

### **301 KAR 1:152. Harvest and sale of Asian carp.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the harvest and sale of Asian carp beyond the requirements of 301 KAR 1:155.

#### Section 1. Definitions.

- (1) "Asian carp" means:
  - (a) Bighead carp;
  - (b) Black carp;
  - (c) Grass carp; or
  - (d) Silver carp.
- (2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.
- (3) "Program" means Asian Carp and Scaled Rough Fish Harvest Program.
- (4) "Program participant" means a commercial fisherman who is:
  - (a) Enrolled in the Asian Carp and Scaled Rough Fish Harvest Program; and
  - (b) Fishing in restricted water.
- (5) "Restricted water" means those areas, as established in 301 KAR 1:140, 1:146, 1:150, and 1:155, where:
  - (a) Commercial fishing is prohibited;
  - (b) Commercial fishing with gill or trammel nets is prohibited; or
  - (c) Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.
- (6) "Scaled rough fish" means any scaled fish that is not an Asian carp, sport fish as established in 301 KAR 1:060, roe bearing fish, or a species ineligible for commercial harvest as established in 301 KAR 1:155.
- (7) "Unlicensed helper" means a person without a commercial fishing license who is assisting a program participant.

#### Section 2. Program Participant Qualifications. A commercial fisherman shall:

- (1) Contact the department and request to be included in the program; and
- (2) Possess a valid Kentucky commercial fishing license.

#### Section 3. Program Participant Requirements. A program participant shall:

- (1) Call the department at 270-226-4192 at least twenty-four (24) hours prior to the requested fishing date and provide the information established in paragraphs (a) through (f) of this subsection:
  - (a) The participant's name;
  - (b) The fish buyer's name;
  - (c) Date requested;
  - (d) Restricted water body to be fished;
  - (e) The location in the restricted water body to be fished, listed as river miles or embayment; and
  - (f) The name or location of the boat ramp that will be used;
- (2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived as established in Section 4 of this

administrative regulation shall only harvest Asian carp and not retain any scaled rough fish or by-catch;

- (3) Only fish:
  - (a) On dates approved by the department; and
  - (b) At a location approved by the department;
- (4) Notify the department and receive approval prior to changing the:
  - (a) Fishing location in the restricted water body; or
  - (b) Boat ramp being used;
- (5) Only use gill or trammel nets:
  - (a) With a minimum bar mesh size of three (3) inches;
  - (b) That are always tended by a program participant when set less than three (3) feet below the surface of the water;
  - (c) That are not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and
  - (d) That are not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;
- (6) Visibly mark each end of net sets or gangs of nets with floating buoys;
- (7) Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;
- (8) Complete a Daily Harvest and Release Summary Card after each day's fishing and submit all cards to the department at the end of each month;
- (9) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative regulation;
- (10) Immediately release all by-catch; and
- (11) Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in 301 KAR 1:155.

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program participant who only harvests Asian carp in restricted or unrestricted waters.

Section 5. Department Program Requirements.

- (1) The department shall:
  - (a) Maintain a list of program participants and their contact information, which shall be:
    1. Provided to known fish buyers; and
    2. Updated at least weekly; and
  - (b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.
- (2) The department shall approve a qualified fishing request by assigning a fishing location and boat ramp to a program participant.
- (3) The department shall not approve a fishing request for reasons established in paragraphs (a) and (b) of this subsection:
  - (a) Higher than normal by-catch is likely to occur at that location and time; or
  - (b) Excessive user conflicts would occur.

Section 6. Unlicensed Helpers.

- (1) A program participant shall not utilize more than two (2) unlicensed helpers while actively fishing.
- (2) A program participant 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 program participant while using commercial fishing gear; and
  - (b) Be permitted to transport Asian carp in the absence of a program participant with a Fish Transportation Permit as established in 301 KAR 1:125.
- (4) A program participant 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 fisherman or another program participant; or
  - (b) Assist a licensed Kentucky commercial fisherman or program participant in harvesting or transporting fish.

#### Section 7. Program Suspension and Disqualification.

- (1) A program participant whose commercial fishing license becomes revoked or suspended as established in 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program while that license is revoked or suspended.
- (2) A program participant shall be suspended from the program:
  - (a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 3(2) are not met; and
  - (b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.
- (3) Any participant who is disqualified or suspended from participation in the program may appeal the decision in accordance with KRS Chapter 13B.
- (4) To appeal the disqualification or suspension, the participant shall provide a written request for a KRS Chapter 13B hearing, postmarked or delivered in person to the department no later than thirty (30) days after notification of the disqualification or suspension.

#### Section 8. Non-commercial Asian Carp Harvest and Sale. Any person possessing a valid Kentucky sport fishing license:

- (1) May harvest Asian carp using legal fishing methods as established in 301 KAR 1:201; and
- (2) May sell harvested Asian carp.

#### Section 9. Incorporation by Reference.

- (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.
  - (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.
- (38 Ky.R. 434; eff. 10-6-2011; 38 Ky.R. 1473; 1724; eff. 5-4-2012; 39 Ky.R. 647; 1041; eff. 11-7-2013; 41 Ky.R. 854; eff. 1-5-2015; 43 Ky.R. 1440; eff. 5-5-2017; 44 Ky.R. 132; eff. 9-8-2017; 45 Ky.R. 2165; eff. 4-5-2019; 46 Ky.R. 150; eff. 9-10-2019; 48 Ky.R. 130, 1125; eff. 11-17-2021.)