

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 02-10-11
Rule ID(s): 4908
File Date: 02/11/2011
Effective Date: 05/12/2011

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Fisheries Division
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1660-01-17	Rules and Regulations Governing the Commercial Use of Wildlife
Rule Number	Rule Title
1660-01-17-.01	General Provisions for Commercial Use

Chapter 1660-01-17
Rules and Regulations Governing the Commercial Use of Wildlife

Amendment

Rule 1660-01-17-.01, General Provisions for Commercial Use, is amended by deleting paragraph (5) in its entirety and replacing it with the following:

- (5) Live Species That May Be Bought and Sold
- (a) Legally obtained live crustaceans (crayfish, lobster, etc.) for food.
 - (b) Legally imported and/or propagated amphibians for purposes other than bait.
 - (c) Legally obtained live native and non-native species may be bought and sold as provided by statute, regulation or proclamation.

Statutory Authority: T.C.A. §§70-1-206 and 70-4-107.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown	✓			
Mike Chase	✓			
Johnny Coleman	✓			
Jim Fyke				✓
Terry Oliver	✓			
Jeffrey H. Griggs	✓			
Mike Hayes	✓			
Jeff McMillin	✓			
Mitchell S. Parks	✓			
Julie Schuster	✓			
Todd A. Shelton				✓
Eric Wright	✓			
Danya Welch	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 10/28/2010 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (mm/dd/yy) - 8-27-10

Rulemaking Hearing(s) Conducted on: (add more dates). 10/28/10



Date: 11-2-10

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-2-10

Notary Public Signature: Lisa Crawford

My commission expires on: 8-23-11

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.



Robert E. Cooper, Jr.
Attorney General and Reporter

2-3-11

Date

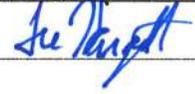
Department of State Use Only

Filed with the Department of State on:

2/11/11

Effective on:

5/12/11



Tre Hargett
Secretary of State

RECEIVED
2011 FEB 11 AM 9:56
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-01-17

New	_____
Amendment	_____X_____
Repeal	_____

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

The Commission anticipates a possible small negative impact to bait dealers as this change would ultimately prohibit the sale of crayfish and dusky salamanders for bait. According to a 2006 survey of bait dealers licensed by TWRA, 12% indicated that they sold crayfish for bait. Currently there are 186 licensed bait dealers in Tennessee so potentially 22 dealers could be affected by this change. Crayfish sales are only a small portion of these businesses. Very few, if any, bait dealers currently sell salamanders in Tennessee.

- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

The Commission anticipates no change in reporting, recordkeeping, or other administrative costs to incorporate the proposed rule change into the existing the TWRA system.

- (3) A statement of the probable effect on impacted small businesses and consumers;

The Commission anticipates that a small number of bait dealers would realize a slight impact from this change because they would no longer be able to sell crayfish or salamanders. This prohibition is necessary to protect Tennessee's native crayfish and salamander populations from the negative impacts associated with introduction of non-native species. Tennessee anglers (i.e., consumers) could still obtain crayfish and dusky salamanders from the wild for bait use. This change will benefit Tennessee anglers by reducing risk of losing valuable fisheries due to unwanted introductions.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

The Commission is unaware of an alternative to the proposed rule and anticipates minimal negative impacts for bait dealers and positive impacts for anglers.

- (5) A comparison of the proposed rule with any federal or state counterparts; and

The Commission is not aware of any federal or state counterparts to this rule.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Bait dealers would realize only a small benefit if exempted from this rule and these exemptions would leave Tennessee's crayfish and salamander populations vulnerable to introductions of non-native species.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule to proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

Will passage of this rule have a projected financial impact on local governments?

We do not anticipate any significant fiscal impact to local governments as a result of this rule amendment.

Please describe the increase in expenditures or decrease in revenues:

We do not anticipate any increase in expenditures or decrease in revenues.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This is a rule amendment that ultimately (in proclamation) prohibits the sale of crayfish and salamanders. This change is necessary to curtail future introductions of non-native species and reduce risk of losing valuable fisheries due to these unwanted introductions

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

We are not aware of any federal law or regulation or any state law or regulations that directly relate to this rule.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Tennessee Wildlife Resources Agency, some bait dealers, and anglers are affected most directly by this rule. The Tennessee Wildlife Resources Agency is urging adoption of this rule.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

We are not aware of any opinions of the attorney general or any judicial ruling that directly relate to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

We do not anticipate any significant fiscal impact to the Agency, local or state revenues as a result of this rule amendment.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Eric Ganus, Fisheries Biologist, possesses substantial knowledge and understanding of this rule.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Nat Johnson, TWRA Assistant Executive Director, will explain the rule at the scheduled meeting of the Government Operations Committees.

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 781-6555.,
nat.johnson@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

A need to protect Tennessee fisheries from unwanted introductions of non-native species prompted the promulgation of this rule amendment.

Red Line Copy

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: _____

Rule ID(s): _____

File Date: _____

Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Fisheries Division
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1660-01-17	Rules and Regulations Governing the Commercial Use of Wildlife
Rule Number	Rule Title
1660-01-17-.01	General Provisions for Commercial Use

Chapter 1660-01-17
Rules and Regulations Governing the Commercial Use of Wildlife

Amendment

Rule 1660-01-17-.01, General Provisions for Commercial Use, is amended by deleting paragraph (5) in its entirety and replacing it with the following:

- (5) Live Species That May Be Bought and Sold
 - (a) Legally obtained live crustaceans (crayfish, lobster, etc.) for food.
 - (b) Legally imported and/or propagated amphibians for purposes other than bait.
 - (c) Legally obtained live native and non-native species may be bought and sold as provided by statute, regulation or proclamation.

1660-01-17-.01 GENERAL PROVISIONS FOR COMMERCIAL USE.

- (1) Definitions
 - (a) Native wildlife is defined as those species which occur naturally in the wild within the geographic boundaries of Tennessee, and whose presence is the result of those species' natural biology, or approved stocking by the Tennessee Wildlife Resources Commission.
 - (b) Non-native wildlife is defined as those species not classified as native.
- (2) Endangered and Threatened Species. The commercial use of any State or Federally endangered species is prohibited. The commercial use of State and Federally threatened species and those species deemed in need of management are permitted only when such species are legally taken for the purpose of sale in the State of origin as provided in T.C.A. §70-8-109.
- (3) Finished Products and Parts, Other Than Meat, That May Be Bought and Sold
 - (a) Finished products and parts of non-native species legally obtained in the State of origin. No parts of black bear (*Ursus americanus*) taken in Tennessee may be bought or sold. Individuals may obtain legally possessed bear parts from other States, which allow the sale of such parts, through mail order purchases or direct purchases which take place outside the boundaries of Tennessee. Any individual possessing parts of bear provided for in this exception must maintain records of legal purchase. No bear parts, including meat, possessed under this exception may be resold within the boundaries of Tennessee.
 - (b) Finished products and parts of legally taken white-tailed deer and wild turkey except meat and antlers in velvet.
 - (c) Non-edible finished products of commercially raised native species.
 - (d) Finished products of reptiles (native and non-native) that are legally acquired.
 - (e) Finished products and parts of native wildlife as provided by statute.
 - (f) The finished products and parts of legally taken furbearers (native and non-native)
- (4) Meat and Meat Products That May Be Bought and Sold
 - (a) The meat of non-native wildlife (except fish) that are commercially raised. Records must be maintained by buyer showing species, origin of shipment, and processor.
 - (b) The meat of legally obtained non-native fish, reptiles, mollusks, the striped bass (*Morone saxatilis*) X white bass (*Morone chrysops*) hybrid, and commercially raised trout.
 - (c) The meat of native wildlife (except fish) as provided by statute or proclamation. The sale of the carcass of groundhog is permitted.
 - (d) The meat of native fish and turtle species may be bought or sold as provided by statute or proclamation.
 - (e) The meat of legally taken crustaceans (crayfish, lobster, etc.).
 - (f) The meat and meat products of legally taken furbearers (native or non-native).

(5) — Live Species That May Be Bought and Sold

- (a) — Crayfish may be taken for bait; except in Mill Creek and its tributaries in Davidson and Williamson Counties.
- (b) — Dusky salamanders (*Desmognathus fuscus*) and crayfish may be taken and sold for bait. Other amphibians may be taken for scientific purposes upon approval of the Executive Director. Turtles of legal species and size as designated by proclamation may be taken and sold for commercial purposes. Other turtles may be taken for scientific purposes upon approval of the Executive Director.
- (c) — Non-native species legally imported under the provisions of T.C.A. §70-2-211 for the purpose of sale.
- (d) — Native and non-native species as provided by statute or proclamation.

(5) Live Species That May Be Bought and Sold

- (a) Legally obtained live crustaceans (crayfish, lobster, etc.) for food.
- (b) Legally imported and/or propagated amphibians for purposes other than bait.
- (c) Legally obtained live native and non-native species may be bought and sold as provided by statute, regulation or proclamation.

(6) Hides of Legally Taken Native Rabbits

- (a) Finished or green hides of native rabbits may be bought or sold.

Statutory Authority: T.C.A. §§70-1-206 and 70-4-107.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown				
Mike Chase				
Johnny Coleman				
Jim Fyke				
Terry Oliver				
Jeffrey H. Griggs				
Mike Hayes				
Jeff McMillin				
Mitchell S. Parks				
Julie Schuster				
Todd A. Shelton				
Eric Wright				
Danya Welch				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 10/28/2010 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on:

8/27/2010