



L. Thomas Bulla, Secretary
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MEMORANDUM

TO: Judy Cooper, Director, Administrative Law Division
Secretary of State's Office

FROM: L. Thomas Bulla, Cabinet Secretary
Department of Commerce

DATE: July 27, 2005

SUB: DNR Wildlife Resources Legislative Rule
Request to Allow Fishing with Jugs

Tom Bulla
Jug
Brian
McManis

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2005 JUL 29 P 3:32

FILED

The purpose of this memorandum is to advise you that the Division of Natural Resources Wildlife Section wishes to withdraw a proposed legislative rule change that would permit anglers to fish with jugs. This proposed rule is found in Series 61, Special Fishing Rule, §58-61-3, 3.4.8. By copy of this memorandum, I am requesting Debra Graham remove this rule from consideration by Legislative Rule Making Review Committee.

Thank you for your cooperation.

FJ/bpv

cc: Debra Graham, Legislative Rule Making Review Committee
Curtis Taylor, Chief, Wildlife Resources Section
Emily Fleming, Assistant to the Director

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

FILED

2005 JUN 28 A 10:17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: BOC, DNR, Wildlife Resources Section TITLE NUMBER: 58

RULE TYPE: Legislative 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: _____

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 July 28, 2005 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Curtis I. Taylor
Division of Natural Resources
Wildlife Resources Section
1900 Kanawha Blvd., E.
Capitol Complex, Bldg. 3, Room 842
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Frank Jezioro
Authorized Signature

~~Legislative Rule Making~~

JUN 28 2005 ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

Review Committee

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

SERIES 61
SPECIAL FISHING RULE

SUMMARY

This revision to Series 61 proposes to allow fishing with jugs and floats as an allowable fishing method.

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

SERIES 61
SPECIAL FISHING RULE

CIRCUMSTANCE

This rule makes a change in the Special Fishing Rule to allow an additional fishing method for anglers.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 61, Special Fishing Rule

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: 1900 Kanawha Blvd., E.
Capitol Complex, Bldg. 3, Room 842
Charleston, WV 25305

Phone Number: 558-2771 Email: billieshearer@wvdnr.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 Division of Natural Resources does not anticipate substantial financial impacts on agency costs or revenues resulting from implementation of these fishing regulations. This proposed rule makes a change in allowed fishing methods in West Virginia.

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	2005 Increase/Decrease (use "-")	2006 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			
Equipment			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Series 61, Special Fishing Rule

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 significant fiscal impacts.

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.

While changes in fishing regulations may impact anglers, these changes in all likelihood will not have a substantial fiscal impact on state costs or revenues. This regulation change adds a fishing method to the Special Fishing Rule.

Date: 6/28/05

Signature of Agency Head or Authorized Representative

Frank J. Jago

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

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. -- West Virginia Code §§20-1-7(30) and 20-1-17(7).

1.3. Filing Date. -- ~~April 13, 2004~~

1.4. Effective Date. -- ~~April 13, 2004~~

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

3.1.1. 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.

3.1.1.a. Multiple-hook lures shall have barbless hooks.

3.1.1.b. Single-hooked lures may have barbed hooks.

3.1.2. 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.

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

3.2.1. It is illegal to use or possess any lures other than artificial flies and streamers while on fly-fishing only waters.

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

3.2.3. 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.

3.3. 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

3.4.1. 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").

3.4.2. Bow Fishing -- It is illegal to:

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

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

3.4.2.c. Use a crossbow while bow fishing.

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

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

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

3.4.4.b. Trotlines and droplines shall bear an identification tag that is legible and waterproof;

3.4.4.c. Trotlines and droplines shall be attended at least once every twenty-four (24) hours;

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

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

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

3.4.5. 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:

3.4.5.a. Game fish may not be seined or trapped;

3.4.5.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;

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

3.4.5.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.

3.4.6. Underwater Spearfishing -- Spearfishing is permitted with the following restrictions:

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

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

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

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

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

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

3.4.7. 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.

3.4.8. Fishing with Jugs or Floats - - The following requirements shall be complied with when using jugs or floats:

3.4.8.a. Jugs and floats shall bear an identification tag that is legible and waterproof;

3.4.8.b. Jugs and floats shall be made of non-shatterable material;

3.4.8.c. Jugs and floats shall be limited to no more than 10 per person;

3.4.8.d. Jugs and floats shall be attended at all times when in use;

3.4.8.e. Wire or cable lines and hooks with more than one point are prohibited;

3.4.8.f. Fishing with jugs or floats is prohibited on impoundments designated by the director and published annually.

§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 58 C.S.R. 60:

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

4.1.2. Wood Pond -- A 1/2-acre 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;

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 C.S.R. 60 the 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.

§ 58-61-5. Special Fishing Area Rule for London, Marmet, and Winfield Dam Tailwaters on the Kanawha River.

5.1. Requirements and prohibitions:

5.1.1. 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 Rule 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 retrieving watercraft or fishing from shore. No other use of access sites is 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 site;

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

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

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

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

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

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

6.1.9. Commercial use of any public boating and fishing access site 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 site 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 site; and

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