

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

301 KAR 1:122. Importation, possession, and prohibited aquatic species.

RELATES TO: KRS 150.180

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems. This administrative regulation establishes the species of aquatic life that are prohibited in the Commonwealth.

Section 1. A person shall not buy, sell, possess, import, or release any aquatic species not native or established in Kentucky waters, except as established in ~~Section~~~~[Sections]~~ 2, 4, or 5 of this administrative regulation.

Section 2. Exceptions.

(1) A person may buy, sell, import, or possess aquarium species, except those established in Section 3 of this administrative regulation, but shall not release the species into Kentucky waters.

(2) A person may buy, sell, import, or possess sterile, triploid grass carp (*Ctenopharyngodon idella*) pursuant to 301 KAR 1:171.

(3) A fertile, diploid grass carp may only be imported or possessed by a certified propagator for the exclusive purpose of producing triploid grass carp.

(4) Individuals of any aquatic species may be immediately released at the time of catch back into the water body from which they are caught.

(5) Tilapia (*Tilapia* spp. or *Oreochromis* spp.) may only be transported and sold live within Kentucky to:

(a) Another licensed propagator;

(b) A licensed live fish and bait dealer; or

(c) A person, corporation, or other business entity that is selling fish for food in establishments licensed for resale by another state agency or for sale as wholesale food products.

(6) A person may buy, sell, import, or possess goldfish (*Carassius auratus*) for use as bait.

Section 3. The live aquatic organisms established in subsections (1) through (7) of this section shall not be imported, bought, sold, or possessed in aquaria:

(1) Subfamily Serrasalminae - piranha, piraya, pirae, or tiger characins;

(2) *Astyanax mexicanus* - Mexican banded tetra, Mexican minnow, or Mexican tetra;

(3) *Petromyzon marinus* - sea lamprey;

(4) Genus *Clarias* - walking catfish;

(5) Genus *Channa* - snakeheads of Asia and Africa;

(6) *Dreissena polymorpha* - zebra mussel; or

(7) *Neogobius melanostomus* – round goby.

Section 4. Invasive ~~[Asian]~~ carp.

(1) A person shall not buy, sell, ~~possess,~~ import, transport, or release the live invasive~~[Asian]~~ carp species established in paragraphs (a) through (d) of this subsection, except as established in Section 2(2), (3), and (4) of this administrative regulation:

(a) *Hypophthalmichthys molitrix* – silver carp;

(b) *Hypophthalmichthys nobilis* – bighead carp;

- (c) *Mylopharyngodon piceus* – black carp; or
 - (d) *Ctenopharyngodon idella* – grass carp~~[, except as established in Section 2(2) and (3) of this administrative regulation].~~
- (2) A licensed commercial fisherman or any person possessing a sport fishing license may possess, sell, and transport the species of ~~invasive~~[Asian] carp established in Section 4(1) of this administrative regulation if the ~~invasive~~[Asian] carp are:
- (a) Not being transported in water;
 - (b) Dead or dying ~~[Moribund]~~; and
 - (c) Being transported to a fish processing facility.

Section 5. Commissioner Approval. The commissioner may permit the importation of a banned aquatic species if the applicant demonstrates that the species shall be used for legitimate scientific or educational purposes.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2023

FILED WITH LRC: June 15, 2023 at 10:40 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2023, at 9:00 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 August 31, 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: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, phone fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the species of aquatic life which are prohibited in the Commonwealth.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to protect Kentucky's fish populations from the damaging effects of invasive fish species.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation will carry out the purposes of the statutes by restricting possession, transportation, sale, and release of species potentially damaging to native ecosystems.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment will allow individuals of any aquatic species, to be immediately released back into the water body from which they are caught, restrict transportation and sale of live tilapia species for food consumption only, add "possess" to the prohibited actions pertaining to live invasive carp species, allow sport fishing anglers to possess, transport, and sell invasive carp if they are not in water, are dead or dying (replaces the word "moribund"), and are being transported to a fish processing facility. Finally, this amendment clarifies that goldfish may be used as bait.

(b) The necessity of the amendment to this administrative regulation:

The amendment clarifies that anglers can immediately release invasive carp which they catch back into the water body they were caught. Previously, the regulation stated all "release" was illegal. Live tilapia are a viable food product, but they should not be stocked in Kentucky's waters. This amendment clarifies that live tilapia can only be transported and sold based on specific guidelines related to food sales. This amendment also cleans up language to specify that live invasive carp cannot be "possessed", along with the other prohibited activities already in the regulation. Along with this, the amendment does allow for invasive carp to be possessed by licensed anglers if the fish are out of water, are dead or dying (replaces the word "moribund"), and going to a fish processing facility. Finally, this amendment clarifies that goldfish can be used as bait when fishing.

(c) How the amendment conforms to the content of the authorizing statutes:

See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes:

See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This amendment will affect anglers wishing to sell invasive carp or use goldfish as bait. In addition, anglers that catch an invasive species such as invasive carp, will not be required to keep it and can release it immediately back into the water. Both commercial and recreational anglers will be prohibited from possessing live invasive carp. Finally, those who wish to propagate, buy, sell, and transport live tilapia, will be impacted.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Regulated entities dealing with invasive carp and other invasive aquatic species, tilapia, or goldfish must follow the new regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will be no cost incurred by the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

These amendments will benefit anglers by keeping damaging aquatic invasive species out of Kentucky's waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis:

There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

It will not be necessary to increase fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering was not applied because all individuals must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

There will be no new revenue generated in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

There will be no new revenue generated in subsequent years.

(c) How much will it cost to administer this program for the first year?

There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years?

There will be no cost in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There will be no anticipated cost savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There will be no anticipated cost savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

There will be no additional costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

There will be no additional costs for the regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will have no major economic impact as defined above.