

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

1991 MAY -1 PM 1:40

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

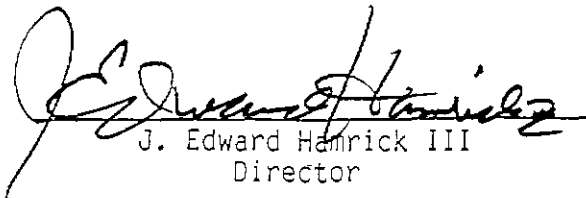
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: "Special Fishing Regulations"

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


J. Edward Hamrick III
Director

FISCAL NOTE FOR PROPOSED RULES

Rule Title: "Special Fishing Regulations"

Type of Rule: Legislative Interpretive Procedural

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

Address: Building 3, State Capitol Complex, Charleston, West Virginia 25305

1. Effect of Proposed Rule	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$
Personal Services					
Current Expense			NO CHANGE		
Repairs and Alterations					
Equipment					
Other					

2. Explanation of Above Estimates:

This rule provides for the adoption of special fishing seasons and prohibitions as they relate to fishing the waters of this State.

3. Objectives of These Rules:

This rule proposes a special fishing seasons for children and the handicapped. This rule also proposes provisions prohibiting the taking of specific species of fish which are currently in very low numbers within this State and prohibits various methods of fishing.

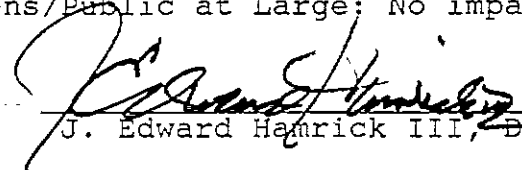
4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: No impact

B. Economic Impact on Political Subdivisions: No impact
Economic Impact on Specific Industries: No impact
Economic Impact on Specific Groups of Citizens: No impact

C. Economic Impact on Citizens/Public at Large: No impact

Date: April 26, 1991



J. Edward Hamrick III, Director

FILED

DATE: May 1, 1991
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: West Virginia Division of Natural Resources
LEGISLATIVE RULE TITLE: "Special Fishing Regulations"

1. Authorizing statute(s) citation:

West Virginia Code Chapter 20, Article 1, Section 7(30).
West Virginia Code Chapter 20, Article 1, Section 17(7).

2. a. Date filed in State Register with Notice of Hearing:

March 22, 1991 (Notice of Comment Period).

b. What other notice, including advertising, did you give of the public hearing?

none

c. Date(s) of hearing(s): N/A

d. Attach list of persons who appeared at the hearing, comments received, amendments to the proposed rule, and the reasons for those amendments.

Attached No comments received X

The comments received and the Divisions responses appear in the Response to Comments filed with the agency-approved proposed Legislative Rule.

N/A

e. Date you filed in the State Register the agency-approved proposed Legislative Rule following public hearing:

May 1, 1991.

f. Name and phone number of agency person to contact for additional information:

Michael E. Comer, Regulatory Analyst
Office of Environmental and Regulatory Affairs
348-2761

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

N/A

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

N/A

PREAMBLE TO A NEW LEGISLATIVE
RULE CONCERNING FISHING THE
WATERS OF THIS STATE

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

REGULATIONS: Title 47, Series 21, "Special Fishing Regulations".

ACTION: Filing an agency approved rule with the Legislative Rule-Making Review Committee.

SUMMARY: Today's filing with the LRMRC proposes a new Legislative Rule that implements a new fishing season for children under 10 years of age and for the handicapped that possess a valid Class Q license. This rule also prohibits the taking of paddlefish, a species of fish considered extremely low in numbers throughout the State waters. This rule also gives specific guidelines when using legal methods of fishing.

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1991 MAY -1 PM 1:40

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF
SECRETARY OF STATE

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

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. --

1.4. Effective Date. --

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 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. 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 tree thereon.

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.

§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.