

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #7

Do Not Mark In This Box, Filing Date

FILE
11 100 88 1110 74

Effective Date

August 19, 1992

NOTICE OF AN EMERGENCY RULE

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

CITE AUTHORITY: §20-2-11, 47 & 48

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: Commercial Sale of Wildlife

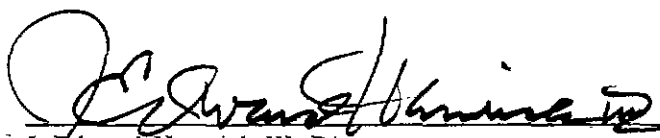
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS (Use Additional Sheets If Necessary) :

3.10



J. Edward Hamrick III, Director
Division of Natural Resources

Summary

The agency proposes to amend its Commercial Sale of Wildlife rule, 47 C.S.R. 23. The rule will be filed for 30 day public comment to begin the Legislative Rule Making process and concurrently filed as an Emergency rule. The need for the change and the justification for the emergency are as follows;

Within the past year it has come to the attention of the Division of Natural Resources that collectors have been taking an excessive number of aquatic turtles, especially wood turtles, from this state for commercial purposes. Turtles collected in the wild have a market value of from five to six hundred dollars, depending upon the species. Most turtles collected in West Virginia sell for from fifty to seventy dollars. Individuals may currently collect and possess up to one hundred turtles in West Virginia provided they have a valid fishing license. Because of the value of these animals and the adverse impact collectors are having on turtle populations, stronger provisions are necessary to prevent the decimation and expatriation of species presently occurring in West Virginia. Recently two individuals from Indiana were arrested in the eastern panhandle for having collected a large number of aquatic turtles without a fishing license. Our non-game biologists and Dr. Tom Pauley, a noted expert on turtles, have stated that the illegal collection of aquatic turtles in West Virginia is having a significant adverse impact on the vitality of certain species populations. In addition, our current law and rule facilitates nationally the sale of illegally collected aquatic turtles that are collected both in and out of state, as West Virginia is the only state that does not have complete control of the commercial collection of turtles. As a result, collectors use West Virginia's name to sell these illegally collected turtles.

The proposed rule will make it illegal, without a permit, to collect for commercial purposes any of the aquatic turtles listed in the proposed rule. Current West Virginia law provides the authority to issue a permit for commercial collection, as well as to designate what wildlife is to be regulated.

Areas within the proposed rule requiring dates will be completed following Secretaries consent to file.

Within the past year it has come to the attention of the Division of Natural Resources that collectors have been taking an excessive number of aquatic turtles, especially wood turtles, from this state for commercial purposes. Turtles collected in the wild have a market value of from five to six hundred dollars, depending upon the species. Most turtles collected in West Virginia sell for from fifty to seventy dollars. Individuals may currently collect and possess up to one hundred turtles in West Virginia provided they have a valid fishing license. Because of the value of these animals and the adverse impact collectors are having on turtle populations, stronger provisions are necessary to prevent the decimation and expatriation of species presently occurring in West Virginia. Recently two individuals from Indiana were arrested in the eastern panhandle for having collected a large number of aquatic turtles without a fishing license. Our non-game biologists and Dr. Tom Pauley, a noted expert on turtles, have stated that the illegal collection of aquatic turtles in West Virginia is having a significant adverse impact on the vitality of certain species populations. In addition, our current law and rule facilitates nationally the sale of illegally collected aquatic turtles that are collected both in and out of state, as West Virginia is the only state that does not have complete control of the commercial collection of turtles. As a result, collectors use West Virginia's name to sell these illegally collected turtles.

The proposed rule will make it illegal, without a permit, to collect for commercial purposes any of the aquatic turtles listed in the proposed rule. Current West Virginia law provides the authority to issue a permit for commercial collection, as well as to designate what wildlife is to be regulated.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 22, 1992

RECEIVED
JUL 23 1992

J. Edward Hamrick III, Director
Division of Natural Resources
Building 3, Room 669
Charleston, West Virginia 25305

WATER RESOURCE SECTION

RE: Proposed Rule - Title 47, Series 23 (Commercial sale of
wildlife)

Dear Ed:

Pursuant to West Virginia Code §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
John M. Ranson
Cabinet Secretary

JMR:cjb
B:RUL-DNRI.RUL

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Commercial Sale of Wildlife 47 C.S.R. 23

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	N.A.	N.A.			

Personal Services
 Current Expenses
 Repairs & Alterations
 Equipment
 Other

2. Explanation of above estimates: No change to the budget will occur as a result of the proposed enforcement provisions.

3. Objectives of this rule: Prevent the decimation and expatriation of aquatic turtles through making it illegal to possess the listed aquatic turtles for commercial purposes.

4. Explanation of Overall Economic Impact of Proposed Rule.

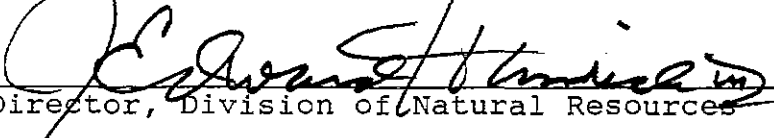
A. Economic Impact on State Government. None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. None.

C. Economic Impact on Citizens/Public at Large. Only violators will be fined.

Date: 7-28-92

Signature of Agency Head or Authorized Representative


 Director, Division of Natural Resources

Date: July 23, 1992
To: Legislative Rule-Making Review Committee
From: Department of Commerce Labor and Environmental Resources, Division of Natural Resources

Emergency Rule Title: Commercial Sale of Wildlife

1. Date of filing: July 28, 1992
2. Statutory authority for promulgating the emergency rule: §20-2-11, 47 & 48
3. Date of filing the proposed legislative rule: July 31, 1992 (Notice of 30 day comment period).
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule: New language is being added to an existing legislative 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:
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 regulation and time limit established therein: N.A.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest:

Within the past year it has come to the attention of the Division of Natural Resources that collectors have been taking an excessive number of aquatic turtles, especially wood turtles, from this state for commercial purposes. Turtles collected in the wild have a market value of from five to six hundred dollars, depending upon the species. Most turtles collected in West Virginia sell for from fifty to seventy dollars. Individuals may currently collect and possess up to one hundred turtles in West Virginia provided they have a valid fishing license. Because of the value of these animals and the adverse impact collectors are having on turtle populations, stronger provisions are necessary to prevent the decimation and expatriation of species presently occurring in West Virginia. Recently two individuals from Indiana were arrested in the eastern panhandle for having collected a large number of aquatic turtles without a fishing license. Our non-game biologists and Dr. Tom Pauley, a noted expert on turtles, have stated that the illegal collection of aquatic turtles in West Virginia is having a significant adverse impact on the vitality of certain species populations. In addition, our current law and rule facilitates

nationally the sale of illegally collected aquatic turtles that are collected both in and out of state, as West Virginia is the only state that does not have complete control of the commercial collection of turtles. As a result, collectors use West Virginia's name to sell these illegally collected turtles.

The proposed rule will make it illegal, without a permit, to collect for commercial purposes any of the aquatic turtles listed in the proposed rule. Current West Virginia law provides the authority to issue a permit for commercial collection, as well as to designate what wildlife is to be regulated.

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

SERIES 23
COMMERCIAL SALE OF WILDLIFE
(EMERGENCY RULE)

§ 47-23-1. General.

1.1. Scope. -- This legislative rule establishes regulations to govern the ~~sale of wildlife raised under licenses issued by the Department~~ killing, taking, trapping, possession, buying, selling, offering to buy or sell, barter, or attempt to take, trap, possess or barter any wildlife, as defined in section 2.3 of these regulations or any other species designated by the director, from the wild, or the eggs of any wildlife or designated species from the wild for commercial purposes pursuant to W. Va. Code §§ 20-2-11, 20-2-47 and 20-2-48.

1.2. Authority. -- W. Va. Code §§ 20-2-11, 20-2-47, and 20-2-48.

1.3. Filing Date. -- ~~May 1, 1989.~~

1.4. Effective Date. -- ~~June 1, 1989.~~

§ 47-23-2. Definitions.

2.1. "Facility" means the property on which a person engages in an activity for which one of the licenses listed in Section 2.2 of these regulations is required by statute and includes, but is not limited to, buildings, enclosures, grounds, impoundments, and ponds.

2.2. "Licensee" means a person who has been granted one of the following permits and licenses issued by the Department:

2.2.1. A license for the operation of a private game preserve for the propagation of wild animals or wild birds for commercial purposes (W. Va. Code § 20-2-47). This license authorizes the holder to breed or raise such animals and birds as specified by the license, to sell the same dead or alive, or to sell the eggs of birds in accordance with the provisions of these regulations.

2.2.2. A license for the operation of a private plant, pond, or business for the propagation, sale, or purchase of fish, frogs, turtles, or other forms of aquatic life for commercial purposes (W. Va. Code § 20-2-48). This license authorizes the holder to breed or raise such species as specified by the license

and to buy and sell the same dead or alive or the eggs thereof in accordance with the provisions of these regulations.

2.3. "Wildlife" means wild animals, wild birds, fish, frogs and other amphibians, turtles, and all forms of aquatic life used as fish bait.

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

§ 47-23-3. Wildlife Acquisition.

3.1. Wildlife held by a licensee shall have been:

3.1.1. Obtained from a person licensed by the Department to sell wildlife in this State;

3.1.2. Imported into this State under the provisions of W. Va. Code § 20-2-13; or

3.1.3. Born at the licensee's facility, the offspring of wildlife legally held by the licensee.

3.2. If a licensee acquires wildlife in the manner specified in Section 3.1.1 of these regulations, a bill of sale from the supplying vendor must be retained by the licensee as proof of legal acquisition.

3.3. If a licensee acquires wildlife in the manner specified in Section 3.1.2 of these regulations, the importation permit issued by the Department must be retained by the licensee as proof of legal acquisition.

3.4. If a licensee acquires wildlife in the manner specified in Section 3.1.3 of these regulations, a record must be kept by the licensee in accordance with the provisions of Section 5 of these regulations.

§ 47-23-4. Wildlife Sales.

4.1. The licensee shall provide a bill of sale to each person who purchases the licensee's wildlife. The bill of sale shall, at a minimum, contain the following information:

4.1.1. The seller's name and address;

4.1.2. The seller's license number;

4.1.3. The date of the sale;

4.1.4. The purchaser's name and address; and

4.1.5. A description of the wildlife sold, including the number of each species sold.

4.1.5.a. For sales of fish, this description shall include the number of pounds of each species sold.

§ 47-23-5. Record Keeping.

5.1. Accurate and current records of all wildlife acquisitions and sales shall be maintained by the licensee. Records on all wildlife born at the licensee's facility shall also be maintained. All records shall be either typed or written in plain and legible English and shall include the full name, address, and telephone number of each person with whom a wildlife transaction has been conducted. All records shall be maintained by the licensee at his facility for a minimum period of three (3) years.

§ 47-23-6. Inspections.

6.1. A licensee's facility, records, or wildlife may be inspected by an authorized representative of the director, on a case by case basis, to assure compliance with all requirements mandated by statute or regulation or by the terms and conditions of the licensee's permit or license.

§ 47-23-7. Possession for commercial purposes prohibited.

The following species shall not be taken from the wild or possessed for any commercial purpose except as authorized pursuant to §§ 20-2-11, 20-2-47 or 20-2-48 of the W. Va. Code.

7.1. It is illegal to catch, capture, sell, trade, take or kill by seine, net, bait, trap, or any other means, or to have in one's possession, or to transport into or out of the state any of the following species of turtles or their eggs for commercial purposes:

Common snapping turtle (Chelydra serpentina serpentina),

Eastern painted turtle (Chrysemys picta picta),

Eastern river cooter (Pseudemys concinna concinna),

Eastern spiny softshell (Apalone spinifera spinifera),

Hieroglyphic turtle (Pseudemys concinna hieroglyphica),

Map turtle (Graptemys geographica),

Midland painted turtle (Chrysemys picta marginata),

Midland smooth softshell (Apalone mutica),

Ouachita map turtle (Graptemys pseudogeographica
ouachitensis),

Redbelly turtle (Pseudemys rubriventris),

Red-eared slider (Trachemys scripta elegans),

Spotted turtle (Clemmys guttata),

Stinkpot (Sternotherus odoratus), and

Wood turtle (Clemmys insculpta).

§ 47-23-8. Penalties.

A violation of these regulations constitutes a misdemeanor for each offense in accordance with W.Va. code § 20-2-11 and each misdemeanor offense shall be subject to the penalties provided for in W. Va. code § 20-7-9.