

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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2011 JUL 25 PM 3:41

OFFICE OF THE
WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Dept. of Commerce, Div. of Natural Resources, Wildlife Resources Section TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30) and 20-1-17(7)

AMENDMENT TO AN EXISTING RULE: YES NO

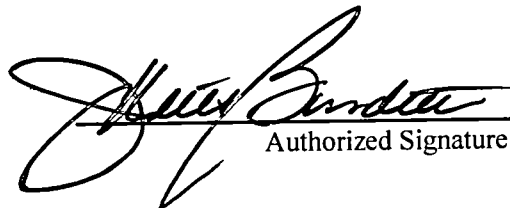
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 61

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: 7/22/11

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DOC - DNB - Wildlife Resources Section
324 Fourth Avenue
So. Charleston, WV 25303

LEGISLATIVE RULE TITLE: Special Fishing Rule

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 10, 2011

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.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 11, 2011

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
324 Fourth Avenue
So. Charleston, WV 25303

- 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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Series 61, Special Fishing Rule

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources, Wildlife Resources Section

Address: 324 Fourth Avenue, South Charleston, WV 25303

Phone Number: 304-558-2771 Email: Billie.J.Shearer@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed rule deletes the locations of Class Q and children's fishing areas which also are listed under Exempt Rule, Series 58-60-16, because of the season and bag limit restrictions at these locations. This proposed rule is not anticipated to have a fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The Division of Natural Resources does not anticipate any changes in fees or revenues resulting from the proposed changes to this rule.

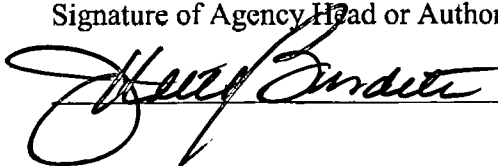
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This change represents a clarification in the listing of rules for Class Q and Children's fishing areas established under Series 61. The change removes the listing of these areas from Series 61 and references them under Series 60, Exempt Rule, with seasons and bag limits established through Series 60.

Date: 7-25-11

Signature of Agency Head or Authorized Representative

 _____

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

**SERIES 61
SPECIAL FISHING RULE**

- SUMMARY:** The proposed rule change represents a clarification in the listing of Class Q and Children's fishing areas as established in Series 61. The proposed rule change removes the listing from Series 61 and references Series 60 for listing under seasons and bag limits.
- CIRCUMSTANCES:** Series 61, Special Fishing Rule, is being amended to remove the listing of Class Q and Children's fishing areas also listed under Exempt Rule, Series 60.

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

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OFFICE OF THE
SECRETARY OF STATE

**SERIES 61
SPECIAL FISHING RULE**

§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. -- W. Va. Code §§20-1-7(30) and 20-1-17(7).

1.3. Filing Date. -- ~~May 3, 2010.~~

1.4. Effective Date. -- ~~July 1, 2010.~~

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" (58CSR60).

§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. Fishing on Catch-and-Release Trout Waters -- Fishing on catch-and-release trout waters is permitted during daylight hours only.

3.1.a. 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.

3.1.a.1. Multiple-hook lures shall have barbless hooks.

3.1.a.2. Single-hooked lures may have barbed hooks.

3.1.b. 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.

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

3.2.a. It is illegal to use or possess any lures other than artificial flies and streamers while

on fly-fishing only waters.

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

3.2.c. 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.

3.3. 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.

3.4. Fishing Methods.

3.4.a. 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").

3.4.b. Bow Fishing -- It is illegal to:

3.4.b.1. Use an arrow having an explosive head or shaft while bow fishing;

3.4.b.2. Use an arrow dipped in or smeared with poison or other chemicals while bow fishing; or

3.4.b.3. Use a crossbow while bow fishing.

3.4.c. Gigging, Snagging, and Snaring -- It is illegal to take any game fish by gigging, snagging, or snaring.

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

3.4.d.1. Trotlines and droplines shall be attached to the bank, or a tree on the bank;

3.4.d.2. Trotlines and droplines shall bear an identification tag that is legible and waterproof;

3.4.d.3. Trotlines and droplines shall be attended at least once every twenty-four (24) hours;

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

3.4.d.5. It is illegal to attach a trotline to public piers and docks or within fifty (50) feet of dam appurtenances; and

3.4.d.6. Trotlines and droplines are prohibited on impoundments designated by the director and published annually.

3.4.e. 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:

3.4.e.1. Game fish may not be seined or trapped;

3.4.e.2. A seine may be used to obtain minnows for use as bait provided the seine is not larger than eight (8) feet nor deeper than four (4) feet;

3.4.e.3. Minnow traps may be used provided the openings are not larger than one inch (1") in diameter; and

3.4.e.4. 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.

3.4.f. Underwater Spearfishing -- Spearfishing is permitted with the following restrictions:

3.4.f.1. Spearguns shall be discharged only beneath the surface of the water;

3.4.f.2. It is illegal to use a bolt having an explosive head or shaft while spearfishing;

3.4.f.3. It is illegal to use a bolt dipped in or smeared with poison or other chemicals while spearfishing;

3.4.f.4. A diver may not spearfish in such a manner as to interfere with other fishermen;

3.4.f.5. A diver may not spearfish in heavily-travelled boat lanes, marked swimming areas, or marked waterskiing areas; and

3.4.f.6. Fish taken by spearfishing may not be returned to the water or left on the bank.

3.4.g. 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 58CSR60:

~~4.1.a. Handley Pond -- A 5-acre pond in Pocahontas County;~~

~~4.1.b. Wood Pond -- A 1/2-acre pond on the Bear Rock Wildlife Management Area in Ohio County;~~

~~4.1.c. Coonskin Park Pond -- A 2.7-acre pond on Coonskin Park in Kanawha County;~~

~~4.1.d. Westover Park Pond -- A 1.0-acre pond in Monongalia County;~~

~~4.1.e. Raleigh County Airport Pond -- A 1.0-acre pond at the entrance to Raleigh County Airport;~~

~~4.1.f. Woodbine Area of Cranberry River -- A 300-yard long section of Cranberry River~~

~~at the Woodbine Recreation Area in Nicholas County;~~

~~4.1.g. Millers Fork Pond — A 5-acre pond in Wayne County;~~

~~4.1.h. Lake Underwood — A 1.0-acre pond at YMCA Kennedy Center in Cabell County;~~

~~4.1.i. Logan County Airport Pond — A 1.0-acre pond at the Logan County Airport; and~~

~~4.1.j. Kanawha State Forest Pond — A 1.0-acre pond on the Kanawha State Forest in Kanawha County.~~

4.2. During the dates established in 58CSR60 the areas are only open to:

4.2.a. 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.b. Any person who possesses a valid Class Q license in accordance with W. Va. 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.a. Children under the age of thirteen (13) shall be accompanied by an adult within the designated public fishing area;

5.1.b. Sitting on, climbing over, through, or under handrails on the designated public fishing area is prohibited;

5.1.c. Swimming or diving from the designated public fishing area is prohibited;

5.1.d. Glass containers are prohibited on the designated public fishing area;

5.1.e. Intoxicants are prohibited on the designated public fishing area; and

5.1.f. 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.a. 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.b. 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.c. Swimming or bathing from any public boating and fishing access site is prohibited;

6.1.d. Camping is prohibited on any public boating and fishing access site;

6.1.e. Open fires are prohibited on any public boating and fishing access site;

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

6.1.g. Discharge of firearms, fireworks and explosives on any public boating and fishing access site is prohibited;

6.1.h. Leaving unattended watercraft is prohibited at any public boating and fishing access site;

6.1.i. Commercial use of any public boating and fishing access site is prohibited, except as authorized by the Director;

6.1.j. 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.k. 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.l. After launching, vehicles shall be parked in available parking spaces.