

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended at ARRS Committee)

301 KAR 1:115. Propagation of aquatic organisms.

RELATES TO: KRS ~~13B,~~ 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 *of Fish and Wildlife Resources* to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife; ~~the restriction off, restrict the~~ places where taking is permitted; ~~;~~ and ~~the application off 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 the Fisheries Commercial Propagation Permit ~~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 written approval from the Fisheries Division. A permit holder may request approval from the Fisheries Divisions by submitting a written request. Approval shall be granted for any single mortality event where ten (10) percent or more of fish from the initial stocking, calculated as fish per acre, are observed dead~~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 ~~KRS Chapter 150~~~~[a statute]~~ or 301 KAR Chapter 1~~[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 ~~KRS Chapter 150~~~~[any department statute]~~ or 301 KAR Chapter 1~~[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 ~~KRS Chapter 150~~~~[a statute]~~ or 301 KAR Chapter 1~~[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. or may be obtained at <https://fw.ky.gov/Fish/Pages/Commercial-Fishing.aspx>.

(KFWR-F-119; 1 Ky.R. 241; eff. 1-8-1975; 4 Ky.R. 569; eff. 8-2-1978; 5 Ky.R. 1077; eff. 8-1-1979; 21 Ky.R. 489; eff. 9-28-1994; 27 Ky.R. 3329; 28 Ky.R. 354; eff. 8-15-2001; 30 Ky.R. 1585; eff. 2-16-2004; 32 Ky.R. 306; eff. 10-12-2005; 32 Ky.R. 2084; 33 Ky.R. 85; eff. 7-12-2006; 34 Ky.R. 2033; eff. 5-2-2008; 45 Ky.R. 148, 651; eff. 9-6-2018; TAm eff. 1-12-2023; 50 Ky.R. 433, 1256; eff. 2-22-2024.)

FILED WITH LRC: November 9, 2023

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.