



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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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: Natural Resources TITLE-SERIES: 58-61  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 58-61 Special Fishing Rule

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: §§20-1-7(31) and 20-1-17(7)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§20-1-7(31) provides agency rule making authority for Chapter 20 powers and duties; §20-1-17(7) provides authority for the Natural Resources Commission to fix by regulation open seasons, and the bag, creel, size, age, weight and sex limits of wildlife in this State.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/10/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

**SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:**

This rule establishes special fishing areas and prohibitions with respect to the taking of fish and other aquatic species in West Virginia. Changes to this rule include a change to the definition of daylight to be consistent with other agency hunting and trapping rules, prohibiting fish taken by bowfishing from being left in the water or on the bank to be consistent with existing spearfishing regulations, prohibiting jug fishing, updating permissible throw net size, clarifying an adult must accompany a minor in special fishing areas, increasing the maximum age of a minor permitted to use special fishing areas to 14, updating prohibitions for public access areas to be consistent with other agency rules and updating use of live minnow areas. A penalty provision was added to clarify W. Va. Code location of already existing penalties.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

This rule establishes special fishing areas and prohibitions with respect to the taking of fish and other aquatic species in West Virginia.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

There is no anticipated impact on revenue.

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

There is no anticipated impact on administrative costs.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There is no anticipated impact on administrative costs or revenue.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

**Yes**

**Wesley H White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 58  
LEGISLATIVE RULE  
DEPARTMENT OF COMMERCE  
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. -- W. Va. Code §§20-1-7(~~3031~~) and 20-1-17(7).

1.3. Filing Date. -- ~~June 6, 2013.~~

1.4. Effective Date. -- ~~June 6, 2013.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

~~1.5.~~ 1.6. 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)~~ W. Va. Code of State Rules, Title 58 Series 60, Fishing Regulations.

**§58-61-2. Definitions.**

2.1. "Daylight hours" means the time period between ~~60~~ 30 minutes before sunrise and ~~60~~ 30 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.~~ 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.a.1.~~ 3.1.1.a. Multiple-hook lures shall have barbless hooks.

~~3.1.a.2.~~ 3.1.1.b. Single-hooked lures may have barbed hooks.

~~3.1.b.~~ 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.a.~~ 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.b.~~ 3.2.2. It is illegal to use any fishing tackle other than conventional fly-fishing tackle on fly-fishing only waters.

~~3.2.c.~~ 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 lines or poles per angler are permitted during the period January 1 through May 31.

3.4. Fishing Methods.

~~3.4.a.~~ 3.4.1. Dipping -- A dip net may not exceed 36 square feet in overall area and its mesh may not be smaller than one-quarter inch .

~~3.4.b.~~ 3.4.2. Bow Fishing -- It is illegal to:

~~3.4.b.1.~~ 3.4.2.a. Use an arrow having an explosive head or shaft while bow fishing;

~~3.4.b.2.~~ 3.4.2.b. Use an arrow dipped in or smeared with poison or other chemicals while bow fishing; or

~~3.4.b.3.~~ 3.4.2.c Use a crossbow while bow fishing.

3.4.2.d. Fish taken by bowfishing may not be returned to the water or left on the bank.

~~3.4.c.~~ 3.4.3. Gigging, Snagging, and Snaring -- It is illegal to take any game fish by gigging, snagging, or snaring.

3.4.4. Jug Fishing -- The use of any free floating device used to deploy a hook and line to take or attempt to take fish is prohibited.

~~3.4.d.~~ 3.4.5. Trotlines and Droplines -- The following requirements shall be complied with when using trotlines and droplines:

~~3.4.d.1.~~ 3.4.5.a. Trotlines and droplines shall be attached to the bank, or a tree on the bank;

~~3.4.d.2.~~ 3.4.5.b. Trotlines and droplines shall bear an identification tag that is legible and waterproof;

~~3.4.d.3.~~ 3.4.5.c. Trotlines and droplines shall be attended at least once every 24 hours;

~~3.4.d.4.~~ 3.4.5.d. Wire or cable lines and hooks with more than one point are prohibited;

~~3.4.d.5.~~ 3.4.5.e. It is illegal to attach a trotline to public piers and docks or within 50 feet of dam appurtenances; and

~~3.4.d.6.~~ 3.4.5.f. Trotlines and droplines are prohibited on impoundments designated by the director and published annually.

~~3.4.e.~~ 3.4.6. 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.~~ 3.4.6.a. Game fish may not be seined or trapped;

~~3.4.e.2.~~ 3.4.6.b. A seine may be used to obtain minnows for use as bait provided the seine is not larger than eight feet nor deeper than four feet;

~~3.4.e.3.~~ 3.4.6.c. Minnow traps may be used provided the openings are not larger than one inch in diameter; and

~~3.4.e.4.~~ 3.4.6.d. A throw net may be used provided the ~~diameter~~ radius is no larger than ~~six~~ 12 feet and the mesh size no larger ~~3/8~~ one inch.

~~3.4.f.~~ 3.4.7. Underwater Spearfishing -- Spearfishing is permitted with the following restrictions:

~~3.4.f.1.~~ 3.4.7.a. Spearguns shall be discharged only beneath the surface of the water;

~~3.4.f.2.~~ 3.4.7.b. It is illegal to use a bolt having an explosive head or shaft while spearfishing;

~~3.4.f.3.~~ 3.4.7.c. It is illegal to use a bolt dipped in or smeared with poison or other chemicals while spearfishing;

~~3.4.f.4.~~ 3.4.7.d. A diver may not spearfish in such a manner as to interfere with other fishermen;

~~3.4.f.5.~~ 3.4.7.e. A diver may not spearfish in heavily-travelled boat lanes, marked swimming areas, or marked waterskiing areas; and

~~3.4.f.6.~~ 3.4.7.f. Fish taken by spearfishing may not be returned to the water or left on the bank.

~~3.4.g.~~ 3.4.5. Fishing through the Ice -- Fishing through the ice on public fishing impoundments is prohibited through holes in the ice with a diameter greater than 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 W.~~ Va. Code of State Rules, Title 58 Series 60, Fishing Regulations:

4.2. During the dates established in the ~~Division's Rule, Fishing Regulations, 58CSR60~~ W. Va. Code of State Rules, Title 58 Series 60, Fishing Regulations the areas are only open to:

~~4.2.a.~~ 4.2.1. All children ~~10~~ 14 years of age or under who are accompanied by ~~another person~~ an adult 18 years of age or older to assist with baiting hooks and removing fish; and

~~4.2.b.~~ 4.2.2. Any person who possesses a valid Class Q ~~license~~ permit 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.~~ 5.1.1. Children under the age of 13 shall be accompanied by an adult 18 years of age or older within the designated public fishing area;

~~5.1.b.~~ 5.1.2. Sitting on, climbing over, through, or under handrails on the designated public fishing area is prohibited;

~~5.1.c.~~ 5.1.3. Swimming or diving from the designated public fishing area is prohibited;

~~5.1.d.~~ 5.1.4. Glass containers are prohibited on the designated public fishing area;

~~5.1.e.~~ 5.1.5. Intoxicants are prohibited on the designated public fishing area; and

~~5.1.f.~~ 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.a.~~ 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.b.~~ Consumption of alcoholic beverages or possession of an open container of alcoholic beverages is prohibited on any public boating and fishing access site;

6.1.2. A person may not consume or possess an open container of any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, wine, or controlled substances at any time on any public boating and fishing access site;

~~6.1.c.~~ 6.1.3. Swimming or bathing from any public boating and fishing access site is prohibited;

~~6.1.d.~~ 6.1.4. Camping is prohibited on any public boating and fishing access site;



~~6.1.e.~~ 6.1.5. Open fires are prohibited on any public boating and fishing access site;

~~6.1.f.~~ 6.1.6. Trash disposal is prohibited on any public boating and fishing access site, except where trash receptacles are provided;

6.1.7. No person shall remove, cut, deface, destroy, or drive any object into any tree, shrub, rock, sign, building, or other structure or object on a public boating and fishing access site;

6.1.8. Loud or excessive noise, demonstrations, disturbances, and disorderly conduct is prohibited on a public boating and fishing access site;

~~6.1.g.~~ 6.1.9. Discharge of firearms, fireworks and explosives on any public boating and fishing access site is prohibited;

~~6.1.h.~~ 6.1.10. Leaving unattended watercraft is prohibited at any public boating and fishing access site;

~~6.1.i.~~ 6.1.11. Commercial use of any public boating and fishing access site is prohibited, except as authorized by the Director;

~~6.1.j.~~ 6.1.12. 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.~~ 6.1.13. 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.~~ 6.1.14. 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:

7.1.1. Airport Pond (Raleigh County).

~~7.1.a.~~ 7.1.2. Anawalt (McDowell County).

~~7.1.b.~~ 7.1.3. Anderson (Kanawha County).

~~7.1.c.~~ 7.1.4. Barboursville (Cabell County)

~~7.1.d.~~ 7.1.5. Bear Rocks (Ohio County).

~~7.1.e.~~ 7.1.6. Berwind (McDowell County).

~~7.1.f.~~ 7.1.7. Big Ditch (Webster County).

~~7.1.g.~~ 7.1.8. Boley (Fayette County).

- ~~7.1.h.~~ 7.1.9. Brandywine (Pendleton County).
- ~~7.1.i.~~ 7.1.10. Brushy Fork (Pendleton County).
- ~~7.1.j.~~ 7.1.11. Buffalo Fork (Pocahontas County).
- ~~7.1.k.~~ 7.1.12. Cacapon (Morgan County).
- ~~7.1.l.~~ 7.1.13. Camp Run (Pendleton County).
- ~~7.1.m.~~ 7.1.14. Charles Fork (Roane County).
- ~~7.1.n.~~ 7.1.15. Chief Cornstalk (Mason County).
- ~~7.1.o.~~ 7.1.16. Chief Logan (Logan County).
- ~~7.1.p.~~ 7.1.17. Conaway Run (Tyler County).
- ~~7.1.q.~~ 7.1.18. Coonskin (Kanawha County).
- ~~7.1.r.~~ 7.1.19. Coopers Rock (Monongalia County).
- 7.1.20. Dents Run (Marion County).
- ~~7.1.s.~~ 7.1.21. Dixon Lake (Monongalia County).
- ~~7.1.t.~~ 7.1.22. Edwards Run (Hampshire County).
- ~~7.1.u.~~ 7.1.23. Elk Two Mile (Site ~~7~~ 12) (Kanawha County).
- ~~7.1.v.~~ 7.1.24. Elk Two Mile (Site 13) (Kanawha County).
- ~~7.1.w.~~ 7.1.25. Elk Two Mile (Site 14) (Kanawha County).
- ~~7.1.x.~~ 7.1.26. Fitzpatrick (Raleigh County).
- ~~7.1.y.~~ 7.1.27. French Creek (Upshur County).
- ~~7.1.z.~~ 7.1.28. Frozencamp Left Fork (Jackson County)
- ~~7.1.aa.~~ 7.1.29. Frozencamp Right Fork (Jackson County)
- ~~7.1.bb.~~ 7.1.30. Handley (Pocahontas County).
- ~~7.1.cc.~~ 7.1.31. Horse Creek (Wyoming County).
- ~~7.1.dd.~~ 7.1.32. Hurricane (Putnam County).
- 7.1.33. Indian Rocks (Nicholas County).

- ~~7.1.ee.~~ 7.1.34. James P. Bailey (Mercer County).
- ~~7.1.ff.~~ 7.1.35. Jimmy Lewis (Mercer County).
- ~~7.1.gg.~~ 7.1.36. Kanawha State Forest (Kanawha County).
- ~~7.1.hh.~~ 7.1.37. Kee (Mercer County).
- ~~7.1.ii.~~ 7.1.38. Kimsey Run (Hardy County).
- ~~7.1.jj.~~ 7.1.39. Laurel (Mingo County).
- ~~7.1.kk.~~ 7.1.40. Little Beaver (Raleigh County).
- ~~7.1.ll.~~ 7.1.41. Logan County Airport Pond (Logan County).
- 7.1.42. McClintic (Mason County)
- ~~7.1.mm.~~ 7.1.43. Miletree (Roane County).
- ~~7.1.nn.~~ 7.1.44. Mill Creek (Barbour County).
- ~~7.1.oo.~~ 7.1.45. Millers Fork (Wayne County).
- ~~7.1.pp.~~ 7.1.46. Moncove (Monroe County).
- ~~7.1.qq.~~ 7.1.47. Mountwood (Wood County).
- 7.1.48. Mountain Valley (Summers County).
- ~~7.1.rr.~~ 7.1.49. New Creek (Dam Number 14) (Grant County).
- 7.1.50. Newburg Lake (Preston County).
- ~~7.1.ss.~~ 7.1.51. North Bend Pond (Ritchie County)
- 7.1.52. Parker Hollow (Hardy County).
- 7.1.53. Pettigrew (Kanawha County).
- ~~7.1.tt.~~ 7.1.54. Pennsboro (Ritchie County).
- 7.1.55. Pendleton (Tucker County).
- ~~7.1.uu.~~ 7.1.56. Pipestem (Summers County).
- ~~7.1.vv.~~ 7.1.57. Plum Orchard (Fayette County).

- ~~7.1.ww.~~ 7.1.58. Poor House (Berkeley County).
- ~~7.1.xx.~~ ~~Raleigh County Airport Pond.~~
- ~~7.1.yy.~~ 7.1.59. Ridenour (Kanawha County).
- ~~7.1.zz.~~ 7.1.60. Rock Cliff (Hardy County).
- ~~7.1.aaa.~~ 7.1.61. Rockhouse (Logan County).
- ~~7.1.bbb.~~ 7.1.62. Rollins (Jackson County).
- ~~7.1.ccc.~~ 7.1.63. Seneca (Pocahontas County).
- ~~7.1.ddd.~~ 7.1.64. Sherwood (Greenbrier County).
- ~~7.1.eee.~~ 7.1.65. Silcott Fork (Roane County).
- ~~7.1.fff.~~ 7.1.66. South Mill Creek (Grant County).
- ~~7.1.ggg.~~ 7.1.67. Spruce Knob (Randolph County).
- ~~7.1.hhh.~~ 7.1.68. Summit (Greenbrier County).
- ~~7.1.iii.~~ 7.1.69. Teter Creek (Barbour County).
- ~~7.1.jjj.~~ 7.1.70. Tracy (Ritchie County).
- ~~7.1.kkk.~~ 7.1.71. Trout (Hardy County).
- ~~7.1.lll.~~ 7.1.72. Tuckahoe (Greenbrier County).
- ~~7.1.mmm.~~ 7.1.73. Underwood (Cabell County).
- ~~7.1.nnn.~~ 7.1.74. Upper Cove Run (Hardy County).
- 7.1.75. Upper Deckers (Preston County).
- ~~7.1.ooo.~~ 7.1.76. Wallback (Clay and Roane counties).
- ~~7.1.ppp.~~ 7.1.77. Warden (Hardy County).
- ~~7.1.qqq.~~ 7.1.78. Watoga (Pocahontas County).
- ~~7.1.rrr.~~ 7.1.79. Westover Park (Monongalia County).
- ~~7.1.sss.~~ 7.1.80. Wolf Run (Marshall County).

**§58-61-8. Penalties.**

8.1. Any person violating the provisions of this rule is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.