

From: info@gfp.sd.us
To: nhilshat@rapidnet.com
Cc: [Kierl, Liz](#); [Harrington, Nick](#)
Subject: Petition for Rule Change Form
Date: Friday, April 28, 2023 5:20:51 PM

South Dakota - Game, Fish, and Parks

Petition for Rule Change

A new form was just submitted from the <http://gfp.sd.gov/> website with the following information:

ID: 190

Petitioner Name: Nancy Hilding

Address: 6300 West Elm,
Black Hawk, , SD 57718

Email: nhilshat@rapidnet.com

Phone: 605-787-6466

Rule Identification: 41:08:01:07

Decribe Change: This is my second petition for rule change submission on 4/28/23. This form does not allow for attached documents. We suggest you change this web page to allow attached documents. The second petition for rule change is also on the beaver hunting/trapping rule & was also sent to GFP's attorney - Jon Kotilnek on Friday afternoon 4/28/23 via e-mail. It is 7 pages long in Times New Roman type font size 12, the last page is not blank . Thus Jon has received 2 petitions from me in two separate e-mails from me, one sent at 3:35 MT and one at 3:46 MT . I am sending two petitions on the same rule, one petition asks for less change and one asks for more change - to give the Commission more options during their review of petitions.

Reason for Change: The Statement of Reasons can be found in the Petition sent to Jon Kotilnek on Friday afternoon 4/28/23 via e-mail.

Nancy Hilding
President
Prairie Hills Audubon Society
P.O. Box 788
Black Hawk, SD 57718
nhilshat@rapidnet.com
605-787-6466

Nancy Hilding
6300 West Elm
Black Hawk, SD 57718,
nhilding@rapidnet.com
April 28th, 2023

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,

LONG 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)

[41:08:01:07.](#)

Beaver trapping and hunting season established. The season to catch, trap, or hunt beaver is open statewide and year-round, except as provided in this section. 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.

We suggest these changes:

Beaver trapping and hunting season established. The season to catch, trap, or hunt beaver is open statewide ~~and year-round~~, and from sunrise on November 1 through sunset on March 31st, except as provided in this section. The season is open from sunrise on November 1 through sunset on ~~April 30th~~ March 31st to catch, trap, or hunt beaver

within the Black Hills Fire Protection District ~~south of Interstate 90 and west of State Highway 79, except as defined in SDCL 34-35-15, except on U. S. Forest Service lands where the beaver season is open from January 1 through March 31.~~

During the period of time from January 1, 2024 till January 1, 2027 there will be a no trapping and hunting permitted pursuant to this rule, for beaver on Black Hills National Forest lands.

Managers of other lands owned by the public, may opt for a moratorium on the beaver trapping and hunting season or opt for shorter or longer beaver trapping and hunting seasons on their lands, if at least 45 days before the season would normally start that year, they send a letter to SD Game, Fish and Parks Secretary & the Commission announcing such, and after acknowledgement from GFP of the receipt of the entity's letter and at least 30 days before the season would normally start, the entity will publish a public notice of their season changes, that will be published in both a local paper and on-line, if they have an on-line presence.

STATEMENT OF REASONS

Statewide beaver trapping/hunting Season for 5 months not 12 months

Previous to summer of 2021, the beaver trapping/hunting season was 12-months west river and six-months east river. In the summer of 2021, Keith Fisk promoted the 12-month state wide beaver trapping/hunting season, so as to make it easier for landowners to kill conflict beaver. 365-days of the year, SD codified law allows landowners to kill conflict beaver with a request to SDGFP and approval of the Secretary of GFP. It allows SDGFP to create special beaver killing rules for public lands, at any time.

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. (Emphasis added)

We believe that the July 2021 extension of the beaver season to 12 months was unnecessary due to SDCL 41-8-23 and it deprives SDGFP staff of the chance to offer to relocate conflict beaver or teach land owners about non-lethal control or help them with non-lethal control.

The 12-month trapping/hunting rule is especially egregious on public land, where the people who are trapping are likely recreationists or commercial enterprise seeking fur revenue, or hunters using beavers for target practice and not the actual land managers, wanting a resource conflict eliminated. Thus, Keith Fisk's justification is wrongly applied to public land. We hope if the Commission and staff educate themselves on all the wonderful benefits that beaver provide to the ecosystem, other wildlife, fish and humans, they will want to re-evaluate a 12-month statewide trapping-hunting season on both public and private land, that they created two years ago.

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 as natal sites. River otters are killed as non-target species in beaver traps and year-round beaver trapping will result in more otters being incidentally killed. Between 1979 and 2019, when otter was still a listed species, 216 otters were "incidentally captured" in SD. Of the 216 otters, 53.7% of the otters were taken in beaver traps, 32.4% were in unknown trap, raccoon was 8.8%, fish were 2.3%, mink was 1.4 % and "other" was 1.4%.

In South Dakota, female otters give birth on approximately April 1st. Any lactating female otter that is trapped and killed in April 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. SD's historic 6th month long Nov-April season thus resulted in otters being killed during the time they give birth and raise their young. Our change from a 12-months or 6-month to a 5-month beaver season removes the April killing of mother otters with dependent young.

SD Game, Fish and Park's River Otter Management Plan does not plan for otters in west River SD (link: https://gfp.sd.gov/UserDocs/docs/otter_plan_2020-08-28.pdf). Most of our members live west River and we want west River otters. Having a 5-month beaver hunting/trapping season west River, will move forward the date when otters recolonize west river without a GFP sponsored re-introduction program.

Rule making power delegated to public land agencies by GFP

In 2021 SDGFP Commission established a precedent of allowing public land managers to modify hunting seasons on their lands, within the 2021 changes to the mountain lion season rule. The 2021 version of the rule allows managing entities of public land to prohibit mountain lion hunting by dogs, without consulting GFP.

41:06:61:06. Application requirements -- License and season restrictions -- Special conditions -- Carcass check-in procedures. The following requirements, restrictions, special conditions, and procedures apply to all applications for license and to all licenses issued under this chapter:

(5) The use of dogs to hunt mountain lions is allowed only during those specified hunting intervals in Custer State Park that allow the use of dogs; and year-round outside of the Black Hills Fire Protection District when on private land, with permission of the landowner or lessee. However, a pursuit of a mountain lion by dogs that originates on

private land may cross over or culminate on private land, with permission from the landowner or lessee, or on public land, unless expressly prohibited by the managing entity; (emphasis added)

See this link for cougar hunting rule:

<https://sdlegislature.gov/Rules/Administrative/29319>

Our proposed rule also allows the public land management entities to place new conditions on a season on their lands, but goes further and establishes a process for notice to GFP and to the public, by the agencies'/entities' adopting the new season conditions.

Moratorium in the Black Hills National Forest

Beaver are a keystone species.

They provide many benefits to the ecosystem, other wildlife, fish and to humans;

- `Beavers are a critical and useful part of our ecosystems.
- `Beavers increase groundwater storage and raise water tables,
- `Beavers decrease flooding
- `Beavers keep ephemeral and intermittent creeks flowing year-round,
- `Beavers filter sediments and pollutants from streams,
- `Beavers create aquatic habitat for aquatic species as well as habitat for other wetlands and riparian associated or dependent terrestrial species. Some of these other species generate hunting/fishing license sales & wildlife watching opportunities.
- `Beavers are fun & interesting to watch
- Trapping of beaver results in incidental killing of river otters, who are strongly associated with beaver
- `Many public land acres are managed for wildlife, multiple use, recreation/scenery and watershed protection values
- `SD statute provides for landowners to contact SD GFP and get permission to remove conflict beavers 365 days of the year. SDGFP provides assistance with removing conflict beavers.
- `Non-lethal methods exist to reduce or eliminate beaver/human conflicts
- `Beavers create habitat that helps store carbon and reduce threats of climate change.

Beaver are hard to find in the Black Hills and in July of 2021 Travis Beis and some other Commissioners indicated support for a three year moratorium on beaver trapping/hunting in the Black Hills National Forest -- to allow for beaver recovery in the Hills. The staff asked the Commissioners to delay that moratorium's rule making while the staff researched data on the Forest's beaver population. They reported back in December of 2021 that recent population data was lacking and helicopter monitoring would cost about either \$30,000 or \$35,000 to create and GFP did not have the money for this in December 2021 (GFP a few months later approved \$500,000 for the Nest Predator Bounty Program).

It is two years later and we believe that GFP and the BHNF have agreed to inventory beaver winter food caches by helicopter in the fall of 2023. Beaver are designated as a “management indicator species” on the BHNF so the Forest Service is actually required by 1982 Forest Planning Rule to do beaver inventories, but the last BHNF inventory was in 2012. We believe that GFP and BHNF are working to or planning to work to identify good existing beaver habitat, relocate “conflict beaver” to the Black Hills and do beaver habitat improvements. We thank both agencies for their work and their plans to benefit beaver.

We see bias in SDGFP not planning to create a beaver hunting/trapping moratorium. SDGFP and BHNF will spend money, resources and staff time to inventory and recover beaver. Why does staff object to stopping beaver hunting because of inadequate population data, but allows continued hunting justified on the same inadequate population data? That argument is a double-edged sword.

We have listed some of the benefits of beaver above. We now refer you to an 8-page letter that conservation organizations sent to President Biden asking for an emergency closure of federal public land to beaver trapping/hunting – This letter indicates the benefits of beaver in much greater depth than this petition. Letter to President Biden from environmental groups on 2/27/23 –<https://www.westernwatersheds.org/wp-content/uploads/2023/02/Biden-Beaver-Letter.pdf>

We also include a link to the recording from June 2021 of Michael M. Pollock of the National Oceanic and Atmospheric Administration speaking at one of our meetings on: “Working with beaver for the benefit of people, fish, wildlife and biological diversity”
<https://vimeo.com/manage/videos/585509489>

Geography Clean up

SDCL explains where the Fire Protection District is:

34 - 35 - 15. Black Hills Forest Fire Protect District - Area included. To protect timber on areas subject to unusual fire dangers, there is hereby created the Black Hills Forest Fire Protection District, consisting of all that part of the state described by metes and bounds as follows: Commencing at a point on the Wyoming - South Dakota state line at the junction of Interstate Highway 90 at the state line; thence east and southeast along Interstate Highway 90 via Rapid City to the intersection of U.S. Highway 16B; thence south and southwest along U.S. Highway 16B to the intersection of State Highway 79; thence south along State Highway 79 to the intersection U.S. Highway 18; thence south along U.S. Highway 18 to the Cheyenne River; thence west and northwest along the Cheyenne River to the Wyoming - South Dakota state line; thence north along said state line to the place of beginning. The Black Hills Forest Fire Protection District does not include any area within the limits of any municipality.

Link:

https://sdlegislature.gov/Statutes/Codified_Laws/2057672https://sdlegislature.gov/Statute/s/Codified_Laws/2057672

This is about geography. Your description is confusing as Highway 79 appears to take a break between Sturgis and Rapid City as I-90 takes over the route signage. However, the SD Department of Transportation has informed me that they consider Highway 79 to run concurrent with Highway 34, Lazelle St and I-90, with I-90 creating a bridge from Sturgis to Rapid City. However, they confirmed that 79 does stop at Maverik Junction, near Hot Springs.

Thus, the description in the existing rule excludes a small part of the Black Hills Fire Protection District, just north of the Cheyenne River and south & west of Maverik Junction. It would be better just to cite the legal description of it at SDCL 34-35-15. If you don't thus amend the rule, that small part the Black Hills Fire Protection District will have a 12-month beaver trapping season and your statements that non-Forest Service land on the Black Hills Fire Protection District has a 6-month trapping season is incorrect. Below see a link to such an on-line GFP statement and a screenshot of the statement.

<https://gfp.sd.gov/events/keydates/>

Beaver Season - Black Hills - Non-U.S. Forest Service land within the BH Fire Protection District | 2023

Season Dates
Start: Nov 1, 2022
End: Apr 30, 2023

Please note that trapping/hunting are not allowed on the 3 National Park Service units that are non-Forest Service lands within the Fire Protection District.

Deadlines in Rule Making

However, GFP's staff is not planning to propose a beaver rule change this May. We support Travis Bies's request for a 3-year moratorium on beaver trapping/hunting in the BHNF and we believe the Forest Service has endorsed the moratorium.

We believe that if a rule change is proposed in June or July 2023 rather than May 2023, that GFP Commission has to finalize that rule on Thursday Sept 7th, 2023. No adopted rule can move from the hearing to the Interim Rules Review (IRRC) without a 5-day break. The IRRC meets on Tuesday 9/12/23 and doesn't meet in October

Jon Kotilnek then has to get the minutes of the Commission's September meeting to the Interim Rules Review Committee (IRRC) in 4 days, if you want the rule change effective November 1st, 2023. This turn-around is possible to achieve, but likely creates a big rush for staff.

Interim Rules Review Committee allows changes to proposals at finalization.

Maybe members of the Commission will like parts of this proposed rule but might object to another part of this proposed rule and are thus afraid to move it forward to finalization. The Interim Rules Review Committee allows you to make significant changes to a proposed rule, if the changes are a result of testimony at the public hearing. So you could modify the petitioned rule proposal after the public hearing in July, if folks object to parts.

1-26-4.7. *Reversion to step in adoption procedure.*

The Interim Rules Review Committee may require an agency to revert to any step in the adoption procedure provided in § 1-26-4 if, in the judgment of the committee:

(1) The substance of the proposed rule has been significantly rewritten from the originally proposed rule which was not the result of testimony received from the public hearing;

See this link to the law about The Interim Rules Review Committee process
https://sdlegislature.gov/Statutes/Codified_Laws/2031417

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Hilding", with a stylized flourish at the end.

Nancy Hilding

President Prairie Hills Audubon Society

For the Society and myself as an individual