

301 KAR 1:152

Asian Carp and Scaled Rough Fish Harvest Program

This administrative regulation establishes the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

Significant Changes

This amendment will remove the qualification requirements that a commercial fisherman must have possessed a valid Kentucky commercial fishing license for at least three consecutive years and have reported a harvest of at least 10,000 pounds of fish per year for a three consecutive year period. In addition, commercial anglers will not be required to notify the department at least 48 hours prior to requesting a fishing date, but still must obtain approval prior to fishing restricted waters.

1 TOURISM, ARTS AND HERITAGE CABINET

2 Kentucky Department of Fish and Wildlife Resources

3 (Amendment)

4 301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

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

6 STATUTORY AUTHORITY: KRS 150.025(1)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department

8 to promulgate administrative regulations to establish seasons for the taking of fish and wildlife,

9 to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish

10 and wildlife, and to make these requirements apply to a limited area. This administrative

11 regulation establishes the requirements for the department's Asian carp and scaled rough fish

12 harvest program.

13 Section 1. Definitions. (1) "Asian carp" means:

14 (a) Bighead carp;

15 (b) Black carp;

16 (c) Grass carp; or

17 (d) Silver carp.

18 (2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

19 (3) "Program participant" means a commercial fisherman who is:

20 (a) Enrolled in the Asian carp and scaled rough fish harvest program [Carp-Harvest Program];

21 and

1 (b) Fishing in restricted water.

2 (4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:

3 (a) Commercial fishing is prohibited; or

4 (b) Commercial fishing with gill or trammel nets is prohibited.

5 (5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to
6 301 KAR 1:060.

7 (6) "Whip net set" means a gill or trammel net that is:

8 (a) Set to encircle and harvest Asian carp and scaled rough fish; and

9 (b) Always tended by a program participant while in the water.

10 Section 2. Qualifications. A commercial fisherman shall:

11 (1) Contact the department and request to be included in the program; and

12 (2) Possess a valid Kentucky commercial fishing license[;]

13 ~~(3) Have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive~~
14 ~~years; and~~

15 ~~(4) Have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive~~
16 ~~year period].~~

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

18 (1) Call the department at 800-858-1549 prior to the [at least forty eight (48) hours in advance of
19 ~~the~~] requested fishing date and provide the [following] information established in paragraphs (a)
20 through (e) of this subsection.[;]

21 (a) The participant's name;

22 (b) The fish buyer's name and phone number;

23 (c) Date requested;

- 1 (d) The location in the restricted water to be fished; and
- 2 (e) The name or location of the boat ramp that will be used;
- 3 (2) Harvest a weight ratio of at least seventy-five (75) percent Asian carp to twenty-five (25)
- 4 percent scaled rough fish over a one (1) month period;
- 5 (3) Only fish:
 - 6 (a) On dates approved by the department; and
 - 7 (b) At a location approved by the department;
- 8 (4) Immediately notify the department if the participant changes the:
 - 9 (a) Fishing location in the restricted water body; or
 - 10 (b) Boat ramp being used;
- 11 (5) Only use a whip net set with a minimum bar mesh size of three and one-quarter (3.25) inches;
- 12 (6) Complete and submit to the department a Daily Harvest and Release Summary Card
- 13 immediately after each day's fishing;
- 14 (7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in [pursuant
- 15 to] Section 2 of this administrative regulation;
- 16 (8) Immediately release all by-catch;
- 17 (9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the
- 18 requirements of 301 KAR 1:155; and
- 19 (10) Be suspended from the program:
 - 20 (a) For a three (3) month period beginning on the first day of the next month if the minimum
 - 21 requirements established in subsection (2) of this section are not met; and
 - 22 (b) For a period of one (1) year beginning on the first day of the next month if the requirements
 - 23 are not met a second time.

1 Section 4. Department Requirements. (1) The department shall:

2 (a) Maintain a list of program participants and their contact information, which shall be:

3 1. Provided to known fish buyers; and

4 2. Updated at least weekly; and

5 (b) Review all restricted water fishing requests as established in [~~pursuant to the requirements of~~]
6 Section 3 of this administrative regulation.

7 (2) The department shall approve a qualified fishing request by assigning:

8 (a) A fishing location and boat ramp to a program participant, except that no more than two (2)
9 program participants shall be assigned to the same one-half (1/2) mile section of water; and

10 (b) The time period when fishing may occur, not to exceed a three (3) consecutive day period.

11 (3) The department shall not approve a fishing request for [~~the following~~] reasons established in
12 paragraphs (a) through (c) of this subsection.[:]

13 (a) Higher than normal by-catch is likely to occur at that location and time;

14 (b) Two (2) program participants have already been approved for the same one-half (1/2) mile
15 section of water at the same time; or

16 (c) A requested date falls on:

17 1. Memorial Day;

18 2. Labor Day;

19 3. July 4; or

20 4. A Saturday or Sunday from April 1 through September 30.

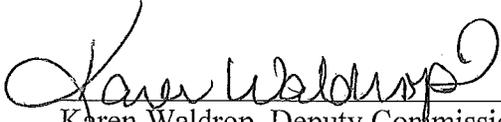
21 Section 5. Program disqualification. A program participant whose commercial fishing license
22 becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from
23 participating in the Asian carp and scaled rough fish harvest program while that license is

1 revoked or suspended.

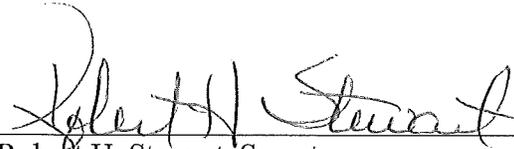
2 Section 6. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011
3 Edition, is incorporated by reference.

4 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
5 the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort,
6 Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

Approved by the Fish and Wildlife Commission



Karen Waldrop, Deputy Commissioner, for
Gregory K. Johnson, Commissioner
Department of Fish and Wildlife Resources



Robert H. Stewart, Secretary
Tourism, Arts and Heritage Cabinet

9/7/14
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2014, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2014.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Rose Mack
Department of Fish and Wildlife Resources
Arnold L. Mitchell Building
#1 Sportsman's Lane
Frankfort, Kentucky 40601
(502) 564-3400 FAX (502) 564-9136
Email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program
Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian carp and scaled rough fish harvest program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

(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 remove the qualification requirements that a commercial fisherman must have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive years and have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period. In addition, commercial anglers will not be required to notify the department at least 48 hours prior to requesting a fishing date, but still must obtain approval prior to fishing restricted waters.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make it easier for commercial fishermen to harvest Asian carp from restricted waters.

(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: This regulation will affect all commercial fishermen who had previously not qualified to participate in the program. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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 fishermen will no longer be required to have possessed a valid Kentucky commercial fishing license for at least

three (3) consecutive years and have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period to participate in the program. In addition, commercial anglers will not be required to notify the department at least 48 hours prior to requesting a fishing date, but still must obtain approval prior to fishing restricted waters.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen to participate in this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will benefit from this amendment because they will now only be required to possess a valid commercial fishing license to participate in the program. In addition, commercial fishermen will be allowed more time to request a fishing date from the department.

(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 to the department to implement this administrative regulation.

(b) On a continuing basis: There now will be no continual cost to the Department.

(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: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? (Explain why or why not). Tiering was not applied to this regulation because all commercial fishermen who fish for Asian carp will be regulated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 301 KAR 1:152

Contact Person: Rose Mack

Phone number: (502) 564-3400

(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 Fisheries Division and Law Enforcement Division will be impacted by this amendment.

(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 to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(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? This administrative regulation will not directly generate revenue for 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? This regulation will not directly generate revenue for state or local government, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will a minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department to administer this program in 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: