

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

Form #3

Do Not Mark In This Box

2012 AUG 31 PM 5: 02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Department of Commerce, Division of Natural Resources, Wildlife Resources TITLE NUMBER: 58

CITE AUTHORITY: Legislative

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.

Angel R. Moore  
Authorized Signature

**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 establishing the no use of live minnows in certain waters as established in Series 60. The proposed rule change removes the listing from Series 60 and adds to Series 61.

**CIRCUMSTANCES:**

Series 61, Special Fishing Rule, is being amended to add the use of live minnows as bait.

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  
So. 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 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

Series 61, Special Fishing Rule

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

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

No Impact

**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 establishing the no use of live minnows in certain waters as established in Series 60. The proposed rule change removes the listing from Series 60 and adds to Series 61.

Date: 8/31/2012

Signature of Agency Head or Authorized Representative

Angel K. Moore

**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: 8/31/2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DOC - DNR- 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:  
July 31, 2012

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:  
August 31, 2012

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

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

**SERIES 61  
SPECIAL FISHING RULE**

FILED

2012 AUG 31 PM 5: 02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§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. --

1.4. Effective Date. --

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. Giggling, Snagging, and Snaring -- It is illegal to take any game fish by giggling, 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 locations during the dates established in the Division's Rule, Fishing Regulations, 58CSR60:

4.2. During the dates established in the Division's Rule, Fishing Regulations, 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.

**§58-61-7. Use of Live Minnows as Bait.**

7.1. The use of live minnows as bait is prohibited at the following impoundments:

7.1.a. Anawalt (McDowell County).

7.1.b. Anderson (Kanawha County).

7.1.c. Barboursville (Cabell County)

7.1.d. Bear Rocks (Ohio County).

7.1.e. Berwind (McDowell County).

7.1.f. Big Ditch (Webster County).

7.1.g. Boley (Fayette County).

7.1.h. Brandywine (Pendleton County).

7.1.i. Brushy Fork (Pendleton County).

7.1.j. Buffalo Fork (Pocahontas County).

7.1.k. Cacapon (Morgan County).

7.1.l. Camp Run (Pendleton County).

7.1.m. Charles Fork (Roane County).

7.1.n. Chief Cornstalk (Mason County).

7.1.o. Chief Logan (Logan County).

7.1.p. Conaway Run (Tyler County).

7.1.q. Coonskin (Kanawha County).

7.1.r. Coopers Rock (Monongalia County).

7.1.s. Dixon Lake (Monongalia County).

7.1.t. Edwards Run (Hampshire County).

7.1.u. Elk Two Mile (Site 7) (Kanawha County).

7.1.v. Elk Two Mile (Site 13) (Kanawha County).

7.1.w. Elk Two Mile (Site 14) (Kanawha County).

7.1.x. Fitzpatrick (Raleigh County).

7.1.y. French Creek (Upshur County).

7.1.z. Frozencamp Left Fork (Jackson County)

7.1.aa. Frozencamp Right Fork (Jackson County)

7.1.bb. Handley (Pocahontas County).

7.1.cc. Horse Creek (Wyoming County).

7.1.dd. Hurricane (Putnam County).

7.1.ee. James P. Bailey (Mercer County).

7.1.ff. Jimmy Lewis (Mercer County).

7.1.gg. Kanawha State Forest (Kanawha County).

7.1.hh. Kee (Mercer County).

7.1.ii. Kimsey Run (Hardy County).

7.1.jj. Laurel (Mingo County).

7.1.kk. Little Beaver (Raleigh County).

7.1.ll. Logan County Airport Pond (Logan County).

7.1.mm. Miletree (Roane County).

7.1.nn. Mill Creek (Barbour County).

7.1.oo. Millers Fork (Wayne County).

7.1.pp. Moncove (Monroe County).

7.1.qq. Mountwood (Wood County).

7.1.rr. New Creek (Dam Number 14) (Grant County).

7.1.ss. North Bend (Ritchie County)

7.1.tt. Pennsboro (Ritchie County).

7.1.uu. Pipestem (Summers County).

7.1.vv. Plum Orchard (Fayette County).

7.1.wv. Poor House (Berkeley County).

7.1.xx. Raleigh County Airport Pond.

7.1.yy. Ridenour (Kanawha County).

7.1.zz. Rock Cliff (Hardy County).

7.1.aaa. Rockhouse (Logan County).

7.1.bbb. Rollins (Jackson County).

7.1.ccc. Seneca (Pocahontas County).

7.1.ddd. Sherwood (Greenbrier County).

7.1.eee. Silcott Fork (Roane County).

7.1.fff. South Mill Creek (Grant County).

7.1.ggg. Spruce Knob (Randolph County).

7.1.hhh. Summit (Greenbrier County).

7.1.iii. Teter Creek (Barbour County).

7.1.jjj. Tracy (Ritchie County).

7.1.kkk. Trout (Hardy County).

7.1.lll. Tuckahoe (Greenbrier County).

7.1.mmm. Underwood (Cabell County).

7.1.nnn. Upper Cove Run (Hardy County).

7.1.ooo. Wallback (Clay and Roane counties).

7.1.ppp. Warden (Hardy County).

7.1.qqq. Watoga (Pocahontas County).

7.1.rrr. Westover Park (Monongalia County).

7.1.sss. Wolf Run (Marshall County).