

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Department of Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: _____

Catching and Selling Bait Fish

DATE OF PUBLIC HEARING: Monday, January 25, 1988 TIME: 3:00 p.m.

LOCATION OF PUBLIC HEARING: Director's Conference Room 674

1800 Washington Street, East

Charleston, West Virginia

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: West Virginia DNR

1800 Washington St., E.

Charleston, WV 25305

Attn: OERA

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

RP Poterba

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: _____

Catching and Selling Bait Fish

~~INSTEAD OF A PUBLIC HEARING~~, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON January 25, 1988 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

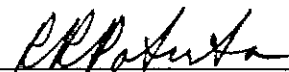
WV Department of Natural Resources

1800 Washington Street, East

Charleston, WV 25305

Attn: OERA

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Catching and Selling Bait Fish

Type of Rule: X Legislative Interpretive Procedural

Agency: West Virginia Department of Natural Resources

Address: 1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$

Personal Services

Current Expense

Repairs and Alterations NO CHANGE

Equipment

Other

2. Explanation of Above Estimates:

The proposed rule replaces an existing rule without changing any current administrative procedures.

3. Objectives of These Rules:

These rules regulate the catching and selling of bait fish by persons licensed under the provisions of W. Va. Code §20-2-55.

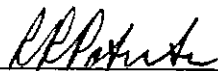
4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: NO IMPACT

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: NO IMPACT

C. Economic Impact on Citizens/Public at Large: NO IMPACT

Date: December 16, 1987



Ronald R. Potesta
Director

**PREAMBLE TO PROPOSED LEGISLATIVE RULES CONCERNING
THE CATCHING AND SELLING OF BAIT FISH**

REGULATIONS: Department of Natural Resources, Series 22,
Catching and Selling Bait Fish

AUTHORITY: W. Va. Code §20-1-7(30)

ACTION: Proposed Rule; Notice of Hearing and Comment Period

DATES: A public hearing on this proposal will be held on Monday, January 25, 1988 in the Director's Conference Room 674, 1800 Washington Street, East, Charleston. Written comments will be received by the Department until 4:30 p.m. on January 25, 1988.

SUMMARY: The Department is proposing a new legislative rule concerning the catching and selling of minnows and other bait fish under a license issued by the Department pursuant to W. Va. Code §20-2-55. The proposed legislative rule would repeal and replace 47 C.S.R. 22A "Regulations For Catching and Selling Minnows and Aquatic Life" filed December 30, 1982 and effective January 1, 1983. The existing rule was proposed and adopted as a procedural rule. It is the current opinion of the Department that the regulations established under this rule fall within the definition of "legislative rule" provided under W. Va. Code §29A-1-2. Therefore, the Department is proposing to repeal and replace the procedural rule currently in effect with a legislatively-authorized rule. One substantive change has been made in replacing the current rule. A new subsection (Section 7.1) would now allow licensees to utilize cast nets to catch bait fish.

CONTACT: For further information regarding this filing, please contact Mr. Jeffrey E. Herrold, WV Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305, telephone (304) 348-2761.

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*10 TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 22
CATCHING AND SELLING BAIT FISH

*09 §47-22-1. General.

1.1. Scope. -- This legislative rule establishes regulations governing the catching and selling of bait fish under a license issued pursuant to W. Va. Code §20-2-55.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces 47 C.S.R. 22A "Regulations For Catching and Selling Minnows and Aquatic Life" filed December 30, 1982 and effective January 1, 1983.

*09 §47-22-2. Definitions.

2.1. "Aggregate" means the total possession or sales limit on similar kinds of bait fish considered as a whole.

2.2. "Bait Fish" means the species listed in Section 3 of these regulations.

2.2. "Licensee" means a person holding a valid license to catch and sell minnows and other bait fish issued by the Department pursuant to W. Va. Code §20-2-55.

2.3. "Lizard" means the colloquial term used in this State for salamanders and refers in these regulations to amphibians rather than reptiles.

*09 §47-22-3. Species Which May Be Legally Caught and Sold.

3.1. The following species may be caught and sold by a licensee:

3.1.1. Crayfish.

3.1.2. Gizzard Shad (*Dorosoma cepedianum*). -- Gizzard shad have a row of sharp, spiny scutes (saw-toothed

scales) along their belly and the last ray of their dorsal fin is greatly elongated.

3.1.3. Hellgrammites.

3.1.4. Madtoms. -- All species in the family **Ictaluridae**, genus **Noturus**. Madtoms have an adipose fin continuous with the caudal fin (i.e., the tail fin continues forward along the back of the fish).

3.1.5. Minnows. -- All species in the family **Cyprinidae** except carp and goldfish. Minnows have a single, spineless dorsal (back) fin which has nine (9) or fewer rays.

3.1.6. Salamanders (Lizards).

3.1.7. Suckers. -- All species in the family **Castostomidae**.

*09 §47-22-4. Possession Limit.

4.1. Crayfish, Hellgrammites, and Lizards. -- Two hundred and fifty (250) in total aggregate number.

4.2. Gizzard Shad. -- No limit.

4.3. Madtoms, Minnows, and Suckers. -- Ten (10) pounds in total aggregate weight.

*09 §47-22-5. Sales Limits.

5.1. Crayfish, Hellgrammites, and Lizards. -- Fifty (50) in total aggregate number per purchaser.

5.2. Gizzard Shad. -- No limit.

5.3. Madtoms, Minnows, and Suckers. -- Fifty (50) in total aggregate number per purchaser.

*09 §47-22-6. Size Limits.

6.1. There are no size limits on bait fish taken for commercial sale.

*09 §47-22-7. Legal Collection Methods.

7.1. Cast nets may be used to catch bait fish for commercial sale if such nets do not exceed three (3) feet in radius and have a square mesh smaller than one-quarter (1/4) inch.

7.2. Dip nets may be used to catch bait fish for commercial sale if such nets do not exceed thirty-six (36) square feet in overall area and have a mesh not smaller than one-quarter (1/4) inch.

7.3. Minnow traps may be used to catch bait fish for commercial sale provided the opening of such traps is not larger than one (1) inch in diameter.

7.4. Seines may be used to catch bait fish for commercial sale if such seines do not exceed four (4) feet in depth, six (6) feet in length, and have a mesh not smaller than one-quarter (1/4) inch.

7.5. Any minnow trap that is left unattended must have a waterproof and legible tag bearing the licensee's name and address and must be tended at least once every twenty-four (24) hours.

***09 §47-22-8. Restricted Areas.**

8.1. No bait fish may be taken for the purpose of commercial sale from waters closed to fishing under the provisions of 47 C.S.R. 20.



*10 TITLE 47
PROCEDURAL RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 22A
REGULATIONS FOR CATCHING AND SELLING
MINNOWS AND AQUATIC LIFE

*09 §47-22A-1. General.

1.1. Scope. -- These procedural rules are promulgated to regulate the catching and selling of minnows and aquatic life.

1.2. Authority. -- W. Va. Code §20-1-7.

1.3. Filing Date. -- December 30, 1982.

1.4. Effective Date. -- January 1, 1983.

*09 §47-22A-2. Species which may be taken for Sale.

2.1. Minnows (Cyprinidae). -- All species except carp and goldfish.

2.2. Suckers. -- Any species.

2.3. Madtoms (Catfish family, Noturus spp).

2.4. Gizzard Shad (Dorosoma cepedianum).

2.5. Crayfish, hellgrammites and lizards (salamanders).

*09 §47-22A-3. Species which may not be taken for Sale.

3.1. Trout, black bass, rock bass, white bass, crappie, walleye, sunfish, pickerel, muskellunge, channel catfish.

*09 §47-22A-4. Identification.

4.1. Minnows. -- Have a single, soft (spineless) dorsal (back) fin which has nine (9) or less rays.

4.2. Gizzard Shad. -- Have a row of sharp spiny scutes along their keel and the last ray of dorsal fin is greatly elongated.

***09 §47-22A-5. Possession Limit.**

5.1. Minnows, Suckers, Madtoms. -- Not to exceed ten (10) pounds in total weight.

5.2. Gizzard Shad. -- No limit.

5.3. Crayfish, Hellgrammites, Lizards. -- Not to exceed two hundred fifty (250) in aggregate number.

***09 §47-22A-6. Limit of Sale.**

6.1. Minnows, Suckers, Madtoms. -- Not to exceed fifty (50) per purchaser.

6.2. Gizzard Shad. -- No limit.

6.3. Crayfish, Hellgrammites, Lizards. -- Not to exceed fifty (50) in aggregate per purchaser.

6.3.1. A receipt of sale must be supplied each buyer. Records of all sales must be kept and they shall be made available for inspection upon request by the director of the Department of Natural Resources of his representative.

***09 §47-22A-7. Size Limits.**

7.1. There are no size limits on bait taken for sale.

***09 §47-22A-8. Methods.**

8.1. Seines. -- Not to exceed four (4) feet in depth nor more than six (6) feet in length having a mesh not smaller than one-quarter (1/4) inch.

8.2. Dip Nets. -- Not to exceed thirty-six (36) square feet in overall area having a mesh not smaller than one-quarter (1/4) inch.

8.3. Minnow Traps. -- Provided the opening is not larger than one (1) inch in diameter.

***09 §47-22A-9. Restricted Areas.**

9.1. No bait may be taken for the purpose of sale from waters of the state parks or from streams closed to fishing during the period of closure.

***09 §47-22A-10. Out-of-State Sale Prohibited.**

10.1. No person shall at any time transport beyond the limits of the State, any species of wildlife captured or caught within the State. (Note: This does not apply to persons who propagate and sell their own fish under propagation license).