

**NOTICE OF PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION**

DIVISION: Marine Fisheries Management

RULE NO:
68B-24.002
68B-24.0055

RULE TITLE:
Definitions
Commercial Requirements; Appeals

PURPOSE AND EFFECT: The purpose of this rule amendment is to modify the Commission's spiny lobster commercial dive (CD) endorsement program. The proposed amendments will (1) extend indefinitely a moratorium on issuing new CD endorsements, (2) allow CD endorsements to be transferable, (3) remove the requirement that the CD endorsement holder be aboard the vessel during trips where harvest occurs, (4) remove outdated language and clarify the remaining rule language to reflect the proposed changes, and (5) update an outdated legal definition of the Biscayne National Park boundaries currently within 68B-24.002 to reference its legal definition in 68B-2.001.

The CD endorsement program was created in 2003 to prevent further expansion of the lobster dive fishery and to return the trapping, diving, and bully netting components of the commercial lobster fishery to their historical and harvest proportions. Because the intent of the program was to reduce effort in the dive fishery, the CD endorsement is not fully transferable and there is a moratorium on issuing any additional CD endorsements. The number of CD endorsements has dropped over time and the endorsement program, coupled with other agency actions related to the commercial lobster fishery, has returned dive fishery harvest levels to their historical proportions. The moratorium on issuing new CD endorsements is set to expire July 1, 2015. Extending the moratorium indefinitely and allowing the transfer of the endorsements will allow the fishery to continue to operate at current levels by maintaining the current number of endorsements, which is believed to be appropriate and sustainable.

The CD endorsement is the only endorsement that requires the endorsement holder to be on board the vessel during trips where lobster is harvested. This provision was originally put in place to reduce effort by preventing the use of the CD by anyone other than the license holder. With the decrease in the number of CD endorsements over time and allowing the CD endorsement to be transferred, the requirement that the CD holder be on board the vessel is no longer needed.

The effect of this rule amendment will be to allow the commercial dive fishery for spiny lobster to continue to operate at its current level, and to allow anyone diving from a CD-licensed vessel to participate in the commercial harvest of spiny lobster. Additional effects of this rule amendment will be to remove outdated rule language, clarify the remaining rule language related to the CD endorsement, and update the legal definition of Biscayne National Park boundaries with the correct reference.

SUMMARY: Rule 68B-24.0055, FAC, will be modified to extend a moratorium on issuing new CD endorsements indefinitely, allow CD endorsements to be transferable, remove the requirement that the CD endorsement holder be on board a vessel during harvest, remove outdated language related to qualification for CD endorsements, and clarify the remaining rule language to reflect the proposed changes. Rule 68B-24.002 will be modified to update the legal definition of the Biscayne National Park boundaries by correcting the reference to its current legal definition in 68B-2.001.

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 April 14 – 16, 2015, 8:30 a.m. – 5:00 p.m.

PLACE: Florida A&M University Alfred Lawson Jr. Multipurpose Center, 1800 Wahnish Way, Tallahassee, Florida 32307

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, (850) 487-0554.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

68B-24.002 Definitions.

As used in this rule chapter:

(1) No change

(2) "Biscayne National Park" means all state waters lying within the boundaries of Biscayne National Park, a legal description of which can be found in 68B-2.001 subsection 68B-28.004(2), F.A.C.

(3) through (14) No change

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-2-87, Amended 7-2-90, 3-1-92, 6-1-94, 10-4-95, Formerly 46-24.002, Amended 7-7-03, 4-1-04, 7-1-08, 7-1-15.

68B-24.0055 Commercial Requirements; Appeals.

(1) No change

(2) ~~Beginning in the 2004-2005 fishing season, in addition to a valid saltwater products license with a restricted species endorsement and a valid crawfish endorsement, a~~ A commercial dive permit is required to harvest spiny lobster in commercial quantities by diving. This permit is in the form of the letter D ~~being added to the end of the existing~~ crawfish number. ~~Application for issuance of a commercial dive permit shall be made on a form provided by the Commission (Form DMF SL0610 (4-04), Commercial Dive Permit Application), incorporated herein by reference.~~

~~(a) The applicant must have documented commercial dive lobster landings pursuant to Commission trip ticket records generated under the provisions of Rule Chapter 68E-5, F.A.C., during the license year July 1, 2000 through June 30, 2001, July 1, 2001 through June 30, 2002, or during the license year July 1, 2002 through June 30, 2003.~~

~~(b) Commercial dive permits will not be issued to or renewed for applicants who own one or more lobster trap certificates. Trap certificates may only be transferred during the period June 15 to March 1 each year. An applicant who is otherwise eligible to receive a commercial dive permit in 2004-2005 but holds lobster trap certificates after March 1, 2004, may receive a commercial dive permit if the commission is directed in writing to deactivate his/her lobster trap certificate account. Failure on the part of such an applicant to obtain the commercial dive permit for the 2004-2005 season is a waiver of eligibility for the dive permit until such a time that the commission authorizes issuance of new commercial dive permits.~~

~~(a)(e) Effective January 1, 2005 and until July 1, 2015, no new commercial dive permits will be issued and no commercial dive permit will be renewed or replaced except those that have remained were active since during the 2004-2005 fishing season. Existing permits may only be issued to a single saltwater products license with a valid crawfish endorsement and a valid restricted species endorsement. Beginning in the 2005-2006 license year and in subsequent license years until July 1, 2015, persons holding a commercial dive permit that was active during the 2004-2005 license year or an immediate family member of that person must request renewal of the commercial dive permit before September 30 of each year.~~

~~(d) An applicant who possesses both an individual saltwater products license and a vessel saltwater products license shall be considered to have only one saltwater products license for purposes of issuing a commercial dive permit. Landings reported on all the applicant's individual and vessel saltwater products licenses shall be used for~~

determining if the applicant meets the criteria for receiving a single commercial dive permit specified in this subsection.

~~(e) In the event of death or disability of a person holding an active commercial dive permit, the permit may be transferred by the person or the executor of the estate to a member of his or her immediate family.~~

~~(f) Appeals. The Director of the Division of Marine Fisheries, or one or more designees of the director, shall consider disputes and other problems arising from the initial denial of the commercial dive permit. The Director shall submit a recommendation to the Executive Director of the Commission for resolution of the appeal, which recommendation shall either allot a permit to the appellant or uphold the denial of a permit.~~

~~1. An appeal of the initial denial of a commercial dive permit is initiated by submission of a completed appeals form (Form DMF-SL-0620 (04-04), incorporated herein by reference) to the Director of the Division of Marine Fisheries before May 1, 2004.~~

~~2. The burden of proof shall be on an appellant to demonstrate, through copies of trip tickets or other proof of landings, legitimate sales to a licensed wholesale dealer that were not reported by the dealer during the qualifying years or included in the agency landings database as of January 31, 2004.~~

~~3. The Executive Director of the Commission may accept or disapprove the recommendations of the Director of the Division of Marine Fisheries, with notice given in writing to each party in the dispute explaining the reasons for the final decision. The action of the Executive Director of the Commission constitutes final agency action, and is appealable pursuant to the requirements of Chapter 120, F.S.~~

~~(3) The commercial spiny lobster dive permit authorizes the holder to harvest spiny lobster in commercial quantities.~~

~~(b)(a) A commercial dive permit may be issued only on a vessel saltwater products license.~~

~~(c)(b) Each unique A commercial dive permit number may only be issued on one of the holder's vessel saltwater products licenses at any time in any one fishing year.~~

~~(e) A corporation that holds a commercial dive permit must designate a person who is thereby authorized to represent and harvest under the corporation's dive permit.~~

~~(d) Failure to renew the commercial dive permit by September 30 of each year will result in forfeiture of the endorsement.~~

~~(3) Transferability. A commercial dive permit is transferable upon approval of the Commission under the following conditions:~~

~~(a) The buyer must hold a saltwater products license with a valid restricted species endorsement.~~

~~(b) A person who wishes to transfer a permit number shall submit a notarized statement of intent within 72 hours of the final notarized signature, that has been signed by both parties to the transaction, hand delivered, or sent by United States Postal Service certified mail, return receipt requested, to the Commission between May 1 and the end of February. Requests received by the Commission before May 1 or postmarked after the end of February of the current license year will not be processed. The statement of intent (Form DMF-SL2410 (02-15), found online at <http://www.flrules.org>, incorporated herein by reference), shall include the following information:~~

~~1. The name, address, and SPL number of seller;~~

~~2. The name, address, and SPL number of buyer; and~~

~~3. The selling price.~~

~~(c) A commercial dive permit shall not be transferred or renewed until all license fees, surcharges, and any other outstanding fees, fines, or penalties owed to the Commission by either party to the transaction have been paid in full.~~

~~(d) Commercial dive permits will not be transferred to or renewed for applicants who own one or more lobster trap certificates. An applicant who is otherwise eligible to receive a commercial dive permit but holds lobster trap certificates may receive a commercial dive permit if the applicant notifies the commission in writing that that he/she is surrendering his/her trap certificates to the Commission. During any period of trap reduction, any certificates surrendered to the Commission shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period.~~

~~(e) In the event of the death or permanent disability of a person holding a commercial dive permit, the permit may be transferred by the license holder or the executor of the estate to a member of his or her immediate family within 12 months of the date of death or disability and upon payment of all outstanding fees, fines, or penalties to the Commission in full.~~

(4) Commercial harvest limits:

(a) ~~Beginning August 6, 2004,~~ Persons harvesting lobster commercially by diving in Broward, Dade, Monroe, Collier, and Lee Counties or adjacent federal EEZ waters shall be subject to a daily vessel harvest and possession limit of 250 spiny lobsters per day. For purposes of this paragraph, persons shall be considered to be harvesting lobster by diving if they are harvesting pursuant to a saltwater products license with a restricted species endorsement and crawfish license with a commercial dive permit and are simultaneously in possession of any artificial underwater breathing apparatus or gear.

(b) No change

(5) No change

Rulemaking Authority Art IV, Sec. 9, Fla. Const. Law Implemented Art IV, Sec. 9, Fla. Const. History—New 7-1-01, Amended 7-7-03, 4-1-04, 7-15-04, 3-21-10, 7-1-15.

PROPOSED EFFECTIVE DATE: July 1, 2015

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

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 5, 2015

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: January 8, 2015