

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

Form #3

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JUL 25 9 41 AM '97

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: 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.



ROBERT A. REINTSEMA, COMMISSIONER

\$5.40

DATE: July 16, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: BOC, DNR - WILDLIFE RESOURCES SECTION

LEGISLATIVE RULE TITLE: 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 May 30, 1997

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

Statewide DNR News Release

c. Date of Hearing(s) N/A

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

Attached X No comments received _____

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

6 - 6 - 97



HOWARD D. LONG
77 PINE GAP RD.
WHITE SULPHUR SP, WV 24986

Mr. Robertson

I am a senior citizen Veteran
of WW II & Korea. Disabled. I am
Happy to see where 2 poles in
impoundments will be put back
into law. I fish and hunt I
have tried to fish some of
the lakes like Spruce Knob
Lake Buffalo, Watago. Seneca
There are some who camp and
go to the lakes at 3:00-5:00 o'clock
in the morning the day after
stocking I have seen 1 person
with 6's rods set at one time
No one else could get to the
lake. That law should have
never been rescinded

Thank you
Howard D Long

DNR
West Virginia
Division of
Natural Resources

Wildlife Resources Section
State Capitol Complex
Building 3
Charleston, West Virginia 25305
Telephone (304) 558-2771
Fax (304) 558-3147



CECIL H. UNDERWOOD
Governor

Equal Opportunity Employer

Administration (304) 558-3315 FAX (304) 558-2768	Law Enforcement (304) 558-2783 FAX (304) 558-1170	Parks and Recreation (304) 558-2764 FAX (304) 558-0077	Wildlife Resources (304) 558-2771 FAX (304) 558-3147	Conservation Education and Litter Control (304) 558-3370 FAX (304) 558-2768	Public Information (304) 558-3380 FAX (304) 558-2768	Real Estate Management (304) 558-3225 FAX (304) 558-3680	Wonderful West Virginia Magazine (304) 558-9152 FAX (304) 558-2768
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July 15, 1997

Mr. Howard D. Long
77 Pine Gap Road
White Sulphur Springs, WV 24986

Dear Mr. Long:

Thank you for taking the time to provide a written comment of support on the proposed Division of Natural Resources rule limiting trout anglers fishing in stocked impoundments to two fishing poles or lines from January 1 through May 31 each year.

This proposed rule was overwhelmingly supported by conservation clubs across the state as well as by individuals who attended the 16 public meetings concerning rule changes. Based on the strong support for this proposal, it is the Division's intention to file the rule with the Legislative Rule Making Committee as submitted. Should the rule pass as submitted, the two line or pole limit will become effective in 1999.

Your interest in West Virginia's fish and wildlife is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Gordon C. Robertson".

Gordon C. Robertson
Deputy
Wildlife Resources

cc: Bernie Dowler

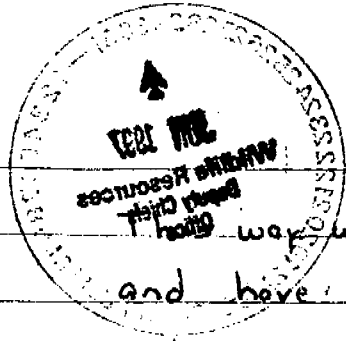


To : Gordon C. Robertson, Deputy



I am writing you concerning one of Hunting and Fishing rule changes. The one rule change I am concerned with is limiting anglers to two lines or fishing poles per anglers in impoundments stocked with trout. I have trout fish since 1985. Since 1985 I have observed many anglers and I myself have many times used more than ~~two~~ two poles while trout fishing. Sometimes we anglers are limited to the amount of time we can trout fish because of working six days a week. If we do not use more than two poles sometimes we are not able to catch four trout for a meal, mainly due to the fact of so many non workers in our area. With the trout getting so much pressure it is so much quicker to be able to put different bait on three or four poles to find out what they are hitting on and be able to get your four trout and leave.

Most of the time about two after each stocking most people quit fishing for trout. So a few of us Anglers get together and go trout fishing for fun and catch and release. We take several poles and go fishing on Sunday's before church and before work.



way we are able to catch several fish and have a lot of fun before the next madrus!

I personally can not see the advantage to limiting Lines & Poles. If a person is going to take more trout, then their limit they are going to do it no matter how many poles or lines they have.

I fish Northfork and Southfork fishing creek in Wetzel County probably more than anyone else. I observe many anglers while fishing and 95% use more than two poles. Several do catch more than their limit, but the anglers with one pole do also. The majority of the anglers with more than one pole only keep four big trout & release the others to be caught by someone else.

I personally can not see making more fishing law when you don't enforce the ones we have. I can count on one hand the number of times I have seen a conservation officer while fishing. I have seen several people take way ~~of~~ over their limit home and come back two or three times. I have seen people net trout and do many other violations. There is another major violation I know of and that is fishing without a license.

How do I know this for sure, I sell Hunting and Fishing license through Martin's True Value in Pine Grove. After fishing the night before the next day the fisherman comes in and purchases a license, then they laugh about catching trout for nothing.

Another violation I have heard people boasting about is removing trout late at night by seining them. These same things happen ever time trout are stocked.

Therefore it is my honest opinion I can see no reason to change this law. We do not live in a Communist State or country yet. I personally believe you would be interfering with our right to choose how we hunt or fish.

Licensed Hunter & Fisherman
Rickie Eugene Barr
H.C. 62 Box 58
Pine Grove WV 26419

DNR
West Virginia
Division of
Natural Resources

Wildlife Resources Section
State Capitol Complex
Building 3
Charleston, West Virginia 25305
Telephone (304) 558-2771
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July 15, 1997

Mr. Rickie E. Barr
H.C. 62, Box 58
Pine Grove, WV 26419

Dear Mr. Barr:

Thank you for taking the time to provide a written comment of opposition on the proposed Division of Natural Resources rule limiting trout anglers fishing in impoundments to two fishing poles or lines from January 1 through May 31 each year.

This proposed rule was overwhelmingly supported by conservation clubs across the state as well as by individuals who attended the 16 public meetings concerning rule changes. Based on the strong support for this proposal, it is the Division's intention to file the rule with the Legislative Rule Making Committee as submitted. Should the rule pass as submitted, the two line or pole limit will become effective in 1999.

Your interest in West Virginia's fish and wildlife is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Gordon C. Robertson".

Gordon C. Robertson
Deputy
Wildlife Resources

cc: Bernie Dowler



**West Virginia
Make It Shine**

CIRCUMSTANCES REQUIRING THE PROPOSED RULE

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 Millers Pond in Wayne County expands angling opportunities for these individuals in that area.

The Division has received many complaints concerning anglers who fish with more than two fishing poles in impoundments stocked with trout by the Division. To give all anglers an equal opportunity in these stocked impoundments, the Division will restrict each angler to two fishing poles or lines during the months of January through May.

SUMMARY OF THE RULE

Title 58, Series 61, Special Fishing Rule establishes special fishing seasons 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 3.4 specifying that anglers may only use two fishing lines or fishing poles in stocked trout impoundments during January 1 through May 31 of each year. The rule also adds Millers Pond in Wayne County to the list waters with a special season for children and individuals possessing a valid Class Q license.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Series 61, Special Fishing Rules

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					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates: No additional enforcement or facility improvement is required.

3. Objectives of these rules: To limit trout-stocked impoundment angling to two lines/angler and to provide special fishing opportunity for children and valid Class Q disabled anglers.

4. Explanation of overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: None

Rule Title: Series 61, Special Fishing Rules

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: None

C. Economic Impact on Citizens/Public at Large: None

Date: 5/27/97

**Signature of Agency or
Authorized Representative:**



ROBERT A. REINTSEMA, COMMISSIONER

TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 61
SPECIAL FISHING RULE

FILED

JUL 25 9 42 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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. -- W. Va. 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 W. Va. 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.

3.45. Fishing Methods

3.45.1. 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").

3.45.2. Bow Fishing -- It is illegal to:

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

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

3.45.2.c. Use a crossbow while bow fishing.

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

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

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

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

3.45 .4.c. Trotlines and droplines must be attended at least once every twenty-four (24) hours;

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

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

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

3.45 .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:

3.45 .5.a. Game fish may not be seined or trapped;

3.45 .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;

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

3.45 .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.

3.45 .6. Underwater Spearfishing -- Spearfishing is permitted with the following restrictions:

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

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

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

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

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

3.45 .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.

4.2. 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 W. Va. Code §20-2-46e.

4.3. Fishing is restricted to daylight hours only.

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

§ 58-61-5. 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 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.