

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

Form #3

Do Not Mark In This Box

JUL 20 11 30 AM '99

OFFICE OF
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Bureau of Commerce, 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 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.



JOHN B. RADER, DIRECTOR

**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 adds a new paragraph 4.1.1 specifying Glenbrier Pond in Cabell County as a special fishing area for children and individuals possessing a valid Class Q license.

**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 Glenbrier Pond in Cabell County expands angling opportunities for these individuals in that area.

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 a new special fishing area for children and individuals possessing a Class Q license.

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: _____

**Signature of Agency or
Authorized Representative:**



JOHN B. RADER, DIRECTOR

DATE: 7/16/99

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: BOC, DNR - WILDLIFE RESOURCES SECTION

LEGISLATIVE RULE TITLE: 61, Special Fishing Rule

1. Authorizing statute(s) citation 20-1-7(30) & 20-1-17(7)

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

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

No public hearing was held but there was a 30-day comment period which was
advertised in the State Register.

c. Date of Hearing(s) N/A

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

Attached _____ No comments received None

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

N/A

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

Gordon Robertson - 304-558-2771

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

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

**SERIES 61
SPECIAL FISHING RULE**

FILED
Jul 20 11 34 AM '99
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

§58-61-1. 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. -- 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 "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 must 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 must be complied with when using trotlines and droplines:

3.5 .4.a. Trotlines and droplines must be attached to the bank, or a tree on the bank;

3.5 .4.b. Trotlines and droplines must bear an identification tag that is legible and waterproof;

3.5 .4.c. Trotlines and droplines must 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.

§58-61-4. 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 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. Glenbrier Pond – A 1.0 acre pond at YMCA Kennedy Center in Cabell County.

4.2. The season is open to:

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

4.2.2. All persons who possess 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) 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.