

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark in this Box

FILED

May 8 2 17 PM '95

OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Bureau of Commerce, Div. of Natural Resources TITLE NUMBER: 58

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Special Fishing Rule

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

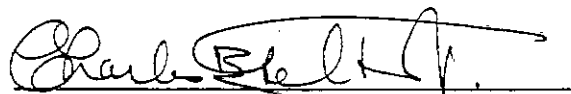
TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. No. 112

SECTION 64-10-2(e), PASSED ON March 23, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 9, 1995



AUTHORIZED SIGNATURE
Charles B. Felton, Jr., Director

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 27, 1995

Robert L. Miles
Natural Resources
Wildlife Resources
Rm. 812, Bldg. 3
Charleston, WV 25305

SB 112 authorizing, **Title 58, Series 21, Special Fishing Rule**, passed the Legislature on **March 11, 1995**. It is was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 112, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in SB 112 section **64-10-2(e)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 21
SPECIAL FISHING RULE

§58-21-1. General.

1.1. Scope and Purpose. -- This rule establishes special fishing seasons and prohibitions with respect to the taking of fish and other aquatic species in West Virginia.

1.2. Authority. -- W. Va. Code §§20-1-7(30) and 20-1-17(7).

1.3. Filing Date. -- May 8, 1995

1.4. Effective Date. -- May 9, 1995

1.5. For the purposes of this rule concerning the open seasons, bag limits, possession limits, creel limits, size, age, weight, and sex limits of any game or nongame fish and other aquatic species of West Virginia, refer to "Fishing Regulations" (58 C.S.R. 20).

§58-21-2. Definitions.

2.1. "Daylight hours" means the time period between sixty (60) minutes before sunrise and sixty (60) minutes after sunset.

2.2. All other terms have the meaning prescribed in W. Va. Code §20-1-2.

§58-21-3. Prohibitions.

3.1. Protected Species -- Keeping or killing or attempting to keep or kill paddlefish (*Polyodon spathula*) at any time by any means is prohibited. If caught or taken, the paddlefish shall be immediately returned to the water.

3.2. Fishing on Catch-and-Release Trout Waters -- Fishing on catch-and-release trout waters is permitted during daylight hours only.

3.2.1. It is illegal to possess any lures except artificial flies and lures made of metal, wood, feathers, hair or synthetic material on catch and release trout waters.

3.2.1.a. Multiple-hook lures must have barbless hooks.

3.2.1.b. Single-hooked lures may have barbed hooks.

3.2.2. It is illegal to keep or kill any fish caught on catch and release trout waters. The leader should be cut on a deeply hooked or gill hooked fish.

3.3. Fishing on Fly-Fishing-Only Waters -- Fishing on fly-fishing-only-waters is permitted during daylight hours only.

3.3.1. It is illegal to use or possess any lures other than artificial flies and streamers while on fly fishing only waters.

3.3.2. It is illegal to use any fishing tackle other than conventional fly fishing tackle on fly-fishing only waters.

3.3.3. It is illegal to keep or kill any fish caught on fly-fishing only waters. The leader should be cut on a deeply hooked or gill hooked fish.

3.4. Fishing Methods.

3.4.1. Dipping -- A dip net may not exceed thirty-six square feet (36 sq. ft.) in overall area and its mesh may not be smaller than one-quarter inch (1/4").

3.4.2. Bow Fishing -- It is illegal to:

3.4.2.a. Use an arrow having an explosive head or shaft while bow fishing;

3.4.2.b. Use an arrow dipped in or smeared with poison or other chemicals while bow fishing; or

3.4.2.c. Use a crossbow while bow fishing.

3.4.3. Gigging, Snagging, and Snaring -- It is illegal to take any game fish by gigging, snagging, or snaring.

3.4.4. Trotlines and Droplines -- The following requirements must be complied with when using trotlines and droplines:

3.4.4.a. Trotlines and droplines must be attached to the bank, or a tree on the bank;

3.4.4.b. Trotlines and droplines must bear an identification tag that is legible and waterproof;

3.4.4.c. Trotlines and droplines must be attended at least once every twenty-four (24) hours;

3.4.4.d. Wire or cable lines and hooks with more than one point are prohibited;

3.4.4.e. It is illegal to attach a trotline to public piers and docks or within fifty (50) feet of dam appurtenances; and

3.4.4.f. Trotlines and droplines are prohibited on impoundments designated by the director and published annually.

3.4.5. Seining for Minnows and Use of Minnow Traps and Throw Nets -- The seining of minnows and use of minnow traps and throw nets is permitted with the following restrictions:

3.4.5.a. Game fish may not be seined or trapped;

3.4.5.b. A seine may be used to obtain minnows for use as bait provided the seine is not larger than six (6) feet nor deeper than four (4) feet;

3.4.5.c. Minnow traps may be used provided the openings are not larger than one inch (1") in diameter; and

3.4.5.d. A thrownet may be used provided the diameter is no larger than six (6) feet and the mesh size no larger than 3/8 inch.

3.4.6. Underwater Spearfishing -- Spearfishing is permitted with the following restrictions:

3.4.6.a. Spearguns shall be discharged only beneath the surface of the water;

3.4.6.b. It is illegal to use a bolt having an explosive head or shaft while spearfishing;

3.4.6.c. It is illegal to use a bolt dipped in or smeared with poison or other chemicals while spearfishing;

3.4.6.d. A diver may not spearfish in such a manner as to interfere with other fishermen;

3.4.6.e. A diver may not spearfish in heavily-travelled boat lanes, marked swimming areas, or marked waterskiing areas; and

3.4.6.f. Fish taken by spearfishing may not be returned to the water or left on the bank.

§58-21-4. Special Fishing Season for Children and Persons Possessing a Valid Class Q License.

4.1. The special fishing season for children and persons possessing a valid Class Q license is from March 1 through May 31 and is open only in the following areas:

4.1.1. Handley Pond -- A 5-acre pond in Pocahontas County.

4.1.2. Wood Pond -- A 1/2-acre impoundment on the Bear Rock Wildlife Management Area in Ohio County.

4.1.3. Coonskin Park Pond -- A 2.7-acre pond on Coonskin Park in Kanawha County.

4.1.4. Westover Park Pond -- A 1.0 acre pond in Monongalia County.

4.1.5. Raleigh County Airport -- A 1.0-acre pond at the entrance to Raleigh County Airport.

4.1.6. Woodbine Area of Cranberry River -- A 300 yard long section of Cranberry River at the Woodbine Recreation Area in Nicholas County.

4.2. The season is open to:

4.2.1. All children ten (10) years of age or under who are accompanied by another person(s) to assist with baiting hooks and removing fish; and

4.2.2. All persons who possess a valid Class Q license in accordance with W. Va. Code §20-2-46e.

4.3. Fishing is restricted to daylight hours only.

4.4. The creel limit is four (4) trout.

§ 58-21-5. Special Fishing Area Regulations for London, Marmet, and Winfield Dam Tailwaters on the Kanawha River.

5.1. Requirements and prohibitions:

5.1.1. Children under the age of 13 must be accompanied by an adult within the designated public fishing area.

5.1.2. Sitting on, climbing over, through, or under handrails on the designated public fishing area is prohibited.

5.1.3. Swimming or diving from the designated public fishing area is prohibited.

5.1.4. Glass containers are prohibited on the designated public fishing area.

5.1.5. Intoxicants are prohibited on the designated public fishing area.

5.1.6. Firearms are prohibited on the designated public fishing area.

SENATE BILL NO. 121

(By Senators Manchin, Anderson, Boley, Grubb and
Macnaughtan)

[Introduced January 20, 1995; referred to the
Committee on Natural Resources; then to the
Committee on the Judiciary]

58-21

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10 A BILL to amend chapter sixty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one, as amended, by adding
12 thereto a new article, designated article three-a, relating
13 to authorizing the division of natural resources to
14 promulgate legislative rules relating to special fishing.

15 Be it enacted by the Legislature of West Virginia:

16 That chapter sixty-four of the code of West Virginia, one
17 thousand nine hundred thirty-one, as amended, be amended by
18 adding thereto a new article, designated article three-a, to read
19 as follows:

20 ARTICLE 3A. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE
21 LEGISLATIVE RULES.

22 §64-3A-1. Division of natural resources.

23 The legislative rules filed in the state register on the
24 fifteenth day of August, one thousand nine hundred ninety-four,

1 modified by the division of natural resources to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the fourteenth day of October,
4 one thousand nine hundred ninety-four, relating to the division
5 of natural resources (special fishing rule), are authorized.

6

7 NOTE: The purpose of this bill is to authorize the Division
8 of Natural Resources to promulgate legislative rules relating to
9 special fishing.

10

11 This section is new; therefore, strike-throughs and
12 underscoring have been omitted.

58-21
Bill-DNR, Special Fishing

0612
H. B. 2190

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)
(Introduced January 23, 1995 ; referred to the
Committee on ~~Agriculture and Natural Resources then~~
the Judiciary

A BILL to amend chapter sixty-four of the code of West Virginia,
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