

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

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions.

- (1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.
- (2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.
- (3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.
- (4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.
- (5) "Catfish" means a blue catfish, channel catfish, or flathead catfish.
- (6) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.
- (7) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.
- (8) "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.
- (9) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.
- (10) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.
- (11) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.
- (12) "Trophy catfish" means a:
 - (a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or
 - (b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

Section 2. General Provisions.

- (1) A person using nontraditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (d) of this subsection:

- ~~(a).~~ The daily creel limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 7(3) of this administrative regulation;~~};~~
- ~~(b).~~ Paddlefish daily creel limit, two (2); no size limit;

- (c) Shovelnose sturgeon daily creel limit, two (2); no size limit; and
- (d) Asian carp daily creel limit is unlimited; no size limit.
- (2) The possession limit for paddlefish and trophy catfish shall be two (2) times the daily creel limit for each species.
- (3) Shovelnose sturgeon may not be harvested from the Mississippi River and must be immediately released.
- (4) A person shall release any:
 - (a) Lake sturgeon;~~[-or]~~
 - (b) Pallid sturgeon; or
 - (c) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing.

- (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.
- (2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:
 - (a) The department's Division of Law Enforcement; or
 - (b) The local conservation officer who is assigned to the particular department-owned lake.
- (3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.
- (4) Skin diving and scuba diving shall be allowed in Greenbo Lake:
 - (a) In a designated cove marked with signage and buoys;
 - (b) From April 1 through October 31; and
 - (c) From 10:00 a.m. to 6:00 p.m. daily.
- (5) A person who is skin diving or scuba diving in a designated cove as established in subsection (4) of this section shall display an international diving flag as established in 301 KAR 6:030.
- (6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.
- (7) Underwater spearing of fish with a hand-held~~hand-held~~ spear or mechanically propelled~~mechanically propelled~~ spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.
 - (a) An angler who is spearing fish shall:
 - 1. Be completely submerged in the water where spearing takes place; and
 - 2. Only spear rough fish.
 - (b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4. Sport Fishing Trotlines, Jugging, and Setlines.

- (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.
- (2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:
 - (a) Bait all hooks; and
 - (b) Remove all caught fish.
- (3) A trotline, setline, or jug line shall be confiscated if it is not:
 - (a) Properly labeled or tagged; or

- (b) Checked or baited at least once every twenty-four (24) hours.
- (4) An angler shall not use more than:
 - (a) Two (2) sport fishing trotlines;
 - (b) Twenty-five (25) setlines; or
 - (c) Fifty (50) jug lines.
- (5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.
- (6) An angler using a sport fishing trotline shall:
 - (a) Set the trotline at least three (3) feet below the water's surface;
 - (b) Not have more than fifty (50) single or multi-barbed hooks; and
 - (c) Have all hooks at least eighteen (18) inches apart on the trotline.
- (7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.
- (8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:
 - (a) In the Tennessee River within 700 yards of Kentucky Lake Dam;
 - (b) In the Cumberland River below Lake Barkley Dam to the Highway 62 bridge;
 - (c) In any lake less than 500 surface acres owned or managed by the department, except:
 - 1. Ballard Wildlife Management Area lakes, Ballard County;
 - 2. Peal Wildlife Management Area lakes, Ballard County; and
 - 3. Swan Lake Wildlife Management Area lakes, Ballard County; or
 - (d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:
 - 1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;
 - 3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 5. McAlpine Dam downstream to the K & I railroad bridge;
 - 6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;
 - 7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or
 - 8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.
- (9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits as established in 301 KAR 1:201.

Section 5. Temporary Aquatic Areas and Temporary Pools.

- (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish by any method except:
 - (a) Poison;
 - (b) Electrical devices;
 - (c) Firearms; or
 - (d) Explosives.
- (2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.

(4) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 6. Gigging and Snagging.

(1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in any lake less than 500 surface acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

(a) Line;

(b) Guides;

(c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (g) ~~of this subsection:~~

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Cumberland River below the Lake Barkley Dam to the U.S. 62 bridge;

~~(d)~~ (d) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

~~(e)~~ (e) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

~~(f)~~ (f) Cave Run Lake; or

~~(g)~~ (g) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

- (c) From any fishing pier or jetty~~[the fishing piers located below the U.S. 62 bridge].~~
- (11) There shall not be a daily creel limit for rough fish except~~[-]~~
~~[(a)] [The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;]~~
~~[(b)] the daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp.[- and]~~
~~[(c)]~~
~~[1.] [The statewide daily creel limit for snagging paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and]~~
~~[2.] [In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.]~~
- (12) There shall not be a size limit for sport fish snagged in the Tennessee River below Kentucky Lake Dam.
- (13) A person shall immediately retain, and not release or cull, any gilled or snagged paddlefish.
- (14) ~~[(13)]~~ All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.
- (15) ~~[(14)]~~ All gilled or snagged rough fish in the Cumberland River below Lake Barkley ~~[Lake]~~ Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.
- (16) ~~[(15)]~~ A person shall immediately cease snagging if:
- (a) A daily creel limit of paddlefish is reached;
 - (b) A daily creel limit of shovelnose sturgeon is reached;
 - (c) A daily creel limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8); or
 - (d) ~~[(e)]~~ A trophy catfish is snagged.

Section 7. Grabbing.

- (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.
- (2) Grabbing shall be permitted in all waters.
- (3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Carr Creek Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8. Bow Fishing.

- (1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:
 - (a) Sport fish;
 - (b) Alligator gar;
 - (c) More than five (5) catfish daily; or
 - (d) ~~[More than two (2) paddlefish daily; or]~~
 - ~~[(e)]~~ Lake sturgeon.
- (2) Any paddlefish, shovelnose sturgeon, or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:
 - (a) Be immediately retained, and not released or culled; and
 - (b) Count toward a person's daily limit.
- (3) Bow fishing shall be open statewide, except:
 - (a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) In the following lakes:

1. Carpenter Lake (Daviness County);
2. Clear Creek Lake (Bath County);
3. Greenbo Lake (Greenup County);
4. Lake Carnico (Nicholas County); and
5. Lake Reba (Madison County); or

(d) From a boat in restricted areas below navigation, power generating, or flood control dams.

RICH STORM, Commissioner

APPROVED BY AGENCY: July 14, 2022

FILED WITH LRC: July 14, 2022 at 11:52 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2022, at 9:00am, 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 September 30, 2022. 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 Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, 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 procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunities.

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

KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

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

This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

(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 makes the following changes to all nontraditional fishing methods: applies the statewide two-fish paddlefish creel limit to all nontraditional fishing methods, sets a daily harvest limit of two shovelnose sturgeon, prohibits harvest of shovelnose sturgeon from the Mississippi River, prohibits harvest of pallid sturgeon statewide, and removes daily harvest limits for Asian carp. In addition, the following changes apply to gigging and snagging: anglers statewide must stop gigging or snagging for the day once they reach their shovelnose sturgeon daily limit, snagging from any fishing pier or jetty on the Tennessee River from the Kentucky Lake Dam down to the Ohio River is prohibited, gigging and snagging in the Cumberland River below Lake Barkley Dam to the Highway 62 bridge is prohibited, and the daily harvest limit of 8 rough fish and the requirement to keep them on the Cumberland River below Lake Barkley Dam is removed. In addition to the above listed changes, this amendment also adds shovelnose sturgeon to the list of fish that must be taken into possession and not released if shot while bowfishing and adds Carr Creek Lake to the list of lakes where anglers can only keep one blue catfish or channel catfish over 25 inches per day when hand grabbing. There is also one cleanup item addressing the size limit of snagged sportfish from the Tennessee River below Kentucky Lake dam.

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

This amendment is necessary to provide better statewide regulations for nontraditional fishing methods to better protect the shovelnose sturgeon and paddlefish populations in the state, as well as prevent accidental harvest of pallid sturgeon in the Mississippi River. In addition, unnecessary restrictions on Asian carp daily limits were removed. This amendment also simplifies and updates gigging and snagging regulations on the Cumberland and Tennessee rivers below Kentucky and Barkley lakes as well as cleans up confusion on the size limit of sport fish that are required to be kept when snagged on the Tennessee River below Kentucky Lake dam. Finally, this administrative regulation addresses bow fishing impacts on the shovelnose sturgeon and applies an already established catfish handgrabbing regulation to a lake that has just started receiving blue catfish stockings.

(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 regulation will affect all anglers using nontraditional fishing methods statewide and in particular on the Tennessee and Cumberland rivers below Kentucky and Barkley lakes.

(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:

Anglers using nontraditional fishing methods will need to follow the new requirements listed in 2(a) above.

(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 to the entities identified in question (3).

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

By complying with these amendments, anglers should see sustained fishing opportunities for shovelnose sturgeon, paddlefish, and catfish (in Carr Creek Lake), as well as decreased numbers of Asian carp through increased take. In addition, these amendments should clear up some confusion in the wording from previous versions of this regulation.

(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 the department to implement this administrative regulation.

(b) On a continuing basis:

There will be no 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:

No increase in fees or funding is needed to fund this program.

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

No fees were established for this program either directly or indirectly.

(9) TIERING: Is tiering applied?

No. Tiering is not applied because all anglers using nontraditional fishing methods 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 department's Fisheries and Law Enforcement Divisions 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), 150.440, 150.470, and 235.280.

(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?

This administrative regulation will not generate revenue for 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?

No revenue will be generated in subsequent years.

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

There will be no additional costs incurred for the first year.

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

There will be no additional costs incurred 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 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 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 for 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)] There will be no major economic impact from this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

N/A

(2) State compliance standards.

N/A

(3) Minimum or uniform standards contained in the federal mandate.

N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

N/A