

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3 □

**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) & 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: _____

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.

Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 7/10/03

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) Curtis I. Taylor
Division of Natural Resources
Wildlife Resources Section

Capitol Complex, Bldg. 3, Room 842
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Special Fishing Rule

1. Authorizing statute(s) citation West Virginia Code Chapter 20-1-7(30) & 20-1-17(7)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 30, 2003

b. What other notice, including advertising, did you give of the hearing?
No public hearing was held. There was a 30-day comment period which was also advertised in a Statewide News Release distributed May 29, 2003.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 2, 2003

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

Attached _____ No comments received X

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

n/a

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Curtis I. Taylor, Chief
DNR Wildlife Resources Section
Capitol Complex, Bldg. 3, Room 842

Charleston, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

- 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 or comment period:

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

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

**SERIES 61
SPECIAL FISHING RULE**

SUMMARY

This revision of Series 61 proposes to add two species of fish to the existing rule establishing a creel and possession limit of zero for paddlefish. This rule proposal would allow for greater protection of shovelnose sturgeon and lake sturgeon during restoration efforts of these species.

**TITLE 68
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 61
SPECIAL FISHING RULE**

CIRCUMSTANCE

The Division of Natural Resources seeks to restore native fishes to waters of the state. The addition of shovelnose sturgeon and lake sturgeon to the rule establishing a creel and possession limit of zero will enhance restoration efforts for these two species.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Series 61, SPECIAL FISHING RULE

Type of Rule X **Legislative** _____ **Interpretive** _____ **Procedural**

Agency Division of Natural Resources, Wildlife Resources Section

Address Capitol Complex

Building 3, Room 842

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates: The Division is already administering programs described in Series 61 and no additional cost will be incurred.

3. Objectives of these rules: To establish a creel and possession limit of zero for shovelnose sturgeon and lake sturgeon.

4. Explanation of overall Economic Impact of Proposed Rule.

Rule Title: Series 61, SPECIAL FISHING 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: None.

Date: 7/11/03

Signature of Agency or
Authorized Representative:



ED HAMRICK, DIRECTOR

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

FILED

SERIES 61
SPECIAL FISHING RULE

2003 JUL 14 P 3: 34

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. -- West Virginia Code §§20-1-7(30) and 20-1-17(7).

1.3. Filing Date. --

1.4. Effective Date. --

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" (58 C.S.R. 60).

§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 West Virginia Code §20-1-2.

§58-61-3. Prohibitions.

3.1. Protected Species -- Keeping or killing or attempting to keep or kill paddlefish (Polyodon spathula), shovelnose sturgeon (Scaphirhynchus platorynchus), or lake sturgeon (Acipenser fulvescens) at any time by any means is prohibited. If caught or taken, the paddlefish, shovelnose sturgeon, or lake sturgeon 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. 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.

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

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

3.2.2. 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.

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

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

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

3.3.3. 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.

3.4. 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.

3.5. Fishing Methods

3.5.1. 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").

3.5.2. Bow Fishing -- It is illegal to:

3.5.2.a. Use an arrow having an explosive head or shaft while bow fishing;

3.5.2.b. Use an arrow dipped in or smeared with poison or other chemicals while bow fishing; or

3.5.2.c. Use a crossbow while bow fishing.

3.5.3. Giggling, Snagging, and Snaring --It is illegal to take any game fish by giggling, snagging, or snaring.

3.5.4. Trotlines and Droplines -- The following requirements shall be complied with when using trotlines and droplines:

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

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

3.5.4.c. Trotlines and droplines shall be attended at least once every twenty-four (24) hours;

3.5.4.d. Wire or cable lines and hooks with more than one point are prohibited;

3.5.4.e. It is illegal to attach a trotline to public piers and docks or within fifty (50) feet of dam appurtenances; and

3.5.4.f. Trotlines and droplines are prohibited on impoundments designated by the director and published annually.

3.5.5. 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:

3.5.5.a. Game fish may not be seined or trapped;

3.5.5.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;

3.5.5.c. Minnow traps may be used provided the openings are not larger than one inch (1") in diameter; and

3.5.5.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.

3.5.6. Underwater Spearfishing -- Spearfishing is permitted with the following restrictions:

3.5.6.a. Spearguns shall be discharged only beneath the surface of the water;

3.5.6.b. It is illegal to use a bolt having an explosive head or shaft while spearfishing;

3.5.6.c. It is illegal to use a bolt dipped in or smeared with poison or other chemicals while spearfishing;

3.5.6.d. A diver may not spearfish in such a manner as to interfere with other fishermen;

3.5.6.e. A diver may not spearfish in heavily-travelled boat lanes, marked swimming areas, or marked waterskiing areas; and

3.5.6.f. Fish taken by spearfishing may not be returned to the water or left on the bank.

3.5.7. 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 58 C.S.R. 60:

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 58 C.S.R. 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 West Virginia Code §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.