TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:090. Means by which migratory game birds may be taken.

RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

STATUTORY AUTHORITY: 150.025(1), 150.305(3), (4), 150.360(2), 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to implement or carry out the purposes of KRS Chapter 150. KRS 150.305(1) authorizes the department to promulgate administrative regulations concerning possession of wildlife protected by KRS Chapter 150. KRS 150.305(3) requires the possession of migratory birds to be governed by federal regulations. KRS 150.305(4) authorizes the commissioner, or his or her designee, to inspect commercial frozen food lockers. KRS 150.360(2) authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Baited area" means any area where shelled, shucked, or unshucked corn; wheat or other grain; salt; or other feed capable of luring, attracting, or enticing migratory game birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered.

(2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn; wheat or other grain; salt; or other feed so as to constitute for migratory game birds a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them.

Section 2. Prohibited Hunting Methods.

(1) Migratory birds for which open seasons are prescribed may be taken by any method except those prohibited in this section.

(2) Migratory game birds and migratory waterfowl shall not be taken:

(a) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than ten (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells, except that this restriction shall not apply during the light geese conservation order season;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off or the sails furled, and its progress has ceased, except that a craft under power may be used to retrieve dead or crippled birds. Crippled birds shall not be shot from a craft under power;

(f) By the use or aid of live birds as decoys;

(g) On an area where tame or captive live ducks or geese are present, unless the birds are and have been for a period of ten (10) consecutive days prior to the taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals the birds from the sight of wild migratory waterfowl;

(h) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this restriction shall not apply during the light geese conservation order season;

(i) By the means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentration, driving, rallying, or stirring up of any migratory bird; or

(j) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited, except that this paragraph shall not prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops or flooded standing crops, including:

a. Aquatics;

b. Flooded harvested croplands;

c. Grain crops properly shocked on the field where grown; or

d. Grains found scattered solely as the result of normal agricultural planting or harvesting; and

2. The taking of all migratory game birds, except waterfowl, on or over any lands where baiting has occurred as the result of:

a. Bona fide agricultural operations or procedures; or

b. Manipulation of a crop or other feed on the land where grown for wildlife management purposes, if manipulation for wildlife management purposes does not include the distribution or scattering of grain or other feed once it has been removed from or stored on the field where grown.

(3) A baited area shall remain a baited area for ten (10) days following complete removal of all corn, wheat or other grain, salt, or other feed.

Section 3. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 4. Transporting, Importing and Exporting.

(1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and administrative regulations of any foreign country, any state in the United States, or subdivision of a state, shall be imported, exported, or transported in accordance with the provisions specified in 50 C.F.R. Part 20.

(2) A person shall not transport within the United States any migratory game birds, except doves, unless the head or one (1) fully feathered wing remains attached to each bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

Section 5. Tagging and Recordkeeping Requirements.

(1) A person shall not put or leave any migratory game birds at any place, other than at his or her personal abode, or in the custody of another person, for picking, cleaning, processing, shipping, transportation, or storage, including temporary storage, or for the

purpose of having taxidermy services performed, unless the birds have a tag attached, signed by the hunter, stating his:

(a) Address;

(b) The total number and species of birds; and

(c) The date the birds were killed.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

(3) A person shall not receive, or have in custody, any migratory game birds belonging to another person unless the birds are tagged as required under subsection (1) of this section.

(4) A person shall not transport migratory game birds belonging to another person unless the birds are tagged as required under subsection (1) of this section.

Section 6. Commercial Frozen Food Lockers.

(1) A commercial frozen food locker shall receive or have in custody any migratory game birds unless the birds are tagged as required in Section 5(1) of this administrative regulation.

(2) A commercial frozen food locker shall not:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing:

1. The number of each species;
2. The date the birds were received;
3. The name and address of the person from whom the birds were received;
4. The date the birds were disposed of; and
5. The name and address of the person to whom the birds were delivered.

(b) Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record.

(c) Prevent any person authorized to enforce this administrative regulation from entering the facility at all reasonable hours and inspecting the records and the premises where the operations are being carried on.

Section 7. Wanton Waste Law. A person shall not kill or cripple any migratory game bird pursuant to this administrative regulation without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

(KFWR-G-102; 1 Ky.R. 732; eff. 5-14-1975; Cert eff. 2-25-2020; 46 Ky.R. 1016, 1830; eff. 3-3-2020; 49 Ky.R. 77, 765; eff. 10-20-2022; 49 Ky.R. 77, 765, 1819; eff. 6-8-2023.)

Approved by the Fish and Wildlife Commission.
RICH STORM, Commissioner

APPROVED BY AGENCY: February 14, 2023

FILED WITH LRC: February 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 28, 2023, at 11 a.m., at KDFWR Administration Building, 1 Sportsman’s Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov