

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

Form #6

Do Not Mark In This Box

**FILED**

APR 16 1 41 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Natural Resources TITLE NUMBER: 58

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.**

**AUTHORIZATION IS CITED IN (house or senate bill number)** SB 320

**SECTION** §64-10-1(g) **PASSED ON** March 10, 1998

**THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS BILL BECOMES EFFECTIVE ON THE  
FOLLOWING DATE:** April 16, 1998

  
\_\_\_\_\_  
John B. Rader, Director

\$3.00

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

**SERIES 61  
SPECIAL FISHING RULE**

Promulgation History

Filed May 27, 1997 - Form #2 Notice of Comment Period of a Proposed Rule

Filed July 25, 1997 - Form #3 Notice of Agency Approval of a Proposed Rule & Filing  
With Legislative Rule Making Committee

August 19, 1998 - Legislative Rule Making Committee Approved Rule

Filed August 28, 1997 - Form #4 Notice of Rule Modification of a Proposed Rule

**TITLE 58  
LEGISLATIVE RULES  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES**

**SERIES 61  
SPECIAL FISHING RULE**

**FILED**  
**APR 16 1 41 PM '98**  
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. -- West Virginia Code §§20-1-7(30) and 20-1-17(7).

1.3. Filing Date. -- April 16, 1998

1.4. Effective Date. -- April 16, 1998

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 thrownet may be used provided the diameter is no larger than six (6) feet and the mesh size no larger than 3/8 inch.

3.5 .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.

4.2. 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 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.

58-61  
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1 Bill-DNR, S

H. B. 4142

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(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)  
[Introduced January 30, 1998; referred to the  
Committee on Agriculture and Natural Resources  
then the Judiciary.]

10 A BILL to amend and reenact section one, article ten,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of natural resources to  
14 promulgate a legislative rule relating to special  
15 fishing.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of  
18 the code of West Virginia, one thousand nine hundred  
19 thirty-one, as amended, be amended and reenacted, to read  
20 as follows:

21 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO  
22 PROMULGATE LEGISLATIVE RULES.

23 §64-10-1. Division of natural resources.

4142

1       (a) The legislative rule filed in the state register  
2 on the sixteenth day of August, one thousand nine hundred  
3 ninety-six, authorized under the authority of section five-  
4 d, article two, chapter twenty of this code, modified by  
5 the division of natural resources to meet the objections of  
6 the legislative rule-making review committee and refiled  
7 in the state register on the twenty-seventh day of  
8 September, one thousand nine hundred ninety-six, relating  
9 to the division of natural resources (fertility control of  
10 free roaming wildlife, 58 CSR 66), is authorized.

11       (b) The legislative rule filed in the state register  
12 on the sixteenth day of August, one thousand nine hundred  
13 ninety-six, authorized under the authority of section  
14 seven, article one, chapter twenty of this code, modified  
15 by the division of natural resources to meet the objections  
16 of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-seventh day  
18 of September, one thousand nine hundred ninety-six,  
19 relating to the division of natural resources (prohibitions  
20 when hunting and trapping, 58 CSR 47), is authorized.

21       (c) The legislative rule filed in the state register  
22 on the sixteenth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified  
2 by the division of natural resources to meet the objections  
3 of the legislative rule-making review committee and  
4 refiled in the state register on the twenty-seventh day of  
5 September, one thousand nine hundred ninety-six, relating  
6 to the division of natural resources (falconry, 58 CSR 65),  
7 is authorized.

8 (d) The legislative rule filed in the state register  
9 on the twenty-fifth day of July, one thousand nine hundred  
10 ninety-seven, authorized under the authority of section  
11 seven, article one, chapter twenty, of this code, relating  
12 to the division of natural resources (special fishing, 58  
13 CSR 61), is authorized.

14

15 NOTE: The purpose of this bill is to authorize the  
16 Division of Natural Resources to promulgate a legislative  
17 rule relating to Special Fishing.

18

19 Strike-throughs indicate language that would be  
20 stricken from the present law, and underscoring indicates  
21 new language that would be added.

ET/17  
81-4

1 Bill-SP, Moc

**H. B. 4143**

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(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)  
[Introduced January 30, 1998; referred to the  
Committee on Roads and Transportation then the  
Judiciary.]

10 A BILL to amend article six, chapter sixty-four of the code  
11 of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section two, relating to  
14 authorizing the state police to promulgate a  
15 legislative rule relating to modified vehicle  
16 inspections.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article six, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,  
21 designated section two, to read as follows:

22 **ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY**  
23 **AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE**

4143

1       **RULES.**

2 §64-6-2. State police.

3       The legislative rule filed in the state register on  
4 the seventeenth day of July, one thousand nine hundred  
5 ninety-seven, under the authority of section forty-eight,  
6 article two, chapter fifteen, of this code, relating to the  
7 state police (modified vehicle inspections, 81 CSR 4), is  
8 authorized.

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10       NOTE: The purpose of this bill is to authorize the  
11 State Police to promulgate a legislative rule relating to  
12 Modified Vehicle Inspections.

13

14       This section is new; therefore, strike-throughs and  
15 underscoring have been omitted.

Senate Bill No. 324

58-61

(By Senator(s) Ross, Anderson, Bowman,  
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the  
Committee on Natural Resources; and then to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article ten,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of natural resources to  
14 promulgate a legislative rule relating to special  
15 fishing.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of  
18 the code of West Virginia, one thousand nine hundred  
19 thirty-one, as amended, be amended and reenacted, to read  
20 as follows:

21 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO  
22 PROMULGATE LEGISLATIVE RULES.

23 §64-10-1. Division of natural resources.

1           (a) The legislative rule filed in the state register  
2 on the sixteenth day of August, one thousand nine hundred  
3 ninety-six, authorized under the authority of section five-  
4 d, article two, chapter twenty of this code, modified by  
5 the division of natural resources to meet the objections of  
6 the legislative rule-making review committee and refiled  
7 in the state register on the twenty-seventh day of  
8 September, one thousand nine hundred ninety-six, relating  
9 to the division of natural resources (fertility control of  
10 free roaming wildlife, 58 CSR 66), is authorized.

11           (b) The legislative rule filed in the state register  
12 on the sixteenth day of August, one thousand nine hundred  
13 ninety-six, authorized under the authority of section  
14 seven, article one, chapter twenty of this code, modified  
15 by the division of natural resources to meet the objections  
16 of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-seventh day  
18 of September, one thousand nine hundred ninety-six,  
19 relating to the division of natural resources (prohibitions  
20 when hunting and trapping, 58 CSR 47), is authorized.

21           (c) The legislative rule filed in the state register  
22 on the sixteenth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified  
2 by the division of natural resources to meet the objections  
3 of the legislative rule-making review committee and  
4 refiled in the state register on the twenty-seventh day of  
5 September, one thousand nine hundred ninety-six, relating  
6 to the division of natural resources (falconry, 58 CSR 65),  
7 is authorized.

8 (d) The legislative rule filed in the state register  
9 on the twenty-fifth day of July, one thousand nine hundred  
10 ninety-seven, authorized under the authority of section  
11 seven, article one, chapter twenty, of this code, relating  
12 to the division of natural resources (special fishing, 58  
13 CSR 61), is authorized.

14

15 NOTE: The purpose of this bill is to authorize the  
16 Division of Natural Resources to promulgate a legislative  
17 rule relating to Special Fishing.

18

19 Strike-throughs indicate language that would be  
20 stricken from the present law, and underscoring indicates  
21 new language that would be added.