

Kentucky Department of Fish & Wildlife Resources



Kentucky Fish & Wildlife Commission Special Called Meeting

Live Video Teleconference Meeting –

Web link: <https://youtu.be/cvda-43qgkk>

June 29, 2021 - 3:00 PM (EST)

#1 Sportsman's Lane

Frankfort, KY

AGENDA

Opening

- Call to Order and Welcome
- Invocation
- Pledge of Allegiance
- Chair's Remarks
- Commissioner's Remarks

Action Items

- June 4, 2021 quarterly Commission meeting minutes
Attachment A-1
- Clarify regulation concerning "wake surfing"
[Amend 301 KAR 6:001](#) to incorporate "wakeboards" in definitions to address emerging safety concerns raised by U.S. Army Corps of Engineers on their lakes, and to enhance boater and wakeboarder safety on other lakes
Attachment A-2
- Voting on Special Commission Permit applications for deer, turkey, elk and waterfowl (qualifying applications received by May 1 from non-profit wildlife conservation organizations for fundraising to conduct projects in Kentucky per [301 KAR 3:100](#))

Discussion Items

- Elk Permit Quotas for 2022
The Wildlife Division recommends retaining the same elk permit quotas as 2021, with a total of 594 permits available in the 2022 Elk Hunt Drawing.
Attachment D-1
- Alligator Gar Study update
The Fisheries Division will provide an update on a long-term research project in partnership with Murray State University regarding Alligator Gar movements.
Attachment D-2
- Lake Carnico – Concerns of lake residents/neighbors about generators, boats and lights used at night by bowfishers

Action Items

- Announcement of Special Commission Permit recipients
- Selection of elk hunt unit assignments for recipients of Special Commission Permits for elk
- Alleged Open Meetings Act violations
 - Timeline of events
 - Allegations by complainant (plaintiff)
 - Opinion of Attorney General
 - Suit filed in Franklin Circuit Court
 - Discussion by Commission members
 - Remedies
 - Plaintiff's requested remedy (Open search for new Commissioner)
 - Discussion and action
 - Commission's remedy in compliance with the Act (Follow Attorney General's opinion, provide more explicit notice about reasons for entering closed sessions, Commissioner Storm's contract)
 - Discussion and action
- Procuring legal counsel for Commission response to Open Meeting complaints and suit in Franklin Circuit Court

Public Comments*

Adjourn

Next Scheduled Quarterly Commission Meeting Date: September 3, 2021

*Because of the virtual livestream format of this meeting, public comments for this meeting will be handled in the following manner. Those wishing to comment about a topic on the agenda may email their comments to FW.PublicAffairs@ky.gov between 8:00am (eastern) on the Monday preceding the meeting until 10:00am (eastern) on the day of the meeting, and those comments will be read by KDFWR staff up to 3 minutes total per commenter during the Public Comments time on the agenda, time permitting. Commenters must include their first and last name(s), Kentucky county(s) of residence (or state of residence if a nonresident), and organizational affiliation and position, if they are an officer or official representative for a particular organization. Note: Contact information is not required but will be helpful if information is requested and will not be publicly disclosed if provided. The Commission chair reserves the right to not read publicly any comments that are libelous, profane, derogatory of others, or not relevant to the meeting agenda. Questions will receive an email response.

Kentucky Department of Fish & Wildlife Resources



Commission Meeting Minutes

Live Teleconference

[YouTube video link](#) posted at fw.ky.gov

June 4, 2021

#1 Sportsman's Lane

Frankfort, KY

8:30 AM (ET)

Commission Members in Attendance (In person / Zoom) – Dr. Karl Clinard, Brian Fisher, Paul Horn, Kenny Knott, Doug Morgan, Ralph Swallows, Dr. Robin Floyd.

Call to Order and Welcome (Video – 4:54) – Chairman Clinard

Invocation and Pledge of Allegiance (Video– 8:00) – Dr. Jeff Eaton and Dr. Floyd

Commissioner and Deputy Commissioner Remarks (Video 9:47)

- Deputy Commissioner Clark recognized Roy Grimes upon his retirement after nearly 20 years of outstanding work as President and CEO of the National Archery of the Schools Program (NASP). Mr. Grimes expressed appreciation for KDFWR's support of NASP during his career.
- Commissioner Storm introduced Tommy Floyd (Video 15:38), the new NASP President and CEO, who gave an update on the organization's continuing efforts.

Action Items

- Minutes from March 5th, April 1st, April 14th, and May 5th, 2021 Commission Meetings (Video 28:33)
 - **Paul Horn made a motion to accept the minutes; seconded by Kenny Knott. Motion Passed.** (Video 29:51).
- Quarterly Financial Statement (Video 30:15)
 - Lisa Cox presented to the Commission.
 - **Doug Morgan made a motion to accept the financial statement; seconded by Paul Horn. Motion Passed.** (Video 34:20)

- Fiscal Year 2022 Management Operating Budget (Video 34:26)
 - **Doug Morgan made a motion to accept the operating budget; seconded by Brian Fisher. Motion Passed.** (Video 36:54)

- Camp Earl Wallace Capital Expenditure (Video 37:00)
 - Michael Scott, EIT Division Director, requested the Commission's approval for the Department to replace the camp's 71-year-old dining hall and kitchen using a combination of federal and state funds and donations. The budget for the project is \$3.5 million. The project would be 69% federally funded with the remaining coming from Fish and Game Fund dollars and donations.
 - **Doug Morgan made a motion to approve the expenditure; seconded by Kenny Knott. Motion Passed.** (Video 42:15)

- Waterfowl Hunting Requirements (Video 42:24)
 - Chris Garland presented the Wildlife Division's proposal to amend waterfowl hunting provisions for Sloughs WMA to enhance opportunities for hunters, including removal of 14 seasonally-drawn blinds from specific units and allowing them to be hunted as walk-in areas.
 - **Brian Fisher made a motion to accept the item as written; seconded by Ralph Swallows. Motion Passed.** (Video 45:32)

- Ballard Wildlife Management Area Entry Rules (Video 45:40)
 - Chris Garland presented the Wildlife Division's proposal to repeal 301 KAR 4:020 and move relevant portions below into 301 KAR 2:222:
 - A person shall not enter upon the premises of the Ballard Wildlife Management Area for any reason during the period October 15 through March 15, except: Department authorized personnel
Persons participating in department managed activities.
 - Trespass by Boat. During periods of high water or flood, unauthorized person shall not enter upon the premises of the Ballard Wildlife Management Area by boat for any purpose. High water or flood conditions do not affect or change the management area boundary which is marked by yellow signs.
 - **Kenny Knott made a motion to accept the item as written; seconded by Dr. Floyd. Motion Passed.** (Video 48:44)

- Proposed Research Project – Spiny Scale Catfish Study (Video 49:00)
 - Chris Garland presented this proposed research, which would investigate taxonomic status and distribution of a crayfish under review by USFWS for potential listing under the federal Endangered Species Act. This project would focus on collection of morphometric and genetic data to clarify the taxonomic status of the spiny scale crayfish and to delineate its range in Kentucky. Ultimately, the results of this study would be used to inform future listing decisions for this species at the federal level. Further, it is anticipated that this project will result in the discovery of new species of

crayfish currently unknown to science. The project would span for 2 years with an estimated total agency cost of \$10,000.

- **Kenny Knott made a motion to accept the research project; seconded by Dr. Floyd. Motion Passed.** (Video 56:35)

Discussion Item

- **Black Bear Season Structure** (Video 57:56)
 - Chris Garland and John Hast presented a proposal to consolidate the number of bear zones to 2 and use hunt days to regulate the bear harvest instead of a harvest quota system.
 - The following amendments were recommended by the Wildlife Division:
 - Remove the harvest quota requirements for all bear zones.
 - Establish 2 bear zones.
 - Bear harvest will be regulated by the number of days the season remains open.
 - Amend minimum weight requirement for harvested bears to 50 lbs.
 - Amend minimum modern gun caliber to .264 cal. / 6.5 mm (currently .270).
 - Open McCreary Zone to chase and bear hunting with dogs (Daniel Boone National Forest still closed).
 - Amend bear check-in requirements: Successful hunters must contact a biologist prior to leaving the bear zone.
 - Adjust the bear hunt with dog's season dates as displayed below to avoid overlap with fall turkey season and archery/crossbow (Arch/Xbow) season for bears.
 - **Doug Morgan made a motion to accept to move this item to an action item after removing the amended minimum weight requirement recommendation; seconded by Dr. Robin Floyd. Motion Passed.** (Video 1:12:35)

New Business Items

- **Sport Fishing Regulations** (Video 1:13:23)
 - Dave Dreves presented proposed amendments to 301 KAR 1:201 to simplify, update and add / remove special fishing regulations for black bass, trout, catfish, and muskellunge.
 - **This item will be moved on as a discussion item in the next quarterly scheduled meeting.**
- **Otter Creek Outdoor Recreation Area** (Video 2:23:17)
 - Chris Garland presented the Wildlife Division's proposal to amend 301 KAR 3:012 to open Otter Creek Outdoor Recreation Area to the general public during the spring turkey season.
 - **This item will be moved on as a discussion item in the next quarterly scheduled meeting.**

- Licensing – Amend applicable regulations to update antiquated language and accommodate modernization efforts (Video 2:24:40)
 - Deputy Commissioner Clark presented to the Commission an overview of efforts to enhance, modernize and improve our licensing and permit delivery system, including the following:
 - Amend [KRS 150.175](#) to:
 - Remove parental approval requirement for purchase of youth license
 - Update Joint Fishing license language to comply with law
 - Update Proof of Disability requirements
 - Amend [KRS 150.195](#) by removing antiquated language concerning license and permit issuance.
 - Amend [301 KRS 5:001](#) by updating definitions to remove antiquated language and accommodate licensing vendor-provided services.
 - Amend [301 KRS 5:010](#) by updating vendor language for consistency.
 - Amend [301 KAR 5:020](#) to update antiquated language and:
 - Add vendor-provided solution language
 - Add issuance fee and operational fee language
 - Alter agent commission amount to be based on percentage of sale rather than fixed per transaction amount.
 - Amend [301 KAR 5:030](#) by incorporating (and abolishing) [301 KAR 5:050](#) to create one comprehensive license and purchase issuance regulation.
 - Clarify information required for purchase
 - Add required proof-of-license language
 - Update language to adhere to current system capabilities and requirements
 - Update disability form requirement language.
 - **This item will be moved on as a discussion item in the next quarterly scheduled meeting.**

- Informational Item: Bass Tournament Exemptions Update
 - Dave Dreves updated the Commission on a 3-year pilot project. In 2017, after receiving several requests from organizers of bass tournaments that fish Cave Run Lake and Lake Cumberland, the Fisheries Division proposed to the KDFWR Commission to evaluate exempting bass tournaments from length limits. These exemptions were to allow participants in a bass tournament to bring fish normally protected by “special fishing regulations” (length or slot limits different from the statewide regulations) to the tournament weigh-in, with the intention of releasing the fish after the weigh-in. Before any long-term policy decision was to be made, the Commission authorized a 3-year “pilot test” of these exemptions on size restrictions for largemouth (LMB) and smallmouth (SMB) bass caught in tournaments on those 2 lakes to gauge the impacts to the fisheries as well as public feedback received. Observations by Fisheries staff did not indicate any significant tournament-related bass mortality. However, KDFWR has received multiple complaints from anglers during the test period, contending that we should not make special

exceptions for tournaments. KDFWR does not have angler survey data on this issue, but we are confident from anecdotal reports and input from individual anglers and fishing groups that a majority of anglers oppose special tournament exemptions. Very few states offer size exemptions to bass tournaments. KDFWR recommends rescind this temporary policy of granting exemptions on request, and making no change to the regulation. The Commissioner would retain the authority to grant exemptions as deemed appropriate.

- Commission Meeting Format and Working Groups – Status Update and Review (Video 2:57:03)
 - Doug Morgan stated that he believes we are on the right path with improving meeting format, working groups and communication. He suggested the scope of working groups be limited to a few achievable outcomes to make them more effective.
 - Chairman Clinard gave a history of the previous format and encouraged the public to be involved.
 - Commissioner Storm and Deputy Commissioner Clark explained the justification for and benefits of the current format in terms of showing down regulation-setting process to allow for more deliberation, research, public awareness and public involvement.

- New Business Item: Lake Carnico (Video 3:00:17)
 - Doug Morgan has received complaints from neighbors regarding disturbance from generators and lights at night on this lake, with requests to consider evaluate bowfishing pressure there.
 - **This item will be moved on as a discussion item in the next quarterly scheduled meeting.**

- Informational Item: 2020 – 2021 Deer Season Update (Video 3:18:10)
 - John Hast provided updates from the March meeting regarding: Epizootic Hemorrhagic Disease Reports and the 2020 – 2021 deer report and model.

- Informational Item: 2021 Spring Turkey Season Update (Video 3:36:45)
 - Zak Danks presented Spring Turkey Harvest updates / results. Zak Danks and Chris Garland will circle back to the Commission with additional information / recommendations.

- Turkey Population – Options for addressing concerns
 - Commission member Brian Fisher suggested that some items be put on the September meeting agenda for discussion, such as:
 - Extending the night-time coyote hunting with rifles season outside of turkey season
 - Expansion of trapping opportunity to target nest predators, such as with particular traps or methods

Public Comments

There were no public comments submitted that were related to the agenda.

Executive Session (per KRS 61.810) (Video 4:11:03)

After Dr. Clinard read a statement regarding the necessity for closed session in this instance, **Dr. Floyd made a motion to enter closed session; seconded by Mr. Swallows. Motion Passed.**

- Discussion – Project A – potential land donation

Action Item (Video 4:51:45)

- **Doug Morgan made a motion to move forward with Project A, provided there were no legal or environmental reasons not to; seconded by Kenny Knott. Motion Passed.** (Video 4:53:33)

Adjourn – Ralph Swallows made a motion to adjourn; seconded by Brian Fisher. Motion Passed.

Kentucky Fish and Wildlife Commission Meeting

REQUEST FOR COMMISSION ACTION

DATE: June 29, 2021

Regulation Number: [301 KAR 6:001](#)

Regular or Emergency: Regular

Action Item: Amend the regulation to include “wakeboards” in the definition of water skis so that wakeboarding: 1) requires use of PFDs, and 2) is not permitted in areas off limits to water skiing.

Introduction: The Law Enforcement Division proposes this amendment to address growing safety concerns for recreational boaters and wakeboarders, and to comply with wishes of lake owners (primarily the U.S. Army Corps of Engineers, hereafter Corps). This regulation is subject to required agency review/amendment per [KRS 13A.3102](#) (enacted 2019), applicable to every regulation administered by a given state agency, making this a timely opportunity for KDFWR to amend the regulation.

Current regulations do not address “wake surfing” which has become increasingly popular on Kentucky waterways. This activity involves a person riding a wakeboard upon the wake of a vessel underway.

Recreational boaters are currently wake-surfing in areas designated as “NO SKI” areas. This is a safety concern that the Corps has brought to our attention on the lakes they own. Areas designated as “NO SKI” are either heavily congested areas or areas that are unsafe due to water hazards such as shallow water, submerged trees

The regulation in current form (301 KAR 6:001) defines water skiing as a person being *towed* by a vessel underway. In wake surfing, the person is not connected to/being towed by the vessel so the regulations that address water skiing activities do not apply and not conducive to enforcement action. The proposed language adds this definition of wake surfing into the current definition for “skiing”.

Proposed Changes:

(20) "Water skis" means rigid or inflatable skis, kneeboards, tubes, wakeboards or similar devices. ~~upon or in which a person is towed behind a moving vessel.~~

(21) "Water skiing" means:

(a) The act of riding in or upon water skis while being towed behind a moving vessel or propelled by a boat's wake or while riding on/in a boat's wake directly behind a vessel that is underway; or

(b) Barefoot skiing.

This additional language was developed by the National Association of State Boating Law Administrators (NASBLA) at the request of several states seeking a standard, national definition for “wake surfing.”

Kentucky Fish and Wildlife Commission Meeting

DISCUSSION ITEM

DATE: June 29, 2021

Regulation Number: [301 KAR 2:132](#)

Regular or Emergency: Regular

Projected Effective Timeframe: 2022 fall hunting season

Discussion Item: Elk Permit quotas for 2022

Introduction: The Wildlife Division recommends that the current elk permit allotment numbers remain in place for the 2022 elk hunting season. The current regulations were put in place prior to the 2019 season and have proven to provide the necessary framework for the sustainable hunting of the Kentucky elk population. Consistency in our elk hunting regulations is paramount to applicants, drawn elk hunters, and elk managers. Specifically, changes to the number of elk permits overall will reduce the efficacy of our population modeling efforts as it relies on at least five years of data where permit numbers are consistent. Hunter effort and, by proxy, total permit numbers are a critical component to our population model. This model requires at least five years of consistent hunter effort data to stabilize the confidence intervals and to allow for increasingly reliable statistical inferences about Kentucky elk abundance.

The recommended elk permit allotment for the 2022 season is:

- Either Sex Archery/Crossbow = 175
- Bull Firearm = 150
- Cow Firearm = 244
- Youth = 25
- Total = 594**

Kentucky Fish and Wildlife Commission Meeting

DISCUSSION ITEM

DATE: June 29, 2021

Regulation Number: N/A

Regular or Emergency: N/A

Projected Effective Timeframe: Summer 2021 (FY2022)

Discussion Item: Alligator Gar Research update

Introduction: KDFWR's Alligator Gar Restoration was initiated in 2009 with the goal of re-establishing the species to its native range in portions of western Kentucky. The research investigates movement patterns of stocked fish using telemetry equipment. This is project funded through the State Wildlife Grant Program (65% federal / 35% state match), and has developed into a partnership with the Private John Allen National Fish Hatchery in Tupelo, Mississippi and Murray State University. Due to the COVID-19 pandemic, stocking numbers have been greatly reduced in 2020 and 2021. However, since 2009, KDFWR has overseen the stocking of as many as 8,800 fish in a given year. KDFWR wishes to continue this scientific research with Murray State University in an effort to better understand the movement patterns of these stocked fish.