



Restricted Species Endorsement

Draft Rule

February 5, 2015

Florida Fish and Wildlife Conservation Commission
Division of Marine Fisheries Management

This document summarizes a draft rule for the Florida Fish and Wildlife Conservation Commission's (FWC) Restricted Species Endorsement (RS) regulations, 68B-2.006, Florida Administrative Code (FAC). The proposed draft rule would modify the qualification requirements for an RS to incorporate industry requests as well as provide clarification and consistency.

Authors: Krista Shipley and Melissa Recks

Report date: January 5, 2015

Need for Rulemaking

- Restricted Species Endorsement (RS) originally established in Florida Statute
- Commission brought into FWC rules in June 2014
 - Directed staff to work with industry on potential rule changes
- Modifications, updates, and clarifications needed for some RS qualification criteria



The RS was created by the Florida Legislature in 1987 at the request and with support from Florida's commercial fishing industry. There is no fee associated with the RS, so all aspects of the endorsement fall under FWC's constitutional authority. In June 2014, the Commission brought the RS regulations into FWC rules to allow the FWC to better respond to the needs of the industry. When the RS was moved into the FAC, the Commission directed staff to return with potential rule changes based on industry input.

Changes proposed at this time include modifications to the qualification requirements that were requested by the industry. Other proposed changes include clarifications and updates to portions of the endorsement program. Staff have been working in cooperation with the industry on all of these modifications.

Restricted Species Endorsement – Background

- Allows holder to commercially harvest/sell species designated as restricted
- No cost
- Fisher must meet certain qualifying criteria
- Established by Legislature at industry request to:
 - Promote sustainability of certain commercially important species
 - Professionalize commercial fishery
 - Ensure harvest under commercial licenses is for commercial purposes



Florida's primary, basic commercial fishing license is the Saltwater Products License (SPL). The SPL is open access and entitles the holder to harvest commercial quantities of saltwater products, use commercial gear, and sell saltwater products to wholesale dealers. However, fishers are required to have additional endorsements to commercially harvest and sell certain species.

The RS is one such endorsement. The RS authorizes the holder to commercially harvest and sell species designated as "restricted species" by the FWC. Prior to the creation of the RS, some of Florida's recreational fishermen were using the \$50 individual SPL for recreational harvest, enabling them to harvest commercial quantities of their favorite species and keep them for personal consumption, thus circumventing the recreational bag limits. The RS program was implemented by the Florida Legislature at the request of and in coordination with Florida's commercial fishing industry to address this and other issues within the fishery. There is no fee associated with the RS, but fishers must qualify to receive it.

The RS was created as a means to promote the sustainable harvest of the state's most valuable commercial species and professionalize the commercial fishery. While many species are still available to be harvested by legitimate commercial fishermen who do not hold an RS, the most heavily targeted species are designated as restricted. The RS program contributes to a professional commercial fishery by preventing full-time commercial fishermen who depend on the fishery as their primary source of income from having to compete with fishermen who only occasionally fish commercially, and by ensuring fish harvested under Florida's commercial licenses (and the higher bag limits typically associated with the commercial fishery) are indeed being harvested for commercial purposes and ultimately ending up in the seafood market.

RS Qualification Requirements

- Must be at least 16 years old
- Must meet one of the qualifying requirements
 - \$5,000 or 25% of total income, whichever is less, attributed to the sale of saltwater products in 1 of the last 3 years
 - Special qualifying provisions available based on:
 - Age
 - Disability
 - Military or veteran status
 - Purchase of a used commercial fishing vessel
- Holder must requalify every 3 years



In order to receive an RS, an individual must be at least 16 years old and meet the qualification requirements designed to demonstrate that the individual is a professional commercial fisher. The primary means of qualifying is to demonstrate that the applicant has harvested and sold at least \$5,000 worth of saltwater products during one of the previous three years or that at least 25% of that person's income for one of the previous three years was attributed to the sale of saltwater products, whichever is less. This income can be verified in a variety of ways such as the validation of trip tickets associated with that person's SPL or by presenting FWC with a crew-share statement that affirms the individual received payment generated from the sale of saltwater products as compensation for their service as a crew member on a commercial vessel.

There are also several special qualifying provisions that either exempt a fisher from the income requirements or that provide a reduced qualifying requirement based on a person's age, disability status, active military or military veteran status, or because the person has recently purchased a used commercial fishing vessel that they intend to use to fish commercially.

Except for a permanent RS issued to someone age 62 or older or to a person who has become totally and permanently disabled, the RS qualification is valid for three years, after which a person must requalify.

Restricted Species

Amberjack*	Hogfish*	Snapper*
Black Drum	King Mackerel*	Spanish Mackerel
Blue Crab*	Marine Life*	Spiny Lobster*
Bluefish	Mullet	Spotted Seatrout
Cobia	Permit	Stone Crab*
Dolphin*	Pompano	Swordfish*
Flounder	Sea Bass*	Triggerfish*
Golden Tilefish*	Sheepshead	Tripletail*
Grouper*	Shrimp*	Wahoo*

* Additional permits or endorsements are or may be required

This slide lists the species that are currently designated as restricted by FWC. A commercial fisher must possess an SPL with an RS in order to harvest commercial quantities of these species or to sell these species.

Asterisks indicate species that require federal permits, additional state-issued endorsements beyond the SPL and RS, or that require additional licenses related to where the fishing occurs and which gear is used.

Summary of Proposed Changes

68B-2.006 Restricted Species Endorsement

- Remove language referencing outdated provisions
- Clarify and update income verification requirements
- Provide an additional avenue to certify disablement
- Increase the amount of time family members have to apply for a new RS after an RS holder dies or becomes disabled
- Modify the qualifying requirements associated with the purchase of used commercial fishing vessels



The proposed draft rule would make a series of changes to the qualifying criteria for the RS.

The first set of proposed changes deals with removing language referencing outdated provisions. The first would remove references to an affidavit demonstrating retail sales prior to 1990 as a means of verifying income. This was included when the RS was created to accommodate SPL holders who harvested saltwater products for sale within their own retail market or restaurant. Since sales from recent years do not apply and no one has qualified under this provision in many years, this form of income verification is no longer necessary. The next proposed change would be a cleanup measure to remove language in the veteran's exemption that can be removed because that portion of the exemption has expired. This will have no effect on the veteran's exemption that went into effect on July 1, 2014.

The proposed draft rule also includes updates and clarifications to the income verification requirements, such as clearly listing what forms of income verification are acceptable when verifying income from saltwater products and overall income as defined by the rule. The proposed draft rule also provides a form for Certified Public Accountants to use when supplying a notarized statement of income.

The next group of proposed changes would apply to individuals receiving an RS via exemptions to the income qualification requirements due to their own disablement or the death or disablement of an immediate family member who held an RS. The first change would provide an additional way for an individual to document that they are totally and permanently disabled. The next change would increase the amount of time a family member of an RS holder who dies or becomes disabled has to apply for an RS, increasing the time from one to three years, and waiving the income qualification requirement for a full license year from the time the RS is issued. This change would allow families more time to deal with other aspects of having a loved one die or become disabled without the pressure to immediately get their fishing operation back up and running.

Additional details for the above proposed changes as well as details of other minor changes in these categories can be found in the supplementary information at the end of this presentation.

The final set of proposed changes would address the current misuse of the vessel purchase exemption and will be the focus of the remainder of the presentation.

Vessel Purchase Exemption – Current Situation

Intent and Approach

- Facilitate the sale of commercial fishing operations to new fishers
- Purchase of a used commercial vessel substitutes for RS qualifying income requirement for a complete license year
- Seller must hold or qualify for their own RS

Misuse of Exemption

- Selling vessels that are not commercial fishing vessels
- Sellers buying back the vessels to requalify themselves
- Over 30% of persons never record commercial sales



The final proposed suite of changes would address ongoing misuse of the exemption for persons who purchase a used commercial fishing vessel. The vessel purchase exemption was intended to facilitate the sale of entire commercial fishing operations to new fishers and make it easier for a person to start up a successful fishing business by giving the buyer a reasonable amount of time to earn the income necessary to qualify for an RS endorsement themselves. Under this exemption, a person who buys a used commercial fishing vessel from someone who holds (or qualifies for) an RS is exempt from the income requirements for one year during this beginning stage of their commercial business. The seller retains his/her original RS and the buyer receives a new one.

In recent years, FWC staff have become aware of the misuse of this exemption, with individuals using the exemption in ways that are not consistent with its original intent, and instead using it as a means to bypass the RS qualification requirements. Some individuals are taking advantage of this exemption by buying vessels that have never been used to commercially fish and cannot reasonably be used to commercially fish, such as kayaks or small inflatable or wooden boats, in order to receive the RS for one year. These transactions occur repeatedly with sellers offering the same small vessel, along with the RS exemption, over and over again, in order to qualify multiple individuals using the same vessel. Eventually, the original owner buys the vessel back in order to get a new RS when his or her one-year RS expires. This activity results in private individuals (who are often not even fishermen) exchanging the RS qualification for profit.

It also appears that many of the RS endorsements obtained with this exemption are being used for non-commercial purposes. Over 30% of the individuals who have qualified under this exemption in recent years never report any sales of saltwater products after qualifying, indicating that many of them are likely recreational fishers who are using the RS to circumvent recreational bag limits (which explains the lack of sales). Members of the commercial fishery are also expressing concerns about this practice and have asked that the agency implement additional regulations to deter this misuse.

Vessel Purchase Exemption – Proposed Changes

Change

- Buyer's RS would only be attached to the purchased vessel
- Seller must qualify for the RS by means other than the vessel purchase exemption

Clarify

- Seller requirements:
 - Must commercially register vessel prior to sale
- Buyer requirements:
 - Must commercially register vessel prior to applying for RS
 - Must be the owner at the time of RS application



The proposed changes to the vessel purchase exemption would reduce opportunities for misuse while preserving the exemption's original intent of allowing new individuals to enter the commercial fishery for restricted species by buying an existing fishing operation and starting their own business.

With few exceptions, once a person qualifies for the RS it is linked to all the SPLs that the person holds. The proposed changes would require the buyer to obtain a vessel SPL for the purchased vessel and limit the use of the one-year RS granted under the exemption to that vessel SPL. In the event that the purchased vessel becomes inoperable during the year that the temporary RS is valid, the buyer could transfer the RS to another vessel SPL. The one-year RS issued under this exemption could not be placed on an individual SPL. This change would help prevent an individual from buying a vessel that could not feasibly be used to commercially fish with the intent of using this exemption to gain an RS for use on a vessel the individual already owns. Additionally, the proposed changes would require that the seller of the used commercial vessel qualify for the RS because they have actually sold the required amount of saltwater products during the last three years, or because they qualify due to an exemption other than the vessel purchase exemption. This would prevent sellers from selling vessels over multiple years without ever having to qualify for the endorsement themselves.

The proposal would also clarify that the vessel being sold must be registered with the state (or the US Coast Guard) by the seller as a commercial vessel at the time of sale and registered as a commercial vessel by the buyer prior to applying for the RS. Finally, the proposal would clarify that the buyer must still be the registered owner of the vessel at the time he or she applies for the RS. This, along with the proposal to tie the RS to the purchased vessel, will deter misuse by limiting the opportunity for multiple individuals to receive this exemption through a series of rapid sales of a single vessel.

Industry Feedback: All Proposed Changes

- Proposed changes have received broad industry support
- Industry has provided some suggestions for additional changes

Staff recommends proceeding with proposed changes now and continuing to work with the industry on possible additional changes at a later date



Staff have been working closely with the commercial fishing industry on this proposal. In general, we have received very positive feedback from the industry. However, some members of the commercial fishing industry have suggested additional changes, beyond those recommended here. One proposal that could help further limit misuse of the vessel purchase exemption would be to require that any vessel purchased by a potential fisher have previous verifiable saltwater products landings associated with it before the buyer would be eligible to receive the exemption to RS qualifying requirements. However, this would mean that only those vessels that were previously licensed and fished under a vessel SPL could be used to receive an RS under this exemption. A potential commercial fisher would not be able to qualify using a purchased vessel that was fished under an SPL issued to an individual. Because this change could potentially exclude legitimate commercial fishermen from entering the fishery, staff would prefer to try the other recommended measures first and see if they adequately address the problem before making this change.

Members of the industry have also suggested that FWC consider allowing verifiable commercial landings of freshwater fish to count toward the income requirements for receiving an RS. While FWC staff appreciate the benefits of this option, Florida's small commercial freshwater fishery does not currently report its landings through the trip ticket system. Because of this, we are not able to offer this to Florida's freshwater commercial fishers at the present time. Staff would need additional time to gather public input on this topic and research how to administer the process before it could be implemented.

Finally, persons who are permanently disabled and people over the age of 62 that meet certain criteria are not required to requalify for the RS, essentially receiving a "permanent" RS. Some stakeholders have asked that this permanent status be retained if the person dies and passes their vessel or their business down to a family member. However, other members of the industry believe the new owner should be required to requalify after the initial period of time offered under the established exemption related to the death of an RS holder (as discussed earlier) expires.

Staff recommends the changes presented earlier in the presentation be implemented now to address the immediate needs of the agency and the fishery. However, staff would like to continue to work with the industry on these suggestions and other possible future changes to the RS regulations and return at a later date with any additional changes that may be needed.

Staff Recommendations

Approve the proposed draft rule to modify 68B-2.006, Restricted Species Endorsement

- Remove outdated provisions
- Modify and clarify RS income requirements
- Provide an additional way for people to document disability
- Increase timeframe for family members to apply and qualify for RS after death or disablement of an RS holder
- Modify qualification requirements associated with the RS vessel purchase exemption

If approved and directed, return for a final public hearing at the April Commission meeting



Staff recommends approving the proposed draft rule that would remove outdated RS provisions, modify and clarify RS income requirements, provide an additional avenue for documenting that a person is totally and permanently disabled, increase the amount of time family members have to apply for the RS after the death or disablement of the RS holder, and modify requirements associated with the RS vessel purchase exemption.

If approved and directed, staff will return for a final public hearing in April.

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



Remove Outdated Language

- Remove affidavit demonstrating retail sales by harvester before 1990
- Clean up language for the veteran's exemption



The proposed rule changes would remove references to an affidavit demonstrating retail sales prior to 1990 as an allowable means of verifying income. This source of income verification was included when the RS was created to accommodate SPL holders who harvested saltwater products for sale within their own retail market or restaurant, but sales from recent years do not apply and no one has used it to qualify for an RS in many years, making this form of income verification outdated.

Another proposed change would be a cleanup measure to remove language in the veteran's exemption that is unnecessary because that portion of the exemption has expired. This will have no effect on the current veteran's exemption, which went into effect on July 1, 2014.

Income Verification – Proposed Clarifications

- Qualifying sales of saltwater products must be to a licensed wholesale dealer
- Clearly list acceptable ways to verify income from sale of saltwater products and overall income
- Federal income tax forms submitted must be complete
- Provide a form for statement of income by a CPA
- Age 62 and older: qualifying sales must be from 1 of last 3 years



The proposed rule changes would also provide a series of clarifications and updates related to the income requirements associated with qualifying for an RS.

Proposed changes with respect to verifying income from sales of saltwater products would include clarifying that qualifying sales must be to a licensed wholesale dealer. This clarification would be consistent with existing regulations for the sale of commercially caught fish because Florida Statutes require that SPL holders only sell their catch to licensed wholesale dealers.

The proposed changes would further clarify what means are acceptable for verifying the fisher's total annual income when qualifying by demonstrating that the required proportion of their total income is attributable to sale of saltwater products. The proposed changes would clarify that federal income tax forms submitted to FWC in order to verify income must contain the entire, complete tax form.

The RS qualification regulations would also be updated to provide a form for use by a Certified Public Accountant (CPA) who is supplying a notarized statement of income.

Finally, persons age 62 and older are currently subject to lower income requirements for the purposes of RS qualification. Beginning at age 62, applicants must only demonstrate income of \$2,500 attributed to the sale of saltwater products, instead of \$5,000. The proposal would clarify that the \$2,500 of sales used to qualify person ages 62 and up must have been made during one of the last three years, as is the case with all verified income requirements for the RS.

Disability Documentation – Proposed Changes

Current exemption:

- Income requirements permanently waived for persons who become totally and permanently disabled after holding an SPL for 3 of the last 5 years

Proposed changes:

- Allow an additional type of documentation for an individual to demonstrate their disability
- Provide a form for certification by a licensed physician



The next set of proposed changes would apply to individuals receiving an RS via exemptions to the income qualification requirements due to becoming disabled. Currently, a person who becomes totally and permanently disabled is permanently exempt from the RS qualification requirements, as long as that person held an SPL during at least three of the five years prior to becoming disabled.

The first change being proposed would provide an additional way for a person to be certified as totally and permanently disabled. This exemption would retain the current means of certification, including certification by the U.S. Department of Veterans Affairs, a branch of the U.S. military, the Railroad Retirement Board, the Social Security Administration, or a licensed physician, but would now allow certification for the purposes of worker's compensation as an additional means of verification. Additionally, a form would be provided for licensed physicians to use when certifying a person as totally and permanently disabled, helping ensure that an individual's application for this exemption has all of the necessary information for verification of the disability the first time they apply, expediting the process for both the applicant and the FWC.

Death or Disablement of a Family Member – Proposed Changes

Current exemption:

- Income requirement waived for 1 license year for an immediate family member of an RS holder who wishes to carry on the fishing operation after the holder dies or becomes disabled

Proposed changes:

- Extend the allowable application time from 1 to 3 years
- Waive qualification requirement for 1 full license year after issuance
- Clarify that RS held by person who dies or is disabled must have been valid at that time



Under the death or permanent disablement exemption, an immediate family member who wishes to carry on the family commercial fishing business is exempt from the income qualification requirements for one full license year following the death or permanent disablement of the original RS holder.

The proposed changes would extend the timeline under which a family member may apply for a new RS from one year to three. This would provide family members with more flexibility by allowing additional time to transfer the fishing operation. The rule would also waive the income qualification requirement for that family member for a full license year from the time the RS is issued, not just from the time the original RS holder died or became disabled. These changes would give families more time to deal with other aspects of having a loved one die or become disabled without the pressure to immediately get their fishing operation back up and running. Further, the proposed changes would clarify that the RS held by the original fisher must have been valid at the time of their death or disablement in order for this exemption to apply.