

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

Form #3

Do Not Mark In this Box

FILED  
1988 Jan. 27, 9:56

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

AGENCY: Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY W. Va. Code §20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES  NO

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

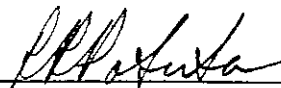
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

Catching and Selling Bait Fish

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.

  
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FISCAL NOTE FOR PROPOSED RULES

70 70

Rule Title: Catching and Selling Bait Fish

Type of Rule:  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.

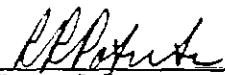
3. Objectives of These Rules:

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

DATE: January 27, 1987

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Natural Resources

LEGISLATIVE RULE TITLE: Catching and Selling Bait Fish

1. Authorizing statute(s) citation:

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

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

December 16, 1987

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

An official Department News Release was sent to all West Virginia newspapers and radio and television stations.

c. Date(s) of hearing(s): January 25, 1988

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached   X   No comments received       

Comments received are detailed in the Response to Comments filed with the agency-approved proposed Legislative Rule. No interested person appeared at the public hearing.

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

January 27, 1988

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

Mr. Dennis H. Treacy, Administrator  
Office of Environmental & Regulatory Affairs  
348-2754

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:

NOT APPLICABLE

- 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.

\_\_\_\_\_

- b. Date of hearing: \_\_\_\_\_

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

\_\_\_\_\_

- d. Attach findings and determinations and reasons:

**PREAMBLE TO PROPOSED LEGISLATIVE RULE 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:** Approved Rule

**SUMMARY:** The Department is approving 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 rather than under the definition of "procedural rule." 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.

**RESPONSE TO COMMENTS:** A public hearing on this proposal was held on January 25, 1988 in Charleston and written comments were received by the Department until 4:30 p.m. on that day. No interested person attended the public hearing; however, one person did submit written comments on the proposed rule. Those comments and the Department's responses appear below:

**Comment:** The commenter believes licensees should be able to collect bait fish from small streams as well as from rivers.

**Response:** These regulations contain no prohibition concerning small streams. A licensee may collect bait fish from any public waters in West Virginia with one exception - no bait fish may be taken from waters closed to fishing. The only stream currently closed to fishing is the Dogway Fork of the Cranberry River in Pocahontas and Webster Counties.

Comment: The commenter recommends that the regulations be amended to prohibit licensees from taking bait fish from streams stocked with trout.

Response: The Department has not received any complaints regarding the taking of bait fish from trout streams and does not believe that the catching of bait fish from stocked streams will adversely affect trout populations or the activities of other fishermen.

\*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 to govern 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.

2.3. "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.

2.4. "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 not 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).