

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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AUG 15 12 50 PM '94

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: Division of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY §20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES NO

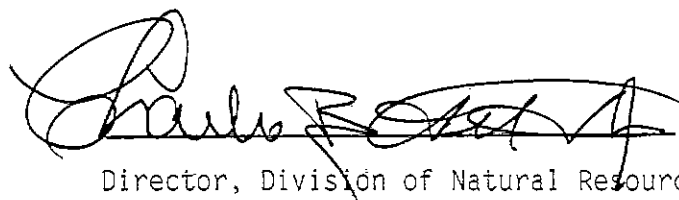
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Special Fishing Rule

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

TITLE OF RULE BEING PROPOSED: _____

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.


Director, Division of Natural Resources

4.20

**CIRCUMSTANCES
CONCERNING CHANGES TO
SPECIAL FISHING RULE**

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

REGULATION: Title 58, Series 21, "Special Fishing Rule".

CIRCUMSTANCES: This revision is to enhance the safe use of Kanawha River Dam Tailwater fishing areas.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Special Fishing Rule

58 C.S.R. 21

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

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

	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	\$		No Change		
Equipment	\$				
Other	\$				

2. Explanation of above estimates: The additions being made to the rule will not change the cost of implementating the rule. These changes are restrictions intended to enhance safety considerations.

3. Objectives of this rule: To enhance the safe use of designated Kanawha River Dam Tailwater fishing areas.

4. Explanation of Overall Economic Impact of Proposed Rule.

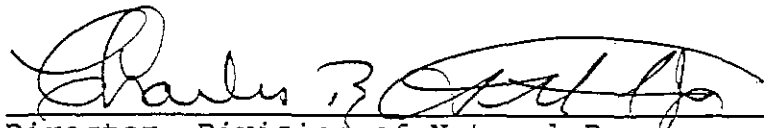
A. Economic Impact on State Government. No impact.

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: July 12, 1994

Signature of Agency Head or Authorized Representative



Director, Division of Natural Resources

DATE: August 15, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Natural Resources

LEGISLATIVE RULE TITLE: Special Fishing Rule

1. Authorizing statute(s) citation §20-1-7(30)

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

July 12, 1994 - Comment Period

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

None

c. Date of Hearing(s) comment period ended August 12, 1994

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

Attached None No comments received 0

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 15, 1994

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

Robert L. Miles, Chief

Wildlife Resources Section

Capitol Complex, Bldg. 3, Room 812

Charleston, WV 25305

Phone: 558-2771

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:

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.

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

PREAMBLE TO A PROPOSED RULE
CONCERNING
SPECIAL FISHING RULE

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

REGULATION: Title 58, Series 21, "Special Fishing Rule."

ACTION: Notice of a thirty day public comment period.

SUMMARY: The proposed amendment creates restrictions that will enhance the safe use of the Kanawha River Dam Tailwater fishing areas. These areas are adjacent to the hydropower discharge area from American Electric Power Company projects at London, Marmet and Winfield Dams.

Written comments received prior to 4:00 p.m. August 12, 1994 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 58
LEGISLATIVE RULES
DEPARTMENT OF COMMERCE, LABOR, AND ENVIRONMENTAL
RESOURCES
DIVISION OF NATURAL RESOURCES

SERIES 21
SPECIAL FISHING RULE

§58-21-1. 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. -- April 21, 1994

1.4. Effective Date. -- April 21, 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 58, Series 20, of the Code of State Regulations (58 C.S.R. 20), "Fishing Regulations".

§58-21-2. 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.

§58-21-3. 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. Giggling, Snagging, and Snaring --It is illegal to take any game fish by giggling, 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.

§58-21-4. 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.

§ 58-21-5. Special Fishing Area Regulations for London, Marmet, and Winfield Dam Tailwaters on the Kanawha River.

5.1. Requirements and prohibitions:

5.1.1. Children under the age of 15 must be accompanied by an adult within the designated public fishing area.

5.1.2. Sitting on, climbing over, through, or under handrails on the designated public fishing area is prohibited.

5.1.3. Swimming or diving from the designated public fishing area is prohibited.

5.1.4. Glass containers are prohibited on the designated public fishing area.

5.1.5. Intoxicants are prohibited on the designated public fishing area.

5.1.6. Firearms are prohibited on the designated public fishing area.