

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

**301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.**

RELATES TO: KRS 150.010(32), 150.450(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is permitted~~[the places where they may be taken]~~. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes~~[Lakes]~~.

~~Section 1. [Definitions.]~~

~~[(1)] ["Bar mesh size" means the distance between two (2) knots on a line of a net.]~~

~~[(2)] ["Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.]~~

~~[(3)] ["Permit" means a special commercial fishing permit.]~~

~~[(4)] ["Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.]~~

~~[(5)] ["Rough fish" is defined by KRS 150.010(37).]~~

~~[(6)] ["Whip set" means a gill net or a trammel net rigged so it is free floating.]~~

~~[Section 2.]~~ Permit Requirements.

(1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) The department shall not issue more than twenty-five (25) permits.

(3) A permit holder shall submit a completed permit application to the department, along with the appropriate permit fee established in 301 KAR 3:022, postmarked on or before November 1 to retain the permit privilege.

(4) The ability to purchase a permit shall only be transferred to immediate family members.

(5) New permits shall not be issued until the total number of permits is less than twenty-five (25).

(6) A ~~[lottery]~~ drawing shall be used to select new permittees if the total number of permits is less than twenty-five (25).

(a) A person applying for a vacant permit shall submit to the department a completed Application for a Special Commercial Fishing Permit postmarked on or before November 1, along with the appropriate fee established in 301 KAR 3:022.

(b) The maximum number of permits issued to nonresidents shall be seven (7).

Section 2. ~~[Section 3.]~~ Permit Requirements.

(1) A person shall possess and carry a valid permit and a valid commercial fishing license:

(a) If using a gill net or trammel net to take rough fish:

1. From November 1 through March 31 at both Kentucky and Barkley lakes~~[Lakes]~~; and

2. In the portions of Kentucky and Barkley lakes~~[Lakes]~~ open to commercial fishing as established in 301 KAR 1:150.

(b) If transporting a gill net or trammel net; and

- (c) If selling fish taken with a gill net or trammel net.
- (2) A person shall:
  - (a) Tag a gill net or trammel net as established in KRS 150.175(4);
  - (b) Not use a gill net or trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:
    - 1. A whip set may have a minimum bar mesh size of three (3) inches; and
    - 2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley ~~lakes~~~~Lakes~~, gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;
  - (c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;
  - (d) Tend each net, except whip sets, at least once every twenty-four (24) hours;
  - (e) Not leave whip sets unattended;
  - (f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;
  - (g) Not dispose of any commercially caught rough fish at public boat launch areas; and
  - (h) Not harvest paddlefish at both Kentucky and Barkley ~~lakes~~~~Lakes~~ during the special commercial fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.
- (3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:
  - (a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or
  - (b) Accompanied by the permit holder if transporting or selling fish taken under the permit.
- (4) A permit holder shall:
  - (a) Maintain an accurate record of daily fishing activity; and
  - (b) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 3. ~~[Section 4.]~~ Paddlefish Harvest Requirements.

- (1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.
- (2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section 4(4).

Section 4. ~~[Section 5.]~~ Permit Suspension, Revocation, and Renewal.

- (1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee by the following methods:
  - (a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.
  - (b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.
  - (c) If a third or subsequent time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

- (2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.
- (3) The department shall revoke or not renew a person's permit for a period of two (2) years, for the following state violations involving commercial fishing:
  - (a) Use of illegal commercial fishing gear;
  - (b) Knowingly placing commercial fishing gear in a restricted area;
  - (c) Harvesting prohibited species of fish;
  - (d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing; or
  - (e) Knowingly falsifying commercial harvest data.
- (4) A person whose permit has been revoked or denied shall be eligible to enter the ~~lottery~~ drawing following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section 2 of this administrative regulation.
- (5) A person whose permit has been revoked or denied may request an administrative hearing pursuant to KRS Chapter 13B.
- (6) 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.
- (7) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.
- (8) 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) The following material is incorporated by reference:
  - (a) "Application for a Special Commercial Fishing Permit", 2007 Edition;
  - (b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2023 Edition~~[2008]~~; and
  - (c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 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 a.m. to 4:30 p.m.

*RICH STORM, Commissioner*

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 12, 2024 at 11:00 a.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on March 28, 2024, at 11:00 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 March 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](mailto: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 sets forth the conditions and provisions for a special commercial fishery using gill and trammel nets at Kentucky and Barkley lakes.

**(b) The necessity of this administrative regulation:**

This administrative regulation is necessary to specify the waters open to, and other restrictions on the use of, gill and trammel nets at Kentucky and Barkley lakes.

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

KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is permitted. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes.

**(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 KRS 150.025 by defining the type and size of gill and trammel nets that can be used, the time period nets can be used, how and where the nets can be set, and what fish can be harvested.

**(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 addresses a cleanup where "The Monthly Report of Commercial Fish Harvest in Kentucky" had been revised multiple times since 2008 (2014, 2019, and 2023 (submitted to LRC in December)) and changes had been accounted for in 301 KAR 1:155. However, the reference to the same document in this administrative regulation was never changed and still refers to the 2008 document which is no longer being used. In addition, this amendment removes the definition section due to the creation of 301 KAR 1:001 which contains definitions for all 301 KAR 1 regulations.

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

This amendment will correct the version of "The Monthly Report of Commercial Fish Harvest in Kentucky" referenced in the Incorporated by Reference section. Also, with the creation of 301 KAR 1:001, there is no need for definition sections in each individual regulation.

**(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 commercial fishers who possess a special commercial fishing permit for Kentucky and Barkley lakes will be affected by this administrative 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:**

The entities in question (3) are already utilizing the newest version of the reporting form and will not have to take any additional actions.

**(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 comply with this amendment.

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

Since the entities identified in question (3) are already using the newest version of the form, there will be no additional benefits.

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

**(a) Initially:**

This administrative regulation change will result in no initial change in administrative cost to the Department.

**(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 any other fees or increase funding to implement this administrative regulation.

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

No new fees will be established.

**(9) TIERING: Is tiering applied?**

No. Tiering is not applied to this regulation because all commercial fishers who possess a special commercial fishing permit for Kentucky and Barkley lakes 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 of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

**(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) authorizes the Kentucky Department of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is permitted. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes.

**(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?**

No revenue will be generated by this administrative regulation during 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 by this administrative regulation during subsequent years.

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

There will be no additional costs to administer this program for the first year.

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

There will be no additional costs to administer this program for 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 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 in subsequent years.

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

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

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

There will be no cost to 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)] Since this is a cleanup of the regulation, there will be no economic impact.