

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

RULE NO.:
68B-14.0036

RULE TITLE:
Recreational Bag Limits: Snapper, Grouper, Hogfish,
Black Sea Bass, Red Porgy, Amberjack, Exception,
Wholesale/Retail Purchase Exemption
Recreational Grouper Season
Commercial Harvest Requirements; Licenses, Season
Closures, Bag and Trip Limits

68B-14.0039
68B-14.0045

PURPOSE AND EFFECT: The purpose of these rule amendments is to modify the Commission's Reef Fish Rule to become consistent with federal reef fish regulations in the South Atlantic. NOAA Fisheries Service has published rules that reduce commercial and recreational fishing for all shallow-water grouper, in order to protect gag, red, and black grouper. A stock assessment completed in 2007 showed that gag grouper are undergoing overfishing, and past stock assessments have shown that red and black grouper are undergoing overfishing. The permanent federal regulations for shallow-water grouper became effective on July 29, 2009, and include all shallow-water grouper species in order to reduce discard mortality of gag, red, and black grouper. The Commission is considering changes to state regulations that would 1) decrease the Atlantic recreational aggregate grouper bag limit from five to three fish per person per day, 2) reduce the recreational bag limit for gag and black grouper in the Atlantic from two fish combined to one fish combined, 3) prohibit the captain and crew of for-hire vessels from retaining any species in the aggregate grouper bag limit, 4) implement an Atlantic recreational season closure for all shallow-water grouper from January 1 through April 30, and 5) amend the Atlantic commercial season closure to include all shallow-water grouper and to expand to January 1 through April 30.

The effect of these rule amendments is that federal and state regulations can be applied more consistently to all 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 contributing to the South Atlantic effort to reduce fishing pressure on gag, red, and black grouper and allow populations of this species and others to expand. This should help ensure a larger sustainable harvest for the future.

SUMMARY: 68B-14.0036 F.A.C. (Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjack, Exception, Wholesale/Retail Purchase Exemption) would be amended to decrease the Atlantic recreational aggregate grouper bag limit from five to three fish per person per day, reduce the recreational bag limit for gag and black grouper in the Atlantic from two fish combined to one fish combined, and prohibit the captain and crew of for-hire vessels from retaining any species in the aggregate grouper bag limit. In 68B-14.0039 F.A.C. (Recreational Grouper Season) an Atlantic recreational season closure for all shallow-water grouper from January 1 through April 30 would be established. 68B-14.0045 F.A.C. (Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits), would amend the Atlantic commercial season closure from March 1 through April 30 to January 1 through April 30 and expands the list of included species from gag and black to all shallow-water grouper.

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-14.0036 Recreational Bag Limits: Snapper, Grouper, Hogfish, Black Sea Bass, Red Porgy, Amberjacks, Tilefish, Exception, Wholesale/Retail Purchase Exemption.

(1) No change

(2) Grouper.

(a) Aggregate bag limit. Except as provided elsewhere in this rule, no recreational harvester shall harvest in or from state waters, nor possess while in or on state waters, more than a total of 4 grouper per day in the Gulf of Mexico excluding waters of Monroe County in any combination of species, or more than a total of 35 grouper per day in the Atlantic Ocean and all waters of Monroe County, in any combination of species. On any vessel licensed to carry customers wherein a fee is paid, either directly or indirectly, for the purpose of taking or attempting to take marine fish in the Atlantic Ocean and all waters of Monroe County, the applicable grouper bag and possession limit specified in this rule shall not extend to the operator of such vessel or any person employed as a crew person of such vessel.

(b) Red Grouper. Except as provided elsewhere in this rule, in all state waters of the Gulf of Mexico, except in all waters of Monroe County, within the aggregate bag and possession limit established in paragraph (a), no more than 2 fish may be red grouper. No recreational harvester may harvest in or from state waters of the Gulf of Mexico, except in all waters of Monroe County, nor possess while in or on the waters of the Gulf of Mexico, except in all waters of Monroe County, more than 2 red grouper.

(c) Gag and black grouper.

1. Except as provided elsewhere in this rule, in all state waters of the Atlantic Ocean and all state waters of Monroe County, within the aggregate bag and possession limit established in paragraph (a), no more than 12 fish may be a gag or a black grouper, ~~either individually or in combination.~~ No recreational harvester may harvest in or from state waters of the Atlantic Ocean or in or from state waters of Monroe County, nor possess while in or on the waters of the Atlantic Ocean or in or on state waters of Monroe County, more than 12 such fish.

2. Except as provided elsewhere in this rule, in all state waters of the Gulf of Mexico, except in all waters of Monroe County, within the aggregate bag and possession limit established in paragraph (a), no more than 2 fish may be gag grouper. No recreational harvester may harvest in or from state waters of the Gulf of Mexico, nor possess while in or on the waters of the Gulf of Mexico, except in all waters of Monroe County, more than 2 gag grouper.

(d) Gag, red and black grouper. In all state waters of the Gulf of Mexico, except in all waters of Monroe County, the daily bag and possession limit for captains and crew on for-hire vessels is zero.

(e) through (g) No change.

(3) through (9) No change.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-31-98, Amended 3-1-99, Formerly 46-14.0036, Amended 10-22-99, 1-1-00, 3-6-00, 3-1-01, 1-1-03, 1-3-05, 9-16-05, 1-1-06, 7-1-06, 7-1-07, 4-1-08, 1-6-09, 8-27-09, _____.

68B-14.0039 Recreational Grouper Seasons Season.

(1) In all state waters of the Gulf of Mexico, except in all waters of Monroe County, the closed season for the recreational harvest and possession of gag grouper, red grouper, black grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind or scamp shall be from February 1 through March 31, each year.

(2) In all state waters of the Atlantic Ocean, including all waters of Monroe County, the closed season for the recreational harvest and possession of gag grouper, black grouper, red grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind, scamp, coney, graysby, and tiger grouper shall be from January 1 through April 30 each year.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-6-09, Amended 8-27-09,_____.

68B-14.0045 Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits

(1) No change.

(2) Season Closures.

(a) through (d) No change.

(e) During the months of January, February, March, and April each year, the harvest, possession, or landing for commercial purposes, in quantities greater than the recreational bag limits specified in Rule 68B-14.0036, F.A.C., and the purchase, sale, or exchange, of gag grouper, or black grouper, red grouper, yellowfin grouper, yellowmouth grouper, rock hind, red hind, scamp, coney, graysby, and tiger grouper harvested from state waters of the Atlantic Ocean and from all state waters of Monroe County, is prohibited.

(f) through (h) No change.

(3) No change.

PROPOSED EFFECTIVE DATE: As soon as possible after adoption.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 2-1-90, Amended 12-31-92, 10-18-93, 3-1-94, 6-15-95, 1-1-96, 11-27-96, 12-31-98, 3-1-99, Formerly 46-14.0045, Amended 1-1-00, 3-6-00, 1-1-01, 3-1-01, 6-1-01, 1-1-03, 7-15-04, 5-20-05, 9-16-05, 3-10-06, 7-1-07, 4-1-08, 8-27-09,_____.

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 NOS:
68B-14.0036

68B-14.0039
68B-14.0045

RULE TITLES:
Recreational Bag Limits: Snapper, Grouper, Hogfish,
Black Sea Bass, Red Porgy, Amberjack, Exception,
Wholesale/Retail Purchase Exemption
Recreational Grouper Season
Commercial Harvest Requirements; Licenses, Season
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The purpose of these rule amendments is to modify the Commission's Reef Fish Rule to become consistent with federal reef fish regulations in the South Atlantic. NOAA Fisheries Service has published rules that reduce commercial and recreational fishing for gag, red, and black grouper. A stock assessment completed in 2007 showed that gag grouper are undergoing overfishing, and past stock assessments have shown that red and black grouper are undergoing overfishing. The permanent federal regulations for shallow-water grouper became effective on July 29, 2009, and include all shallow-water grouper species in order to reduce discard mortality of gag, red, and black grouper. The Commission is considering changes to state regulations that would 1) decrease the Atlantic recreational aggregate grouper bag limit from five to three fish per person per day, 2) reduce the recreational bag limit for gag and black grouper in the Atlantic from two fish combined to one fish combined, 3) prohibit the captain and crew of for-hire vessels from retaining any species in the aggregate grouper bag limit, 4) implement an Atlantic recreational season closure for all shallow-water grouper from January 1 through April 30, and 5) amend the Atlantic commercial season closure to include all shallow-water grouper and to expand to January 1 through April 30.

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SUMMARY OF PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: REEF FISH

RULE NO.:
68B-14.0036

RULE TITLE:
Recreational Bag Limits: Snapper, Grouper, Hogfish,
Black Sea Bass, Red Porgy, Amberjack, Exception,
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68B-14.0039
68B-14.0045

Recreational Grouper Season
Commercial Harvest Requirements; Licenses, Season
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FEDERAL COMPARISON STATEMENT FOR PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: REEF FISH

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68B-14.0045

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The proposed rule would modify the Commission's Reef Fish Rule to become consistent with federal reef fish regulations in the Atlantic Ocean. NOAA Fisheries Service has published rules containing regulatory actions for shallow-water groupers, specifically gag grouper, which is undergoing overfishing, black and red grouper, and other federally designated shallow-water groupers. 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 commercial and recreational harvest of certain grouper species. The South Atlantic Fishery Management Council is the lead agency in the management of reef fish in the South Atlantic, of which grouper is included.

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

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Recreational Grouper Season
Commercial Harvest Requirements; Licenses, Season
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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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68B-14.0039
68B-14.0045

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. If consistent rules are not adopted the recovery plan for gag grouper 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 that is being implemented in federal waters.