

68B Rule Cleanup and Reorganization
Final Public Hearing
June 12, 2013



Florida Fish and Wildlife Conservation Commission
Division of Marine Fisheries Management

Version 3

This document is a final public hearing summarizing proposed 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 rules would create standard provisions that apply to all saltwater fishing in order to improve enforceability of the regulations and simplify the rule language, making them easier to understand.

Update: This document has been updated to clarify that the temporary possession allowance does not apply to species for which all possession is currently prohibited. Also, the definition for Florida Waters and the Vessel Operator Responsibility rule have been removed from staff's proposal in order to consider possible alternative approaches to achieving the desired goals.

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History of Rule Cleanup

- Commission directed staff to clean up marine fisheries rule language in 2009
 - Inconsistencies from one chapter to the next
 - Existing language creates unintended loopholes
 - Increase public understanding
 - Improve enforceability
- Draft rule hearing at the April 2013 meeting
- Public web-based workshops in late April
- Today: final public hearing



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. Since that time the rule cleanup team, consisting of members of the Division of Marine Fisheries Management, Law Enforcement (LE) and the Legal Office have been working on the project, with the goals of reducing or eliminating inconsistencies among the current species chapters and updating old rule language to eliminate unintended loopholes in order to increase the public's understanding of the regulations and improve enforceability.

At the April Commission meeting in Tallahassee, the Commission approved a draft rule hearing of staff's proposed rule changes under the first phase of the rule cleanup process. Since that meeting, staff offered two statewide web-based public workshops reviewing these recommendations and is now returning to the Commission for a final public hearing of the proposed changes.

Creation of a General Chapter

New place for regulations applying to all saltwater fishing

- Would reduce confusion and simplify enforcement
- Commonly used definitions standardized and applied to all marine fisheries chapters
- Provisions taken from existing species chapters
- Regulations would apply to all species including those without established seasons, bag limits, or size limits



The proposed rules would create a new General chapter comprised of definitions and provisions that would apply to all saltwater fishing. The proposed General chapter would simplify marine fisheries regulations by creating a single, intuitive location for commonly used definitions and regulations that apply broadly to marine fisheries. The chapter would be created by renaming 68B-2, FAC, Restricted Species License Exemption, and designating it the General chapter. This would reduce confusion and simplify enforcement by ensuring that these definitions and provisions are consistent in their wording and their meaning, eliminating repetition, and reducing opportunities for misinterpretation.

The definitions of these commonly used terms would be standardized and applied to all the marine fisheries chapters in Division 68B, unless otherwise stated in subsequent chapters. The proposed marine fisheries-wide provisions are each taken from existing species chapters or statutory language and are therefore not new to saltwater fisheries management in Florida. However, some of these definitions and provisions have been modified slightly and all of them would now apply to all fisheries, including those often referred to as “unregulated” due to their lack of established seasons, bag limits, or size limits.

Proposed Rule: Definitions

68B-2.001 General Definitions

- *Commonly used definitions standardized, including modifications of some definitions*
 - *Harvest equal to or greater than twice the recreational bag limit would constitute harvest “For Commercial Purposes”*
 - *Unnecessary harming or killing would constitute “Harvest”*
 - *“Purchase” and “Sell” defined; transfer of possession not required*



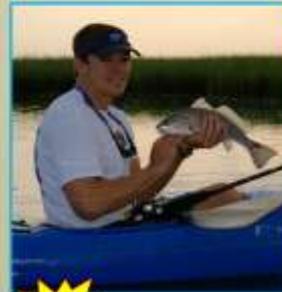
The proposed rule would create a new location for commonly used definitions (68B-2.001, FAC). The proposed standardization of definitions would modify the existing definitions with respect to some fisheries. The following proposed definition changes would change the meaning or enforcement of some fisheries regulations.

- Harvest “For Commercial Purposes” is currently defined in several different ways across the various species regulations. The most common definition applied in 68B includes any harvest in excess of the recreational bag limit. Florida Statutes (F.S.) sets a different standard by including possession of at least twice the recreational bag limit in the definition of “Commercial Harvester.” The proposed standardized definition of “For Commercial Purposes” would conform to the statute by including harvest of at least twice the recreational bag limit, and would still include harvest with intent to sell.
- The definition of “Harvest” currently used in many chapters would be expanded to include the unnecessary harming or destruction of marine organisms. This change would 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.
- “Purchase” and “Sell” are currently undefined throughout most of Division 68B. The proposed definitions would also be expanded slightly compared to many of the current usages of these terms. The new definitions would mirror those currently used in the snook rule chapter, such that a change in possession would not be required for a transaction to constitute a purchase or sale.

Proposed Rule: Returning Marine Organisms to the Water

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

- *Require non-harvested finfish and regulated invertebrates be immediately returned to the water*
 - *Prohibits unnecessary harming or destruction*
 - *Prohibits discarding these animals on the bank, shore, or otherwise out of the water*
- *Expressly allows for temporary possession of marine organisms*
 - *Determine species and length*
 - *Take photographs*
 - *Would not apply to prohibited species*



Florida Statute and Commission rules currently require all food fish not retained be released immediately and returned alive to the water from which they were taken, and specifically prohibit the placement of non-retained food fish on the bank, or any other place out of the water. While these regulations provide food fish with protection from unnecessary destruction, there is confusion about what constitutes a food fish. The proposed rule (68B-2.002, FAC) would bring the provisions into the General chapter where they can be more easily found and require that all finfish and any marine invertebrate regulated by the Commission's rules must be returned immediately to the water if they are not intended for harvest. This provision would also prohibit unnecessarily harming or destroying finfish or regulated marine invertebrates prior to release or discarding them on the bank, or otherwise out of the water.

In addition, the proposed rules would explicitly allow for temporary possession of a marine organism for the limited purposes of determining the species, measuring the length, and for taking a photograph, unless there is a specific limitation on possession in a species-specific rule. Since the draft rule hearing, this provision has been modified to clarify that it does not apply to species for which all possession is currently prohibited. If approved, staff would file this limitation via Notice of Change.

Organisms temporarily possessed in association with these regulations 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 would reduce confusion and assure the public that they would not be violating the regulations under these circumstances.

Proposed Rules: General Provisions

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

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

68B-2.008 Trap Placement

- *Prohibits placing traps in navigational channels*



The reef fish chapter (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. The proposed rule (68B-2.004, FAC) would prohibit 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 aboard a vessel on the same trip harvest only commercial bag limits or recreational bag limits of any particular species during that trip. This rule would be consistent with the intent of the Commission's established bag limits and improve 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 final proposed rule (68B-2.008, FAC) 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.

Recent Changes to Proposed Rules

NEW

68B-2.001 General Definitions

- *Keep the existing definition of "Florida Waters"*
- *Staff to explore options for improving enforceability at or near potential fishing sites*
- *Language would be adopted via Notice of Change*
- *Return with recommendation in phase II of rule cleanup*

68B-2.005 Vessel Operator Responsibility

- *Staff to explore options for improving regulatory compliance on the water*
- *Removal would be adopted via Notice of Withdrawal*
- *Return with recommendation in phase II of rule cleanup*



Staff has continued to receive input on the rule cleanup proposals since the draft rule hearing. Based on this input and staff's further consideration of the proposed rules, staff recommends removing several provisions from the proposal and in order to consider possible alternative approaches to achieving the desired goals.

At the draft rule hearing, staff recommended expanding the definition of "Florida Waters" to include any potential shore-based fishing site and the adjacent parking areas in order to improve enforceability of the existing regulations and limitations on harvest. This proposed measure was modeled after a similar provision in place for red drum. However, staff has recently become aware that the public is uncomfortable with the idea of expanding the use of this term. Therefore, staff would like time to explore other options for improving enforceability without modifying this definition. If approved, the current definition from 68B-4.0025, FAC, would be re-adopted via Notice of Change and staff would return to the Commission during phase II of rule cleanup with a different approach for improving enforceability of the regulations.

Staff also recommended creating a general provision similar to existing rules in the red drum, king mackerel, and reef fish chapters that would hold the vessel operator responsible for violations of marine fisheries regulations that occurred aboard the vessel. Staff has recently identified some problems with the wording of this provision that could lead to unintended negative consequences if adopted and staff would like to take additional time to review this provision and possible alternate regulations for achieving greater regulatory compliance. In order fully explore these issues, staff would also like to withdraw this previously proposed rule from Commission consideration and bring it back with the next phase of rule cleanup. If approved, this change would be adopted via Notice of Withdrawal.

Staff Recommendation

Approve the advertised rules and Notices of Change/Withdrawal



- Create a consolidated list of consistent definitions that apply to all marine fisheries
- Require finfish and regulated invertebrates that are not retained to be immediately returned to the water unharmed
- Allow temporary possession of marine organisms for the purposes of measuring and photographing
- Expand the application of sporadically applied marine fisheries provisions to all marine species
- Limit permissible temporary possession 
- Maintain the current definition of Florida Waters, eliminate the Vessel Operator Responsibility rule, and direct staff to return with new recommendations during phase II 



If approved, make the rules effective on Sept. 1, 2013

Staff recommends approving the proposed new rules to create a list of standardized definitions for commonly used terms and apply them consistently across all marine fisheries regulations; require non-retained marine finfish and any marine invertebrate regulated by Division 68B, FAC, be returned immediately to the water without being unnecessarily harmed; allow temporary possession of marine organisms for the purposes of determining compliance with the regulations or photography; and expanding the application of several sporadically applied provisions to all marine species.

Staff also recommends the Commission approve modifying the permissible temporary possession provision to clarify that it does not apply to prohibited species; retaining the current definition for “Florida Waters” from 68B-4.0025, FAC, and moving it to the General chapter; removing the Vessel Operator Responsibility rule from the proposed General chapter; and approving staff to file the necessary Notices of Change/Withdrawal that would apply these proposed modifications to the advertised rules.

If approved, staff recommends making the rules effective on September 1, 2013.

Staff will continue working on defining Florida Waters and the Vessel Operator Responsibility rule as part of phase II of rule cleanup.

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

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



Multiphase Process

- Team of staff from Legal, DMFM, and LE
- Phase I
 - Reformat and standardize 20 species chapters
 - Compilation of general definitions and provisions
- Future phases
 - Cleanup 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 a portion of the team's recommendations for phase I.

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.

Work to Date

Apr 2010

- Law Enforcement funded review
- Standardized format developed for phase I species chapters

2010 - Dec 2012

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

Oct 2012 - Mar 2013

- Comments received from agency staff and the public

Apr 17, 2013

- Draft rule hearing

Apr 22 and 24, 2013

- Public workshops offered



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 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 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. Public comment was gathered from mid-October through November 30, during which time the current and the proposed rule language was 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.

Internal Review and Public Input

- Input of agency personnel incorporated
- First round of public comment gathered during October and November
- Staff received comments and suggestions from a wide variety of stakeholders and stakeholder groups
- Public web-based workshops offered in late April
- Additional comments and direction received since the draft rule hearing



Staff received considerable thoughtful and helpful feedback on the proposed General chapter during the internal staff review and public input during late 2012 and early 2013. 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.

Definition of “Florida Waters”



68B-4.0025 (current definition)

“Florida waters” means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any other bodies of water under the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof.

68B-2.001 (withdrawn from further consideration)

“Florida Waters” means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any other bodies of water under the jurisdiction of the State of Florida, whether marine, coastal, or inland, and any part thereof. Florida Waters include any potential fishing site adjacent to the water like a dock, pier, boat ramp, bridge, shore, beach, or other location from which fishing could occur and any parking location adjacent to a potential fishing site.



This slide lists two possible definitions of “Florida Waters.” The first is the current definition, as found in 68B-4.0025, FAC. Staff is recommending this definition be maintained in its current form and moved to the consolidated list of definitions in the proposed General Chapter (68B-2).

Staff originally proposed expanding this definition, also shown above, to encompass potential shore-based fishing sites and the adjacent parking lots, in order to aid in enforcement and increase compliance with existing regulations. Staff is recommending this second definition be withdrawn from further consideration, and that the current definition be retained.