

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

301 KAR 5:200. Special commission permits for incorporated nonprofit wildlife conservation organizations.

RELATES TO: KRS 150.170, 150.175, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes Kentucky Department of Fish and Wildlife Resources~~[the department]~~ to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue a special permit to an incorporated nonprofit wildlife conservation organization for fundraising if proceeds of the sale are used in Kentucky. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.

Section 1. Definitions.

(1) "Incorporated nonprofit wildlife conservation organization" means an entity that:

(a) Has a stated purpose, as expressed in its articles of incorporation or bylaws, to conserve and enhance fish and wildlife resources to provide opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.;

(b)

1. Holds status as a nonprofit organization pursuant to 26 U.S.C. Section 501(c)(3); and

2. Is incorporated under the laws of this state or any other state; or

(c) Is an affiliated regional, state, or local chapter of a parent organization that meets the requirements of subsection (1)(b) of this section.

(2) "Proceeds" means the amount of money received by an incorporated nonprofit wildlife conservation organization from the sale or transfer of a special commission permit minus all expenses directly attributable to the sale of the permit.

(3) "Project" means an enterprise designed to achieve stated purposes, which shall conserve and enhance fish and wildlife resources within Kentucky by enhancing habitat or providing opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.

(4) "Special commission permit" means a ~~[species-specific]~~ permit issued by the Kentucky Fish and Wildlife Commission to an incorporated nonprofit wildlife conservation organization for fundraising that allows the assigned permit holder~~[recipient]~~, to perform the acts applicable to the specific game designated by the permit~~[depending on the species listed on the permit, to harvest]~~:

(a) For deer permits, harvest one ~~[One]~~ (1) additional deer of either sex~~[per license year]~~;

(b) For wild turkey permits, harvest one ~~[One]~~ (1) additional turkey of either sex~~[per license year]~~;

(c) For elk permits, harvest one ~~[One]~~ (1) elk of either sex except that an individual shall harvest no more than one (1) elk total per license year;

(d) For black bear permits, harvest one (1) additional black bear of either sex; or

(e) ~~(d)~~ For waterfowl permits, receive priority hunt dates and location selection for public area waterfowl hunting ~~[Up to a daily bag limit of waterfowl per day]~~.

Section 2. Issuance and Sale of Special Commission Permit.

(1) There shall be no more than ten (10) special commission permits issued per species per license year.

(2) An incorporated nonprofit wildlife conservation organization may apply for one (1) special commission permit per species by submitting, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, the following information:

- (a) Organization Name;
- (b) Mailing address;
- (c) Contact person's name;
- (d) Phone number;
- (e) Email Address;
- (f) Permit types requested;
- (g) Proposed method of selling the permits;
- (h) Estimated dollar amount to be raised through the sale of permits requested;
- (i) Rationale for the estimate;
- (j) Fund-raising history;
- (k) Prior experience with conservation projects;
- (l) Description of proposed conservation project for which the funds will be used;
- (m) Analysis of who will primarily benefit from the proposed project;
- (n) List of tangible goods intended for purchase which will not be expended during the project, if applicable;
- (o) Who will maintain ownership of any tangible items remaining after the project is completed, and how they will be used for the reasonable life of those items;
- (p) Explanation of how the proposed project is intended to enhance fish and wildlife, habitats, fish and wildlife education, or fish and wildlife related recreation in Kentucky;
- (q) Internal Revenue Service Employer Identification Number (EIN) under which the organization is applying; and
- (r) Parent Organization name, if the organization is applying as an affiliated regional, state, or local chapter thereunder. ~~[The incorporated nonprofit wildlife conservation organization shall accurately complete a Special Commission Permits Application Form.]~~

(3) A national organization and its affiliated regional, state, and local chapters or branches shall all be eligible to apply for a special commission permit in the same year if each organization meets the definition in Section 1(1) of this administrative regulation.

(4) No more than one (1) of each special commission permit type ~~[per species]~~ shall be awarded per distinct Internal Revenue Service Employer Identification Number (EIN) per year.

(5) ~~[In addition to the completed application, the]~~ The organization shall also submit, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission> the following supporting documents:

- (a) A copy of the organization's articles of incorporation;
- (b) A copy of the Internal Revenue Service determination letter establishing the organization's current tax-exempt status, including the applicant's Employer Identification Number (EIN);
- (c) A copy of the organization's bylaws that state the purposes of the organization, if the purposes of the organization are not stated in the articles of incorporation; and
- (d) A letter, dated within ninety (90) days of submission ~~[the application]~~, from the organization's parent organization, if applicable, stating that the chapter organization is in good-standing and is recognized by the parent organization.

(6) The deadline for submission of the application and all supporting documents is May 1 of each year. ~~[The completed application and accompanying documents listed in subsection (5) of this section shall be postmarked or delivered to the department by May 1 of each year.]~~

(7) Organizations ~~[Applications]~~ shall be disqualified from eligibility ~~[the awards process]~~ for the criteria listed in paragraphs (a) through (d) of this subsection:

(a) Failure to submit the required information ~~[application]~~ and supporting ~~[accompanying]~~ documents to the department by the deadline established in subsection (6) of this section;

(b) ~~[An incomplete or missing Special Commission Permits Application Form or accompanying documents required pursuant to subsection (5) of this section;]~~

~~[(c)]~~ Failure to qualify as an incorporated nonprofit wildlife conservation organization; or

~~[(c)]~~ ~~[(d)]~~ Failure ~~[Beginning in 2022, the wildlife conservation organization applicant failed]~~ to meet the following requirements:

1. Sell a special commission permit awarded in the previous two (2) years;

2. Comply with the requirements of subsections (11)(b) and 11(c) of this section during the previous two (2) years; ~~[or]~~

3. Timely submit the following, during the previous two (2) years, for each permit received by the organization:

a. All ~~[all of]~~ the information required by subsection ~~[subsections]~~ (11)(d) ~~[and 11(f)]~~ of this section; or

b. The name of person who purchased the permit; and

c. A statement that the organization attempted to obtain the hunter information required by subsection (11)(d) of this section but was not supplied all the information prior to the applicable submission deadline; ~~[during the previous two (2) years.]~~

4. Timely submit the information required by subsection 11(f) for the calendar year for a given application; or

5. Submit by May 1 of the current calendar year, the information required for the previous calendar year by subsection 11(f) if the information was not provided timely.

(8) Prior to selecting organizations to receive special commission permits for the current year ~~[recipients]~~, the Fish and Wildlife Commission shall review and consider all information and ~~[applications and]~~ documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (7) of this section.

(9) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

(a) Past compliance; and

(b) History of funds generated.

(10) The Fish and Wildlife Commission shall select organizations to receive permits ~~[permit recipients]~~ based on the information listed in subsection (9) of this section and the information contained within the organization's submission ~~[application]~~.

(11) An incorporated nonprofit wildlife conservation organization that is awarded a special commission permit shall:

(a) Generate proceeds through the sale of each permit awarded;

(b) Use the proceeds ~~[from the sale of the permits]~~ within Kentucky, only for the project listed in the application, and not for ordinary operational costs of the organization;

(c) Remit to the department any proceeds from the sale of the permits that are not expended by the May 1 reporting deadline three (3) years after the submission deadline ~~[of the application]~~ for which the special commission permits were awarded;

(d) Submit to the department, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, the information listed in subparagraphs 1. through ~~4.~~^{5.} of this paragraph for the hunter to whom the permit shall be issued. Failure to submit the required information by the applicable deadline will result in no permit being issued.

1. Name;
2. Address;
3. ~~[Date of birth;]~~
- ~~[4.]~~ A copy of the hunter's valid Kentucky Hunting license; and
- ~~4.~~ ^{5.} For waterfowl, the requested location and date of the hunt.

(e) The information to be submitted, as established in paragraph (d) of this section, shall be submitted to the department no later than the following dates during the license year for which the permit is valid:

1. March 1 for turkey;
2. August 1 for elk;
3. August 1 for deer; ~~and~~
4. September 1 for black bear; and
5. September 1 for waterfowl.

(f) Submit to the Department of Fish and Wildlife Resources, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, by May 1 of the following year, and each subsequent year until all funds generated by the sale of the permit are expended or remitted to the department, a report, subject to audit, that includes:

1. A financial statement containing:
 - a. Total funds raised from the sale of each permit;
 - b. A detailed list of expenditures directly attributable to the sale of ~~each~~^{the} permit;
 - c. Net proceeds after expenditures used in fundraising, if applicable~~[profit];~~
 - d. A detailed list of expenditures attributable to the conservation project with a receipt for each expenditure~~[receipts attached];~~ and
 - e. Balance of funds remaining;
2. A summary of the conservation project; and
3. A synopsis of the project's impact in regards to the goals stated~~[in the application].~~

(12) Once a special commission permit has been issued to a hunter, it shall not be transferred to another hunter.

Section 3. Special Permit Use.

(1) A special permit shall only be valid for the:

- (a) Individual named on the permit;
- (b) Game animals ~~[Species of wildlife]~~ listed on the permit; and
- (c) The first season for designated game animals~~[that species]~~ in the license year following the commission meeting that the special permit was awarded~~[, except that during 2020 permits for deer and waterfowl shall also be awarded for the current license year].~~

(2) A special commission permit holder shall comply with all other department statutes and KAR Title 301.

(3) A holder of a special commission permit to hunt deer may hunt on any Wildlife Management Area during an open deer season or ~~[nonmobility impaired]~~ quota hunt pursuant to 301 KAR 2:178, for which they are otherwise eligible to participate, except:

- (a) Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;

(b) A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and

(c) A permit holder shall notify the area manager upon leaving a Wildlife Management Area.

(4) A holder of a special commission permit to hunt wild turkey shall not hunt on a Wildlife Management Area that is closed to turkey hunting.

(5) A holder of a special commission permit to hunt waterfowl may, subject to the timely submission of all applicable information by the wildlife conservation organization, hunt on Ballard, Boatwright, or Sloughs Wildlife Management Areas from one (1) of the areas' hunting units during one (1) of the available hunt periods established by the department, pursuant to 301 KAR 2:222.

(6) Each special commission permit to hunt elk shall be randomly assigned an elk~~[a]~~ hunting unit at the time of the selection of the wildlife conservation organizations to be awarded special commission permits. Each elk hunting unit will be assigned once prior to assigning a second permit to the unit. No elk hunting unit will be assigned more than two (2) permits. The permit holder shall be allowed~~[restricted]~~ to hunt in the assigned elk hunting unit on private land with permission from the landowner, or on Department owned or managed lands that are the subject of public access agreements between the landowners and the department~~[hunting in the assigned unit only]~~. The permit holder shall also be allowed to hunt in any other elk hunting unit with private landowner permission, as established in Section 3(7) of this regulation and consistent with any applicable requirements established in 301 KAR 2:132 and 301 KAR 2:030, on private land that is not open for public hunting through a hunter access area agreement, voucher-cooperator agreement, or wildlife management area agreement between the landowner and the department.

~~[(7)] [A holder of any special commission permit may hunt on private land with the permission of the landowner.]~~

~~[Section 4.] [Incorporation by Reference.]~~

~~[(1)] ["Special Commission Permits Application Form", 2019 edition, is incorporated by reference.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2024, 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 January 31, 2024. 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 regulation establishes the procedures for the application, award, and reporting of the Special Commission Permit fund raising opportunity for incorporated nonprofit wildlife conservation organizations.

(b) The necessity of this administrative regulation:

The regulation is necessary to establish the procedures of the Special Commission Permit program required by KRS 150.177.

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

KRS 150.177 requires administrative regulations to be promulgated to govern the number of special permits to be issued per year per species.

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

This regulation assists the administration of the statutes by establishing clear procedures for the application, granting, reporting, and use of special commission permits.

(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 adds Black Bear as a species for which permits will be eligible, clarifies the benefit of the receiving a waterfowl permit, moves the application and reporting process to an online submission portal, and removes language that is no longer needed.

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

This amendment is necessary to provide additional fund-raising opportunities through black bear permits, to clarify ambiguous language regarding the benefits of possessing a special waterfowl permit, and streamlines the application and reporting process via an online system that will provide various error controls to assist organizations in properly completing the applications and reports.

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

The amendment establishes the number and type of species which are eligible for special permits.

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

The online portal will help to avoid errors in the application and reporting process to decrease the number of organizations that must be disqualified for errors in the application and reporting processes.

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

All incorporated non-profit wildlife conservation organizations that apply for special commission permits (approximately 10-20 per year), all such organizations that have been awarded permits that are required to report upon the use of the funds raised (approximately 10-14 per year), all individuals that receive the special permits each

year through the non-profit fundraising efforts (approximately 35-40 per year historically and 45-50 per year moving forward with the addition of black bear permits).

(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:

The non-profits will have to submit their application materials, hunter info, and reporting documents via a web-based online portal rather than via email or hard copy.

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

There should be no additional cost to the entities to comply with the amendments.

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

The entities will benefit from real-time error alerts for incomplete or missing application materials, hunter information, and reporting materials as well as save the costs associated with physical mail delivery for those organizations that have historically mailed their documents.

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

(a) Initially:

There will be no added costs to implement the amendments.

(b) On a continuing basis:

There will be no added 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 Fish and Game 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 will be necessary.

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

This regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied?

Tiering is not applied as all organizations will qualify or not qualify to participate based upon set criteria in accordance with the statute.

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

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

KRS 150.025, 150.177, 150.195(1)

(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 revenue generated for state or local government 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 revenue generated for state or local government in subsequent years.

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

There will be no additional cost to administer the program amendments in the first year.

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

There will be no additional cost to administer the program amendments 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?

This amendment will not result in cost savings for the regulated entities, but will provide opportunities for the regulated entities to generate funds through the addition of black bear permits. The retail value of the black bear permits is currently unknown.

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

This amendment will not result in cost savings for the regulated entities, but will provide opportunities for the regulated entities to generate funds through the addition of black bear permits. The retail value of the black bear permits is currently unknown.

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

There will be no cost to the regulated entities for the first year.

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

There will be no cost to the regulated entities for 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)] The amendment will not have a major economic impact as the only economic impact will be beneficial to the regulated entities.