



This document summarizes a draft rule amendment for the Florida Fish and Wildlife Conservation Commission's (FWC) permit, Florida pompano and African pompano rule 68B-35, Florida Administrative Code (F.A.C.).

The purpose of this proposed rule amendment is to better implement the direction and intent of the Commission by correcting errors made in rule language created during the 2011 rule revision.

Staff recommends approving the draft rule without further hearing planned prior to adoption, unless requested.

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Background

- Series of draft rules proposed
 - September 2010
 - December 2010
 - April 2011
- Final public hearing in June 2011
- Changes approved included:
 - Separate size and bag limits for permit and pompano
 - Eliminating directed commercial harvest of permit
 - A special permit zone (SPZ) with more restrictive management measures and a different size limit
 - Extending state regulations into federal waters



The Commission adopted a variety of changes to the permit, Florida pompano, and African pompano rule in June 2011. The rule development process was lengthy and complex, with staff proposing a series of draft rules at Commission meetings in September and December of 2010 and again in April 2011. When the amendment was adopted in June 2011, it included a suite of modifications to the rule. In addition to other changes, separate size and bag limits were established for permit and Florida pompano, which had previously been regulated together. Directed commercial harvest of permit was eliminated statewide, with limited allowances made for permit taken as bycatch in legal gill net operations targeting other species in federal waters. The special permit zone (SPZ) was also established in the Keys, where separate management measures for permit were developed to better align with this primarily catch and release fishery. These regulations included a lower bag limit, a different size limit, and a spawning season closure for permit harvested from the SPZ. These changes and all other regulations for permit and Florida pompano were applied in both state and federal waters off Florida.

Statement of the Problem

- Technical rule language issues discovered since implementation
- Rule language changes are needed to implement Commission's direction



Several technical issues have been discovered with the rule language since it was implemented in August 2011. Because of these rule language errors, portions of the current rule do not reflect the Commission's intent from their June 2011 Commission meeting. The following proposed draft rules would correct these errors and implement the Commission's original direction.

Proposed Draft Rule: Pompano Sale Provision

68B-35.003 Size Limits; Prohibition of Sale; Landing in Whole Condition

- *Move Florida pompano sale provision to this section*
- *Daily sale limit of 250 pompano would apply except for those fishing in the PEZ under a PE*

68B-35.005 Pompano Endorsement Regulations

- *Move Florida pompano sale provision to 68B-35.003*



The commercial trip limit for Florida pompano is 250 fish, except for pompano endorsement (PE) holders fishing in the pompano endorsement zone (PEZ), who do not have a daily limit. The intent of the sale provision was to prohibit commercial harvesters that do not hold a PE from selling more than the legal catch on a single day, which is 250 pompano. However, the provision was incorrectly worded and currently only prohibits PE holders, who can legally catch more than 250 pompano, from selling more than 250 pompano per day.

The proposed draft rule would amend 68B-35.003 and 68B-35.005, F.A.C., to apply the 250 Florida pompano daily sale limit to all commercial harvesters except PE holders harvesting Florida pompano from the PEZ. This would allow all commercial harvesters to sell their legal catch.

The draft rule would also move the sale provision from its current location in the pompano endorsement regulations section to a more appropriate location in section 68B-35.003, F.A.C.

Proposed Draft Rule: Gear Clarification

68B-35.004 Gear Specifications and Prohibited Gear

- Clarify that incidental commercial harvest of permit with a gill net is not allowed in state waters



The directed commercial harvest of permit was prohibited, however, an allowance was made for permit harvested as bycatch in legal federal gill net fisheries. The rule language was incorrectly worded and applied this exception to state waters where gill nets are prohibited. The draft rule would correct the exception, by applying it to gill net fisheries operating in federal waters only, as originally intended.

The draft rule would amend 68B-35.004, F.A.C., to clarify that the allowance for incidental commercial bycatch of permit using a gill net is not allowed in state waters and only applies when permit are caught as bycatch in federal waters.

Proposed Draft Rule: SPZ regulations

68B-35.003 Size Limits; Prohibition of Sale; Landing in Whole Condition,

68B-35.0035 Bag Limits, and

68B-35.006 Closed Season

- *Commercial harvest of permit is not allowed in the SPZ*
- *The SPZ and PEZ do not overlap*
- *Draft rule would remove all exceptions to the prohibitions on commercial harvest and possession of permit within the SPZ*



When staff proposed the SPZ at the draft rule hearing, the SPZ and the PEZ overlapped. Because of this overlap and the allowance for permit to be taken commercially as bycatch in the PEZ, several exceptions were made to the permit regulations in order to allow PE holders to harvest, possess, and land permit taken as bycatch in areas where the SPZ and PEZ overlap. However, the boundaries of the SPZ were modified at the final public hearing to remove the overlap with the PEZ, making these exceptions to the SPZ regulations unnecessary.

The draft rule would amend 68B-35.003, 68B-35.0035, and 68B-35.006, F.A.C., to remove all exceptions to prohibitions on harvest, possession and landing of permit by commercial vessels within the SPZ. Removing these exceptions would prohibit all commercial harvest of permit within the SPZ, as the Commission intended.

Staff Recommendation



Approve the proposed draft rule implementing the Commission's original intent:

- Apply the Florida pompano sale provision as originally intended
- Clarify incidental commercial harvest of permit with a gill net is not allowed in state waters
- Prohibit all commercial harvest and possession of permit in the SPZ

Make rule effective as soon as possible



* Staff will publish a notice that the rule will become final with no further public hearing unless requested

Staff recommends approving the proposed draft rule amendments, which would implement the Commission's original intent by correcting rule language associated with the sale provision for Florida pompano, clarifying the allowance for incidental harvest of permit with gill nets, and eliminating the exceptions to commercial harvest and possession of permit within the SPZ.

Staff also recommends approving the draft rule without further hearing planned prior to adoption, unless requested, as allowed by Section 120.53, F.S. and making the rule effective as soon as possible.

Staff has evaluated the rule under the standards of 68-1.004, F.A.C., and found it to be in compliance.