 SDR 47, effective September 8, 2008.*

General Authority: *SDCL 41-2-18(2)(17), 41-8-20.*

Law Implemented: *SDCL 41-2-18(2)(17), 41-8-20.*

Current rules soon to be replaced, which we are ignoring.

41:08:01:07. Beaver trapping and hunting season established in East River and Black Hills Fire Protection District -- Exception. *The season is open from sunrise on the first Saturday of November to sunset on April 30 to catch, trap, or hunt beaver within the Black Hills Fire Protection District south of Interstate 90 and west of State Highway 79, except U. S. Forest Service lands where the beaver season is open from January 1 to March 31, inclusive. The season is open the year around to catch, trap, or hunt beaver in the remaining portion of the Black Hills Fire Protection District. In all counties east of the Missouri River the season is open from sunrise on the first Saturday of November to sunset on April 30.*

41:08:01:08. Beaver trapping and hunting season established in West River
-- Exception. *The season is open the year around to catch, trap, or hunt beaver in all counties west of the Missouri River except that portion of the Black Hills Fire Protection District described in § 41:08:01:07.*

CHANGE REQUESTED

We propose this new rule

41:08:01:07. Beaver trapping and hunting season established. The season is open from sunrise on November 1 through sunset on March 31st to catch, trap or hunt beaver in all of South Dakota, except U. S. Forest Service lands where the beaver season is open from January 1 through March 31.

STATEMENT OF REASONS

1. Crazy division of the Black Hills Fire Protection District

The 41:08:01:07 current rule(s) in both Jon Kotilnek's version and the old versions, creates a crazy subdivision of the Black Hills Fire Protection District. The District is split into four parts. You need to imagine a box, with east-to-west sides as lines drawn horizontally from Rapid City to the Wyoming border and from Hot Springs to the Wyoming border. You need to imagine north-to-south sides of the box created by the Wyoming border and highway 79. In that square the private inholdings have a 6-month trapping season and the Forest Service lands have 3-months. However in the Fire Protection district below the southern box edge at Hot Springs and above the northern box edge at Rapid City, all the private land inholdings in the forest and edge properties around the forest have 360 day season. There is a lot of forest north of Rapid City. We imagine due to homesteading many riparian areas are on private property, not on Forest Service land. We ask what possible rational reason could there be for this weird division?

2. Relationship of beavers to otters

SD otters are recovering from likely past extirpation in SD. Otters are frequently taken incidentally in beaver traps & otters rely on habitat provided by beavers.

The "2018 Game, Fish and Parks Threatened and Endangered Species Status Review" says at pages 123:

"River otters have a commensal relationship with beavers as beaver dams provide year-round open water and beaver bank dens and lodges are used by river otters as rest and natal sites"

SD 2018 Endangered and Threatened Species Status Review says at page 124

"Of 117 reported river otters killed in South Dakota from 1979 through 2016, 73% were killed incidental to legal trapping activities.....

A year-round beaver trapping season west of the Missouri River and a focus on non-native trout management in Black Hills streams will impair statewide recovery of river otters."

Melquist in his 2015 report to SDGFP on his 4-year study of SD river otters writes on page 71:

"I do not believe current regulations for harvesting and controlling beaver populations in South Dakota are conducive to the expansion of otters in West River and could hinder the rate of growth in East River. In South Dakota, female otters give birth on approximately 1 April. Any lactating female otter trapped and killed will result in the loss of her offspring. To reduce the possibility of trapping female otters with dependent young, beaver trapping seasons should not extend beyond 31 March. The unrestricted 31 March take of beaver that is currently allowed in West River should be replaced with a harvest season not to extend beyond 31 March if SDGFP plans to try and recover otters in that region of the State. Unregulated shooting of beaver should be discouraged or prohibited to avoid accidentally shooting an otter"
(Emphasis added)

Melquist in his 2015 report to SDGFP on his 4-year study of SD river otters at page 12 - writes:

Features I looked for in evaluating suitability of the different streams for otters included:

- *_Stream characteristics: Varying water depths and stream velocity, stream meanders, suitable bank cover (trees, shrubs), and presence of bank and in-stream structures.*

- Watershed features: Presence of adjacent wetlands and suitable tributaries, presence of beaver or beaver activity, and the level of human impacts.
- Prey availability: A diverse prey base (e.g., multiple fish species, crayfish, and frogs) is always preferable to enhance otter habitat. While I always looked for the presence of potential prey at each survey site, prey suitability was based on existing data.
- Other factors: Not a high traffic area and few or no human establishments.
(Emphasis added)

SDGFP's Draft 2020-2029 SD River Otter Management Plan July Version at page 3

"Target species was known for 146 of the 216 (67.5%) incidentally trapped river otter (Table 5). Of these, 116 (53.7%) were caught in traps targeting beaver, 19 while targeting raccoon (8.8%), 5 in fish nets or traps (2.3%), and 3 in sets targeting mink (1.4%). "

Here is the chart about that from the draft River Otter Plan:]

Table 5. Species targeted when river otter were incidentally captured in South Dakota, 1979-2019.

Species	Frequency	%
beaver	116	53.7%
unknown	70	32.4%
raccoon	19	8.8%
fish	5	2.3%
mink	3	1.4%
other	3	1.4%
	216	100%

32.5 percent of the otters were taken in traps for which the purpose was unknown and that set of unknowns likely would have included more beaver traps.

Otters have babies in April and April beaver trapping will harm recovery of otters. The current East & west river trapping seasons overlap time of otters giving birth.

Keith Fisk e-mailed me on 7/24/20 that "Beaver in South Dakota typically breed Feb. – April (most probably breed in March and April) and birth approximately 3 months later or around May -July".

3. Beavers are good for environment.

Beavers serve very valuable help for the South Dakota aquatic and terrestrial habitats that are associated with surface water. Here is a quote from USFWS's "The Beaver Restoration Guidebook *Working with Beaver to Restore Streams, Wetlands, and Floodplains, Version 2.0, June 30, 2017* Please see page iv

"Increasingly, restoration practitioners are using beaver to accomplish stream, wetland, and floodplain restoration. This is happening because, by constructing dams that impound water and retain sediment, beaver substantially alter the physical, chemical, and biological characteristics of the surrounding river ecosystem, providing benefits to plants, fish, and wildlife. The possible results are many, inclusive of: higher water tables; reconnected and expanded floodplains; more hyporheic exchange; higher summer base flows; expanded wetlands; improved water quality; greater habitat complexity; more diversity and richness in the populations of plants, birds, fish, amphibians, reptiles, and mammals; and overall increased complexity of the riverine ecosystems.

In many cases these effects are the very same outcomes that have been identified for river restoration projects. Thus, by creating new and more complex habitat in degraded systems, beaver dams (and their human-facilitated analogues) have the potential to help restoration practitioners achieve their objectives. Beaver have become our new partner in habitat restoration."

Beavers (*Castor canadensis*) are a management indicator species (MIS) on the Black Hills National Forest. (see the 2006 Black Hills National Forest Land and Resource Management Plan page II-32). Management Indicators (MI) are defined in Forest Service Manual (FSM) 2620.5-1 as

"(P)lant and animal species, communities, or special habitats selected for emphasis in planning, and which are monitored during forest plan implementation in order to assess the effects of management activities on their populations and the populations of other species with similar habitat needs which they may represent."

It makes no sense for beaver trapping/hunting on the Black Hills National Forest to not to be monitored and inventoried. The Forest Service needs to know if fluctuations in beaver populations are due to Forest Service forest management choices or private beaver hunting/trapping.

4. SDCL 41-8-23 provides for private people who have conflict beavers on their land to ask GFP Secretary for permission to kill conflict beaver

Keith Fisk has suggested to me that the reason for a more aggressive hunting beaver season west River is that the West River landowners are more vocal with GFP about beaver conflict issues than East River. SD has this law about killing conflict beaver:

41-8-23. Killing of mink, muskrats, and beavers causing damage.

Mink may be killed at any time if doing damage around buildings but all such mink killed are the property of the state, if taken during the closed season. If muskrat or beaver are injuring irrigation ditches, dams, embankments, or public highways, or causing any other damage to property, the secretary of game, fish and parks may issue a permit to trap or kill such animals at any time. The Game, Fish and Parks Commission may authorize the killing or trapping of beaver upon public lands and game preserves at any time the commission deems necessary.

Source: SDC 1939, § 25.0801; SL 1941, ch 121; SL 1947, ch 113; SL 1951, ch 125; SL 1955, ch 86;

SL 1959, ch 122; SL 1959, ch 123; SL 1961, ch 122; SL 2009, ch 206, § 53.

This law allows private landowners concerned about conflict beavers to apply to the Secretary of GFP for permission to kill conflict beavers. We don't think this is such a hardship.

It allows that land management agencies with conflict beavers may rely on the Commission to authorize beaver killing or trapping. We are not sure that the federal government needs the states permission to manage conflict wildlife in federal jurisdiction, but it seems state and local public land managers would need to.

Our proposed rule change, if finalized, won't take effect till later November 2020 after the Interim Rules Review Committee November meeting, when the 5-month beaver hunting/trapping season will be ongoing. If the Commission wants to use its' power to create a new rule authorizing trapping of conflict beaver on public lands in SD, it has till the end of March to do so. If adopted after October Commission meeting, there may be a short delay for the rule to become effective, while waiting for 20 days after the first Interim Rules Review Committee meeting in March or April 2021.

We could propose a rule for conflict beavers on public land, but you might want to consult with state and local land-managing agencies to see what they would want such a rule to look like and consider what issues there are with it.

However if you don't want to delay so as to study the issue, in addition to the above rule proposal, you could also consider moving forward a new rule proposal for **41:08:01** saying -- "Public land managers have 365 days a year to kill or translocate conflict beavers from the properties or public right of-ways they manage. If a beaver is injuring irrigation ditches, dams, embankments, or public highways, or causing any other damage to property, it may be considered a conflict beaver "

Trapping when beavers have dependent young.

Changing from a year round trapping season to shorter season will reduce the killing of mother beavers with dependent young. This is a conservation issue to help maximize beaver populations, once you acknowledge that beaver are valuable to SD. It is also an animal welfare issue as it reduces suffering of dependent young who may die of starvation.

Otters have babies in April so incidental take in beaver traps in April can orphan otter young. Keith Fisk e-mailed me on 7/24/20 that : "*Beaver in South Dakota typically breed Feb. – April (most probably breed in March and April) and birth approximately 3 months later or around May -July.*" So beaver trapping in May-July will orphan dependent young.

Citations:

Pollock, M.M., G.M. Lewallen, K. Woodruff, C.E. Jordan and J.M. Castro (Editors) 2017. The Beaver Restoration Guidebook: Working with Beaver to Restore Streams, Wetlands, and Floodplains. Version 2.0. United States Fish and Wildlife Service, Portland, Oregon. 219 pp. Online at:
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Wayne E. Melquist, Ph.D., FINAL REPORT, Determination of river otter (*Lontra canadensis*) distribution and evaluation of potential sites for population expansion in South Dakota , 1 October 2011 - 30 January 2015, Prepared for: Wildlife Diversity Program South Dakota Game, Fish and Parks , May 2015
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Sincerely,



Nancy Hilding
President
Prairie Hills Audubon Society
and for Self



Christine Sandvick