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 5:06:18 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:	189
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 form does not allow for attached documents. We suggest you change this web page to allow attached documents. The first petition for rule change on the beaver hunting/trapping rule was sent to GFP's attorney - Jon Kotilnek on Friday afternoon 4/28/23 via e-mail. It is 6 pages long in Times New Roman type font size 12, however the last page is blank.
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.

Removed last page of the attached document as it was blank for printing efficiency. - EJK 5/1/23

Petition Supporting Doc
Petition #189

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,

SHORT 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, 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~~ 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. However 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.

STATEMENT OF REASONS

Moratorium on Beaver hunting/trapping 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 Bies 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 the 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:

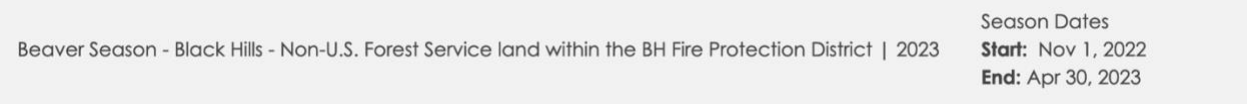
> *34 - 35 - 15. Black Hills Forest Fire Protect District - Area included. To protect timber on areas subject to unusual fire dangers, there is hereby created the Black Hills Forest Fire Protection District, consisting of all that part of the state described by metes and bounds as follows: Commencing 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/Statutes/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/



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

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. However GFP's staff is not planning to propose a beaver rule change this May.

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 a part 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 of it.

> *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,

Nancy Hilding

President Prairie Hills Audubon Society

For the Society and myself as an individual