TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

(Amendment)

301 KAR 2:090. Means by which migratory game birds may be taken.

RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

STATUTORY AUTHORITY: 150.025(1), 150.305(3), (4), 150.360(2), 150.600, 50 C.F.R. 20, 21

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to implement or carry out the purposes of KRS Chapter 150. KRS 150.305(1) authorizes the department to promulgate administrative regulations concerning possession of wildlife protected by KRS Chapter 150. KRS 150.305(3) requires the possession of migratory birds to be governed by federal regulations. KRS 150.305(4) authorizes the commissioner, or his or her designee, to inspect commercial frozen food lockers. KRS 150.360(2) authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Baited area" means any area where shelled, shucked, or unshucked corn; wheat or other grain; salt; or other feed capable of luring, attracting, or enticing migratory game birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered.

(2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn; wheat or other grain; salt; or other feed so as to constitute for migratory game birds a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them.

Section 2. Prohibited Hunting Methods.

(1) Migratory birds for which open seasons are prescribed may be taken by any method except those prohibited in this section.

(2) Migratory game birds and migratory waterfowl shall not be taken:

(a) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than ten (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells, except that this restriction shall not apply during the light geese conservation order season;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off or the sails furled, and its progress has ceased, except that a craft under power may be used to retrieve dead or crippled birds. Crippled birds shall not be shot from a craft under power;

(f) By the use or aid of live birds as decoys;

(g) On an area where tame or captive live ducks or geese are present, unless the birds are and have been for a period of ten (10) consecutive days prior to the taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals the birds from the sight of wild migratory waterfowl;

(h) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this restriction shall not apply during the light geese conservation order season;

(i) By the means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentration, driving, rallying, or stirring up of any migratory bird; or

(j) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited, except that this paragraph shall not prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops or flooded standing crops, including:

a. Aquatics;

b. Flooded harvested croplands;

c. Grain crops properly shocked on the field where grown; or

d. Grains found scattered solely as the result of normal agricultural planting or harvesting; and

2. The taking of all migratory game birds, except waterfowl, on or over any lands where baiting has occurred as the result of:

a. Bona fide agricultural operations or procedures; or

b. Manipulation of a crop or other feed on the land where grown for wildlife management purposes, if manipulation for wildlife management purposes does not include the distribution or scattering of grain or other feed once it has been removed from or stored on the field where grown.

(3) A baited area shall remain a baited area for ten (10) days following complete removal of all corn, wheat or other grain, salt, or other feed.

Section 3. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 4.[~~Section 3.~~] Transporting, Importing and Exporting.

(1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and administrative regulations of any foreign country, any state in the United States, or subdivision of a state, shall be imported, exported, or transported in accordance with the provisions specified in 50 C.F.R. Part 20.

(2) A person shall not transport within the United States any migratory game birds, except doves, unless the head or one (1) fully feathered wing remains attached to each bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

Section 5.[~~Section 4.~~] Tagging and Recordkeeping Requirements.

(1) A person shall not put or leave any migratory game birds at any place, other than at his or her personal abode, or in the custody of another person, for picking, cleaning, processing, shipping, transportation, or storage, including temporary storage, or for the purpose of having taxidermy services performed, unless the birds have a tag attached, signed by the hunter, stating his:

(a) Address;

(b) The total number and species of birds; and

(c) The date the birds were killed.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

(3) A person shall not receive, or have in custody, any migratory game birds belonging to another person unless the birds are tagged as required under subsection (1) of this section.

(4) A person shall not transport migratory game birds belonging to another person unless the birds are tagged as required under subsection (1) of this section.

Section 6.[~~Section 5.~~] Commercial Frozen Food Lockers.

(1) A commercial frozen food locker shall receive or have in custody any migratory game birds unless the birds are tagged as required in Section 5[~~4~~](1) of this administrative regulation.

(2) A commercial frozen food locker shall not:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing:

1. The number of each species;

2. The date the birds were received;

3. The name and address of the person from whom the birds were received;

4. The date the birds were disposed of; and

5. The name and address of the person to whom the birds were delivered.

(b) Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record.

(c) Prevent any person authorized to enforce this administrative regulation from entering the facility at all reasonable hours and inspecting the records and the premises where the operations are being carried on.

Section 7.[~~Section 6.~~] Wanton Waste Law. A person shall not kill or cripple any migratory game bird pursuant to this administrative regulation without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

Approved by the Fish and Wildlife Commission.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 14, 2023

FILED WITH LRC: February 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 28, 2023, at 11 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 April 30, 2023. 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: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, (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 administrative regulation establishes means by which migratory game birds may be taken. These means are consistent with federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the possession, transportation, importation, exportation, tagging and commercial handling of legally taken migratory game birds. It prohibits the wanton waste of harvested migratory game birds.

(b) The necessity of this administrative regulation:

The necessity of this administrative regulation is to establish the means by which migratory birds may be harvested in accordance with the USFWS.

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

KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360(2) authorizes the department to restrict methods for the taking of wildlife. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

This administrative regulation assists in the effective administration of the statutes by establishing the means by which migratory bird harvest may occur and how harvested birds are handled consistent with state, national, and international management goals.

(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 will add descriptions of the type of shotgun shells which may be used to harvest waterfowl. This section, with no changes, is being moved from 301 KAR 2:222. It is more appropriate here because the rules apply to all waterfowl hunting not just hunting on public lands.

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

This amendment clarifies Department regulations by placing all specific regulations on waterfowl hunters in one 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:

There are approximately 40,000 migratory bird hunters in Kentucky who are impacted by this 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:

Waterfowl hunters will see no difference in hunting regulations.

(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 additional costs to those identified in question (3).

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

The only benefit is clarity of regulations and ability to find the regulations governing waterfowl hunting.

(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 change to 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?

Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

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’s Divisions of Wildlife 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), 150.360(2), 150.305(3) and (4), 150.600, and 50 C.F.R. Parts 20 and 21.

(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 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?

n/a

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

n/a

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

There will be no cost for the regulated entities in the first full year of this administrative regulation is in effect.

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

There will be no cost for the regulated entities in subsequent years this administrative regulation is in effect.

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)]. This administrative regulation will not have a major economic impact [as defined in KRS 13A.010(13)].

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

(2) State compliance standards.

The Department of Fish and Wildlife Resources sets migratory birds seasons and methods by which migratory birds may be harvested within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

(3) Minimum or uniform standards contained in the federal mandate.

50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag, possession limits and means by which migratory birds may be legally harvested. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting and allows for the harvest and means of harvest of light geese under a conservation order season.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Yes.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky’s waterfowl hunters.