



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

Form #7

Filing Date

FILED

Dec 23 10 03 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: DCL&ER, Div. of Natural Resources TITLE NUMBER: 47

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

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

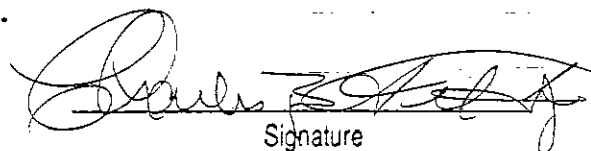
TITLE OF RULE BEING AMENDED: Special Fishing Rule

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:
Two (2) new waters are proposed to be added to the special fishing areas for children and persons possessing a valid Class Q (handicapped) license. This filing will allow the stocking of these waters be initiated during March through May of 1994. (The time period for stocking trout in the Children and Class Q license designated waters). If the emergency rule is not filed, these areas will not be available to the user group until March of 1995.


Signature

Use additional sheets if necessary

4.20



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

December 15, 1993

Mr. Charles B. Felton, Jr.
Director
Division of Natural Resources
Building 3, Room 812
Charleston, West Virginia 25305-0664


Re: Proposed Emergency Amended Rule, Title 47, Series
21, Special Fishing Rule

Dear Mr. Felton:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,


John M. Ranson
Cabinet Secretary

JMR/ec

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STATE OF WEST VIRGINIA
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

State Capitol Complex
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GASTON CAPERTON
Governor

CHARLES B. FELTON, JR.
Director

JOHN M. RANSON
Cabinet Secretary

M E M O R A N D U M

TO: John M. Ranson, Cabinet Secretary
Department of Commerce, Labor
and Environmental Resources

DATE: December 8, 1993

SUBJECT: Division Approval of Proposed Rules and Request for
Department Consent to File

The enclosed emergency amendment and notice of comment period for the proposed rules listed on the enclosed "MEMORANDUM OF CONSENT" have my approval to be proposed pursuant to the West Virginia Administrative Procedures Act. Your approval is requested.

A handwritten signature in cursive script, appearing to read "Charles B. Felton, Jr.", written over a horizontal line.

Charles B. Felton, Jr., Director
Division of Natural Resources

CBF/mds

Enclosure



STATE OF WEST VIRGINIA
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

State Capitol Complex
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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

CHARLES B. FELTON, JR.
Director

M E M O R A N D U M

TO: Bob Miles, Chief
Wildlife Resources Section

FROM: Bernard F. Dowler, Assistant Chief
Wildlife Resources Section

DATE: December 7, 1993

SUBJECT: Approval of Proposed Legislative Rule

Enclosed for your approval is the emergency amendment and notice of comment period for the following legislative rule:

Series 21

If these changes are acceptable, please sign below and return.

Bob Miles 12/9/93
Bob Miles Date

BFD/trs

Enclosure

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Special Fishing Regulations

47 C.S.R. 21

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

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

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	no change	no change	no change	no change
Personal Services	\$				
Current Expenses	\$				
Repairs & Alterations	\$				
Equipment	\$				
Other	\$				

2. Explanation of above estimates: Two additions are being made to the rule, neither of which will change the cost of implementating the rule.

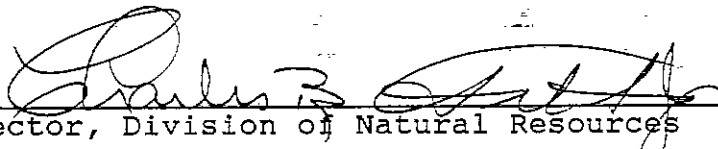
3. Objectives of this rule: To add an additional pond and stream section to the special fishing areas for class Q license holders.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government. None.
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. None.
- C. Economic Impact on Citizens/ Public at Large. None.

Date: 12-8-93

Signature of Agency Head or Authorized Representative


 Director, Division of Natural Resources

DATE: December 8, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: DCL&ER, Division of Natural Resources

EMERGENCY RULE TITLE: Special Fishing Rule

1. Date of Filing December 23, 1993
2. Statutory authority for promulgating emergency rule:
§§ 20-1-7(30) and 20-1-17(7)
3. Date of filing of proposed legislative rule: December 23, 1993
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?
Amends a current rule
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.

The emergency rule would add two (2) new areas to the existing four (4) areas managed specifically for children 10 years of age or younger and to handicapped persons with a Class O license. These areas are essential to provide a quality fishing opportunity to those who have difficulty accessing other areas and competing with other anglers. Since the areas are stocked with trout March through May each year, they must be listed in the fishing regulations brochure (printed at the beginning of the year) to inform the public and to allow proper law enforcement. If the emergency rule cannot be filed, the above-mentioned user group could not benefit from the areas until March of 1995.

PREAMBLE TO A PROPOSED RULE
CONCERNING
SPECIAL FISHING RULE

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

REGULATION: Title 47, Series 21, "Special Fishing Rule."

ACTION: Emergency amendment of an existing rule, and notice of a thirty day public comment period.

SUMMARY: The proposed amendment adds two waters to the special fishing areas for children and persons possessing a valid Class Q license: (1) Raleigh County Airport; and (2) Woodbine Area of Cranberry River.

FILED

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

Dec 23 10 03 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 21
SPECIAL FISHING RULE

§47-21-1. 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. --

1.4. Effective Date. -- January 1, 1994

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 C.S.R. 20), "Fishing Regulations".

§47-21-2. 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.

§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 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. Only artificial flies and lures made of metal, wood, feathers, hair, or synthetic material may be used or in a persons 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 a persons 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 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 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; 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 -- 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; and

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 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 .5-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 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.