

## NOTICE OF PROPOSED RULE

### FISH AND WILDLIFE CONSERVATION COMMISSION

**DIVISION:** Marine Fisheries

| <b>RULE NO:</b> | <b>RULE TITLE:</b>   |
|-----------------|--|
| 68B-42.001      | Purpose and Intent; Designation of Restricted Species; Definition of “Marine Life Species”                                   |
| 68B-42.002      | Definitions  |
| 68B-42.004      | Size Limits  |
| 68B-42.005      | Recreational Bag Limits  |
| 68B-42.006      | Commercial Season, Harvest Limits  |
| 68B-42.009      | Prohibitions on the Taking, Destruction, or Sale of Marine Corals, Sea Fans, and Non-erect, Encrusting Octocorals; Exception |

**PURPOSE AND EFFECT:** The primary purpose of this rule amendment is to protect the giant Caribbean sea anemone (*Condylactis gigantea*) from further harvest and allow the population to rebuild to the point that sustainable harvest can resume. Life history characteristics for the giant Caribbean sea anemone make it susceptible to overharvest and localized extinction, and both industry reports and commercial landings data indicate the numbers have declined substantially. The intent of the Commission is to temporarily eliminate harvest of giant Caribbean sea anemone in order to allow population numbers to recover, and consider options for future management within three years. Additionally the rule amendment would correct previous errors and omissions in the rule and clarify aspects of the rule which may be a source of confusion. These corrections would require that recreational angelfish and butterfly fish collectors abide by the size limits currently applied to the commercial sector and clarify that all collectors of hybrid angelfishes must abide by the angelfish size limits. The application of these size limits to all sectors and species would provide additional protections for both very small and large, breeding-size angelfishes and butterfly fishes, and aid law enforcement. The amendment would also remove the non-ornamental species sand perch, dwarf sand perch and unicorn filefish from the definition of “marine life,” in order to allow hook and line fishers to harvest them legally by traditional methods for use as bait and food. The definition of snapping shrimp would be expanded to include all species in the family Alpheidae in order to incorporate all snapping shrimp species collected by the marine life industry in the provisions of the rule. Black corals would be added to the prohibitions on marine corals. The rule would also clarify that the protections provided to live rock extend to reef structures built by sabellarid tube worms.

The primary effect of this rule would be to protect the giant Caribbean sea anemone from harvest in state and federal waters off Florida until the Commission approves reinstating a bag limit. Additional effects would be to implement consistent size limits for recreational and commercial collectors of angelfishes and butterfly fishes in state and federal waters, and to require that hybrid angelfishes harvested from state and federal waters meet the current commercial size limits for other angelfish species. Sand perch, dwarf sand perch and unicorn filefish would be deregulated with respect to the marine life rule and would be subject only to provisions of Florida Statute as applied to otherwise unregulated marine species. Species of snapping shrimp outside of the genus *Alpheus*, but within the family Alpheidae would be included in the definition of “marine life”, and therefore subject to the provisions of 68B-42, F.A.C. Black corals of the family Antipatharia would be included in the prohibitions on the taking, destruction and sale of marine corals from state waters, and it would be clearly stated in rule that the harvest of reef structures built by sabellarid tube worms is prohibited in or from state and federal waters.

**SUMMARY:** Rule 68B-42.001 (Purpose and Intent; Designation of Restricted Species; Definition of “Marine Life Species”) would be amended to remove sand perch, dwarf sand perch and unicorn filefish from the definition of “marine life species”, effectively deregulating these species. Rule 68B-42.002 would be modified to clarify the reefs created by tube worms of the Family Sabellariidae are included in the definition of “live rock”, and thus harvest of these reefs is prohibited. Rule 68B-42.004 would be amended by applying the existing size limits for commercial harvest of angelfish and butterfly fish species to recreational harvesters and to clarify the current angelfish size limits also apply to hybrid forms. Rules 68B-42.005 (Recreational Bag Limits) and 68B-42.006 (Commercial Season, Harvest Limits) would be amended to reduce the recreational and commercial bag limits for the giant Caribbean sea anemone (Genus *Condylactis*) to zero (0). The Commission would consider reinstating bag limits after a 3-year closure. Rule 68B-42.009 would be amended to include black corals in the current prohibition on marine corals.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** [place an “X” in one of the choices for each of the two statements as directed by the memo on small business impacts] The agency has determined that this rule will \_\_\_\_ or will not X have an impact on small business. A SERC has \_\_\_\_ or has not X been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

the nature of the rule and the preliminary analysis conducted to determine whether a SERC was required.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternatives 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 September 5 – 6, 2012, 8:30 a.m. to 5:00 p.m., each day.

**PLACE:** Doubletree Hotel, 4500 West Cypress Street, Tampa, Florida 33607.

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:** Jessica McCawley, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, and (850) 487-0554.

**THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:**

**68B-42.001 Purpose and Intent; Designation of Restricted Species; Definition of “Marine Life Species”.**

(1) NO CHANGE

(2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 379.101(32), F.S.:

(a) through (i) NO CHANGE

(j) Hamlet/seabass – Any species of the Family Serranidae, except groupers of the genera *Epinephalus* and *Mycteroperca*, seabass of the genus *Centropristis*, and longtail bass, *Hemanthias leptus*, sand perch, *Diplectrum formosum*, and dwarf sand perch, *Diplectrum bivittatum*.

(k) through (aa) NO CHANGE

(bb) Filefish/triggerfish – Any species of the Family Balistidae, except gray triggerfish, *Balistes capriscus*, ~~and~~ ocean triggerfish, *Canthidermis sufflamen*, and unicorn filefish, *Aluterus monoceros*.

(cc) through (hh) NO CHANGE

(3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 379.101(32), F.S.:

(a) through (j) NO CHANGE

(k) Shrimp – Any of the following species:

1. through 2. NO CHANGE

3. Snapping shrimp – Any species of the Family Alpheidae ~~Genus *Alpheus*.~~

(l) through (v) NO CHANGE

(4) through (5) NO CHANGE

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-91, Amended 7-1-92, 1-1-95, 6-1-99, Formerly 46-42.001, Amended 10-7-01, 7-1-09, 11-1-2012.*

**68B-42.002 Definitions.**

As used in this rule chapter:

(1) through (11) NO CHANGE

(12) “Live rock” means rock with living marine organisms attached to it and includes any formations created by tube worms of the family Sabelliidae.

(13) through (20) NO CHANGE

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-91, Amended 7-1-92, 1-1-95, 7-15-96, Formerly 46-42.002, Amended 2-1-05, 7-1-06, 7-1-09, 10-31-11, 11-1-2012.*

**68B-42.004 Size Limits.**

(1) NO CHANGE

(2) Angelfishes:

(a) No person ~~harvesting for commercial purposes~~ shall harvest, possess, or land any of the following species of angelfish (Family Pomacanthidae), of total length outside of the limits specified below:

1. A minimum of one-and-one-half (1 1/2) inches and a maximum of eight (8) inches for any species (including hybrids) of the Genus *Pomacanthus*.÷

~~a. Gray angelfish (*Pomacanthus arcuatus*).~~

~~b. French angelfish (*Pomacanthus paru*).~~

2. A minimum of one-and-three-quarters (1 3/4) inches and a maximum of eight (8) inches for species (including hybrids) of the Genus *Holacanthus*, except for the species rock beauty (*Holacanthus tricolor*).÷

~~a. Blue angelfish (*Holacanthus bermudensis*).~~

~~b. Queen angelfish (*Holacanthus ciliaris*).~~

3. NO CHANGE

(b) NO CHANGE

(3) Butterflyfishes ~~—~~ ÷

~~(a) No person harvesting for commercial purposes shall harvest, possess, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch or greater than 4 inches.~~

~~(b) No person shall harvest, possess, or land any butterflyfish of total length greater than 4 inches.~~

(4) through (9) NO CHANGE

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-91, Amended 7-1-92, 1-1-95, 7-15-96, Formerly 46-42.004, Amended 6-1-99, 7-1-09, 10-31-11, 11-1-2012.*

**68B-42.005 Recreational Bag Limit.**

(1) through (8) NO CHANGE

(9) No person shall harvest, possess, or land giant Caribbean or “pink-tipped” anemones (Genus *Condylactis*).

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-91, Amended 1-1-95, Formerly 46-42.005, Amended 7-1-09, 10-31-11, 11-1-2012.*

**68B-42.006 Commercial Season, Harvest Limits.**

(1) through (2) NO CHANGE

(3) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on October 1 of each year and continues through September 30 of the following year. These persons shall not harvest, possess, or land tropical ornamental marine life species in excess of the following limits:

(a) through (f) NO CHANGE

(g) A limit of zero (0) 200 giant Caribbean or “pink-tipped” anemones (Genus *Condylactis*) per unique

saltwater product license number bearing a unique marine life endorsement number with a maximum possession limit of zero (0) 400 aboard a vessel at any time with two unique marine life endorsement numbers aboard.

(h) through (n) NO CHANGE

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-91, Amended 7-1-92, 1-1-95, Formerly 46-42.006, Amended 6-1-99, 2-28-02, 7-1-09, 10-31-11, 11-1-2012.*

**68B-42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals Sea Fans, and Non-erect, Encrusting Octocorals; Exception.**

(1) Except as provided in subsection (2), no person shall take, attempt to take, or otherwise destroy, or sell, or attempt to sell, any sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina*, or any hard or stony coral (Order Scleractinia), any black coral (Order Antipatharia), or any fire coral (Genus *Millepora*). No person shall possess any such fresh, uncleaned, or uncured sea fan, hard or stony coral, black coral, or fire coral. No person shall harvest or possess any non-erect, encrusting species of the Subclass Octocorallia within or without state waters.

(2) NO CHANGE

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const., Chapter 83-134, Laws of Fla., as amended by Chapter 84-121, Laws of Fla. Law Implemented Art. IV, Sec. 9, Fla. Const., Chapter 83-134, Laws of Fla., as amended by Chapter 84-121, Laws of Fla. History—New 1-1-95, Amended 7-15-96, Formerly 46-42.009, Amended 7-1-09, 10-31-11, 11-1-2012.*

**PROPOSED EFFECTIVE DATE:** November 1, 2012

**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 ORIGINATING PROPOSED RULE:** Jessica McCawley, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850) 487-0554.

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

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** June 28, 2012

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.:** December 22, 2011