

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37202

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Opinion No. 07-144

Commercial Fishing

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**QUESTION**

Does the definition of “commercial fisher” in Tenn. Code Ann. § 70-2-205 encompass fishing guides, charter boat operators, tournament fishermen or others not directly engaged in the business of taking fish for sale, barter or exchange?

**OPINION**

No. It is the opinion of this Office that the language in Tenn. Code Ann. § 70-2-205(b)(1) is facially ambiguous and, therefore, the wildlife agency’s administrative interpretation, which exempts fishing guides, charter boat operators and tournament fishermen from the definition of “commercial fisher,” should be accorded persuasive weight.

**ANALYSIS**

Both commercial and recreational fishing are subject to the license and permit provisions found in Tennessee’s wildlife statutes. *See* Tenn. Code Ann. §§ 70-2-101 to 70-2-226. But commercial fishing activities generally entail higher license fees. Tenn. Code Ann. § 70-2-205(b)(1) defines a “commercial fisher” as follows:

. . . any person who takes or who aids and assists another person in taking fish or other aquatic life from any of the waters, lakes, streams or ponds of this state *for pay, or for the purpose of sale, barter or exchange*. Any person fishing with commercial fishing gear shall be deemed to be a “commercial fisher” within the meaning of this subdivision (b)(1). All persons using fishing tackle or fishing gear other than that permitted to be used by a person having or holding a sport fishing license is likewise deemed and considered a “commercial fisher” within the meaning of this subdivision (b)(1).

(Emphasis added).

Although the language in the first sentence of this statutory definition appears to be quite broad, and the words “for pay” arguably could be applied to fishing guides, charter boat operators

and possibly even tournament fishermen, we understand that the Tennessee Wildlife Resources Agency has historically declined to include those categories under this rubric. It is a general rule of statutory construction, where a statute is of doubtful meaning and subject to construction, that administrative interpretations by agencies charged with the enforcement or administration of an act are accorded persuasive weight by the courts. *Nashville Mobil Phone Co., Inc. v. Atkins*, 536 S.W. 2d 335, 340 (Tenn. 1976); *Estrin v. Moss*, 430 S.W.2d 345, 351 (Tenn. 1968).

With respect to the remainder of the definition in Tenn. Code Ann. §70-2-205(b)(1), which addresses fishing gear, we find additional guidance for the distinction between recreational and commercial fishing in the Tennessee Wildlife Resource Commission's proclamations on file with the Secretary of State's Office. In particular, Proclamation No. 06-23 on sport fishing, effective March 1, 2007, states that "[t]he use of rods and reels, poles, hand-held lines, and other devices and methods described in this proclamation are the only legal means of sport fishing." Proclamation No. 06-23, Section XV, D. The same proclamation does describe additional devices and gear, some of which overlap with commercial fishing gear, such as cast nets, slat baskets and trotlines. *Id.*, Sections X, XI and XII. But Proclamation No. 06-22 on commercial fishing, effective November 3, 2006, lists many more types of legal commercial fishing gear, such as fyke nets, pound nets, trammel nets and fish seines, none of which are found in Proclamation No. 06-23. The listing of gear in these proclamations is therefore helpful in providing additional notice to the regulated community as to what type of fishing activity it is engaging in.

It is the opinion of this Office that TWRA's administrative interpretation, which exempts fishing guides, charter boat operators and tournament fishermen from the definition of "commercial fisher," should be credited. Recreational, or sport, fishing is not defined under Tennessee's wildlife statutes or the regulations. And, unlike some states, Tennessee does not separately license or regulate fishing guides. Charter boat operators, who take passengers and travel traditionally navigable waterways, are generally subject to federal rather than state regulation. Although persons who pursue these occupations may receive compensation for assisting others in taking fish from the waters of the state, we believe the text of the statute on this point is sufficiently ambiguous that a court would give deference to the agency's construction of Tenn. Code Ann. § 70-2-205(b)(1).

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