

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #7

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1991 MAR 22 AM 9:18  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

Department of Commerce, Labor  
and Environmental Resources,  
Division of Natural Resources

AGENCY: \_\_\_\_\_ TITLE NUMBER: 47

CITE AUTHORITY: West Virginia Code §§20-1-7(30) and 20-1-17(7)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 21

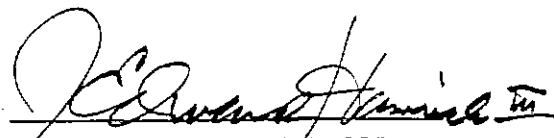
TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

"Special Fishing Regulations"

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use Additional Sheets If Necessary.

  
J. Edward Hamrick III  
Director

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DATE: March 22, 1991

TO: Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

FROM: Department of Commerce, Labor, and Environmental  
Resources, Division of Natural Resources.

EMERGENCY RULE TITLE: "Special Fishing Regulations"

1. Emergency Rule was filed on: March 22, 1991.
2. Statutory authority for promulgating the Emergency Rule:  
West Virginia Code, Chapter 20, Article 1, Section 7  
West Virginia Code, Chapter 20, Article 1, Section 17
3. Proposed Legislative Rule was filed on: March 22, 1991
4. Does the Emergency Rule adopt new language or does amend or  
repeal the current Legislative Rule?  
This rule adopts new language and incorporates changes made  
to the existing Series 20 ("Fishing Regulations") that the  
Division feels necessary to put through the legislative  
process.
5. Has the same or similar Emergency Rule previously been filed  
and expired? No
6. State, with particularity, those facts and circumstances  
which make the Emergency Rule necessary for the immediate  
preservation of public peace, health, safety, or welfare.  
Not Applicable
7. If the Emergency Rule was promulgated in order to comply with  
a time limit established by the Code or federal statute or  
regulation, cite the code provision, federal statute, or  
federal regulation and time limit established therein.  
Not Applicable
8. State, with particularity, those facts and circumstances  
which make the Emergency Rule necessary to prevent  
substantial harm to the public interest.  
Upon recent review of Title 47, Series 20, "Fishing  
Regulations," the Division found it necessary to subject  
recent additions to the aforementioned regulations to the  
legislative process in accordance with the State  
Administrative Procedures Act (W. Va. Code §29A). In doing  
so, The Division deleted several provisions from Series 20  
(exempted from legislative review), refiled Series 20 as an  
exempt rule, and created a new series to include these  
recently deleted provisions. The division finds in  
necessary to promulgate these rules on an emergency basis  
to enable the enforcement of these provisions which  
regulate current programs established by the Division.

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EMERGENCY RULE

TITLE 47  
LEGISLATIVE RULES  
DEPARTMENT OF COMMERCE, LABOR, AND ENVIRONMENTAL RESOURCES  
DIVISION OF NATURAL RESOURCES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 21  
SPECIAL FISHING REGULATIONS

§47-21-1. General.

1.1. Scope and Purpose. -- These regulations establish 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. -- ~~March 22, 1991.~~

1.4. Effective Date. -- ~~March 22, 1991.~~

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this is correct. rlc.

1.5. For the purposes of these regulations 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 Title 47, Series 20, of the Code of State Regulations (47 U.S.C §20), "Fishing Regulations".

§47-21-2. Definitions.

2.1. "Daylight hours" means the time period between thirty (30) minutes before sunrise and thirty (30) minutes after sunset.

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

§47-21-3. Prohibitions.

3.1. Protected Species. To keep or kill or attempt to keep or kill paddlefish (*Polyodon spathula*) at any time by any means shall be 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. Only artificial flies and lures made of metal, wood, feathers, hair, or synthetic material may be used or in

## EMERGENCY RULE

one's possession 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. All fish caught on catch-and-release trout waters must be returned to the water at once. To release a deeply hooked or gill-hooked fish, the leader should be cut.

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

3.3.1. Only artificial flies and streamers may be used or in one's possession on fly-fishing-only waters.

3.3.2. Only conventional fly fishing tackle may be used on fly-fishing-only waters (i.e., open-faced and closed-faced spinning or spin cast reels are prohibited).

3.3.3. All fish caught on fly-fishing-only waters must be returned to the water at once. To release a deeply hooked or gill-hooked fish, the leader should be cut.

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 shall be 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; and

3.4.2.c. Use a crossbow while bow fishing.

3.4.3. Giggling, Snagging, and Snaring. It is illegal to take any game fish by giggling, 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 tree thereon.

## EMERGENCY RULE

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.

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 Minnow Traps. The following requirements must be complied with when seining for minnows and using minnow traps.

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.

3.4.6. Underwater Spearfishing. The following requirements must be complied with when spearfishing.

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.

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

**EMERGENCY RULE**

**§47-21-4. Special Fishing Season for Children and the Handicapped.**

4.1. The special fishing season for children and the handicapped 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 Pochahontas 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.

4.2. The season shall be open to:

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

4.2.2. All persons that 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.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE May 3, 1991  
ADMINISTRATIVE LAW DIVISION

May 3, 1991

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

RULE: New Rule, Series 21, Specifal Fishing Regulations

DATE RULE FILED AS AN EMERGENCY RULE: March 22, 1991

DECISION NO. 20-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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## STATE OF WEST VIRGINIA

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#### DECISION

#### EMERGENCY RULE DECISION (ERD 20-91)

AGENCY: Division of Natural Resources  
RULE: New Rule, Series 21, Special Fishing Regulations  
FILED AS AN EMERGENCY RULE: April 26, 1991

- par. 1 The Division of Natural Resources (DNR) has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(a))].
- par. 4 (A) Procedural Compliance: WV Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DNR filed this emergency rule with supporting documents with the Secretary of State March 22, 1991 and with the LRMRC March 22, 1991.

par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 20-1-7(30) reads:

*Promulgate rules and regulations, in accordance with the provisions of §29A-1-1 et seq. of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take other steps as may be necessary in his discretion for the proper and effective enforcement of this chapter.*

par. 9 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code §29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

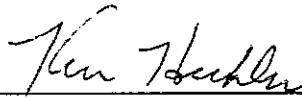
par. 12 The facts and circumstances as presented by the DNR are as follows:

This rule adopts new language and incorporates changes made to the existing Series 20 (Fishing Regulations) that the Division feels necessary to put through the legislative process. Upon recent review of Title 47, Series 20, Fishing Regulations, the Division found it necessary to subject recent additions to the aforementioned regulations to the legislative process in accordance with the State Administrative Procedures Act (W. Va. Code §29A). In doing so, the Division deleted several provisions from Series 20 (exempted from legislative review), refiled Series 20 as an exempt rule, and created a new series

to include these recently deleted provisions. The Division finds it necessary to promulgate these regulations on an emergency basis to enable the enforcement of these provisions which regulate current programs established by the Division.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g) . . ."to prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 20-91 or ERD 20-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Natural Resources, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

Entered \_\_\_\_\_

THIS DATE May 3, 1991  
ADMINISTRATIVE LAW DIVISION