

## LIONFISH: Draft Rule Language

Draft Rule Hearing: April 16, 2014

*This proposed rule language reflects staff recommendations to delay the prohibition on aquaculture of lionfish for future rulemaking and incorporate stakeholder recommendations for improving the remaining rule language. If approved, differences between this draft language and the language previously published in the Florida Administrative Register will be accomplished via the attached Notices of Change.*

### CHAPTER 68-5

#### RULES RELATING TO NON-NATIVE SPECIES

##### **68-5.005 Lionfish**

(1) As used in this rule, "lionfish" means any finfish of the genus *Pterois*.

(2) The importation of live lionfish or hybrids or eggs thereof is prohibited.

(3) Live lionfish imported from outside the State of Florida after August 1, 2014, may not be sold, offered for sale, bartered, or otherwise exchanged.

(4)(a) Except as provided in subsection (b), a wholesale or retail dealer, or any other wholesale or retail establishment possessing live lionfish, or any hybrids or eggs thereof may only possess live lionfish harvested from Florida waters or adjacent federal waters. Any wholesale or retail establishment shall maintain the invoices, receipts, bills of sale, bills of lading, or other documentation affirmatively showing that all lionfish possessed or purchased by the dealer have been sourced from within state waters or adjacent federal waters.

(b) A wholesale dealer or retailer may possess and offer for sale live lionfish imported prior to August 1, 2014. However, the burden shall be upon any person possessing imported live lionfish to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and to show that such live lionfish were imported and entered the state in interstate commerce prior to August 1, 2014. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute a violation of this section.

(5) No common carrier or employee of said carrier may carry, knowingly receive for carriage, or permit the carriage of any live lionfish, including hybrids or eggs thereof, except for lionfish lawfully harvested from waters of the State of Florida or from adjacent federal waters.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 8-1-14.

### CHAPTER 68B-4

#### GEAR SPECIFICATIONS AND PROHIBITED GEAR

**68B-4.012 Diving: Powerheads and Rebreathers, Use to Harvest Fish in State Waters Prohibited; Definition; Spearfishing Marine Species in Fresh Water Prohibited.**

(1) NO CHANGE

(2) Rebreathers.

(a) Except for persons harvesting lionfish (genus *Pterois*), no ~~No~~ person diving in state waters by means of a

rebreather shall harvest any marine species. Use of rebreathers for any nonconsumptive purpose is allowed in state waters.

(b) The possession of any fish other than lionfish that has been harvested by a person diving in state waters by means of a rebreather, aboard a vessel fishing or at rest in state waters, shall constitute a violation of this subsection.

(c) The term “harvest” for purposes of this subsection means the catching or taking of a marine species by any means, followed by a reduction of the species to possession, whether or not the species has been killed or wounded.

(3) NO CHANGE

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 11-26-92, Amended 7-15-96, 1-1-97, Formerly 46-4.012, Amended 7-1-01, 3-1-05, 08-01-2014.*

## **CHAPTER 68B-5 MISCELLANEOUS**

### **68B-5.006 Lionfish.**

(1) For purposes of this rule:

(a) NO CHANGE

(b) “Lionfish” means any fish of the genus species *Pterois volitans* or *Pterois miles*, or any part thereof.

(2) through (3) NO CHANGE

(4) The harvest of lionfish while using a rebreather is allowed in accordance with ~~Nothing herein shall be interpreted as allowing harvest while using a rebreather as prohibited by~~ subsection 68B-4.012(2), F.A.C.

(5) In accordance with 68-5.005, F.A.C., the importation of live lionfish is prohibited.

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 8-21-13, Amended 8-1-2014.*

## **CHAPTER 68B-20 SPEARING: BOW HUNTING, GIGGING, AND SPEARFISHING**

### **68B-20.003 Spearing, Statewide Regulation; Prohibition Against Powerheads, Bangsticks, and Rebreathers; Repeal of Certain Special Acts.**

(1) NO CHANGE

(2) Except as provided in subsection 68B-20.004, spearfishing ~~Spearfishing~~ is hereby prohibited:

(a) Within 100 yards of all public bathing beaches.

(b) Within 100 yards of all commercial or public fishing piers.

(c) Within 100 yards of that portion of any bridge where public fishing is legally permitted.

(d) Within 100 feet of the unsubmerged portion of any jetty, except that spearfishing shall be allowed along the last 500 yards of any jetty that extends more than 1,500 yards from the shoreline.

(e) In or on any body of water under the jurisdiction of the Division of Recreation and Parks of the Department of Environmental Protection. Possession of spearing equipment in or on any body of water under the jurisdiction of the Division of Recreation and Parks is prohibited except when such equipment is not loaded and is properly stored upon watercraft passing nonstop through such marine waters.

(3) through (8) 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 6-17-85, Amended 1-1-98, Formerly 46-20.003, Amended 6-30-13, 8-1-14.*

**68B-20.004 Exception to Statewide Spearing Prohibitions**

(1) Notwithstanding anything to the contrary in 68B-20.003 or 379.2425, F.S., upon request and with reasonable assurance that the activity will not harm the environment nor be a danger to public health or safety, the Executive Director, or his designee, shall issue permits authorizing the harvest of non-native marine species by spearfishing from areas where the activity is otherwise prohibited. The permit shall be for the limited purpose of facilitating the removal of non-native species from Florida Waters.

(2) Permits shall only be issued to the director of an organized tournament or event. For the purposes of this rule, an “organized tournament or event” means a fishing competition or other event that involves ten or more registered participants.

(3) The permit shall only be issued for an organized tournament or event that does not unduly impact resources, interfere with other users, or impose significant risks to public health and safety.

(4) Permits shall be valid for a period of no longer than one week and only for harvest from the areas specified in the permit.

(5) The Commission shall impose upon any permit such reasonable conditions as are necessary to assure that the event or activity authorized will limit liability to the agency and protect fish, wildlife, and natural and cultural resources.

(6) All individuals participating in an organized tournament or event for which a permit to take lionfish has been issued shall have a copy of the permit in his or her possession at all times when conducting activities authorized by the permit.

(7) Violations of this rule or of the terms of the permit may result in the revocation of the permit and the denial of future permit applications pursuant to Rule 68-1.010, F.A.C.

(8) The authority granted under this section shall not exempt any person from purchasing a saltwater fishing license as required by Section 379.354, F.S.

(9) The permit shall not authorize any activities within the Florida Keys National Marine Sanctuary, within the boundaries of a federal park or other waters managed by the United States Department of the Interior, or within any state park or any other waters managed by the Florida Department of Environmental Protection unless it is accompanied by any and all permits that may be required by the National Oceanic and Atmospheric Administration, the Department of the Interior, or the Florida Department of Environmental Protection for such activities or events.

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 8-1-2014.*

FISH AND WILDLIFE CONSERVATION COMMISSION

Departmental

RULE NO.:       RULE TITLE:  
68-5.005        Lionfish

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 40, No. 90, (May 8, 2014), issue of the Florida Administrative Register.

Proposed amendment to Rule 68-5.005 has been changed to remove all reference to aquaculture and to include the following:

(1) through (2) no change.

(3) Live lionfish imported from outside the State of Florida after August 1, 2014, may not be sold, offered for sale, bartered, or otherwise exchanged.

(4)(a) Except as provided in subsection (b), a wholesale or retail dealer, or any other wholesale or retail establishment possessing live lionfish, or any hybrids or eggs thereof may only possess live lionfish harvested from waters off the state of Florida waters or adjacent federal waters. Any wholesale or retail establishment shall maintain the invoices, receipts, bills of sale, bills of lading, or other documentation affirmatively showing that ~~that~~ all lionfish possessed or purchased by the dealer have been sourced from Florida within state waters or adjacent federal waters ~~of the Exclusive Economic Zone.~~

(b) No change.

(5) No common carrier or employee of said carrier may carry, knowingly receive for carriage, or permit the carriage of any live lionfish, including hybrids or eggs thereof, except for lionfish lawfully harvested from Florida waters inside of the territorial limits of the State or from adjacent federal waters of the Exclusive Economic Zone.

(6) ~~The aquaculture of lionfish is prohibited except as authorized by Conditional/Prohibited/Nonnative species permit as provided in paragraphs (a) through (f) below:~~

~~(a) Eligibility.~~

~~1. A permit for research involving lionfish cultivation shall be issued only to a principal investigator who is a faculty member of a college or university, is affiliated with an accredited institution, or is a member of a federal, state or county agency.~~

~~2. Permits shall be issued only for the purposes of researching lionfish population control measures or mitigating negative impacts to native species and ecosystems~~

~~(b) Lionfish cultivation held outdoors may only be held in a water body that has the lowest point of the top edge of its levee, dike, bank, or tank at an elevation of at least one foot above the 100 year flood elevation determined by reference to elevation maps issued by the National Flood Insurance Program, U.S. Department of Homeland Security. Such water body shall have no water discharge or shall be constructed with a barrier system designed to prevent escape of adults, juveniles, and eggs in the water effluent discharged from the permittee's property.~~

~~(c) Lionfish cultivation held indoors may only be held in culture systems having no water discharge, having a water discharge through a closed drain system, or other system designed to prevent discharge of water containing adults, juveniles and eggs from the permittee's property.~~

~~(d) A detailed research proposal shall accompany the application for the permit. The proposal shall state the research objectives, methodology and study duration, and outline planned safeguards to assure proper containment of the species. An annual record of progress toward the research project objectives shall be maintained, and such research proposal and record of progress shall be available for inspection upon request of Commission personnel.~~

~~(e) The permit shall expire 12 months from the date of issuance and shall not be renewed until a detailed report of research findings is received and approved by the Commission. The report shall include a description of activities undertaken in the permit period, progress toward research project objectives, and proposed additional activities to be undertaken during any renewal period. Such reports are public records subject to the requirements for public disclosure under Chapter 119, F.S.~~

~~(f) Any escape or release of lionfish, or the eggs thereof, shall be reported immediately to the Commission.~~

No other changes were made to the rule amendments as proposed.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NO.:      RULE TITLE:

68B-5.006      Lionfish

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 40, No. 90, (May 8, 2014), issue of the Florida Administrative Register.

Proposed amendment to Rule 68B -5.006 has been changed to remove references to aquaculture:

(1) through (4) NO CHANGE

(5) In accordance with 68-5.005, F.A.C., the importation of live lionfish ~~is and the aquaculture of lionfish are~~ prohibited.

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 8-21-13, Amended 8-1-2014.*

No other changes were made to the rule amendments as proposed.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NO.:       RULE TITLE:  
68B-20.004       Exception to Statewide Spearing Prohibitions

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 40, No. 90, (May 8, 2014), issue of the Florida Administrative Register.

Proposed amendment to Rule 68B-20.004 has been changed as follows:

(1) Notwithstanding anything to the contrary in 68B-20.003 or 379.2425, F.S., upon request and with reasonable assurance that the activity take will not harm the environment nor be a danger to public health or safety, the Executive Director, or his designee, shall issue permits authorizing the harvest of non-native marine species by spearfishing from areas where the activity is otherwise prohibited. The permit shall be for the limited purpose of facilitating the removal of non-native species from Florida Waters.

(2) Permits shall only be issued to the director of an organized tournament or event. For the purposes of this rule, an “organized tournament or event” means a fishing competition or other event that involves ten or more registered participants.

(3) through (8) NO CHANGE

(9) The permit shall not authorize any activities within the Florida Keys National Marine Sanctuary, within the boundaries of a federal park or other waters managed by the United States Department of the Interior, or within any state park or any other waters managed by the Florida Department of Environmental Protection unless it is accompanied by any and all permits that may be required by the National Oceanic and Atmospheric Administration Association, the Department of the Interior, or the Florida Department of Environmental Protection for such activities or events.

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 8-1-2014.*

No other changes were made to the rule amendments as proposed.