

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

Form #2

Do Not Mark In This Box

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUN 29 11 39 AM '00
58

FILED

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Natural Resources TITLE NUMBER: _____

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

AMENDMENT TO AN EXISTING RULE: YES X 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 August 4, 2000 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Gordon Robertson, Deputy Chief

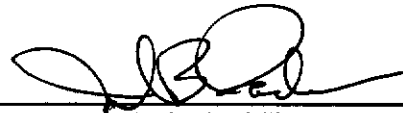
DNR Wildlife Resources Section

Capitol Complex, Bldg. 3, Room 842

1900 Kanawha Blvd., E.

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
DIVISION OF NATURAL RESOURCES**

**SERIES 61
SPECIAL FISHING RULE**

SUMMARY

Series 61 establishes special fishing areas and prohibitions with respect to the taking of fish and other aquatic species in West Virginia. This revision of Series 61 proposes to add two small impoundments in Logan and Kanawha counties to the existing list of small impoundments with the special fishing season from March 1 - May 31 for children 10 years of age and under and persons possessing a valid class Q license. The rule also proposes to require that holes cut in the ice on public impoundments for ice fishing be no larger than 10 inches in diameter. The final addition is a new section 58-61-6, proposing requirements and prohibitions for the use of public fishing and boating access sites. The rule proposal has minor technical changes for format and to avoid duplication of other rules.

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

**SERIES 61
SPECIAL FISHING RULE**

CIRCUMSTANCE

The Division of Natural Resources seeks to expand the angling opportunity for children and those individuals possessing a valid Class Q license (disabled). The addition of ponds in Kanawha and Logan counties expands angling opportunities for these individuals in that area.

The Division is experiencing numerous difficulties with misuse, vandalism and disturbances at public fishing and boating access sites. To clarify enforcement authorities, the division is proposing requirements and prohibitions for the use of these sites limiting them to legitimate uses associated with fishing and boating.

In the interest of anglers safety, the rule also proposes that holes cut in the ice on public impoundments for ice fishing be no larger than 10 inches in diameter.

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 special fishing areas and prohibitions with respect to the taking of fish and other aquatic species. This revision adds two new special fishing areas for children and individuals possessing a Class Q license. It also establishes requirements and prohibitions for the legitimate use of public fishing and boating access sites.

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: 6-29-00

**Signature of Agency or
Authorized Representative:**



JOHN B. RADER, DIRECTOR

FILED

JUN 29 12 23 PM '00

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 61
SPECIAL FISHING RULE

§58-61-1. General.

1.1. Scope and Purpose. -- This rule establishes special fishing seasons 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 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 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*) 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. 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. Gigging, Snagging, and Snaring --It is illegal to take any game fish by gigging, 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 permitted through holes in the ice with a maximum diameter of ten (10) inches.

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

4.1. The special fishing ~~season~~ areas for children and persons possessing a valid Class Q license ~~is are from March 1 through May 31 and is open only in the following areas~~ locations during the dates established in §58-60:

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

4.1.2. Wood Pond -- A 1/2-acre impoundment 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; ~~and~~

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 §58-60 ~~The season is~~ 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.

~~4.4. The creel limit is four (4) trout.~~

§ 58-61-5. 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 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 Regulations 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 retrieval of watercraft or fishing from shore. No other use of the access sites shall be 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 sites;

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

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

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

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

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

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

6.1.9. Commercial use of any public boating and fishing access sites 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 sites 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 sites.

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