

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

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.445, 150.450(2), (3), 150.990, 217.015(20)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest because of similarity of appearance with the endangered pallid sturgeon. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

Section 1. Nonresident Commercial Fishing Licenses. A nonresident commercial fishing license shall only be issued to residents of states that offer nonresident fishing licenses to Kentucky residents, except that a nonresident with a valid 2013 Kentucky nonresident commercial fishing license shall be eligible to purchase a nonresident fishing license in subsequent license years, unless the nonresident fails to purchase the permit during any license year.

Section 2. Unlicensed Helpers.

- (1) A commercial fisher shall not utilize more than two (2) unlicensed helpers while actively fishing.
- (2) A commercial fisher shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.
- (3) An unlicensed helper shall:
 - (a) Be accompanied by a licensed commercial fisher while using commercial fishing gear; and
 - (b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisher with a Fish Transportation Permit as established in 301 KAR 1:125.
- (4) A commercial fisher whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:
 - (a) Be listed as a helper by a licensed Kentucky commercial fisher; or
 - (b) Assist a licensed Kentucky commercial fisher in harvesting or transporting fish.

Section 3. Tagging and Using Commercial Gear. A commercial fisher shall:

- (1) Tag commercial fishing gear as established in 301 KAR 1:146;
- (2) Not use commercial fishing gear within:
 - (a) Fifty (50) yards of the outlet or inlet of an overflow lake;
 - (b) Fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River; or
 - (c) 200 yards of a dam, as established in KRS 150.445;
- (3) Not use commercial nets from April 1 through October 31:
 - (a) In bays and inlets of Kentucky or Barkley lakes; or
 - (b) Within 200 yards from the mouth of bays or inlets in Kentucky or Barkley lakes;and

(4) Call the department at 800-858-1549 within twenty-four (24) hours if any commercial gear is:

- (a) Lost;
- (b) Stolen; or
- (c) Irrecoverable due to unforeseen circumstances.

Section 4. Special Catfish Harvest Restrictions.

(1) In all waters open to commercial fishing, except as established in subsection (2) of this Section, there shall be:

- (a) An unlimited harvest of catfish less than trophy catfish size; and
- (b) A daily limit of one (1) trophy catfish of each species.

(2) A person with a valid commercial license shall obtain from the department a free Lower Ohio River Trophy Catfish Harvest Permit in order to harvest Lower Ohio River Trophy Catfish in the mainstem Ohio River downstream of Cannelton Lock and Dam.

(a) The department shall issue a maximum of fifteen (15) permits annually.

(b) The department shall issue a permit to a commercial fisher who:

- 1. Has reported a minimum harvest of 10,000 pounds of catfish from the Ohio River and its tributaries open to commercial fishing in at least two (2) of the last three (3) years; and
- 2. Sends a written request to the department postmarked on or before March 10.

(c) A commercial fisher may retain the rights to the permit each year, provided the requirements established in paragraph (2)(b) of this subsection are met.

(d) Each permit shall be issued in the order established in subparagraph 1. through 3. of this paragraph.

- 1. Retained permit requests;
- 2. A random electronic drawing for the remaining permit requests that are postmarked by March 10 of each year; and
- 3. First-come, first-served for any remaining permits.

(e) There shall be an unlimited daily harvest of catfish less than Lower Ohio River Trophy Catfish size for each permit holder in the mainstem Ohio River downstream of Cannelton Lock and Dam.

(f) There shall be a daily limit of four (4) Lower Ohio River Trophy Catfish in aggregate for each permit holder in the mainstem Ohio River downstream of Cannelton Lock and Dam.

(3) A Lower Ohio River Trophy Catfish Harvest Permit holder shall not possess more than one (1) daily limit of Lower Ohio River Trophy Catfish while on the water or trailering on a boat ramp.

(4) There shall be a maximum of two (2) daily limits of Lower Ohio River Trophy Catfish possessed per boat while on the water or when trailering on a boat ramp if there is more than one (1) Lower Ohio River Trophy Catfish Harvest Permit holder in the boat.

(5) While on the water or trailering on a boat ramp, a commercial fisher who does not possess a Lower Ohio River Trophy Catfish Harvest Permit shall not possess more than one (1) daily limit of trophy catfish.

(6) While on the water or trailering on a boat ramp, multiple commercial fishers per boat who do not possess a Lower Ohio River Trophy Catfish Harvest Permit shall not possess more than two (2) daily limits of trophy catfish.

Section 5. Harvester's Permit.

(1) In order to retain his or her permit privilege, a harvester's permit holder shall submit to the department postmarked by September 15:

- (a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and
- (b) The permit fee as established in 301 KAR 5:022.

- (2) Prior to being issued a harvester's permit, a person shall possess a valid commercial fishing license.
- (3) A harvester's permit shall not be sold to a resident of a state that will not sell a nonresident harvester's permit, or its equivalent, to Kentucky residents.
- (4) The maximum number of resident harvester's permits available each year shall be 101.
- (5) The maximum number of nonresident harvester's permits available each year shall be eighteen (18).
- (6) A harvester's permit holder shall be eligible to transfer permit privileges to an:
 - (a) Immediate family member; or
 - (b) Unlicensed helper who:
 1. Has been employed by the permit holder for a period of at least one (1) year in that capacity; and
 2. Complies with the requirements of this administrative regulation.
- (7) To transfer a permit, the permit holder shall send to the department:
 - (a) A notarized letter documenting the name and relationship of the permit recipient; and
 - (b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.
- (8) Transferability shall be voided if a commercial fishing license or harvester's permit is revoked or suspended as established in Section 13 of this administrative regulation.

Section 6. Harvester's Permit Drawing.

- (1) There shall be a drawing for the unfilled harvester's permits below the quota.
- (2) A person shall apply for the drawing by submitting the following to the department by September 15:
 - (a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and
 - (b) The appropriate permit fee as established in 301 KAR 5:022.
- (3) A mailed Application for Commercial Roe-bearing Fish Harvester's Permit shall be postmarked by September 15 to be eligible.
- (4) A person chosen in the drawing shall first obtain a commercial fishing license prior to obtaining a harvester's permit.
- (5) The department shall return all permit fees to those not chosen in the drawing.
- (6) If the department receives fewer resident or nonresident Applications for Commercial Roe-bearing Fish Harvester's Permits than the number of available harvester's permits, then completed Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 shall be issued in the order they were received until the quota has been reached.
- (7) If the number of Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 exceeds the number of harvester's permits available, then a second drawing shall be held to determine the recipients of the available permits.

Section 7. Harvester's Permit Requirements.

- (1) A harvester's permit shall be required for a licensed commercial fisher to harvest, transport, or sell roe fish or unprocessed roe.
- (2) A permit shall not be required for a special commercial fishing permit holder to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.
- (3) A harvester's permit shall not be issued unless all applicable reports have been completed and submitted to the department, pursuant to Section 13 of this administrative regulation.
- (4) A harvester's permit holder shall:
 - (a) Have the permit in possession while:

1. Fishing for roe-bearing fish; and
 2. Transporting or selling roe-bearing fish or unprocessed roe;
- (b) Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 8 of this administrative regulation; and
- (c) Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer.

Section 8. Buyer's Permit Requirements.

- (1) A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.
- (2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with the appropriate permit fee to the department, as established in 301 KAR 3:022.
- (3) A buyer's permit holder shall:
 - (a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;
 - (b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;
 - (c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in Kentucky;
 - (d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in another state including:
 1. Name, address, and telephone number of the seller;
 2. License number of the seller; and
 3. Number of pounds of unprocessed roe purchased;
 - (e) Sign the harvester's permit holder's Daily Roe-bearing Fish Harvester's Transaction Report for each transaction prior to purchasing or receiving unprocessed roe from the harvester;
 - (f) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester's permit holder for a period of three (3) years; and
 - (g) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.

Section 9. Commercial Fishing Season and Size Limits.

- (1) The commercial fishing season shall be open year-round in the waters listed in 301 KAR 1:150, except for:
 - (a) Kentucky and Barkley lakes as established in 301 KAR 1:140;
 - (b) The shovelnose sturgeon season, which shall extend from October 15 through May 15 in the Ohio River Basin only; and
 - (c) The paddlefish season, which shall extend from:
 1. November 1 through April 30 in all waters open to commercial fishing, except Kentucky and Barkley lakes, as established in 301 KAR 1:140; and
 2. November 1 through May 31 for commercial trotlines in all waters open to commercial fishing, except the Ohio and Mississippi rivers.
- (2) There shall not be a size limit on any commercially-harvested rough fish, except that a commercial fisher shall only harvest:
 - (a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of the snout to the fork of the tail fin;
 - (b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except in Kentucky and Barkley lakes as established in 301 KAR 1:140; and
 - (c) Blue catfish, flathead catfish, and channel catfish as established in Section 4 of this administrative regulation, and measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

- (3) A harvester's or buyer's permit holder shall not possess:
 - (a) Unprocessed paddlefish roe after June 5; or
 - (b) Unprocessed shovelnose sturgeon roe after May 20.

Section 10. Species Ineligible for Commercial Harvest.

- (1) A commercial fisher shall not harvest, and shall immediately release the following species:
 - (a) Sport fish listed in 301 KAR 1:060;
 - (b) Pallid sturgeon, a federally endangered species;
 - (c) Lake sturgeon;
 - (d) Shovelnose sturgeon caught in the Mississippi River;
 - (e) All turtle species;
 - (f) All mussel species except Asiatic clams (Genus Corbicula); and
 - (g) Alligator gar.
- (2) A licensed commercial fisher shall only sell roe-bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods as established in 301 KAR 1:146.

Section 11. Tending Gear and Removing Fish. A commercial fisher shall:

- (1) Tend and remove the fish from:
 - (a) Hoop nets or slat traps at least once every seventy-two (72) hours; and
 - (b) Other commercial fishing gear at least once every twenty-four (24) hours;
- (2) Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and
- (3) Remove commercial fishing gear from the water when finished fishing.

Section 12. Roe Fish Egg Checking Methodology. A commercial fisher shall use a ten (10) gauge or smaller needle to examine roe fish for the presence of eggs.

Section 13. Reporting, License and Permit Suspension, Renewal, and Revocation.

- (1) Every licensed commercial fisher shall submit a completed Monthly Report of Commercial Fish Harvest in Kentucky by the tenth day of every month for the previous month's harvest, even if no harvest occurred.
- (2) A harvester's permit holder shall:
 - (a) Complete a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the month that roe-bearing fish are harvested or sold to a Kentucky permitted buyer; and
 - (b) Submit to the department all completed daily reports within a calendar month by the tenth day of the following month, in addition to the reporting requirements established in subsection (1) of this section.
- (3) If a buyer's permit holder completes any transactions in a given month, the permit holder shall submit to the department a completed Monthly Commercial Roe-bearing Fish Buyer's Report by the tenth day of the following month.
- (4) A report that is being mailed to the department shall be postmarked on or before the tenth of the month pursuant to subsections (1) through (3) of this section.
- (5) The department shall issue a courtesy reminder letter to a holder of a commercial fishing license, harvester's permit, or buyer's permit who has failed to submit to the department a monthly report by the deadlines established in subsections (1) through (4) of this section.
- (6) The department shall issue a warning letter to a license or permit holder who has twice failed to meet the reporting deadlines established in subsections (1) through (4) of this section during any given commercial fishing license year.
- (7) The department shall suspend the commercial fishing license of a license or permit holder who has failed to meet reporting deadlines for three (3) or more months in a given

license year until the license or permit holder submits to the department all required reports.

(8) The department shall suspend for a period of three (3) months the commercial fishing license of a license or permit holder who has not met the reporting deadlines established in this section for four (4) or more times in a license year.

(9) If a three (3) month suspension extends into a new license year, subsequent delinquent reports shall result in additional three (3) month suspensions.

(10) The department shall not renew a commercial fishing license, harvester's permit, or buyer's permit for a person who has not satisfied the reporting requirements of this administrative regulation.

(11) The department shall revoke the commercial fishing license, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear, pursuant to 301 KAR 1:146;

(b) Knowingly placing commercial fishing gear in a restricted area, pursuant to Section 3(2) and (3) of this administrative regulation;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing, pursuant to 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(12) The department shall revoke a buyer's permit, for a period of two (2) years, of a person:

(a) Convicted of a federal commercial fishing violation; or

(b) Who falsified data on a Monthly Commercial Roe-bearing Fish Buyer's Report.

Section 14. Administrative Hearings.

(1) A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit has been:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked.

(2) 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, suspension, non-renewal, or revocation.

(3) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(4) 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 15. Boundaries. The department shall make available on its Web site at fw.ky.gov the Global Positioning System coordinates detailing the Kentucky and Ohio border on the Ohio River, for download to personal devices.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008 edition;

(b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008 edition;

(c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008 edition;

(d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008 edition;

(e) "Monthly Report of Commercial Fish Harvest in Kentucky", 2023 edition; and

(f) "List of GPS coordinates for Ohio River Boundary with Ohio", 2008 edition.

(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 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. or may be obtained at <https://fw.ky.gov/Fish/Pages/Commercial-Fishing.aspx>.

(KFWR-F-CF3-2; 1 Ky.R. 243; eff. 1-8-1975; Am. 5 Ky.R. 1078; eff. 8-1-1979; 21 Ky.R. 490; eff. 9-28-1994; 25 Ky.R. 410; 834; eff. 10-16-1998; 29 Ky.R. 1314; 1765; eff. 1-16-2003; 32 Ky.R. 942; eff. 2-3-2006; 34 Ky.R. 367; 850; 1395; eff. 12-12-2007; 34 Ky.R. 2217; Am. 2552; 35 Ky.R. 550; eff. 9-12-2008; 37 Ky.R. 2056; 2430; 2565; eff. 6-3-2011; 39 Ky.R. 834; eff. 1-4-2013; 40 Ky.R. 1874; 2424; eff. 6-6-2014; 44 Ky.R. 570; eff. 12-7-2017; 45 Ky.R. 2167; eff. 4-5-2019; 50 Ky.R. 1568; eff. 6-6-2024.)

RICH STORM, Commissioner

APPROVED BY AGENCY: December 15, 2023

FILED WITH LRC: December 15, 2023 at 11:20 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 29, 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 February 29, 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.