



Gear Regulations Cleanup

Consent Agenda Item #3 - Draft Rule
November 16, 2016

Florida Fish and Wildlife Conservation Commission
Division of Marine Fisheries Management

Version 1

This is a draft rule to remove or amend outdated rule language found in Division 68B, Florida Administrative Code (FAC), and in Florida's Special Acts of Local Application (Special Acts) that appears to authorize the use of net gear prohibited by Article X, Section 16 of the Florida Constitution (Net Limitation Amendment) or that appears to establish a different penalty for net-related violations than has subsequently been established by the Legislature. This rule cleanup would reduce confusion and improve the clarity of Florida's statewide gear regulations.

Authors: Kyle Miller, Stephanie Walthall, and Melissa Recks

Report date: October 10, 2016

Background

- The Net Limitation Amendment (Article X, Section 16, Florida Constitution) became effective July 1, 1995
 - Prohibits the use of gill or entangling nets in all state waters
 - Prohibits the use of any net with more than 500 square feet of mesh area within all nearshore and inshore waters
- Some local gear regulations enacted prior to the Net Limitation Amendment have not been updated and appear to authorize the use of prohibited net gear
- Outdated rules have become a source of confusion
 - Has resulted in harvesters using nets in compliance with outdated rules, but in violation of the Net Limitation Amendment



The Net Limitation Amendment, which was adopted by Florida voters in 1994 and became effective July 1, 1995, prohibits the use of gill and entangling nets in all state waters, and the use of any net with more than 500 square feet of mesh area within nearshore and inshore waters. Nearshore and inshore waters are defined as: "all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean."

There are gear regulations with limited geographical application that were established before the Net Limitation Amendment and have not been updated, which appear to authorize the use of prohibited net gear in specific areas. These outdated local gear rules conflict with provisions of the Net Limitation Amendment and can lead someone to believe that net gear prohibited under the Net Limitation Amendment regulations is still allowable in certain parts of the state. These outdated rules have become a source of confusion for both fishers and law enforcement and have resulted in harvesters using nets in compliance with outdated rules, but in violation of the Net Limitation Amendment.

Timeline

1983: Existing local gear regulations incorporated into rules of the Marine Fisheries Commission

1995: Net Limitation Amendment became effective

1999: FWC acquired local gear regulations when the agency was created

2015: The Joint Administrative Procedures Committee (JAPC) of the Florida Legislature conducted a standard review of Chapter 68B-3, FAC

- Requested FWC delete or clarify outdated and confusing language

2016: Staff conducted a comprehensive review of marine fisheries regulations to identify all potentially conflicting and confusing net-related language

Proposed changes would reduce confusion and improve the clarity of Florida's statewide gear regulations



Existing local gear regulations, including the Special Acts, became rules of the Marine Fisheries Commission (MFC) when that agency was created in 1983, and were incorporated into MFC rules before the Net Limitation Amendment became effective in 1995. The FWC acquired these local laws and Special Acts when it was created in 1999.

The Joint Administrative Procedures Committee (JAPC) of the Florida Legislature is charged with maintaining a continuous review of rules developed by Florida agencies and the authority upon which those rules are based. During a standard review of FWC rules in 2015, JAPC identified outdated rule language in Chapter 68B-3, FAC, that appeared to be in conflict with provisions of the Net Limitation Amendment. JAPC contacted FWC and requested that the outdated rule language be deleted or clarified.

In order to ensure any action taken by the Commission is thorough, FWC staff from the Division of Marine Fisheries Management, Division of Law Enforcement, and the Legal Office conducted a comprehensive review of marine fisheries regulations in 2016 to identify any additional net-related regulations with potentially confusing language in other portions of the Commission's marine fisheries rules (Division 68B, FAC), or within the Special Acts. Repealing or amending the language that appears to authorize the use of prohibited gear, or that appears to establish penalties for the use of illegal net gear that are inconsistent with statewide penalties established more recently by the Florida Legislature, will eliminate outdated and unnecessary regulations, reduce confusion, and improve the clarity of Florida's statewide gear regulations.

Comprehensive Review of Marine Fisheries Regulations

Species Rules

- No changes needed at this time

Gear Regulations

- Typically apply statewide
- Single update recommended

Special Acts of Local Application

- Local fishing laws originally enacted by Legislature
- Regulations administered by FWC on behalf of the counties
- Several updates recommended

Local Laws (68B-3) and Tampa Bay Rules (68B-25)

- Limited geographic application
- Includes Special Acts of Local Application incorporated into 68B, FAC
- Includes recommended updates identified by JAPC



As previously stated, staff conducted a comprehensive review of marine fisheries regulations in Division 68B, FAC, and in the Special Acts to determine if any rules other than those identified by JAPC in 68B-3 contained outdated or potentially confusing language.

No issues were identified in any of the Commission's species-specific rules in Division 68B, FAC.

Chapter 68B-4, FAC, Gear Specifications and Prohibited Gear, establishes gear regulations that apply both statewide and to specific regions of the state. Only one update is recommended within this chapter.

Staff also reviewed all remaining Special Acts and Local Laws under FWC authority. Special Acts are typically old laws that were written to address fisheries issues in specific, local areas of the state. These Special Acts were originally enacted by the Legislature prior to the creation of the MFC and the implementation of the Net Limitation Amendment. These Special Acts now fall under FWC's constitutional authority to regulate fishing, and the Commission has the authority to modify or repeal them. Several Special Acts are appropriate for repeal as part of this gear regulation cleanup effort.

Over time, some Special Acts have been incorporated into Chapter 68B-3, FAC, Local Laws, and Chapter 68B-25, FAC, Tampa Bay. These Special Acts and Local Laws were also enacted before the Net Limitation Amendment became effective. Four rules are recommended for repeal or amendment within these chapters, including the recommended updates identified by JAPC.

A comprehensive list of all the regulations recommended for repeal or amendment under this draft rule is provided in a separate document.

Changes Needed

- Remove outdated references to predecessor agencies
 - Amend to refer to FWC
- Repeal language that appears to authorize the use of nets larger than 500 sq. ft. in nearshore and inshore waters
- Repeal outdated references to gill and other entangling nets
- Repeal references to net penalties that are inconsistent with those established following implementation of Net Limitation Amendment



Photo: Ruth Swing



Because many of the rules being recommended for potential amendment or repeal are outdated, there are a variety of changes that staff feel are necessary. Many outdated regulations reference predecessor agencies that no longer exist. Some references to the Marine Fisheries Commission should remain for historic reference as appropriate, while other references should be amended to refer solely to FWC.

Portions of Special Acts and portions of rule language in Division 68B, FAC, that appear to authorize the use of nets that have since been prohibited by the Net Limitation Amendment need to be repealed or amended to eliminate conflicting and confusing language.

In addition, several Special Acts that implement outdated net gear regulations also establish penalties for the use of net gear in violation of that specific regulation. The Legislature has since provided penalties for net fishing violations and other fishery related violations in Florida Statutes that apply consistently statewide. Repealing the outdated penalties in the Special Acts will eliminate confusion and clarify that the relevant penalties listed in Florida Statute apply.

Benefits of Proposed Changes

- Consistent with established Commission priorities
 - Agency Strategic Plan
 - Marine Fisheries Rule Cleanup
- Will result in fewer, more transparent saltwater fishing regulations
- Conservation goals would still be accomplished with more concise rules
- Reduce confusion
 - Clarify applicability of statewide gear regulations



This proposal is consistent with the Commission's established priorities of the Agency Strategic Plan and the Marine Fisheries Rule Cleanup project. As part of its Agency Strategic Plan, the Commission directed staff to remove unnecessary rules and streamline regulations in order to more efficiently manage marine species. The Marine Fisheries Rule Cleanup project is also an important component of simplifying FWC rules, making them easier to read, understand, and enforce. Rule Cleanup has multiple components, including the review of Special Acts, the standardization of specific rule chapters, and the repeal or amendment of any outdated, unnecessary, or redundant rule language.

The repeal of these Special Acts and other outdated or unnecessary regulations will result in fewer, more transparent saltwater fishing regulations in Florida.

Under the proposed changes, the conservation goals of the Commission would continue to be accomplished with more concise rules. The proposed draft rules would reduce confusion and therefore clarify Florida's statewide gear regulations.

Staff Recommendation

Approve the proposed rule changes to reduce confusion and improve the clarity of Florida's statewide gear regulations by removing outdated rule language found in a variety of the Commission's older marine fisheries regulations

- Amend references to FWC's predecessor agencies
- Repeal/amend outdated gear regulations that appear to authorize the use of net gear prohibited by the Net Limitation Amendment
- Repeal references to penalties for use of illegal net gear that are inconsistent with more recently established penalties in Florida Statutes

If approved, the changes will be noticed and filed for adoption without further hearing as allowed by s. 120.54 (3) Florida Statutes.



Staff recommend approving the proposed draft rules to amend outdated references to predecessor agencies, and to repeal or amend outdated language in Division 68B, FAC, and a variety of Special Acts that appears to authorize the use of net gear that is prohibited by Article X, Section 16 of the Florida Constitution, or that references penalties for use of illegal net gear that are inconsistent with more recently established penalties in Florida Statutes.

If approved, staff recommend the proposed changes be advertised and filed for adoption with no further public hearing unless requested.

Staff have evaluated the rules under the standards of 68-1.004, FAC, and found them to be in compliance.

NOTE: *The complete list of proposed changes is available in a separate document. That document provides the details of each regulation under consideration for amendment or repeal and an explanation of how it conflicts with more recent statewide gear regulations.*

The following slides are considered backup material and are not anticipated to be part of the actual presentation to the Commission



Special Acts of Local Application

- Local fishing regulations originally enacted by the Legislature
- Special Acts were repealed from Laws of Florida by the Legislature in 1983 and readopted as rules of the Marine Fisheries Commission (MFC)
- Transferred to the FWC in 1999
- FWC administers these regulations on behalf of the counties
- FWC has the authority to modify or repeal these regulations
 - Staff is working with counties to identify Special Acts that are no longer needed or that should be revised and moved into the FAC



The local fishing regulations under consideration for repeal are just a few of many Special Acts of Local Application administered as rules of the FWC. These Special Acts address fisheries issues in specific, local areas of the state and were originally enacted by the Florida Legislature prior to the creation of the Marine Fisheries Commission (MFC).

When the MFC was created in 1983, the Legislature repealed many Special Acts relating to marine fisheries and transferred them to the MFC where they were adopted as rules. When the FWC was created in 1999, the FWC acquired these rules, now referred to as Special Acts of Local Application.

These Special Acts fall under FWC's Constitutional authority to regulate fishing, and the FWC has the authority to modify or repeal them. FWC staff is currently working with counties, through the Marine Fisheries Rule Cleanup process, to identify which Special Acts can be consolidated or eliminated in an effort to streamline regulation, increase transparency and consistency, and standardize FWC saltwater fishing rules.

Local Laws (68B-3, FAC)

- FWC marine fisheries regulations with limited geographic application
- Includes former Special Acts that have been modified or readopted
- Includes local gear regulations established by MFC
- Some were not updated after the Net Limitation Amendment became effective
- FWC acquired local laws when the agency was created in 1999
- JAPC conducted a review of Rule Chapter 68B-3, FAC, (Local Laws) in 2015
 - Identified outdated regulations that appear to authorize the use of net gear that is prohibited by the Net Limitation Amendment



This slide provides an overview of the origin of the localized fishing regulations referred to as Local Laws found in Chapter 68B-3, FAC.