

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

Form #3

Do Not Mark In This Box

RECEIVED

1992 SEP 17 PM 3:31

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE

AND

FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

CITE AUTHORITY § 20-2-11, 47 & 48

AMENDMENT TO AN EXISTING RULE: YES NO

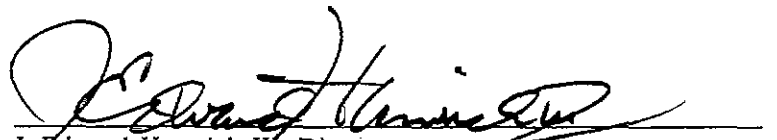
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: Commercial Sale of Wildlife

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
Division of Natural Resources

2.90



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: September 18, 1992

TO: Legislative Rule-Making Review Committee

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

LEGISLATIVE RULE TITLE: West Virginia Public Hunting and Fishing Areas

1. Authorizing statute (s) citation: 20-1-7(30) and 20-3-2
- 2.a. Date filed in State Register with Notice of Hearing: July 28, 1992 (Written Comments Only)
- 2.b. What other notice, including advertizing, did you give of the hearing?
None
- 2.c. Date of hearing (s): N/A
- 2.d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments:
Attached: _____ No comments received X
- 2.e. Date agency approved proposed Legislative Rule filed in State Register following public hearing: September 18, 1992
- 2.f. Name and telephone of agency contact: William Daniel, 558-2784
3. If the statute under which the rule was promulgated and submitted requires certain finding and determinations to be made as a condition precedent to their promulgation:
 - 3.a. Date on which a notice of the time and place of hearing for the taking of evidence and a general description of the issues to be decided was filed in the State Register:
N/A
 - 3.b. Date of hearing: N/A
 - 3.c. Date the required findings and determinations together with reasons therefor were filed in the State Register: N/A
 - 3.d. Findings and determinations, and reasons (attached).

PREAMBLE TO A PROPOSED RULE
CONCERNING
COMMERCIAL SALE OF WILDLIFE

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

REGULATION: Title 47, Series 23, "Commercial Sale of Wildlife"

SUMMARY: The proposed rule received no written comments prior to 5:00 p.m., August 31, 1992.

PREAMBLE TO A PROPOSED RULE
CONCERNING
COMMERCIAL SALE OF WILDLIFE

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

REGULATION: Title 47, Series 23, "Commercial Sale of Wildlife."

ACTION: Filing of a Proposed Rule, Notice of a Thirty Day Public Comment Period.

SUMMARY: The proposed, filed rule provides for a prohibition on the possession of aquatic turtles for commercial purposes unless a permit is obtained.

Written comments received prior to 5:00 pm August 31, 1992 will be accepted. Written comments should be sent to:

Bob Miles, Chief
Division of Natural Resources,
Wildlife Resources Section
Capitol Complex,
Bldg. 3, Room 812,
Charleston, West Virginia 25305

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

SERIES 23
COMMERCIAL SALE OF WILDLIFE

§ 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.