

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended at ARRS Committee)

301 KAR 1:152. Harvest and sale of invasive~~Asian~~ carp.

RELATES TO: KRS Chapter 13B, 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 of Fish and Wildlife Resources~~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 invasive~~Asian~~ carp beyond the requirements of 301 KAR 1:155.

Section 1. Invasive Carp and Scaled Rough Fish Harvest Program.

- (1) To participate in the program, a commercial fisher shall:
- (a) Contact the department and request to be included in the program;
 - (b) Possess a valid Kentucky commercial fishing license;
 - (c) Contact the department at 270-226-4192 and provide the information established in subparagraphs 1. through 5. of this paragraph prior to fishing:
 - 1. The participant's name;
 - 2. The fish buyer's name;
 - 3. Date fishing is to occur;
 - 4. Restricted water body to be fished; and
 - 5. Ramp, marina, or dock where ~~a boat~~ ~~boat(s)~~ will be launched;
 - (d) Harvest a weight ratio of at least sixty-five (65) percent invasive carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisher whose license fee has been waived as established in subsection (2)(c) of this section shall only harvest invasive carp and not retain any scaled rough fish or by-catch;
 - (e) Only fish on dates and at locations provided to the department;
 - (f) Notify the department prior to changing any information as established in subsection (1)(c) 2. through 5. of this section;
 - (g) Only use gill or trammel nets:
 - 1. With a minimum bar mesh of three (3) inches;
 - 2. That are always tended by a program participant ~~if~~ ~~when~~ set less than three (3) feet below the surface of the water;
 - 3. That are not left unattended by a program participant for more than six (6) hours ~~if~~ ~~when~~ set at least three (3) feet below the surface of the water from April 1 through September 20; and
 - 4. That are not left unattended by a program participant for more than eight (8) hours ~~if~~ ~~when~~ set at least three (3) feet below the surface of the water from October 1 through March 31;
 - (h) Visibly mark each end of net sets or gangs of nets with floating buoys;
 - (i) Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;
 - (j) 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;

- (k) Be allowed to sell all harvested invasive carp and scaled rough fish as established in subsection (1) of this section;
- (l) Immediately release all by-catch; and
- (m) Report all harvest on a Monthly Report of Commercial Fish Harvest in Kentucky, as established in 301 KAR 1:155.
- (2) 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;
 - (b) Maintain a list of all restricted water fishing requests as established in subsection (1) of this section; and
 - (c) Waive the commercial fishing license fees, as established in 301 KAR 5:022, for a program participant who only harvests invasive carp in restricted or unrestricted waters.
- (3) The department shall not approve a fishing request if:
 - (a) Higher than normal by-catch is likely to occur at that location and time; or
 - (b) Excessive user conflicts would occur.

Section 2. Experimental Commercial Fishing Methods Program.

- (1) The following waterbodies, including restricted waters , shall be open to experimentation to target invasive carp under this program upon department approval:
 - (a) Cumberland River downstream of Lake Barkley;
 - (b) Tennessee River downstream of Kentucky Lake;
 - (c) Green River from 200 yards downstream of Green River Lock and Dam 4 to the confluence with the Ohio River;
 - (d) Kentucky Lake;
 - (e) Lake Barkley;
 - (f) Mississippi River from the mouth of the Ohio River downstream to the Kentucky-Tennessee state line; and
 - (g) Ohio River downstream of Newburg Lock and Dam.
- (2) The commercial fishing gear tag requirements as established in 301 KAR 1:146 shall be waived ~~if~~ ~~when~~ department personnel are present during experimentation.
- (3) The commercial fishing gear tag requirements as established in 301 KAR 1:146 ~~shall~~ ~~must~~ be followed ~~if~~ ~~when~~ department personnel are not present during experimentation.
- (4) Any commercial gear not conforming to those established in 301 KAR 1:146 shall be reviewed by the department for commercial gear tagging feasibility and need.
- (5) Any live fish holding net left overnight on the water shall have a commercial fishing gear tag attached and be marked with equipment issued by the department.
- (6) Tier I requirements.
 - (a) A commercial fisher shall apply for Tier I of the program by submitting a completed Application for Experimental Commercial Fishing Methods Program Permit provided by the department.
 - (b) Participation in Tier I of the program shall be limited to three (3) program participants at any one (1) time.
 - (c) In addition to meeting the qualification requirements established in paragraph (e) of this subsection, selection of the top three (3) applicants shall be based on the scoring criteria established in subparagraphs 1. through 4. of this paragraph:
 - 1. The fisher's experience as a commercial fisher , as well as the fisher's experience fishing for invasive carp;

2. The years of experience the fisher has with the gear and methods proposed and the past results of using the proposed gear ~~and ~~and/or~~~~ methods;
 3. The status of the fisher's gear, including if:
 - a. They currently possess all the gear required for their proposed method;
 - b. They do not currently possess all the gear, but they attest they will possess **all the ~~such~~** gear prior to their admission in the program; or
 - c. They have access to the gear; and
 4. How their proposal shall help the department to achieve its mission of reducing the number of invasive carp in Kentucky waters.
- (d) If at any time the number of program participants falls below three (3), all applications submitted prior to the vacancy will be reviewed as established in paragraph (c) of this subsection for selection of a new program participant.
- (e) To qualify for Tier I of the program, a commercial fisher shall:
1. Have a minimum of three (3) years commercial fishing experience with at least two (2) years holding a valid commercial fishing license;
 2. Have a boat and ~~motor that meet ~~motor(s) which meets~~~~ the following requirements:
 - a. Minimum boat length of twenty-two (22) feet, and space for essential crew and one (1) department-appointed observer, along with storage capacity for harvested fish;
 - b. Outboard motor with a minimum of seventy-five (75) horsepower;
 - c. Required safety equipment and personal flotation devices (PFD);
 - d. Fishing electronics, including traditional and side-imaging sonar, and water temperature; and
 - e. Valid boat registration;
 3. Have a towing vehicle capable of boat transportation to and from designated removal sites and hauling of harvests for sale or disposal;
 4. Have the necessary Kentucky Department of Transportation identification permits, insurance cards, and federal transportation tags for commercial transport of fish ; ~~;~~ and
 5. Allow a department staff member to be present for all commercial fishing methods experimentation.
- (f) A Tier I participant shall:
1. Fish under a paid commercial license that allows the harvest and sale of rough fish other than invasive carp;
 2. Possess a valid Experimental Commercial Fishing Methods Program Permit;
 3. Be present for all commercial fishing methods experimentation;
 4. Coordinate with the department to request a fishing date and location at least five (5) days in advance of fishing;
 5. Allow department staff onboard vessels to observe and record fish harvesting efforts;
 6. Cease any experimentation considered by the department to:
 - a. Be unsafe;
 - b. Interfere with other recreational users;
 - c. Be detrimental to non-target species; or
 - d. Be unsuccessful for significant invasive carp harvest;
 7. Be responsible for the removal and lawful disposal of all invasive carp species caught from waters during fishing efforts;
 8. Indicate on sales receipts that fish were harvested by an experimental **gear and method** ~~gear/method~~ authorized under this program and identify the permit holder;

9. Be eligible for the department's Kentucky and Barkley Lake Invasive Carp Subsidy Program;
10. Submit itemized invoices, by date, to the department each month, including pounds harvested of each species;
11. 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;
12. Report all harvest on a Monthly Report of Commercial Fish Harvest in Kentucky, as established in 301 KAR 1:155; and
13. Meet with department personnel quarterly to review the actions taken under this program.

(7) Tier II requirements.

(a) A commercial fisher shall apply for Tier II of the program by submitting a completed Application for Experimental Commercial Fishing Methods Program Permit provided by the department.

(b) Along with meeting the requirements established in subsection (6)(e)1. through 5. of this section, Tier II applicants ~~shall~~ ~~must~~ also meet the requirements established in subparagraphs 1. through 6. of this paragraph:

1. Shown proficiency in use of the experimental ~~gear and method~~ ~~gear/method~~ by either:

- a. Participating for at least six (6) months in Tier I of the program, with ~~the gear and method~~ ~~gear/method~~ fished a minimum of twenty (20) times; or
- b. Previously utilizing ~~the experimental gear and method~~ ~~gear/method~~ through a department Memorandum of Agreement and have been released from department observation of experimental fishing activities;

2. ~~Have previously been responsive to all department communications and requirements during Tier I activities including:~~

- ~~a. Fishing date scheduling and scheduling changes;~~
- ~~b. Reporting requirements; and~~
- ~~c. Department staff onboard observations ~~maintained~~ ~~satisfactory communication with department staff during Tier I activities~~ ;~~

3. Harvested at least 200,000 pounds of invasive carps through Tier I of the program within the previous year;

4. Harvested a weight ratio of at least eighty (80) percent invasive carp to twenty (20) percent scaled rough fish over the most recent ten (10) fishing days under Tier I of the program;

5. By-catch, in the form of sportfish, ~~shall~~ ~~must~~ have represented five (5) percent or less by number of the fish caught, based upon the ~~department~~ ~~Department~~ observer's visual estimate, over the most recent ten (10) fishing days under Tier I of the program; and

6. By-catch ~~shall~~ ~~must~~ have been in a condition where survival could be expected upon release.

(c) A Tier II participant shall:

1. Follow the requirements established in subsection (6)(f) of this section, except requests for a fishing date and location shall be made at least twenty-four (24) hours in advance of fishing;

2. Harvest a weight ratio of at least eighty (80) percent invasive carp to twenty (20) percent scaled rough fish over each one (1) month period;

3. By-catch, in the form of sportfish, ~~shall~~ ~~must~~ be maintained at five (5) percent or less by number of the fish caught, based upon the fisher's or a department observer's visual estimate; and

4. Keep daily records and report the following to department staff on a monthly basis:

- a. Pounds of fish harvested by species;
- b. Number of personnel assisting with the effort;
- c. Names of licensed commercial fishers that fish were transferred to for the purpose of transport and sale ,~~f(1)~~ if any. ~~f(2)~~ ;
- d. Name of processor or fish market receiving fish;
- e. Number of hours experimental gear was fished;
- f. Number of times gear was deployed; and
- g. Other pertinent information associated with the gear ,*for example, ~~f(1)~~ mesh size, gear depth, gear length, and approximate depth of water gear was used in ~~f(2)~~*

f. 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 3. [Section 6.] Unlicensed Helpers.

- (1) A ~~[program]~~ participant in the Invasive Carp and Scaled Rough Fish Harvest Program shall not utilize more than two (2) unlicensed helpers while actively fishing.
- (2) A participant in Tier I or Tier II of the Experimental Commercial Fishing Methods Program may use more than two (2) unlicensed helpers while actively fishing but *shall* ~~*must*~~ follow the reporting requirements as established in Section 2(7)(b)4.b. of this administrative regulation.

(3) A participant in either program ~~[participant]~~ shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(4) ~~[(3)]~~ An unlicensed helper in either program shall:

(a) Be accompanied by a licensed program participant while using commercial fishing gear; and

(b) Be permitted to transport invasive~~[Asian]~~ carp in the absence of a program participant with a Fish Transportation Permit as established in 301 KAR 1:125.

(5) ~~[(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 ~~fisher~~**fisherman** or another ~~[program]~~ participant in either program; or

(b) Assist a licensed Kentucky commercial ~~fisher~~**fisherman** or another ~~[program]~~ participant in either program in harvesting or transporting fish.

Section 4. ~~[Section 7.]~~ Program Suspension, Revocation, and Disqualification.

(1) A ~~[program]~~ participant in either program whose commercial fishing license becomes revoked or suspended as established in 301 KAR 1:155 shall be disqualified from participating in those programs~~[the Asian Carp and Scaled Rough Fish Harvest Program]~~ while that license is revoked or suspended.

(2) A participant in the Invasive Carp and Scaled Rough Fish Harvest 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 1(1)(d)~~[(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) A participant in Tier I of the Experimental Commercial Fishing Methods Program 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 2(6)(f) 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.

(4) A participant in Tier II of the Experimental Commercial Fishing Methods Program 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 2(7)(c) 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.

(5) Falsification of any information listed in an application shall result in disqualification from consideration for selection and revocation of any experimental methods permit that may have been issued to the applicant.

(6) Any participant who is disqualified, revoked, or suspended from participation in ~~either~~~~[the]~~ program may appeal the decision in accordance with KRS Chapter 13B.

(7) ~~[(4)]~~ To appeal the disqualification, revocation, 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 5. ~~[Section 8.]~~ Non-commercial Invasive~~[Asian]~~ Carp Harvest and Sale. Any person possessing a valid Kentucky sport fishing license:

(1) May harvest invasive~~[Asian]~~ carp using legal fishing methods as established in 301 KAR 1:201; and

(2) May sell harvested invasive~~[Asian]~~ carp.

Section 6. [Section 9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Daily Harvest and Release Summary Card", 2011 Edition; ~~and, is incorporated by reference.]~~

(b) "Application for Experimental Commercial Fishing Methods Program Permit", 2024 Edition.

(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. or may be obtained at <https://fw.ky.gov/Fish/Pages/Commercial-Fishing.aspx>.

(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; 50 Ky.R. 2292; 51 Ky.R. 268; eff. 11-5-20024.)

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