



Snook Rule Clarification

Draft Rule

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Florida Fish and Wildlife Conservation Commission

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Background on Issue



- As result of the dismissal of a federal Lacey Act case involving illegal importation and sale of snook in Florida, our snook rule needs clarification

- The Federal Court order in the case gives direction as to the clarification needed for our snook rules
 - Rules need to clearly apply within and without state waters

- In addition staff identified a technical error in the definitions section of the rule that needs correction



This issue is a result of a Federal Lacey Act case that was dismissed in the United States District Court, Southern District of Florida in January 2009. The Lacey Act, 16 U.S.C. § 3372(a), prohibits the interstate transportation of wildlife taken in violation of state law. The case involved frozen snook filets imported from Nicaragua. The federal case was dismissed because the FWC snook rule upon which the Lacey Act case was based did not clearly state that FWC prohibits the importation and sale of any species of snook even if taken outside the waters of Florida. The Federal Court order gave direction as to the amendments needed for the FWC snook rule to prohibit import for sale of any species of snook.

The purpose of the proposed draft rule amendments is to clarify that the Commission prohibits the sale of snook harvested or taken within or without the state in order to fully protect snook from illegal sales or importation. The season portion of the snook rule would also be clarified that when possession is prohibited it also applies both within and without the state. The size limit portion of the rule would clarify that snook harvested within or without of state waters must be landed in a whole condition. The proposed draft rule would also correct a technical error in the definition of harvest so that temporary possession of snook is allowed only in order to determine compliance with minimum and maximum size requirements.

History of Snook Regulation Intent

January 2000 – Language was added to the gear portion of the snook rule to prohibit any gear except hook and line for taking snook within or without of state waters

- The 2000 rule was designed to close a loophole: spearfishers who illegally speared snook in state waters could claim they took them in federal waters

- This “within or without the state” language was not added to other portions of the rule at the time – but it was our intent



The gear portion of the snook rule has already been clarified so that it applies both within and without of state waters. This “within or without the state” language was added in January 2000 after law enforcement officers encountered divers who had speared snook and claimed they took the snook in federal waters. The added language fixed this loophole, but the loophole was never fixed in the other portions of the snook rule. The “within or without the state” language was intended for the other portions of the rule, but was not added at the time.

Intent Clarification

- This same approach is now needed to close the loophole that was used to sell snook that were taken outside of state waters

- In order to clarify this “within and without the state” intent in all portions of the snook rule, the proposed rules would modify:
 - Prohibition of Sale of Snook
 - Seasons
 - Size Limits



This same approach is now needed to close the loophole that was used to sell snook that were taken outside of state waters. In order to clarify this “within and without the state” intent in all portions of the snook rule, the proposed rule would modify the following sections: Prohibition of Sale of Snook, Seasons, and Size Limits.

Prohibition of Sale Clarification

- The rule would clarify that it is unlawful to buy or sell snook taken within or without the state except for brood stock purposes as provided for in the snook Special Activity License

Season Closure Clarification

- The rule would clarify that no person shall take or possess any snook taken within or without the state during periods when take or possession is prohibited

Size Limit Clarification

- The rule would clarify that snook taken within or without the state must be landed in whole condition



This slide summarizes the proposed rule clarification changes for the three sections of the snook rule. The proposed draft rule for 68B-21.003, Prohibition of Sale of Snook, Florida Administrative Code, (F.A.C.) would clarify that it is unlawful to buy or sell snook taken within or without the state except for brood stock purposes as provided for in the snook Special Activity License issued by this agency.

The proposed draft rule for 68B-21.004, F.A.C., Seasons, would clarify that no person shall take or possess any snook taken within or without the state during periods when take or possession is prohibited.

The proposed rule for 68B-21.005, F.A.C., Size Limits, would clarify that snook taken within or without the state must be landed in whole condition.

Harvest Definition Technical Change

- The rule, by adding the word “maximum”, would clarify that the definition of “harvest” allows temporary possession only to determine compliance with the minimum or maximum size requirements



In addition to clarifying the “within and without the state” intent, staff has identified a technical error in the definitions section of the rule that needs correcting. The proposed draft rule for 68B-21.0015, F.A.C., Definitions, would clarify that the definition of harvest allows temporary possession of snook only to determine compliance with minimum or maximum size requirements. In review of this rule, staff determined that due to the fact that snook is regulated using a slot limit and not just a minimum size limit, the word “maximum” needed to be added to the definition of harvest. This is a minor technical change.

Staff Recommendation

These rules involve clarification of existing enforcement policy, therefore staff recommends that:

- The proposed rule amendments be advertised in the Florida Administrative Weekly (FAW)
- The rules should be adopted without further public hearing unless there is a request for public hearing within 21 days of advertising the rule in the FAW



Staff recommends that we close this enforcement loophole as quickly as possible. This would mean we would not come back to the Commission with this rule unless a final public hearing is requested. We have notified stakeholders of our intention to address this issue, including the Nicaraguan fish dealer who was the subject of the Lacey Act case. The draft rule language is provided in the Commissioner's notebook. The rules should be adopted without further public hearing unless there is a request for public hearing within 21 days of advertising the rule in the Florida Administrative Weekly (FAW). Staff has evaluated the rules under the standards of 68-1.004, F.A.C. and found them to be in compliance.