



This document summarizes draft rule amendments for the Florida Fish and Wildlife Conservation Commission's (FWC) marine fisheries management regulations in Division 68B, Florida Administrative Code (FAC). The proposed draft rule amendments would standardize the format and rule language for 22 of the existing species chapters, relocate the regulations for three species to new rule chapters in 68B, and compile a series of definitions and provisions that will apply to all marine fisheries. The proposed changes would improve enforceability of the regulations and simplify the rule language, making them easier to understand. The proposed amendments presented here also include a correction to the recently created rule language in 68B-2.006, FAC, Restricted Species License Exemption.

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Background

Staff has received considerable public input that the rule language is confusing



- Inconsistencies from one chapter to the next
 - Rule language for specific provisions varies
 - Slightly different definitions for the same term
 - Overall chapter format varies
- Existing language creates unintended loopholes

Commission directed staff to clean up marine fisheries rule language

- Increase public understanding
- Improve enforceability



Staff has been aware for several years that the marine fisheries regulations in Division 68B need to be cleaned up and reorganized. Over the years, staff has received considerable feedback from the public as well as agency personnel that the rule language is overly complex, inconsistent, and confusing. The regulations represent a compilation of rules for more than 40 fisheries, drafted over several decades. As a result, the language for provisions that apply to multiple species vary from one chapter to the next. Definitions for the same term also vary from rule to rule because fishery-specific concerns were considered when drafting each definition. In addition, there is no standardized format for rules, making it more difficult to locate a specific provision such as the size limit, bag limit, or closed season for a particular species. This lack of consistency makes it more difficult for FWC Law Enforcement (LE) officers to locate the proper rule number when they encounter a violation. The outdated language in some of the older chapters also creates loopholes that hamper enforcement of the regulations.

Because of these and other concerns, in June 2009 the Commission directed staff to conduct a comprehensive review of the regulations in 68B, FAC, and return with suggestions for improving the regulations with the intent of creating consistency, improving the overall understandability of the regulations, and improving enforceability.

Multiphase Process

- Team of staff from Legal, DMFM, and LE
- Phase I: presented here in 2 parts
 - Reformat and standardize 22 species chapters
 - Compilation of general definitions and provisions
- Future phases
 - Clean up remaining rule chapters
 - Review local laws
 - Repeal unnecessary statutes



The rule cleanup process is a multiphase project being conducted by a team of FWC staff from the Legal Office and the Divisions of Marine Fisheries Management (DMFM) and LE. This presentation summarizes the team's recommendations for phase I, presented here in two parts. The first half of the presentation discusses the proposal to reformat and standardize 22 of the current species chapters in 68B. The proposals in this portion of the presentation will not result in any substantive changes to the meaning of the regulations.

The second half of the presentation will discuss the proposed consolidation of gear descriptions currently located throughout the 22 chapters into the current Gear Definitions rule in 68B-4, FAC, and the creation of a General chapter where general definitions and provisions will be compiled. If implemented, the proposals associated with this portion of the draft rule will result in some substantive changes to the meaning and enforcement of marine fisheries regulations in some cases.

Future phases of the rule cleanup process will include reformatting and standardizing the remaining chapters in 68B, conducting a review of FWC's current local laws (Special Acts of Local Application) to determine which ones are still needed, and conducting a comprehensive review of Florida Statute to determine which statutes need to be transferred to FWC rule or recommended for repeal.

Proposed Changes: Phase I

- 22 species chapters: standardized format and language

Bay Scallops	Dolphin and Wahoo	Red Drum	Sturgeon
Billfish and Swordfish	Flounder and Sheepshead	Sardines	SW FL Shells
Black Drum	Hard Clams	Seatrout	Tarpon
Bonefish	Jellyfish	Shad and River Herring	Tripletail
Calico Scallops	Queen Conch	Snook	Weakfish
Cobia		Sponges	

- No changes to regulation intent or meaning



The proposed draft rules would create a newly reorganized, standardized format for the species rule chapters that, if approved, will be applied to each chapter as it is reviewed during this or future phases of rule cleanup. For the purposes of the current proposal, this format has been applied to 22 of the existing chapters including: bay scallops, billfish and swordfish, black drum, bonefish, calico scallops, cobia, dolphin and wahoo, flounder and sheepshead, hard clams, jellyfish, queen conch, red drum (redfish), sardines, spotted seatrout, shad and river herring, snook, sponges, sturgeon, southwest Florida shells, tarpon, tripletail, and weakfish.

None of these changes or any of the other changes proposed and discussed in this portion of the presentation will result in changes to the intent, meaning, or enforcement of the existing rules and are purely meant to organize and improve the readability of the regulations.

Proposed Rule Chapter Format

- 68B-X.001** – Designation as a Restricted Species; Purpose and Intent
- 68B-X.002** – Definitions
- 68B-X.003** – Size Limits for Recreational and Commercial Harvest; Whole Condition Requirement
- 68B-X.004** – Bag, Vessel, and Possession Limits; Harvest Prohibited
- 68B-X.005** – Seasons
- 68B-X.006** – Allowed and Prohibited Gear and Method of Harvest; Bycatch Exemptions
- 68B-X.007** – Purchase and Sale Prohibitions
- 68B-X.008** – Commercial Closures and Areas
- 68B-X.009** – License Requirements



Each of the species chapters in 68B is currently organized differently; for example, the size limit for cobia is not located in the same place within the cobia chapter as the size limits for snook and redfish, within their respective chapters. The proposed draft rules will conform to a standardized format for each of the 22 species rule chapters presented here and create consistency among the chapters in order to help staff (including LE) and stakeholders navigate the regulations and locate the specific regulations they are interested in. For example, the recreational and commercial size limits will always occur in rule 003 of each species chapter, while the bag limits for each species will always be found in rule 004. Thus someone looking for the current bag limits for cobia, snook, and redfish will be able to more easily find the regulations, located in 68B-19.004 (Cobia), 68B-21.004 (Snook), and 68B-22.004 (Redfish), FAC. This change will be particularly helpful for LE officers who need to verify the regulations quickly or who have encountered a violation and need to determine which rule to reference in the citation.

The rule language for the individual management measures in these chapters was also reviewed, cleaned up, and standardized across all 22 chapters. The proposed changes will result in clearer, standardized rule language for each of the management measures found in the various rule chapters. As an example of this standardization, the language for the size limit regulations of one fish will be similar to the corresponding size limit language for every other species. This standardization will be applied to each of the management measure provisions and similar language will be used consistently across all chapters whenever possible, making all the rules simpler and clearer and increasing the public understanding of the regulations.

Other Proposed Changes

- 3 chapters split:
 - Billfish and Swordfish
 - Dolphin and Wahoo
 - Flounder and Sheepshead
- Correct the language for recently implemented rule exempting veterans from some of the RS qualification requirements



Changes would not affect the meaning of current regulations but should improve enforceability



In addition to the new format and standardized language, the proposed draft rule will split three of the current species chapters. The chapters for billfish and swordfish, dolphin and wahoo, and flounder and sheepshead currently contain regulations for multiple unrelated species. In order to reduce confusion and clarify that these species are managed separately, the billfish and swordfish chapter will be split, leaving billfish in the current rule chapter and creating a new rule chapter for swordfish. New chapters will also be created for wahoo and sheepshead, leaving dolphin and flounder in their current rule chapters. This will result in 25 species chapters which conform to the proposed, cleaned up format.

Finally, the proposed draft rule will also correct language for the recently implemented rule modifying or waiving the qualification requirements for the restricted species endorsement for Florida's resident veterans attempting to enter the commercial fishing industry. This new rule was approved by the Commission in September 2012 and implemented last November, but there is a small error in the language that could be perceived to grant FWC permission to deny a valid application for the endorsement. This correction will reflect the original intent and clarify that FWC will issue the endorsement whenever all the necessary conditions are met.

None of the proposed rule amendments presented in the first half of this document will result in substantive changes to any of the current regulations, but will make the regulations easier to understand and enforce.

Internal Review and Public Input

- Team requested internal agency review
 - Many suggested changes incorporated
- Public comment gathered during Oct. and Nov.
 - Proposed changes advertised on the website and via social media
 - Variety of stakeholder groups contacted directly
- Reviewed by several stakeholders
 - Minimal suggestions for change



The first round of internal review and public commenting led to significant improvements to the language drafted by the rule cleanup team. The team sought an internal agency review of the proposed rule language prior to releasing it to the public. This staff review proved very helpful and many suggested changes were incorporated to further improve the language. Staff then solicited public input for a period of seven weeks during October and November, during which time the cleanup process and the proposed changes were posted on the MyFWC.com website and advertised on several social media sites. Staff also contacted a variety of stakeholders and stakeholder groups directly to ask for their assistance reviewing the proposed language. Staff received a limited response with respect to the standardization of the 25 species chapters during the public comment period, but several stakeholder suggestions were incorporated into the language now being proposed.

Proposed Draft Rules

68B-15, 16, 17, 18, 19, 21, 22, 26, 28, 29, 32, 33, 34, 36, 37, 41, 47, 48, 49, 51, 52, and 53

- Reformat and standardize 22 species chapters

68B-57 Wahoo, 68B-58 Swordfish, and 68B-59 Sheepshead

- Create 3 species chapters to separate unrelated fisheries

68B-2.006 Restricted Species Endorsement Provision

- Correct rule language to better reflect original intent



The proposed draft rules would reformat and standardize the 22 species chapters addressed during phase I of the rule cleanup process; create three new reformatted and standardized rule chapters for wahoo, swordfish, and sheepshead; and correct an error in the rule language for the veterans restricted species endorsement provision.

Additional draft rule proposals developed as part of the rule cleanup process will be presented separately in the second half of this presentation.

Staff Recommendation



Approve the proposed draft rules

- Standardizing formats and language for 22 chapters
- Creating 3 new species chapters for wahoo, swordfish, and sheepshead
- Correcting an error in the language for the veterans RS exemption

And

Direct staff to continue work on future phases of rule cleanup

If directed, return in June 2013 with a Final Public Hearing



Staff recommends approving the draft rule to standardize and reformat 22 of the existing chapter in 68B, FAC; create new chapters for wahoo, swordfish, and sheepshead; and correct the rule language for the veterans restricted species endorsement exemption.

Staff also recommends the Commission direct staff to continue working on the planned future phases of the rule cleanup process in order to reformat and standardize the remaining rule chapters in 68B and eliminate unnecessary local laws and statutes.

If the draft rule amendments are approved, staff recommends proceeding to a Final Public Hearing at the June Commission meeting.

Public Comment



Phase I: Substantive Changes



This second portion of the document summarizes draft rule proposals to compile a series of general definitions and provisions that will apply to all marine fisheries. Unlike the proposals presented in the first portion of this document, the rules proposed in this section will result in substantive changes to the meaning and enforcement of some marine fisheries regulations. However, the proposed draft rules will reduce confusion and improve enforceability by consistently applying regulations currently found in some or many rule chapters to all marine fisheries, by creating overarching regulations, and by providing a single consistent definition for commonly used terms. This portion of the document provides a discussion of the major changes in regulations created by the proposed changes.

Issue and Proposed Solution

No place for regulations applying to all saltwater fishing

- Restating terms and general provisions in each species chapter is confusing, redundant, and cumbersome

General chapter will simplify regulations

- Rename 68B-2 as the General chapter
- Single location for marine fisheries-wide regulations
- Will reduce confusion and simplify enforcement
- Provisions taken from existing species chapters
- Regulations will apply to all species including those without established seasons and bag or size limits



Many marine fisheries regulations already apply to all or nearly all of the regulated species. However, because there is no place in FAC for definitions or provisions that apply to all fisheries, these provisions are currently detailed in each of the species chapters where they apply. This redundancy is cumbersome and can be confusing, especially if the regulations are worded differently or apply differently with respect to different species.

The proposed General chapter will simplify marine fisheries regulations by creating a single, intuitive location for the regulations that apply to all marine fisheries. The chapter will be created by renaming 68B-2, FAC, and designating it the General chapter. This will reduce confusion and simplify enforcement by ensuring that these provisions are consistent in their wording and their meaning, eliminating repetition, and reducing opportunities for misinterpretation. The proposed marine fisheries-wide provisions are each taken from existing species chapters and are therefore not entirely new to saltwater fisheries management. However, some of them have been modified slightly and all of them will now apply to all fisheries, including those often referred to as “unregulated” due to their lack of established seasons, bag limits, or size limits.

Definitions

Gear Definitions rule

- Existing gear descriptions consolidated into current rule in 68B-4

General Definitions rule will modify existing definitions in some cases

- “**Florida Waters**” expanded to include any potential fishing site and the adjacent parking area
- Harvest in excess of the recreational bag limit would constitute harvest “**For Commercial Purposes**”
- Unnecessary destruction would constitute “**Harvest**” with or without possession
- “**Purchase**” and “**Sell**” defined; transfer of possession not required to meet the definitions



Standardizing commonly used definitions will help ensure anglers and fishers understand the definitions, preventing the confusion created by the different wording used to define the same terms in various chapters. The proposed draft rule would consolidate the definitions of various legal fishing gears by moving gear descriptions currently located in some of the species chapters into the already existing Gear Definitions rule (68B-4.002, FAC). The proposed draft rules will also create a General Definitions rule in 68B-2, FAC. These definitions for terms used in multiple species chapters will apply to all marine fisheries, unless otherwise stated in subsequent rules.

This proposed standardization of definitions will modify the existing definitions with respect to some fisheries. The following proposed definition changes are particularly noteworthy due to the impact these changes will have on the enforcement of fisheries regulations. The definition of “Florida Waters” will be expanded to include any potential fishing site, such as the shore, a dock, pier, jetty or bridge, and any parking area adjacent to a potential fishing site. This will mirror a similar provision in the current redfish rule and will aid enforcement by allowing LE officers to enforce the regulations after fish have been landed. Harvest “For Commercial Purposes” is currently defined in several different ways across the various species regulations. The standardized definition will still include harvest with intent to sell. However, harvest of commercial quantities (greater than the recreational bag limit) will also constitute harvest for commercial purposes. This is consistent with several but not all of the current species rules. The definition of “Harvest” currently used in many chapters will also be expanded to include the unnecessary destruction of marine organisms. This change will mean that any species destroyed for purposes other than possession would also be subject to harvest regulations including size and bag limits and season, species, and area closures. The definitions of “Purchase” and “Sell” will also be expanded slightly compared to many of the current usages of these terms. The new definitions will mirror those currently used in the snook rule chapter, such that a change in possession will not be required for a transaction to constitute a purchase or sale.

General Provisions: Return of Organisms to the Water

- Requires fish not intended for harvest be immediately returned to the water free, alive, and unharmed
- Prohibits discarding fish on the bank, shore, or otherwise out of the water
- Expressly allows for temporary possession
 - Determine if it's legal for harvest
 - Take photographs



Florida Statute currently requires all food fish not retained be released immediately and returned free, alive, and unharmed to the water from which they were taken, and specifically prohibits the placement of non-retained food fish on the bank, or any other place out of the water. While the statute provides protection for food fish from unnecessary destruction, there is confusion about what constitutes a food fish. The proposed rule would bring the provisions from statute into the FAC and clarify that they apply to all marine organisms.

In addition, the proposed draft rule would explicitly allow for temporary possession of a marine organism for the limited purposes of determining whether or not the organism can be legally harvested or for taking a photograph. However, the organism must then be returned to the water immediately following the determination and/or photograph. FWC currently allows anglers to temporarily possess a fish for these purposes, but codifying this enforcement policy will reduce confusion and assure the public that they will not be violating the regulations under these circumstances.

Other General Provisions

Fishing license requirements

- Clearly state when a recreational fishing license, saltwater products license, and restricted species endorsement is required

Recreational and commercial harvest on a single trip

- Prohibits both recreational and commercial harvest of any single species on the same trip

Vessel operator responsibility

- Holds the vessel operator responsible for ensuring all passengers abide by fisheries regulations



Photo: TakeMeFishing.org

The recreational and commercial fishing license requirements are also found in statute. The proposed rule would bring those requirements into FAC and clarify when a recreational license, saltwater products license, and/or restricted species endorsement is required to fish or possess marine organisms in Florida.

The reef fish rule (68B-14, FAC) currently contains a provision that prohibits harvest of both a recreational and commercial bag limit of any reef fish species on the same trip. A similar rule will be created in the General chapter prohibiting harvest of both recreational and commercial bag limits of any single species by the same person on the same trip. The new provision would also require that all persons fishing under a single vessel SPL, on a single trip, harvest only commercial bag limits or recreational bag limits of any particular species. This rule would be consistent with the intent of the Commission's established bag limits and improve the enforceability by prohibiting anglers from harvesting fish in excess of the bag limits under the guise of retaining both recreational and commercial limits for the same species.

The current reef fish and redfish rules also contain a provision making the vessel operator responsible for any violations of the reef fish rule on their vessel. A similar rule in the General chapter will hold all vessel operators responsible for ensuring their passengers abide by all fisheries regulations. This rule would acknowledge that the vessel operator is responsible for the conduct of those fishing from his or her vessel. It will improve enforceability by allowing LE to issue a citation when a violation occurs, even if no one on the vessel is willing to claim responsibility for the illegal catch.

Other General Provisions (continued)

Possession and sale of illegally-caught fish

- Prohibits possession, transport, sale and purchase of illegally-caught marine organisms

Multiple hook and natural bait

- Prohibits the use of treble hooks in conjunction with live or dead natural bait

Trap Placement

- Prohibits placing traps in navigational channels



Florida statute and many of the rule chapters in Division 68B, FAC, prohibit sale of illegally-caught fish. The redfish and reef fish rules further prohibit the possession, transport, and purchase of illegally-caught fish. The proposed rule would apply those prohibitions to all marine organisms. This rule would improve enforceability of the current regulations by allowing LE to issue citations for violations they encounter after the harvester has landed the organism and left the fishing site.

Commission regulations for more than 10 species of marine fishes prohibit the use of treble hooks (or similar multi-prong hooks) when fishing with natural bait. Treble hooks can cause considerable damage to a fish when swallowed because of the multiple hooks involved. Treble hooks baited with live or dead natural bait are more likely to result in gill or stomach hooking than are artificial lures. The damage suffered by fish hooked in the gills or stomach decreases the fish's chance of survival if released. The proposed rule would extend the current prohibition to all marine fisheries operating in state waters and to federal waters fisheries managed by FWC.

The final proposed rule would prohibit the placement of traps in navigational channels. The placement of traps in channels hinders navigation and can result in additional "ghost traps" when boaters are forced to cut trap lines that become entangled in their props. However, the prohibition on the placement of traps in channels is currently only found in the stone crab rule (68B-13, FAC). The proposed rule would extend the prohibition to all trap fisheries.

Internal Review and Public Input

- Input of agency personnel incorporated
- Public comment gathered during Oct. and Nov.
- Staff received comments and suggestions from a wide variety of stakeholders and stakeholder groups



Staff received considerable thoughtful and helpful feedback on the proposed General chapter during the internal staff review and public input periods in late 2012. The rule cleanup team reviewed all of this feedback and incorporated many changes into the proposed rule language based on those comments and suggestions, making significant improvements to the previously drafted language.

Proposed Draft Rules



68B-4.002 Gear Definitions

- Relocate gear descriptions previously found in other chapters

68B-2.001 General Definitions

- Standardized definitions would apply to all marine fisheries

68B-2.002 Return of Marine Organisms to Water; Permissible Temporary Possession

- Clarify that any fish not retained must be released alive and unharmed
- Allow for temporary possession for photography and determining compliance with regulations

68B-2.003 License Required for Harvest or Possession of a Marine Organism Regulated

- Clearly state that the proper fishing licenses are required when possessing marine organisms on the water and while fishing



The proposed draft rules presented in this second portion of the document would relocate all gear descriptions used in multiple species chapters to the existing Gear Definition rule (68B-4.002, FAC) and create a series of new rules within 68B-2, FAC, as described below. The proposed draft rules would standardize commonly used definitions and apply them to all marine fisheries; clarify that any fish not retained must be released immediately free, alive, and unharmed, while still allowing for temporary possession for the purposes of determining compliance with the regulations or taking a photograph; and clearly state that the appropriate recreational or commercial fishing license is required when possessing marine organisms on Florida Waters and while fishing.

Proposed Draft Rules (continued)

68B-2.004 Recreational and Commercial Harvest on the Same Trip

- Prohibit commercial and recreational harvest of the same species on a single trip

68B-2.005 Vessel Operator Responsibility

- Require the vessel operator to ensure all passengers comply with marine fisheries regulations

68B-2.007 Prohibition of Possession, Transport, Purchase, or Sale of Illegally-Caught Marine Organisms

- Prohibit the possession or sale of marine organisms caught in violation of fisheries regulations

68B-2.008 Trap Placement

- Prohibit placement of traps in navigational channels

68B-2.009 Multiple Hook and Bait Prohibition

- Extend the prohibition on use of treble hooks with natural bait to all marine fisheries



The proposed new draft rules would also prohibit an individual from harvesting both commercial and recreational bag limits of the same species on the same trip, and require that all persons fishing under a vessel be either recreational harvesters or commercial harvesters with respect to each single species on a given trip; prohibit the possession, transport, purchase, and sale of any illegally-caught marine organism; prohibit the placement of any trap in a navigational channel; and extend the current prohibition on the use of treble hooks (and similar multiple hook gear) in conjunction with natural bait to all marine fisheries.

Staff Recommendation



Approve the proposed draft rules:

- Relocate existing gear descriptions to the Gear Definitions rule
- Rename 68B-2, creating a General chapter
- Create a consolidated list of consistent definitions that apply to all marine fisheries
- Expanding the application of a series of sporadically applied marine fisheries provisions to all marine fisheries in order to reduce confusion and aid in enforcement of the existing regulations

If directed, return in June 2013 with a Final Public Hearing



Staff recommends approving the draft rules relocating existing gear descriptions to the Gear Definitions rule, renaming 68B-2 to creating a General chapter, creating consolidated lists of consistent definitions that apply to all marine fisheries, expanding the application of a series of sporadically applied marine fisheries provisions, and creating the described new provisions, which will apply to all marine fisheries in order to reduce confusion and aid in enforcement of the existing regulations.

If the draft rule amendments are approved, staff recommends proceeding to a Final Public Hearing at the June Commission meeting.

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



Work to Date



April 2010

- Law Enforcement funded review
- New standardized format and language for 22 existing rule chapters

2010 - Dec. 2012

- Staff from DMFM, Legal, Law Enforcement, and the former MFC General Council
 - Reviewed recommended changes
 - Incorporated additional cleanup measures

Oct. - Nov. 2012

- Staff solicited review by variety of stakeholder groups
- Proposed changes posted online for public review

Dec. 2012

- Staff compiled input and made necessary changes



After receiving direction from the Commission, Staff convened the Division 68B rule cleanup team in 2009 to determine how best to begin the regulatory review. In April 2010, the Division of Law Enforcement (LE) hired the University of Florida's Conservation Clinic at the Levin College of Law to review 68B and suggest the appropriate changes. This contract resulted in detailed suggestions for the first phase (Phase I) of rule cleanup, including a new consistent format for the individual chapters and clearer language for 22 of the existing species chapters.

The FWC 68B rule cleanup team, consisting of staff from the Divisions of Marine Fisheries Management (DMFM) and Law Enforcement, FWC's Legal Office, and Charlie Shelfer former General Council with the Marine Fisheries Commission (MFC), reviewed the changes recommended by the contractor. The team verified that the recommended changes did not conflict with the original intent of the rules or change the current meaning of any of the rules. The team then conducted an additional rule review and incorporated other cleanup measures that were deemed appropriate. In October 2012, the rule cleanup team released for public comment the new rule language for 22 of the current species chapters in 68B, as well as the Gear Definitions rule in 68B-4, FAC, and a newly proposed General chapter. The public comment period was open from mid-Oct. through Nov. 30, during which time the entirety of both the current and the proposed rule language were published on the MyFWC.com website for public review. Staff also contacted a wide variety of stakeholders and stakeholder groups directly to solicit input on the proposed changes. The public comments received were reviewed by the team during December, with several changes to the language made based on these suggestions.