

NOTICE OF PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION: Marine Fisheries

RULE NO.:
68B-14.005

RULE TITLE:
Regulation and Prohibition of Certain Harvesting
Gear: Allowable Gear, Incidental Bycatch, Violation

PURPOSE AND EFFECT: The purpose of this rule amendment is to modify the Commission's Reef Fish Gear Rule to become consistent with federal reef fish gear regulations in the South Atlantic. NOAA Fisheries Service has published rules that include a requirement to use dehooking tools when releasing fish in federal South Atlantic waters. This provision went into effect July 29, 2009 and was designed to lower discard mortality of snapper-grouper species. Dehooking tools are widely used by commercial and recreational fishers and are a proven way of reducing handling and associated mortality of fish that are returned to the water. The Commission is considering changes to state regulations that would require a dehooking tool to be aboard commercial and recreational vessels and to be used as needed when releasing reef fish in the Atlantic Ocean.

The following rule amendment would change state regulations to be consistent with federal regulations: require a dehooking tool to be aboard commercial and recreational vessels and to be used as needed to remove hooks from fish in the Atlantic Ocean when fishing for reef fish.

The effect of this rule amendment is that federal and state regulations regarding reef fish gear would be applied more consistently to all reef fish fishing activity in the Atlantic Ocean. The overall effect is to more consistently apply regulations to minimize confusion for the public and aid in enforcement of both state and federal fishery regulations. By adopting these regulations the State of Florida will also be taking steps to reduce discard mortality of reef fish which should help to ensure a larger sustainable harvest for the future.

SUMMARY: 68B-14.005 F.A.C (Regulation and Prohibition of Certain Harvesting Gear: Allowable Gear, Incidental Bycatch, Violation) would be amended to require a dehooking tool to be aboard commercial and recreational vessels and to be used as needed when releasing reef fish in the Atlantic Ocean.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: *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.*

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for lower cost regulatory alternative 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 regular meeting of the Commission, December 9-10, 2009, 8:30 a.m. to 5:00 p.m., each day.

PLACE: John Boy Auditorium, 1200 South W.C. Owen Avenue, Clewiston, FL, 33440

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: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, and (850) 487-0554.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

68B-14.005 Regulation and Prohibition of Certain Harvesting Gear: Allowable Gear, Incidental Bycatch,

Violation.

(1) through (2) No change.

(3) Required gear in the Gulf reef fish fishery. Beginning June 1, 2008, for a person on board a vessel harvesting any of the species listed in subsection 68B-14.001(2), F.A.C., the vessel must possess on board and such person must use the gear specified in paragraphs subparagraphs (a), (b), and (c)1, 2, and 3.

(a) through (c) No change.

(4) Required gear in the Atlantic Ocean reef fish fishery. For a person on board a vessel harvesting any of the species listed in subsection 68B-14.001(2), F.A.C., the vessel must possess on board and such person must use the gear specified in subparagraphs (a).

(a) Dehooking devices. At least one dehooking device is required and must be used as needed to remove hooks embedded in Atlantic reef fish with minimum damage. The dehooking device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking device must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Atlantic reef fish fishery.

~~(5)~~ (4) Violation. Possession of any of the species specified in subsection 68B-14.001(2), F.A.C., beyond the bycatch allowance in paragraph (2)(a), aboard a vessel fishing in state waters, while also in possession of unauthorized gear, constitutes a violation of subsections (1) and (2).

PROPOSED EFFECTIVE DATE: As soon as possible after adoption.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-11-86, Amended 2-1-90, 3-1-94, 10-4-95, 7-15-96, 1-1-98, 12-31-98, 6-1-99, Formerly 46-14.005, Amended 1-1-03, 3-1-05, 7-17-05, 7-1-07, 3-12-08, 4-1-08, _____.

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(S) ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850) 487-0554.

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: February 6, 2009

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: Reef Fish

RULE NO:
68B-14.005

RULE TITLES:
Regulation and Prohibition of Certain Harvesting
Gear: Allowable Gear, Incidental Bycatch, Violation

The purpose of this rule amendment is to modify the Commission's Reef Fish Gear Rule to become consistent with federal reef fish gear regulations in the South Atlantic. NOAA Fisheries Service has published rules that include a requirement to use dehooking tools when releasing fish in federal South Atlantic waters. This provision went into effect July 29, 2009 and was designed to lower discard mortality of snapper-grouper species. Dehooking tools are widely used by commercial and recreational fishers and are a proven way of reducing handling and associated mortality of fish that are returned to the water. The Commission is considering changes to state regulations that would require a dehooking tool to be aboard commercial and recreational vessels and to be used as needed when releasing reef fish in the Atlantic Ocean.

The following rule amendment would change state regulations to be consistent with federal regulations: require a dehooking tool to be aboard commercial and recreational vessels and to be used as needed to remove hooks from fish in the Atlantic Ocean when fishing for reef fish.

The effect of this rule amendment is that federal and state regulations regarding reef fish gear would be applied more consistently to all reef fish fishing activity in the Atlantic Ocean. The overall effect is to more consistently apply regulations to minimize confusion for the public and aid in enforcement of both state and federal fishery regulations. By adopting these regulations the State of Florida will also be taking steps to reduce discard mortality of reef fish which should help to ensure a larger sustainable harvest for the future.

SUMMARY OF PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: REEF FISH
RULE NO.:
68B-14.005

RULE TITLE:
Regulation and Prohibition of Certain Harvesting
Gear: Allowable Gear, Incidental Bycatch, Violation

68B-14.005 F.A.C (Regulation and Prohibition of Certain Harvesting Gear: Allowable Gear, Incidental Bycatch, Violation) would be amended to require a dehooking tool to be aboard commercial and recreational vessels and to be used as needed when releasing reef fish in the Atlantic Ocean.

FEDERAL COMPARISON STATEMENT FOR PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: REEF FISH

RULE NO.:
68B-14.005

RULE TITLE:
Regulation and Prohibition of Certain Harvesting
Gear: Allowable Gear, Incidental Bycatch, Violation

The proposed rule would modify the Commission's Reef Fish Gear Rule to become consistent with federal reef fish gear regulations in the Atlantic Ocean. NOAA Fisheries Service has published rules containing regulatory actions for shallow-water groupers, which includes a requirement to possess onboard and to use dehooking tools as needed when releasing reef fish in the South Atlantic. Federal rule changes became effective on July 29, 2009. This proposed rule amendment creates consistency between Florida State Jurisdictional Waters and federal waters with regard to required gear for fishing for reef fish. The South Atlantic Fishery Management Council is the lead agency in the management of reef fish in the South Atlantic.

SUMMARY OF PUBLIC HEARINGS FOR PROPOSED RULES
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: REEF FISH

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In developing these rule amendments, the Commission relied upon the best available scientific information, discussions with industry representatives, and public testimony gathered at federally noticed publicly hearings, and publicly noticed Commission meetings. A draft rule was presented at a publicly noticed Commission meeting on September 10, 2009 in Howie-in-the-Hills, Florida.

**STATEMENT OF ESTIMATED REGULATORY COSTS
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: REEF FISH**

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A statement of estimated regulatory costs has not been prepared for this rule change because the agency has determined that this rule will not have a significant economic impact on a substantial number of small businesses. These gear rules should help reduce the bycatch mortality of snapper grouper (reef fish) species as regulations become more restrictive for gag grouper and vermilion snapper. If consistent rules are not adopted, the recovery plans for gag grouper and vermilion snapper may be delayed and lead to further restrictions on the fishery in the long term in order to end overfishing. Thus, there will likely be a greater impact to small businesses if the State of Florida does not adopt the proposed rule amendment that creates consistency between Florida State Jurisdictional Waters and the federal plan to end overfishing of gag grouper and vermilion snapper that is being implemented in federal waters.