

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2009 MAY 28 AM 11:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Dept. of Commerce, Div. of Natural Resources, Wildlife Resources Section TITLE NUMBER: 58

RULE TYPE: Legislative CITE AUTHORITY: 20-1-7(30) and 20-1-17(7)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 61

TITLE OF RULE BEING AMENDED: Special Fishing Rule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU 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 June 29, 2009 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Curtis I. Taylor, Chief

DNR, Wildlife Resources Section
1900 Kanawha Blvd., E.

Capitol Complex, Bldg. 3, Room 812
Charleston, WV 25305

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES**

**SERIES 61
SPECIAL FISHING RULE**

CIRCUMSTANCE

This rule reflects concerns from anglers that six-foot seines are not readily available from most retail establishments. The proposed rule will make these nets more available to persons wishing to purchase seines to collect bait fish.

**TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES**

**SERIES 61
SPECIAL FISHING RULE**

SUMMARY

The proposed rule provides for persons to use a seine net up to eight feet in length to collect bait fish in West Virginia waters. This is an increase from the current six-foot length allowed by rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Special Fishing Rule 58 CSR 61

Type of Rule: Legislative Interpretive Procedural

Agency: WV Department of Commerce Division of Natural Resources

Address: 1900 Kanawha Blvd., E.
Bldg. 3
Charleston, WV 25305

Phone Number: (304) 558-2771 Email: billieshearer@wvdnr.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed rule provides for an increase from six feet to eight feet for seine nets used in the collection of bait fish. It will not have an effect on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Special Fishing Rule 58 CSR 61

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The proposed rule will have no effect on fees or revenues for the agency.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The agency does not anticipate any reasons for fiscal impacts not addressed on this fiscal note form.

Date: ²⁸ May 22, 2009

Signature of Agency Head or Authorized Representative

Billy M. Goetz

**TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES**

**SERIES 61
SPECIAL FISHING RULE**

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**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

§58-61-1. General.

1.1. Scope and Purpose. -- This rule establishes special fishing areas and prohibitions with respect to the taking of fish and other aquatic species in West Virginia.

1.2. Authority. -- W. Va. §§20-1-7(30) and 20-1-17(7).

1.3. Filing Date. -- April 13, 2004.

1.4. Effective Date. -- April 13, 2004.

1.5. For the purposes of this rule provisions 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, are contained in Division of Natural Resources rule "Fishing Regulations" (58CSR60).

§58-61-2. 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.

§58-61-3. Prohibitions.

3.1. Fishing on Catch-and-Release Trout Waters -- Fishing on catch-and-release trout waters is permitted during daylight hours only.

3.1.1. It is illegal to possess any lures except artificial flies and lures made of metal, wood, feathers, hair or synthetic material on catch and release trout waters.

3.1.1.a. Multiple-hook lures shall have barbless hooks.

3.1.1.b. Single-hooked lures may have barbed hooks.

3.1.2. It is illegal to keep or kill any fish caught on catch and release trout waters. The leader should be cut on a deeply hooked or gill hooked fish.

3.2. Fishing on Fly-Fishing Only Waters -- Fishing on fly-fishing only waters is permitted during daylight hours only.

3.2.1. It is illegal to use or possess any lures other than artificial flies and streamers while on fly-fishing only waters.

3.2.2. It is illegal to use any fishing tackle other than conventional fly-fishing tackle on fly-fishing only waters.

3.2.3. It is illegal to keep or kill any fish caught on fly-fishing only waters. The leader should be cut on a deeply hooked or gill hooked fish.

3.3. Fishing in Impoundments Stocked with Trout by the Division -- Only two (2) lines or poles per angler are permitted during the period January 1 through May 31.

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 shall be complied with when using trotlines and droplines:

3.4.4.a. Trotlines and droplines shall be attached to the bank, or a tree on the bank;

3.4.4.b. Trotlines and droplines shall bear an identification tag that is legible and waterproof;

3.4.4.c. Trotlines and droplines shall 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 Use of Minnow Traps and Throw Nets -- The seining of minnows and use of minnow traps and throw nets is permitted with the following restrictions:

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~~ eight (6 8) 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 throw net 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 -- Spearfishing is permitted with the following restrictions:

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.

3.4.7. Fishing through the Ice -- Fishing through the ice on public fishing impoundments is prohibited through holes in the ice with a diameter greater than ten (10) inches.

§58-61-4. Special Fishing Areas for Children and Persons Possessing a Valid Class Q License.

4.1. The special fishing areas for children and persons possessing a valid Class Q license are open only in the following locations during the dates established in 58CSR60:

4.1.1. Handley Pond -- A 5-acre pond in Pocahontas County;

4.1.2. Wood Pond -- A 1/2-acre pond 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 Pond -- A 1.0-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;

4.1.7. Millers Fork Pond -- A 5-acre pond in Wayne County;

4.1.8. Lake Underwood -- A 1.0-acre pond at YMCA Kennedy Center in Cabell County;

4.1.9. Logan County Airport Pond -- A 1.0-acre pond at the Logan County Airport; and

4.1.10. Kanawha State Forest Pond -- A 1.0-acre pond on the Kanawha State Forest in Kanawha County.

4.2. During the dates established in 58CSR 60 the areas are only open to:

4.2.1. All children ten (10) years of age or under who are accompanied by another person to assist with baiting hooks and removing fish; and

4.2.2. Any person who possesses a valid Class Q license in accordance with W. Va. §20-2-46e.

4.3. Fishing is restricted to daylight hours only.

§ 58-61-5. Special Fishing Area Rule for London, Marmet, and Winfield Dam Tailwaters on the Kanawha River.

5.1. Requirements and prohibitions:

5.1.1. Children under the age of thirteen (13) shall 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; and

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

§ 58-61-6. Special Area Rule for DNR-Owned or Leased Public Boating and Fishing Access Sites.

6.1. Requirements and prohibitions:

6.1.1. Public boating and fishing access facilities shall be used solely for the purpose of launching and retrieving watercraft or fishing from shore. No other use of access sites is allowed;

6.1.2. Consumption of alcoholic beverages or possession of an open container of alcoholic beverages is prohibited on any public boating and fishing access site;

6.1.3. Swimming or bathing from any public boating and fishing access site is prohibited;

6.1.4. Camping is prohibited on any public boating and fishing access site;

6.1.5. Open fires are prohibited on any public boating and fishing access site;

6.1.6. Trash disposal is prohibited on any public boating and fishing access site, except where trash receptacles are provided;

6.1.7. Discharge of firearms, fireworks and explosives on any public boating and fishing access site is prohibited;

6.1.8. Leaving unattended watercraft is prohibited at any public boating and fishing access site;

6.1.9. Commercial use of any public boating and fishing access site is prohibited, except as authorized by the Director;

6.1.10. Parking of any vehicle or the mooring of any watercraft in such a manner as to obstruct any avenue of ingress or egress, except for the purpose of launching from any public boating and fishing access site is prohibited;

6.1.11. Any law enforcement officer acting under proper authority may prohibit an individual from launching a watercraft from any public boating and fishing access site; and

6.1.12. After launching, vehicles shall be parked in available parking spaces.