

NOTICE OF PROPOSED RULE

FISH AND WILDLIFE CONSERVATION COMMISSION  
Division of Marine Fisheries Management

RULE NO.:	RULE TITLE:
68B-14.0035	Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper
68B-14.00355	Size Limits for Importation and Sale
68B-14.0036	Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjack, Exception, Wholesale/Retail Purchase Exemption
68B-14.0039	Recreational Grouper Season
68B-14.0045	Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits
68B-14.0046	<u>Transit Through State Waters During Closed Season</u>

PURPOSE AND EFFECT: The purpose of these rule amendments is to modify the Commission's Reef Fish Rule to become mostly consistent with federal reef fish regulations in the Gulf of Mexico. The National Marine Fisheries Service has published rules containing regulatory actions for gag grouper, which is undergoing overfishing, red grouper, and other federally designated shallow water groupers. Federal rule changes will become effective in 2009 subject to approval by the Secretary of Commerce. The Commission is considering changes to state regulations that would: 1) decrease the minimum size of commercially caught red grouper in the Gulf of Mexico from 20 inches to 18 inches total length, 2) reduce the size limit for the importation and sale of red grouper from 20 inches to 18 inches total length, 3) reduce the aggregate bag limit for all Gulf grouper from 5 grouper per person per day to 4 grouper per person per day, and 4) include additional shallow water groupers (red grouper, black grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp) in the February 1 through March 31 recreational gag grouper harvest closure. The closure includes other shallow water grouper species because fishing for them affects the discard mortality of gag grouper.

In addition, there are two final rule amendments proposed for state waters that are not consistent with proposed federal rules: 1) The current commercial closed season of February 15 through March 14 for red, black, and gag grouper will be modified to prohibit all commercial and recreational harvest from February 1 through March 31. Additional shallow water grouper species will be included in the closure (adding yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp). The effect of this amendment will be to create one closed season for all commercial and recreational harvest of shallow water groupers in Gulf state waters. 2) The direct transit of commercially harvested shallow water groupers legally caught in the Gulf federal waters offshore of Florida will be allowed through state waters of Florida during the February 1 through March 31 closed season in state waters.

The effect of these rule amendments is that federal and state regulations can be applied more consistently to all fishing activity in the Gulf of Mexico. There will be some inconsistency with federal regulations due to the prohibition of commercial fishing in state waters from February 1 through March 31. The overall effect, however, is to more consistently apply regulations to minimize confusion for the public and aid in enforcement of both state and federal fishery regulations. By adopting these regulations the State of Florida will also be contributing to the gulf-wide effort to reduce fishing pressure on gag grouper and allow populations of this species and others to expand. This will help ensure a larger sustainable harvest for the future.

SUMMARY: 68B-14.0035 F.A.C. (Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper) would be amended to reduce the commercial size limit for red grouper in the Gulf from 20 to 18 inches total length. 68B-14.00355 F.A.C. (Size Limits for Importation and Sale) would be amended to reduce

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the size limit for the importation and sale of red grouper from 20 inches to 18 inches total length. 68B-14.0036 F.A.C. (Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjack, Exception, Wholesale/Retail Purchase Exemption) would be amended to reduce the aggregate bag limit for Gulf grouper from 5 grouper per person per day to 4 grouper per person per day. 68B-14.0039 F.A.C. (Recreational Grouper Season) would be amended to include additional shallow water groupers (including red grouper, black grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp) in the February 1 through March 31 gag grouper closure. In 68B-14.0045 F.A.C. (Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits) the current commercial closed season of February 15 through March 14 for red, black, and gag grouper would be modified to prohibit commercial harvest from February 1 through March 31. Additional shallow water grouper species would also be included in the closure (adding yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp). The effect of this amendment would be to create one closed season for all commercial and recreational harvest of shallow water groupers in Gulf state waters. 68B-14.0046 F.A.C. (Transit Through State Waters During Closed Season) would be created to allow the direct transit of commercially harvested shallow water groupers legally caught in Gulf federal waters through Gulf state waters of Florida during the February 1 through March 31 closed season in state waters.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: *The agency has determined that this rule will not have an impact on small business. A SERC has not been prepared by the agency.***

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: During the Commission's regular meeting June 17-18, 2009, 8:30 a.m. to 5:00 p.m., each day.

PLACE: Plantation Inn, 9301 West Fort Island Trail, Crystal River, FL. 34429

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting The ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jim Antista, General Counsel, Legal Office, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399-1600.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

**CHAPTER 68B-14 REEF FISH**

**68B-14.0035 Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper.**

No person shall land, possess, unnecessarily destroy, purchase, exchange, sell or offer for sale any of the following species harvested in or from state waters, of a length less than set forth as follows:

- (1) – (3) No change.
- (4) Grouper (measured in terms of total length).
- (a) - (d) No change.
- (e) 1. Red grouper harvested recreationally statewide and commercially from the Atlantic Ocean 20 inches.  
2. Red grouper harvested commercially from the Gulf of Mexico 18 inches.
- (f) – (h) No change.
- (5) – (7) No change.

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**PROPOSED EFFECTIVE DATE:** As soon as possible following Commission action.

*Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-31-98, Amended 3-1-99, Formerly 46-14.0035, Amended 1-1-00, 1-1-01, 1-1-01, 1-1-03, 9-16-05, 7-1-06, 7-1-07, 4-1-08, 1-6-09, \_\_\_\_\_.*

**68B-14.00355 Size Limits for Importation and Sale.**

(1) No person shall possess for purposes of sale, purchase, sell, or exchange any of the following species of a length less than set forth as follows:

- (a) – (c) No change.
- (d) Grouper (measured in terms of total length).
  - 1. – 2. No change.
  - 3. Red grouper 18 ~~20~~ inches.
  - 4. – 5. No change.
- (e) – (f) No change.
- (2) – (4) No change.

**PROPOSED EFFECTIVE DATE:** As soon as possible following Commission action.

*Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-03, Amended 9-16-05, 7-1-06, 7-1-07, 4-1-08, \_\_\_\_\_.*

**68B-14.0036 Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjacks, Tilefish, Exception, Wholesale/Retail Purchase Exemption.**

- (1) (a) – (e) No change.
- (f) Cubera snapper.
  - 1. Cubera snapper of a total length less than thirty inches (30”) shall be included in the aggregate snapper bag and possession limit established in paragraph (a), and the exception provided in subsection (8~~7~~).
  - 2. No change.
- (2) Grouper.
  - (a) Aggregate bag limit. Except as provided elsewhere in this rule, no recreational harvester shall harvest in or from state waters, nor possess while in or on state waters, more than a total of 4 ~~5~~ grouper per day in the Gulf of Mexico excluding waters of Monroe County in any combination of species, or more than a total of 5 grouper per day in the Atlantic Ocean and all waters of Monroe County, in any combination of species.
- (b) – (g) No change.
- (3) – (9) No change.

**PROPOSED EFFECTIVE DATE:** As soon as possible following Commission action.

*Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-31-98, Amended 3-1-99, Formerly 46-14.0036, Amended 10-22-99, 1-1-00, 3-6-00, 3-1-01, 1-1-03, 1-3-05, 9-16-05, 1-1-06, 7-1-06, 7-1-07, 4-1-08, 1-6-09, \_\_\_\_\_.*

**68B-14.0039 Recreational Grouper Season.**

In all state waters of the Gulf of Mexico, the closed season for the recreational harvest and possession of gag grouper, red grouper, black grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind or scamp shall be from February 1 through March 31, each year.

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**PROPOSED EFFECTIVE DATE:** As soon as possible following Commission action

*Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 1-6-09,*

**68B-14.0045 Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits.**

- (1) No change.
- (2) Season Closures.
- (a) – (d) No Change.
- (e)1. No Change.

2. Except as provided in 68B-14.0046, F.A.C., beginning February 1 15 and continuing through March 31 14 of each year, the harvest, possession, or landing of in quantities greater than the recreational bag limits specified in Rule 68B-14.0036, F.A.C., and the purchase, sale, or exchange, of gag grouper, black grouper, or red grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind or scamp harvested from state waters of the Gulf of Mexico, except from all waters of Monroe County, is prohibited.

- (f) – (h) No change.
- (3) No change.

**PROPOSED EFFECTIVE DATE:** As soon as possible following Commission action.

*Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 2-1-90, Amended 12-31-92, 10-18-93, 3-1-94, 6-15-95, 1-1-96, 11-27-96, 12-31-98, 3-1-99, Formerly 46-14.0045, Amended 1-1-00, 3-6-00, 1-1-01, 3-1-01, 6-1-01, 1-1-03, 7-15-04, 5-20-05, 9-16-05, 3-10-06, 7-1-07, 4-1-08, \_\_\_\_\_.*

**68B-14.0046 Transit Through State Waters During Closed Seasons**

The season, possession and bag limit restrictions contained in Rule 68B-14.0045 shall not apply to lawful commercial harvest in federal waters when such harvest is transported directly through state waters of the Gulf of Mexico with gear appropriately stowed. Transit shall be direct, continuous and expeditious from the place where lawful harvest occurred to the place where the vessel is regularly docked, moored, or otherwise stored or to the place of the licensed wholesale dealer where the catch is to be sold. For the purpose of this section appropriately stowed means a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however buoys may remain on deck. A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (i.e., hooks, leaders, sinkers, flashers, or baits) must be disconnected and stowed separately from the fishing apparatus. Sinkers must be disconnected from the down rigger and stowed separately.

**PROPOSED EFFECTIVE DATE:** As soon as possible following Commission action.

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New, \_\_\_\_\_.*

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON(S) ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850) 487-0554.

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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: February 6, 2009

Gulf Grouper Item 10. A. (1)

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE  
FISH AND WILDLIFE CONSERVATION COMMISSION

RULE CHAPTER TITLE: Reef Fish

RULE NOS:

68B-14.0035

68B-14.00355

68B-14.0036

68B-14.0039

68B-14.0045

68B-14.0046

RULE TITLES:

Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper  
Size Limits for Importation and Sale

Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjack, Exception, Wholesale/Retail Purchase Exemption

Recreational Grouper Season

Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits

Transit Through State Waters During Closed Season

The purpose of these rule amendments is to modify the Commission's Reef Fish Rule to become mostly consistent with federal reef fish regulations in the Gulf of Mexico. The National Marine Fisheries Service has published rules containing regulatory actions for gag grouper, which is undergoing overfishing, red grouper, and other federally designated shallow water groupers. Federal rule changes will become effective in 2009 subject to approval by the Secretary of Commerce. The Commission is considering changes to state regulations that would: 1) decrease the minimum size of commercially caught red grouper in the Gulf of Mexico from 20 inches to 18 inches total length, 2) reduce the size limit for the importation and sale of red grouper from 20 inches to 18 inches total length, 3) reduce the aggregate bag limit for all Gulf grouper from 5 grouper per person per day to 4 grouper per person per day, and 4) include additional shallow water groupers (red grouper, black grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp) in the February 1 through March 31 recreational gag grouper harvest closure. The closure includes other shallow water grouper species because fishing for them affects the discard mortality of gag grouper.

In addition, there are two final rule amendments proposed for state waters that are not consistent with proposed federal rules: 1) The current commercial closed season of February 15 through March 14 for red, black, and gag grouper will be modified to prohibit all commercial and recreational harvest from February 1 through March 31. Additional shallow water grouper species will be included in the closure (adding yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp). The effect of this amendment will be to create one closed season for all commercial and recreational harvest of shallow water groupers in Gulf state waters. 2) The direct transit of commercially harvested shallow water groupers legally caught in the Gulf federal waters offshore of Florida will be allowed through state waters of Florida during the February 1 through March 31 closed season in state waters.

The effect of these rule amendments is that federal and state regulations can be applied more consistently to all fishing activity in the Gulf of Mexico. There will be some inconsistency with federal regulations due to the prohibition of commercial fishing in state waters from February 1 through March 31. The overall effect, however, is to more consistently apply regulations to minimize confusion for the public and aid in enforcement of both state and federal fishery regulations. By adopting these regulations the State of Florida will also be contributing to the gulf-wide effort to reduce fishing pressure on gag grouper and allow populations of this species and others to expand. This will help ensure a larger sustainable harvest for the future.

These rules are pursuant to the Commission's constitutional authority.

Gulf Grouper Item 10. A. (1)

SUMMARY OF PROPOSED RULE  
FISH AND WILDLIFE CONSERVATION COMMISSION  
RULE CHAPTER TITLE: REEF FISH

RULE NO.:  
68B-14.0035

68B-14.00355  
68B-14.0036

68B-14.0039  
68B-14.0045

68B-14.0046

RULE TITLE:

Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper  
Size Limits for Importation and Sale  
Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjack, Exception, Wholesale/Retail Purchase Exemption  
Recreational Grouper Season  
Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits  
Transit Through State Waters During Closed Season

68B-14.0035 F.A.C. (Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper) would be amended to reduce the commercial size limit for red grouper in the Gulf from 20 to 18 inches total length. 68B-14.00355 F.A.C. (Size Limits for Importation and Sale) would be amended to reduce the size limit for the importation and sale of red grouper from 20 inches to 18 inches total length. 68B-14.0036 F.A.C. (Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjack, Exception, Wholesale/Retail Purchase Exemption) would be amended to reduce the aggregate bag limit for Gulf grouper from 5 grouper per person per day to 4 grouper per person per day. 68B-14.0039 F.A.C. (Recreational Grouper Season) would be amended to include additional shallow water groupers (including red grouper, black grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp) in the February 1 through March 31 gag grouper closure. In 68B-14.0045 F.A.C. (Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits) the current commercial closed season of February 15 through March 14 for red, black, and gag grouper would be modified to prohibit commercial and recreational harvest from February 1 through March 31. Additional shallow water grouper species would also be included in the closure (adding yellowfin grouper, yellowmouth grouper, rock hind, red hind, and scamp). The effect of this amendment would be to create one closed season for all commercial and recreational harvest of shallow water groupers in Gulf state waters. 68B-14.0046 F.A.C. (Transit Through State Waters During Closed Season) would be created to allow the direct transit of commercially harvested shallow water groupers legally caught in Gulf federal waters through Gulf state waters of Florida during the February 1 through March 31 closed season in state waters.

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FEDERAL COMPARISON STATEMENT FOR PROPOSED RULE  
FISH AND WILDLIFE CONSERVATION COMMISSION  
RULE CHAPTER TITLE: REEF FISH

RULE NO.:  
68B-14.0035

68B-14.00355  
68B-14.0036

68B-14.0039  
68B-14.0045

68B-14.0046

RULE TITLE:

Size Limits: Amberjacks, Black Sea Bass, Gray  
Triggerfish, Grouper, Hogfish, Red Porgy, Snapper  
Size Limits for Importation and Sale  
Recreational Bag Limits: Snapper, Grouper, Hogfish,  
Black Sea Bass, Red Porgy, Amberjack, Exception,  
Wholesale/Retail Purchase Exemption  
Recreational Grouper Season  
Commercial Harvest Requirements; Licenses, Season  
Closures, Bag and Trip Limits  
Transit Through State Waters During Closed Season

The proposed rule would modify the Commission's Reef Fish Rule to become mostly consistent with federal reef fish regulations in the Gulf of Mexico. The National Marine Fisheries Service has published rules containing regulatory actions for gag grouper, which is undergoing overfishing, red grouper, and other federally designated shallow water groupers. Federal rule changes will become effective in 2009 subject to approval by the Secretary of Commerce. This proposed rule amendment creates consistency between Florida State Jurisdictional Waters and federal waters with regard to commercial and recreational harvest of certain grouper species. The Gulf of Mexico Fishery Management Council is the lead agency in the management of reef fish, of which grouper is included.

Gulf Grouper Item 10. A. (1)

SUMMARY OF PUBLIC HEARINGS FOR PROPOSED RULES  
FISH AND WILDLIFE CONSERVATION COMMISSION  
RULE CHAPTER TITLE: REEF FISH

RULE NO.:  
68B-14.0035

68B-14.00355  
68B-14.0036

68B-14.0039  
68B-14.0045

68B-14.0046

RULE TITLE:

Size Limits: Amberjacks, Black Sea Bass, Gray  
Triggerfish, Grouper, Hogfish, Red Porgy, Snapper  
Size Limits for Importation and Sale

Recreational Bag Limits: Snapper, Grouper, Hogfish,  
Black Sea Bass, Red Porgy, Amberjack, Exception,  
Wholesale/Retail Purchase Exemption

Recreational Grouper Season

Commercial Harvest Requirements; Licenses, Season  
Closures, Bag and Trip Limits

Transit Through State Waters During Closed Season

In developing these rule amendments, the Commission relied upon the best available scientific information, discussions with industry representatives, and public testimony gathered at federally noticed publicly hearings, and publicly noticed Commission meetings. A draft rule was presented at a publicly noticed Commission meeting on April 16, 2009 in Tallahassee, Florida.

Gulf Grouper Item 10. A. (1)

**SMALL BUSINESS IMPACT ASSESSMENT  
FISH AND WILDLIFE CONSERVATION COMMISSION  
RULE CHAPTER TITLE: REEF FISH**

RULE NO.:  
68B-14.0035

68B-14.00355  
68B-14.0036

68B-14.0039  
68B-14.0045

68B-14.0046

RULE TITLE:

Size Limits: Amberjacks, Black Sea Bass, Gray Triggerfish, Grouper, Hogfish, Red Porgy, Snapper  
Size Limits for Importation and Sale  
Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjack, Exception, Wholesale/Retail Purchase Exemption  
Recreational Grouper Season  
Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits  
Transit Through State Waters During Closed Season

A statement of estimated regulatory costs has not been prepared for this rule change because the agency has determined that this rule will not have a significant economic impact on a substantial number of small businesses. If consistent rules are not adopted the recovery plan for gag grouper may be delayed and lead to further restrictions on the fishery in the long term in order to end overfishing. Thus, there will likely be a greater impact to small businesses if the State of Florida does not adopt the proposed rule amendment that creates consistency between Florida State Jurisdictional Waters and the federal plan to end overfishing of gag grouper that is being implemented in federal waters.