

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

**Mark Martin**

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Little Rock, Arkansas 72201-1094

(501) 682-5070

[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Game and Fish Commission

Department Legal Division

Contact Jim Goodhart, Esq. E-mail james.goodhart@agfc.ar.gov Phone 501-223-6327

Statutory Authority for Promulgating Rules Amendment 35

Rule Title: Baitfish Regulations

Intended Effective Date  
(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other October 1, 2018  
(Must be more than 10 days after filing date.)

Legal Notice Published .....

Final Date for Public Comment .....

Reviewed by Legislative Council .....

Adopted by State Agency .....

Date

August 20, 2017

September 21, 2017

NA

September 21, 2017

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

April M. Soman

april.soman@agfc.ar.gov

9/22/2017

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted

~~IN COMPLIANCE WITH THE ARKANSAS ADMINISTRATIVE PROCEDURES ACT, ACT 25-15-204~~

substantial Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. Pursuant to 2011 decision rendered by the Pulaski County Circuit Court and 2000 opinion by the Arkansas Attorney General, the rulemaking requirement of the Arkansas Administrative Procedures Act cannot be constitutionally applied to the AGFC. Nevertheless, the AGFC does substantially comply with the rulemaking provisions under Ark. Code Ann. section 25-15-204 for public notice, opportunity for comment, and filing of all regulations adopted by the Commission.

James F. Goodhart  
Signature

223-6327

james.goodhart@agfc.ar.gov

Phone Number

E-mail Address

Chief Counsel

Title

September 22, 2017

Date



**ARKANSAS GAME AND FISH COMMISSION**  
**Little Rock, Arkansas**

MINUTE ORDER NO: 17-072 SUBJECT: Baitfish regulations; Codes 26.27 and 32.06

DATE PASSED: September 21, 2017

PAGE 1 of 1 PAGES LOCATION: Statewide

**WHEREAS,** the Arkansas Game and Fish Commission and its staff have proposed the attached baitfish regulations (Codes 26.27 and 32.06); and

**WHEREAS,** the attached regulations have been communicated through a variety of media avenues to sportsmen and the general public throughout the state for review and comment for the past 30 days; and

**WHEREAS,** after carefully considering the recommendations of Commission staff and the Regulations Committee, as well as comments received from the public, the Commission has determined that the attached regulations promote sound wildlife conservation and management and are consistent with Amendment 35 of the Arkansas Constitution and that these regulations should now be approved for application statewide.

**NOW, THEREFORE, BE IT ORDERED** this 21<sup>st</sup> day of September 2017, that the Arkansas Game and Fish Commission hereby approves and adopts the attached regulations, which shall become effective on October 1, 2018.

**BE IT FURTHER ORDERED** that the Commission staff is authorized to proceed with legally certifying and filing the attached regulations with the Secretary of State, State Library, and Bureau of Legislative Research and incorporating them into the Commission Code Book and Addendum.

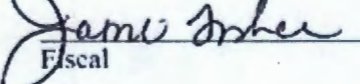
**STAFF APPROVAL**

Submitted by:   
 Chris Racey  
 Chief

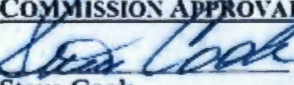
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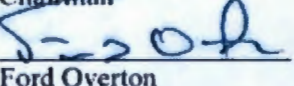
Approved:   
 Director

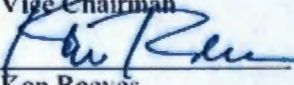
Approved:   
 Legal

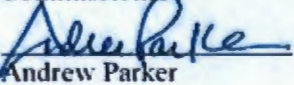
Approved:   
 Fiscal

**COMMISSION APPROVAL**

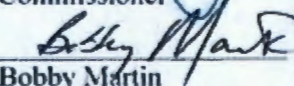
  
 Steve Cook  
 Chairman

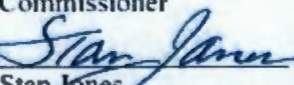
  
 Ford Overton  
 Vice Chairman

  
 Ken Reeves  
 Commissioner

  
 Andrew Parker  
 Commissioner

  
 Joe Morgan  
 Commissioner

  
 Bobby Martin  
 Commissioner

  
 Stan Jones  
 Commissioner

## **Code Book Language for Baitfish Regulation Changes**

### **26.27 WILD-CAUGHT BAITFISH RESTRICTED**

**10-18**

It is unlawful to use live wild-caught baitfish unless such baitfish was caught within the same waterbody being fished or from a tributary entering upstream of the waterbody. No baitfish may be moved upstream past a dam or barrier that prohibits the normal passage of fish.

Exception: Baitfish purchased from a licensed dealer selling only certified, farm-raised baitfish may be used.

**PENALTY: Class 1**

### **32.06 TAKING BAITFISH FOR COMMERCIAL PURPOSES IN CERTAIN WATERS PROHIBITED**

**10-18**

It is unlawful to take or attempt to take baitfish for commercial purposes in: The Caddo River and that portion of the Little Missouri River and its tributaries above Ozan Creek in Pike County; all waters north of U.S. Highway 70 in Howard County; and all waters in Benton, Carroll, Clark, Crawford, Franklin, Lawrence, Madison, Montgomery, Newton, Polk, Sebastian, Sevier and Washington counties.

Exception: Gizzard and Threadfin Shad may be taken for commercial use in these counties in compliance with Code 26.27.

**PENALTY: Class 1**



## FINANCIAL / ECONOMIC IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY  
(Attach additional pages if needed)

**DEPARTMENT:** Arkansas Game & Fish Commission

**DIVISION:** Fisheries

**PERSON COMPLETING THIS STATEMENT:** Chris Racey

**TELEPHONE #:** (501) 878-7336

**FAX #:** (501) 223-6461

**EMAIL:** Chris.Racey@agfc.ar.gov

**SHORT TITLE OF THIS RULE:** Baitfish Regulations Approval (Codes 26.27 & 32.06)

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes: X No:
2. Do you believe that the development of a financial impact statement is so speculative as to be cost prohibitive? Yes: X No: If "Yes", please explain: Based on a recent survey conducted by AGFC Fisheries Division, approximately 5 of 57 respondents (14%) stated that they harvested some baitfish from the wild. However, the value of that harvest is unknown. In addition, financial impact of these proposed changes ranges from perceived negative impacts to perceived positive impacts.
3. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue	\$	
Federal Funds	\$	
Cash Funds	\$	N/A
Special Revenue	\$	
Other (Identify)	\$	
Total	\$	

Next Fiscal Year

General Revenue	\$	
Federal Funds	\$	
Cash Funds	\$	N/A
Special Revenue	\$	
Other (Identify)	\$	
Total	\$	

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? (Estimated cost includes fees, administrative penalties, reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.) Identify the party subject to the proposed rule, and explain how they are impacted.

**Current Fiscal Year:** \$ unknown **Next Fiscal Year:** \$ unknown

**Party Subject to Rule:** (A) Baitfish dealers, (B) Commercial fish guides, (C) Aquaculture industry, (D) Anglers in Arkansas

**Effect on Party Subject to Rule:** (A) Perceived negative effect for some smaller, more rural baitfish dealers (bait stores) which may currently sell live, wild-caught baitfish, potentially reducing sales; However, dealers that sell a certified baitfish product may potentially see increased sales due to enhanced consumer confidence that the product they are purchasing will not inoculate new waterbodies with aquatic nuisance species. (B) Perceived negative effect by some commercial striped bass fishing guides at Lake Ouachita and Beaver Lake who have voiced concerns that their business models may be disrupted and result in reduced revenue; not all guides share this view. A similar regulation was enacted on Norfolk Lake in 2009 where there has been little or no negative economic impact as reported by commercial fish guides at Lake Norfolk. (C) Additional certified baitfish will likely be sold across AR by the aquaculture industry; this will have a positive effect on the local and statewide economy. (D) Perceived positive effect by some anglers



and angler groups that have broad concerns about transfer of aquatic nuisance species to new waterbodies in AR and the economic impacts that come along with that; Perceived negative effect by some anglers that currently use live, wild-caught baitfish instead of purchasing certified baitfish at a baitfish dealer; baitfish cost may increase annually for their recreational use but risk of transfer of aquatic nuisance species will be lowered.

5. What is the total estimated cost by fiscal year to the agency to implement this rule? Explain the financial benefit to the agency from implementing this rule.

Current Fiscal Year: \$ N/A Next Fiscal Year: \$ N/A

Financial Benefit to Agency: N/A

6. Do alternative means exist for accomplishing the objectives of the rules that might be less burdensome to small business? Yes: No: X

Why were such alternatives not proposed:

7. Compare this rule with federal and state counterparts: Five other states around AR have a similar or more restrictive regulation (KY, OK, MS, KS and TX).