

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

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the ~~Department~~~~[department]~~ of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting~~[to establish seasons for the taking]~~ of fish and wildlife, the restriction of places where taking is permitted~~[to regulate bag limits, creel limits, and methods of take,]~~ and the application of administrative regulations~~[to make these requirements apply]~~ to a limited area or to the entire state. This administrative regulation establishes the areas where commercial fishing is allowed.

Section 1. Rivers and Creeks.

~~[(1)]~~ The rivers and creeks established in subsections (1) through (7)~~[paragraphs (a) through (g)]~~ of this section~~[subsection]~~ shall be open to commercial fishing pursuant to 301 KAR 1:146 and 1:155:

(1) ~~[(a)]~~ ~~[Barren River from its junction with Green River upstream to Greencastle, Kentucky;]~~

~~[(b)]~~ Cumberland River from its junction with the Ohio River upstream to the Highway 62 bridge;

~~[(c)]~~ ~~[Eagle Creek from its junction with the Kentucky River upstream to the Highway 22 bridge in Grant County;]~~

(2) ~~[(d)]~~ Green River from its junction with the Ohio River upstream to 200 yards below Green River Lock and Dam 4~~[6]~~;

~~[(e)]~~ ~~[Highland Creek from its junction with the Ohio River upstream to the Rock Ford Bridge in Union County;]~~

(3) ~~[(f)]~~ Kentucky River from its junction with the Ohio River upstream to the junction of the North and Middle Forks of Kentucky River;

~~[(g)]~~ ~~[North Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Walker's Creek;]~~

~~[(h)]~~ ~~[South Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Cow Creek;]~~

~~[(i)]~~ ~~[Licking River from its junction with the Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;]~~

(4) ~~[(j)]~~ Mississippi River from the mouth of the Ohio River downstream to the Tennessee line;

(5) ~~[(k)]~~ Ohio River from its junction with the Mississippi River upstream to the West Virginia state line except those segments of the river that extend below the following locks and dams where slat baskets are the only piece of commercial gear allowed, except for the first 200 yards below the dam pursuant to KRS 150.445:

(a) ~~[(1)]~~ Lock and Dam 53 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion;

(b) ~~[(2)]~~ Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion;

(c) ~~[(3)]~~ Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

(d) ~~[(4)]~~ J.T. Myers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island

- from the fixed weir dam to the first dike;
- (e) ~~{5-}~~ Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;
- (f) ~~{6-}~~ Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;
- (g) ~~{7-}~~ McAlpine Dam downstream to the K&I railroad bridge;
- (h) ~~{8-}~~ Markland Dam downstream to a line perpendicular to the end of the outer lock wall;
- (i) ~~{9-}~~ Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; and
- (j) ~~{10-}~~ Greenup Dam downstream to a line perpendicular to the end of the outer lock wall;
- (6) ~~{4-}~~ Pond River from its junction with the Green River upstream to the Highway 62 bridge; and
- ~~{(m)} [Panther Creek from its junction with the Green River upstream to the head of the creek;]~~
- ~~{(n)} [Rough River from its junction with the Green River upstream to the Highway 69 bridge at Dundee, Kentucky;]~~
- (7) ~~{(o)}~~ Tennessee River from its junction with the Ohio River upstream to River Mile 17.8~~{-}~~
- ~~{(p)} [Tradewater River from its junction with the Ohio River upstream to the Highway 365 bridge; and]~~
- ~~{(q)} [Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox].~~

Section 2. ~~{(2)}~~ Lakes. The lakes established in subsections (1) through (5) of this Section~~[following lakes]~~ shall be open to commercial fishing pursuant to 301 KAR 1:146 and 1:155~~[-, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as specified in subsection (3) of this section;-]~~

(1)

~~{(a)} [Barkley;]~~

~~{(b)}~~ Herrington Lake from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream;~~[and]~~

(2) ~~{(e)}~~ Kentucky Lake from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream;~~[-]~~

(3) Lake Barkley from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream; ~~{Exceptions;-}~~

(4) Lake Cumberland from the impounded or standing pools of the lake up to the first shoal or riffle in any main or tributary stream, except Lake Cumberland shall be closed to commercial fishing;

(a) Above the confluence of Koger Creek on the Big South Fork Arm; and

(b) Above the confluence of the Rockcastle River on the Cumberland River Arm; and

~~{(a)} [Cumberland Lake shall be closed to commercial fishing above the confluence of Koger Creek on the Big South Fork Tributary.]~~

(5) ~~{(b)}~~ Permanent overflow lakes adjacent to the Mississippi and Ohio Rivers that may be accessed from either river by a boat during high flow ~~{conditions shall be open to statewide commercial fishing during these high flow}~~ events, except as prohibited on department wildlife management areas pursuant to 301 KAR 4:020 and 301 KAR 4:050. (KFWR-F-CF1-4; 1 Ky.R. 242; eff. 1-8-1975; Am. 872; eff. 6-11-1975; 3 Ky.R. 771; 4 Ky.R. 99; eff. 8-3-1977; 9 Ky.R. 934; eff. 3-2-1983; 12 Ky.R. 1357; eff. 3-4-1986; 15 Ky.R. 1131; eff. 11-23-1988; 17 Ky.R. 1797; eff. 12-19-1990; 29 Ky.R. 517; eff. 10-9-2002; 32

Ky.R. 307; 621; 10-12-2005; 32 Ky.R. 2087; 33 Ky.R. 87; eff. 7-12-2006; 40 Ky.R. 400; 792; eff. 10-3-2013; Cert eff. 2-5-2020; 50 Ky.R. 1761; eff. 7-18-2024.)

RICH STORM, Commissioner

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 11, 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 9:30 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.

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 the areas where commercial fishing is allowed.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to manage the commercial harvest of fish in Kentucky by establishing the waters open to commercial fishing.

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

KRS 150.025(1) authorizes the 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.

(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(1) by listing the waters that are open to commercial fishing in Kentucky.

(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 removes several creeks and rivers from the list of waters open to commercial fishing due either having no or very few records of commercial harvest in the last decade. In addition, due to the full removal of Lock and Dam 6 (previous upper boundary) and partial removal of Lock and Dam 5, this amendment sets a new upper boundary for commercial fishing on the Green River at Lock and Dam 4. Finally, this amendment closes a portion of Lake Cumberland (upstream from the confluence of the Rockcastle River on the Cumberland River Arm) to commercial fishing due to numerous conflicts between recreational users and commercial fishers and potential detrimental effects on Lake Sturgeon.

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

The removal of certain waterbodies was due to no or very few records of commercial harvest in the last decade on these waters. Also, due to the deauthorization and removal of Green River Lock and Dam 6 and partial removal of Lock and Dam 5, a new upper boundary for commercial fishing was required on the Green River. Finally, numerous conflicts between recreational users and commercial fishers using trot lines, as well as the threat to Lake Sturgeon from trot line capture, resulted in the need to close a portion of Lake Cumberland open to commercial fishing.

(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 fished in the waterbodies that are proposed to be closed, as well as the Green River, will be affected.

(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:

Commercial fishers will no longer be allowed to fish on the proposed creeks and rivers in Section 1 and the section of Lake Cumberland proposed in Section 2(4)(b). In addition, commercial fishers must follow the new upper boundary location for commercial fishing on the Green River.

(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 minimal cost to entities in question (3). The rivers and creeks being closed to commercial fishing had no or very low use in the last decade, so commercial income from these waterbodies was negligible. The loss of commercial fishing income from the relocation of the upper boundary on the Green River will also be negligible. Although a section of Lake Cumberland was closed to commercial fishing, there is still a large portion of the lake that remains open to fishing, including a long stretch of the Cumberland River Arm on the upper end of the lake.

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

Although benefits are limited, the impacts of this amendment should be minimal due to the low commercial use of the waters being closed and the large number of commercial waters still open.

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

(a) Initially:

There will be no cost associated with implementation of this administrative regulation initially.

(b) On a continuing basis:

There will be no cost associated with implementation of this administrative regulation 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 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 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.

(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 direct cost to the regulated entities in the first year; however, there could be a small loss in revenue for those that had commercially fished on the waters proposed to be closed. Commercial harvest reports show low to no harvest on these waters, however.

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

There will be no direct cost to the regulated entities in subsequent years; however, there could be a small loss in revenue for those that had commercially fished on the waters proposed to be closed. Commercial harvest reports show low to no harvest on these waters, however.

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:

See (4)(c) and (4)(d) above.

(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)] Although there may be a small economic impact to the regulated entities, it will be much lower than \$500,000 and therefore will not be a "Major economic impact".