

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

301 KAR 1:115. Propagation of aquatic organisms.

RELATES TO: KRS 150.290, 150.485

STATUTORY AUTHORITY: KRS 150.025, 150.180(2), 150.280, 150.450, 50 C.F.R. 17.11

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180(2) authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species. This administrative regulation establishes the requirements for obtaining a propagation permit for aquatic organisms and establishes the requirements for propagation permit holders.

Section 1. ~~Definitions.~~

~~{(1)} ["Aquatic organisms" means fishes, frogs, crayfish, and other aquatic vertebrates and invertebrates.]~~

~~{(2)} ["Live bait fishes" means:]~~

~~{(a)} [Rough fishes, except Asian carp and federally threatened or endangered species as established in 50 C.F.R. 17.11; or]~~

~~{(b)} [Redear sunfish less than six (6) inches in length.]~~

~~{(3)} ["Permit" means a fisheries commercial propagation permit.]~~

~~{(4)} ["Water supply lake" means a lake that:]~~

~~{(a)} [Is owned by a municipality or other public water supply entity;]~~

~~{(b)} [Provides potable water supply for the public;]~~

~~{(c)} [Is not owned by the state; and]~~

~~{(d)} [Is not managed by the department.]~~

~~Section 2.~~ Permit Requirements and Application Procedures.

(1) Before acquiring or propagating aquatic organisms, an individual, corporation, or other business entity~~[a person]~~ shall obtain a permit from the department by:

(a) Completing an application provided by the department; and

(b) Paying the permit fee as established in 301 KAR ~~5:022~~3:022.

(2) The department shall issue a free permit to elementary, middle, and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes.

Section 2. ~~Section 3.~~ Acquisition of Brood Stock from Public Waters.

(1) A permit holder may obtain from public waters a maximum of 1,500 live bait fishes or crayfish per surface acre of water used for propagation of a particular species.

(2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both live bait fishes and crayfish.

(3) A conservation officer shall supervise the acquisition of brood stock from public waters.

(4) A permit holder shall use gear as established in 301 KAR 1:130 to acquire aquatic organisms from public waters.

(5) A permit holder may sell propagated aquatic organisms.

Section 3. ~~[Section 4.]~~ An individual, corporation, or other business entity. ~~[A person]~~ may request a permit for paddlefish to be stocked and reared in a water supply lake for aquaculture purposes as established in 301 KAR 1:110 by completing a permit application and submitting it to the department.

(1) A municipality may allow a permitted second party to rear paddlefish in a water supply lake.

(2) If a municipality or other public water supply entity allows a second party to rear paddlefish, a contractual agreement between the two (2) granting permission to use the lake for rearing paddlefish shall be required for the extent of the rearing period. A copy of the contractual agreement shall be submitted to the department before a permit is issued.

(3) Water supply lakes that are currently open to sport fishing shall be required to remain open to sport fishing throughout the length of the rearing of paddlefish.

(4) Paddlefish shall be the only species permitted to be stocked by the permit holder in a water supply lake.

(5) The number of paddlefish stocking events for each rearing period shall be limited to one (1) for each approved water supply lake. Any additional stocking events shall require prior approval by the commissioner.

(6) The permit applicant shall list the name of each water supply lake on the permit application.

(7) A permit shall be obtained for every year of the paddlefish rearing period.

(8) The department shall not:

(a) Enforce the protection of the stocked paddlefish; or

(b) Establish paddlefish sport fish administrative regulations in any of the water supply lakes.

(9) Paddlefish that escape in the stream, either above or below the lake, shall not be considered property of the permit holder.

(10) The department shall not be responsible for any corrective actions associated with fish populations in the water supply lakes used for aquaculture purposes.

(11) If a municipality rears paddlefish without a contractual agreement with a second party, it shall provide the department with a name of a person responsible for the rearing of the paddlefish in the water supply lake.

(12) A permit holder may use gill nets to take paddlefish only from the water supply lakes listed on the permit. A permit holder or a designated representative in possession of a valid copy of the permit shall be on site each time gill nets are used in the water supply lakes.

(a) The department shall be notified at least three (3) days in advance of any paddlefish harvest from a water supply lake, including the random sampling of the stocked paddlefish that require the use of gill nets.

(b) Gill nets shall only be used in a water supply lake from November 1 through March 31.

(c) Gill nets shall not have a bar mesh size smaller than five (5) inches.

(d) A permit holder shall attach a metal tag provided by the department to each gill net used.

(e) Paddlefish shall be the only species of fish harvested, and any other species of fish captured shall be immediately released without undue injury.

Section 4. ~~[Section 5.]~~ Inspection of Facilities and Revocation or Denial of Permits.

(1) A permit holder shall allow a conservation officer to inspect his or her facilities.

- (2) The department shall:
- (a) Revoke the permit of an individual, corporation, or other business entity~~[a person]~~ who violates a statute or administrative regulation pertaining to propagation of aquatic organisms;
 - (b) Deny a permit:
 - 1. For an individual, corporation, or other business entity~~[a person]~~ who has violated any department statute or administrative regulation within the last year; ~~or~~~~[and]~~
 - 2. For propagation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems; and
 - (c) Not renew the permit for a period of up to two (2) years of an individual, corporation, or other business entity~~[a person]~~ that has been found guilty of violating a statute or administrative regulation pertaining to propagation of aquatic organisms.
- (3) Fees paid for revoked permits shall not be refunded.
- (4) An individual, corporation, or other business entity whose permit has been denied, revoked, or to whom a non-renewal period has been applied may request an administrative hearing pursuant to KRS Chapter 13B.
- (5) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.
- (6) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.
- (7) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 5. ~~[Section 6.]~~ Incorporation by Reference.

- (1) "Fisheries Commercial Propagation Permit Application", 2006 edition, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fisheries, Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 14, 2023 at 11:00 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2023, at 10:00 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 September 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: Jenny Gilbert, Legislative Liaison, 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 requirements for obtaining a permit to propagate aquatic organisms and the associated requirements for all permit holders.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish minimum standards for fisheries propagation permit holders and to help conserve native aquatic resources.

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

KRS 150.025 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180(2) authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species.

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

This administrative regulation will carry out the purposes of the statutes by providing individuals, corporations, or other business entities the ability to propagate and hold native aquatic species.

(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 further clarifies in administrative regulation that the department may deny a propagation permit for propagation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems. It also cleans up language pertaining to the KRS 13B hearing process.

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

This amendment is necessary to prevent the spread of non-native or invasive aquatic organisms in Kentucky and provide a better explanation of the KRS 13B hearing process.

(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:

All individuals applying for a propagation permit to propagate aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be affected by this regulation.

(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:

Those regulated entities in question (3) will not be allowed to propagate aquatic organisms potentially damaging to Kentucky's aquatic ecosystems.

(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 those entities.

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

Compliance will help prevent the unwanted spread of non-native aquatic organisms in 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 a fee 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 wishing to propagate aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be treated the same.

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 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180(2) authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species.

(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?

Approximately \$1,600 will be generated from propagation permits 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?

Approximately \$1,600 will be generated from propagation permits in subsequent years.

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

It will cost approximately \$500 to administer this program in the first year.

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

It will cost approximately \$500 to administer this program 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.