

Background Report No. 3

Final Proposed Rule Text: In the following rule text, all changes made since the April 2007 Commission meeting are shown in add (underlined) – delete (strike-through) format in red. The changes were made in response to comments from the Joint Administrative Procedures Committee (JAPC) and a rule challenge from Palm Beach County.

Background Report No. 2 attached to this agenda item shows all of the proposed changes incorporated into a final proposed rule which is recommended for final approval at the September 12-14, 2007 Commission meeting.

CHAPTER 68E-1 MARINE TURTLE PERMITS

- 68E-1.002 Introduction, Scope and Definitions
- 68E-1.004 General Permit Application Procedures, Requirements and Expiration
- 68E-1.0041 Authorizations for Marine Turtle Research, Conservation, and Educational Activities
- 68E-1.005 Suspensions and Revocation

68E-1.002 Introduction, Scope and Definitions.

(1) Florida Statutes restrict the take, possession, disturbance, mutilation, destruction, selling, transference, molestation, and harassment of marine turtles, nests, or eggs. Protection is also afforded to marine turtle habitat. A specific authorization from Commission staff is required to conduct scientific, conservation, or educational activities that directly involve marine turtles in or collected from Florida, their nests, hatchlings or parts thereof, regardless of the applicant's possession of any federal permit. The authorization may be in the form of a ~~conservation~~ permit, a loan agreement, or a ~~letter of consent~~ permit, as described in Rule 68E-1.0041, F.A.C.

(2) Whenever the Commission determines that a request to conduct research, conservation, or educational activities with marine turtles, their nests, or hatchlings is in the public interest and will advance marine turtle recovery or protect marine turtles, their nests, or habitat, it ~~may~~ shall issue authorizations, upon such terms, conditions, or restrictions as are necessary to ensure that the intentions of 370.12 (1) (c) and (d), F. S. are not violated.

(3) Under agreement with the federal government, the issuance of a permit or other authorization by the Commission may satisfy U.S. Fish and Wildlife Service permit requirements

for research, conservation, or educational activities involving Florida marine turtles. An additional permit from the National Marine Fisheries Service might be required for in-water work.

(4) Permits may not be issued for the importation of marine turtles across international boundaries or waters or for head starting, the practice of collecting marine turtle eggs or hatchlings solely for the purpose of raising them until they attain a larger size and then releasing them.

(5) For the purposes of this rule, the following definitions apply:

(a) “Applicant” means the individual who applies for a Marine Turtle Permit from the Commission.

(b) “Conservation purpose” means an act carried out solely for the purpose of maintaining life or habitat of any marine turtle, their nests, hatchlings, or promoting the recovery of marine turtle populations.

(c) “Educational facility” means public or non-public colleges or universities, or nature centers, museums, zoos, aquaria, or similar institutions. Educational facilities must be regularly opened to the public for the primary purpose of providing an educational experience.

(d) “Educational purpose” means to hold marine turtles to exhibit, inform and instruct the public in their biology, habitat, or conservation needs.

(e) “Hatchery” means an area of beach where authorized individuals have placed marine turtle nests in aggregated clusters in one location, with or without restraining or protective walls.

(f) “Hatchling” means any species of marine turtle, within or outside of a nest, that has recently hatched from an egg.

(g) “Marine turtle” means any marine-dwelling reptile of the families Cheloniidae or Dermochelyidae found in Florida waters or using the beach as nesting habitat, including the species: *Caretta caretta* (loggerhead), *Chelonia mydas* (green), *Dermochelys coriacea* (leatherback), *Eretmochelys imbricata* (hawksbill), and *Lepidochelys kempii* (Kemp's ridley) or hybrids of these species. For purposes of this rule, marine turtle is synonymous with sea turtle.

(h) “Nest” means an area where marine turtle eggs have been naturally deposited or subsequently relocated.

(i) “Nest relocation” means the practice of excavating a nest following deposition and reburying all intact eggs.

(j) “Principal Permit Holder” means the individual authorized to conduct marine turtle conservation activities under the provisions of this Chapter.

(k) “Prudent peer review standards” means criteria or processes arising from scientific methods established or generally accepted by the scientific community to evaluate deductive models, experiments, research proposals, and results that are directed toward the validation of hypotheses or advancement of scientific knowledge.

(l) “Regulatory permit or authorization” means a permit, water quality certificate, or authorization issued pursuant to Florida Statutes Chapters 161 or 373.

(m) “Scientific purpose” means for the purposes of conducting research or analysis using prudent experimental protocols to gain scientific knowledge and to advance conservation, population management, or biological understanding of marine turtles.

Specific Authority 370.10(2), 370.12(1) FS.

Law Implemented 370.10(2) 370.12 (1) FS.

History -New

(Substantial Rewording of Rule 68E-1.004 follows. See Florida Administrative Code for present text.)

68E-1.004 General Permit Application Procedures, Requirements and Expiration.

(1) Any individual desiring to obtain authorization to conduct scientific, conservation, or educational activities directly involving marine turtles shall submit an application to the Commission prior to conduct of the activity. Applications shall be submitted on the application form to the Florida Fish and Wildlife Conservation Commission, Tequesta Field Laboratory, 19100 S.E. Federal Highway, Tequesta, FL 33469 unless otherwise directed. Application for Marine Turtle Permit (FWC Form 32-101 effective 8/06) is hereby incorporated by reference. Application forms shall be made available by the Commission to any individuals requesting them in writing from the above-listed submittal address or by telephone.

(2) Any individual who is a properly accredited person in accordance with ~~Section~~ 370.12

(1) (c), F.S., has specific experience with marine turtles and the proposed activity, and meets the

applicable criteria in this rule section ~~may shall~~ be eligible to receive authorization from the Commission to undertake activities for research, conservation, or educational purposes that involve any of the prohibited actions listed in ~~Section~~ 370.12 (1) (d) 1. and 2., F. S. The Commission shall not issue permits to individuals unable to demonstrate a working knowledge of current marine turtle conservation practices, to individuals lacking specific experience in conducting marine turtle research or conservation activities, to individuals who do not meet the applicable criteria in this rule section, or if there is no demonstrated need for the project.

(3) In addition to those individuals requesting to conduct activities in accordance with ~~subsection~~ (1) above, any individual who is a properly accredited person ~~may shall~~ be eligible to receive authorization from the Commission in the form of a loan agreement to possess dead marine turtles or marine turtle parts for educational purposes.

(4) Applicants requesting a Marine Turtle Permit for the first time to conduct nesting surveys as a Principal Permit Holder shall meet the following additional criteria.

(a) Applicants shall have specific experience conducting nesting surveys, including a minimum of two (2) nesting seasons, or two hundred (200) hours, of marine turtle nesting survey experience. State and federal employees who are requesting a permit for a marine turtle nesting survey program on state or federal land are not required to meet this criteria, but shall submit the following information for their program to document their experience.

(b) To document experience, the applicant shall submit the following information:

1. The specific duties and responsibilities related to marine turtle conservation ~~that have been carried out.~~
2. The frequency with which nesting surveys were conducted.
3. The area that was surveyed.
4. Whether surveys were conducted independently or with other volunteers.
5. Approximate number of crawls observed during ~~the a~~ two (2) year period.
6. List of all of training that was received or presented and name of trainer.
7. Years of program oversight and number of volunteers or staff supervised.

(c) Knowledge - Applicant shall satisfactorily complete a set of standardized comprehensive qualifying examination questions pertaining to general marine turtle biology.

nests, species characteristics, and Commission ~~guidelines.~~ [Marine Turtle Conservation Guidelines](#). Applicant shall correctly answer ~~95~~90% of the questions to be eligible to receive a permit.

(d) Education - The Commission ~~may~~ shall also consider formal and continuing education course work and work experience in the permitting decision.

(e) References ~~—Upon request, the—~~ The applicant shall provide two (2) references, each of whom must have specific marine turtle nesting survey experience in Florida, ~~when the applicant's experience is not based on work that was performed under a Commission-issued permit or when Commission staff requests references after receipt of applicant's documentation of experience. Commission staff will request references when an applicant's claimed experience cannot be corroborated by Commission permit records.~~ These references must be knowledgeable regarding the applicant's responsibilities, performance, and experience in marine turtle nesting surveys. At least one of the references must be a Principal Permit Holder, and it is ~~recommended that preferable if both references be~~ recommendations come from a Principal Permit Holders. Personnel supervised by the applicant should not be used as a reference. Complete addresses, telephone numbers, and e-mail addresses should be provided for each reference.

~~(f) For all in-water protection or research work, the permittee shall provide evidence of a valid Section 10 or Section 7 Incidental Take Authorization from the National Marine Fisheries Service.~~

(5) To qualify to relocate marine turtle nests as a Principal Permit Holder, the applicant shall have a minimum of one (1) nesting season, or twenty-five (25) hours, of marine turtle nest relocation experience, obtained within the past five (5) years. As part of the application, the applicant shall provide complete up-to-date documentation of relocation experience for at least one nesting season, including:

(a) Field data sheets documenting relocation experience signed by the Principal Permit Holder (in Florida) or other biologist with marine turtle nesting survey experience (outside Florida) that oversaw the relocations.

(b) To document experience, the Applicant shall submit the following information:

1. List of relocated nests with reason for relocation.
2. List of beach sites that received relocated nests and explanation of how they were chosen.
3. Hatching success data for all relocated nests. ~~Hatching success must equal or exceed 65% for all relocated nests that were not lost due to storms.~~
4. Applicant must satisfactorily complete a set of standardized comprehensive qualifying examination questions pertaining to marine turtle nest relocation techniques by correctly answering 9590% of the questions.

(6) Upon receipt of multiple applications to conduct nesting surveys on a designated beach, Commission staff shall consider the following in permit decisions:

- (a) The length of time applicants conducted nesting surveys in that area and their familiarity with the specific beach.
- (b) Ability of the applicants to provide the technical information required by a state or federal regulatory permit.
- (c) History of compliance of the applicants with all reporting requirements.
- (d) History of compliance of the applicants with all provisions of this Chapter.
- (e) Consistency in data collection for the Statewide and Index Nesting Beach Surveys.

~~(7) In the event an application is submitted to conduct marine turtle conservation activities required in a local, state or federal regulatory permit, Commission staff may issue a second authorization to conduct (7) For all in-water protection or research work, the permittee shall provide evidence of a valid Section 10 or Section 7 Incidental Take Authorization from the National Marine Fisheries Service.~~

~~(8) In the event a local, state or federal regulatory permit requires additional marine turtle nesting surveys and conservation activities on a beach that is already a part of either the Statewide or Index Nesting Beach Surveys, Commission staff shall modify the existing Marine Turtle Permit to include any additional survey or monitoring requirements if requested in writing by both the Principal Permit Holder and the regulatory permit holder. Otherwise a second authorization to conduct those activities required as conditions of the regulatory permit may be requested pursuant to subsection (1) above.~~

(a) If a second authorization is issued, only those activities required as conditions of the regulatory permit shall be authorized~~regulatory activity.~~

~~(a).~~ All such ~~activities~~conservation activities such as marking or relocating nests shall be conducted secondary to the Statewide or Index Nesting Beach Surveys and in cooperation with the Principal Permit Holder authorized to conduct Statewide or Index Nesting Beach Surveys.

(b) Statewide and Index Nesting Beach data shall be submitted to Commission by the Principal Permit Holder.

(89) When marine turtle protection or monitoring is required as a condition of any regulatory permit, a Marine Turtle Permit to conduct such monitoring shall only be issued to an independent third party who can obtain appropriate authorization as required by this rule section. Counties or municipalities with an established marine turtle conservation program, including a Principal Permit Holder, may conduct monitoring for all ~~county~~local government-sponsored activities such as beach nourishment provided the Principal Permit Holder ~~is independent of other county programs such as beach management and~~ meets all requirements of this Chapter.

~~(9~~ and the primary responsibility of the Principal Permit Holder and their program is conservation of marine turtles and not the implementation of other programs such as beach management.

(10) The Commission ~~may~~shall issue permits to an individual who is a properly accredited person requesting to conduct stranding activities as a Principal Permit Holder, provided they have evidence of having attended a Commission or National Marine Fisheries Service stranding workshop within one year prior to application.

~~(1011)~~ Applications for authorization to conduct activities for a scientific purpose shall be accompanied by a research proposal or a detailed statement-of-work to be performed.

(a) The Commission, using prudent peer review standards, shall consider the following in permit decisions:

1. Scientific protocols of the application;
2. The need for the research; and

3. The potential for the research to promote the recovery of marine turtle populations.

(b) The Commission may seek additional information from the applicant or reviewer, or may consult additional reviewers to ensure appropriate peer review of the application.

(c) The Commission may impose certain restrictions on the permit or deny the application based on the above assessments. It is the intent of the Commission to provide and follow a consistently applied, science-based mechanism to ensure that applicants use appropriate scientific methodologies when conducting activities that involve manipulative or invasive methods with marine turtles or their nests.

~~(11)~~

(12) All facilities making application to hold or to rehabilitate marine turtles are subject to inspection by Commission personnel before issuance of a permit and on a periodic basis for the duration of the permit, if issued. To obtain a permit, the facility must do the following:

(a) Install interpretive signs regarding marine turtle conservation at the educational exhibit of marine turtles. The scientific content of such signs ~~must be approved shall be submitted for approval~~ by Commission staff prior to installation; ~~at the address in subsection (1) above. Commission staff will approve the sign if the information is accurate and will inform and instruct the public in the biology, habitat, or conservation needs of marine turtles. An approved signs~~ must remain in place while captive or educational turtles are on display at the facility.

(b) Veterinary care shall be provided by facilities holding or rehabilitating marine turtles. Veterinarians providing marine turtle care shall ~~satisfactorily demonstrate anhave~~ expertise with marine turtles. ~~The facility shall identify the veterinarian who will provide the care at the facility and include documentation of the veterinarian's experience with the application. The veterinarian identified in the application will~~ be listed on the Marine Turtle Permit.

(c) Rehabilitated marine turtles shall be released as soon as they are fit for survival in the wild. The determination of fitness shall be made by the attending veterinarian in consultation with Commission personnel.

(d) All releases shall be coordinated in advance with Commission personnel.

~~(12)~~

(13) All facilities holding live marine turtles shall complete monthly reporting forms supplied by the Commission and submit them quarterly. Report forms request information on the status of captive marine turtles, acquisitions, deaths, releases and water quality and may be modified periodically. Failure to provide timely reports shall be grounds for the Commission to revoke current permits and to deny future applications for authorization. The Marine Turtle Holding Facility Quarterly Report (FWC Form ST Effective 2007) is hereby incorporated by reference.

(a) Marine turtles shall not be held for rehabilitation in conditions detrimental to the turtle. ~~as determined during a site inspection by Commission staff~~; this includes public display if determined to be detrimental to the animal.

(b) Limited educational displays of marine turtles of a threatened species ~~may shall~~ be authorized. ~~when consistent with the Marine Turtle Conservation Guidelines.~~

(c) Endangered marine turtles may be held on display in the event that they have been deemed non-releasable as a result of injuries that would preclude their ability to survive in the natural habitat; are of an unknown or non-Florida origin; or were acquired prior to the enactment of the Federal Endangered Species Act of 1973 (16 U.S.C. § 1531 *et. seq.*).

~~(1314)~~ All facilities or individuals involved in the rehabilitation of marine turtles shall obtain and maintain a current authorization for euthanasia of threatened and endangered marine turtles from the U.S. Fish and Wildlife Service.

~~(1415)~~ A marine turtle ~~conservation~~ permit, loan agreement, or ~~letter of~~ consent ~~permit~~ issued by the Commission must be in the possession of the named Principal Permit Holder(s) or volunteer at all times during conduct of authorized activities.

~~(15)~~

(16) Commission ~~guidelines~~ ~~Marine Turtle Conservation Guidelines~~ related to nesting surveys, nest relocation, release, and other management or conservation activities shall be distributed as appropriate. ~~The Marine Turtle Conservation Guidelines are hereby incorporated by reference (5/07) and are available at the address listed in subsection (1) above.~~ On a periodic

basis, the Commission may develop new guidelines or update existing ones to reflect prudent conservation and research practices related to the recovery of marine turtle populations.

(a) These guidelines, after having been acknowledged in writing by the Principal Permit Holder, ~~may~~shall be included as conditions of the permit.

(b) The failure of the Principal Permit Holder or any individual listed on the permit to follow guidelines of the Commission may be grounds for the Commission to revoke any current permit or to deny future applications for authorization.

(c) The Principal Permit Holder is responsible for transmitting Commission guidelines to all individuals listed on the permit. Failure of the Principal Permit Holder to properly distribute Commission guidelines and to supervise the activities of others listed on the permit shall be grounds for the Commission to revoke current permits and to deny future applications for authorization.

(d) Principal Permit Holders are expected to attend Commission nesting ~~workshops annually,~~ and stranding workshops ~~annually, and volunteers must attend at least once every threetwo~~ years. ~~Participants in the Index Nesting Beach Survey Program are required to attend nesting workshops annually. Volunteers are expected to attend these workshops at least once every two~~ years.

~~(16)~~(17) Permits for scientific research issued under this Chapter are not valid in state, federal, or local parks, monuments, sanctuaries or preserves without additional permits or concurrence from the appropriate management unit.

~~(17)~~

~~(18)~~ All permits shall expire at the end of the calendar year from the date of issuance, or at the end of the permitted project, whichever event occurs first.

~~(18)~~19) Permits are non-transferable and shall be issued to a single applicant acting as the Principal Permit Holder.

~~(19) Each Permit may include~~(20) ~~The Commission shall allow~~ up to twenty-four volunteers ~~that to~~ conduct marine turtle conservation work under the supervision of the Principal Permit Holder ~~when requested by the Principal Permit Holder.~~

~~(20) The Principal Permit Holder may request to include~~(21) The Commission shall allow additional volunteers under a ~~letter of authorization, consent permit when requested by the Principal Permit Holder~~ provided these volunteers are not directly involved in data collection, ~~nesting surveys~~, or in direct contact with a marine turtle, nest, or hatchlings unless specifically approved by Commission staff. The request must list each additional volunteer, specify the activity in which they will participate, and describe the training provided for that activity.

~~(21) For major activities, the~~(22) The permit will be issued to include all authorized personnel, each of which must be named on the permit prior to field work. The Principal Permit Holder and other individuals listed on the permit shall have the permit or a copy thereof upon their person while conducting work with marine turtles, their nests, or hatchlings.

~~(223)~~ Renewal of existing Marine Turtle Permits shall occur as follows:

(a) Commission staff shall provide a reminder to each Principal Permit Holder each fall.

(b) All renewal requests, ~~required~~ forms, and ~~required~~ reports ~~required pursuant to this section~~ shall be submitted to the Commission Tequesta office approximately two months prior to the expiration of the existing permit.

(c) Permit renewals shall be based upon satisfactory compliance with the conditions of the existing permit, receipt of all reports for authorized activities, compliance with the Marine Turtle ~~Permit Holder~~Conservation Guidelines for authorized activities, the need for a specific activity, and timely response to Commission staff upon request for information related to authorized activities.

Specific Authority 370.10(2), 370.12(1) FS.;

Law Implemented 370.10(2), 370.12(1) FS.

History New ~~2-11-81, Amended 8-6-81, Formerly 16B-40.04, 16B-40004, 62R-1.004, Amended 7-1-04,~~

68E-1.0041 Authorizations for Marine Turtle Research, Conservation, and Educational Activities.

(1) Activities that require a **conservation** permit include, but are not limited to, any actions associated with a living or stranded marine turtle, its nest, or hatchlings such as:

(a) Any research or conservation activities; or

(b) Any educational activities, including, but not limited to, educational displays or public awareness walks.

(c) Hatcheries shall not be approved unless authorized in an incidental take authorization from the U.S. Fish and Wildlife Service.

(2) Activities ~~that may be authorized by a loan agreement include, but are not limited to, any activities~~ involving use of any dead marine turtle or parts thereof ~~shall be authorized by a loan agreement. Authorization For Loan of Marine Turtle Specimens (FWC Form ST-LA effective 5/07) is hereby incorporated by reference.~~

(3) Activities that may be authorized by a ~~letter of consent permit~~ include, but are not limited to:

(a) Transfer of marine turtles, or parts thereof, to or from permit holders into or out of the state of Florida;

(b) Limited consumptive use of marine turtle parts for research;

(c) One-time events or minor activities that are not of a sufficient magnitude to require a ~~conservation~~ permit or a modification to an existing ~~conservation~~ permit;

(d) Actions undertaken in response to an emergency officially designated by the appropriate officials of the state of Florida; or,

(e) Actions that are a result of ~~short term~~ collaboration with Commission staff, such as directed research or management activities.

Specific Authority 370.10(2), 370.12(1) FS.

Law Implemented 370.10(2), 370.12(1) FS.

History New

(Substantial rewording of Rule 68E-1.005 follows. See Florida Administrative Code for present text.)

68E-1.005 Suspensions and Revocation.

(1) Non-compliance with permits issued under the provisions of this Chapter is subject to the following actions:

(a) Failure to fulfill reporting requirements or respond to other information requests shall constitute a minor violation of this rule. Such a violation shall cause the Commission to issue a notice of noncompliance to the permittee, and issuance of subsequent year permits shall not proceed until the permittee fulfills all such requirements.

(b) Permittee shall be subject to permit suspension or revocation by the Commission if it finds that the permit holder has violated this Chapter, Chapter 370, F.S., Titles 68 or 46, F.A.C., state or federal wildlife protection acts or codes, submitted false information in the application, has deviated significantly from the approved activity, or has violated conditions under which the permit was originally issued.

(2) Permits issued under this Chapter are subject to the provisions of ~~Rule 68A-5.004~~, F.A.C.

Specific Authority 370.10(2), 370.12(1) FS.

Law Implemented 370.10(2), 370.12(1) FS.

History New ~~2-11-81, Formerly 16B-40.05, 16B-40.005, 62R-1.005, Amended~~