

Florida Fish and Wildlife Conservation Commission (Division 68)

Chapter 68F – Aquatic Plants

CHAPTER 68F-20 AQUATIC PLANT CONTROL PERMITS

68F-20.0015	Definitions
68F-20.002	Permits - Applications
68F-20.0035	Waters Exempt from Permitting
68F-20.0045	Criteria for Issuing, Modifying or Denying Permit Applications
68F-20.0055	Management Method Criteria and Standards, Operations and Reporting Requirements
68F-20.0075	Penalties

68F-20.0015 Definitions.

(1) "Aquatic plant" means any plant, including a floating, emersed, submersed, or ditchbank species, growing in, or closely associated with, an aquatic environment, and includes any part or seed of such plant.

(2) "Aquatic plant management" means an activity designed to control the growth of aquatic plants so as to protect human health, safety and recreation and, to the greatest degree practicable, to prevent injury to non-target plants, animal life, and property.

(3) "Beneficial aquatic plants" mean indigenous aquatic plant species that provide fish and wildlife habitat, water quality protection, and shoreline stabilization.

(4) "Section" means the Invasive Plant Management Section, an administrative subdivision of the Florida Fish and Wildlife Conservation Commission, located at 3900 Commonwealth Boulevard, MS 705, Tallahassee, Florida 32399-3000, telephone (850)245-2809.

(5) "Classes of Surface Water" means the classification of surface waters as defined by the Department of Environmental Protection, pursuant to Rule 62-302.400, F.A.C.

(a) "Class I – Public Water Supplies" means surface waters designated for human consumption.

(b) "Class II – Shellfish Propagation or Harvesting" means surface waters where shellfish are grown or harvested for human consumption.

(c) "Class III – Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife" means all surface waters of the state of Florida, which are not included in Class I, II, IV or V.

(d) "Class IV – Agricultural Water Supplies" means secondary and tertiary canals within agricultural areas.

(e) "Class V Waters – Navigation, Utility and Industrial Use" means waters designated for such use.

(6) "Collection" means the removal or gathering of any aquatic plant, including any part or seed thereof, from the place in which it is growing in the natural environment.

(7) "Connection" means any depression, ditch, canal, culvert, pipe, or any other natural or man-made conveyance, whether permanent or intermittent, which joins the surface water of one waterbody to the surface water of another waterbody in such a manner as to allow the interchange of water between the waterbodies. Waterbodies with conveyances which are subject to man-made controls, including but not limited to dams, weirs, water control gates, and valves which are preventing the interchange of water between waterbodies at the time of the use of an herbicide for aquatic plant management activities, and throughout any water use restriction periods required by the herbicide product label, shall not be considered to be connected.

(8) "Control area" means an area of water containing the aquatic plant management site within which opportunity exists for the mixture of water temporarily degraded by management activities with receiving or adjacent waters. This includes the area of water in which the use of a herbicide or mechanical aquatic plant management activity is undertaken.

(9) "Commission" means the Florida Fish and Wildlife Conservation Commission.

(10) "Ditchbank species" means those plants usually growing not directly in water but near water's edge at normal water level.

(11) "Eradication program" means a method for the control of non-indigenous aquatic plants in which control techniques are utilized in a coordinated manner in an attempt to kill all the target aquatic plants on a permanent basis in a given geographical area.

(12) "Herbicide" means any chemical product used to chemically control or regulate aquatic plant growth.

(13) "Maintenance program" means a method for the management of aquatic plants in which techniques are used in a coordinated manner, on a continuous or periodic basis, in order to maintain the target plant population at the lowest feasible level funding and technology will permit, as determined by the Commission.

(14) "Manatee aggregation site" means a specific area within a waterbody or canal system where manatees periodically congregate, as identified by the section in consultation with the U.S. Fish and Wildlife Service and the Commission's Imperiled Species Management Section.

(15) "Natural waters" means those surface waters created through geological and biological processes whether or not subsequently modified by man.

(16) "Noxious aquatic plant" means any part, including but not limited to seeds or reproductive parts, of an aquatic plant which has the potential to hinder the growth of beneficial plants, to interfere with irrigation or navigation, or to adversely affect the public welfare or the natural resources of this state.

(17) "Outstanding Florida Waters" means waters designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes as listed in Rule 62-302.700, F.A.C.

(18) "Permit" means a license issued by the commission, pursuant to this chapter.

(19) "Person" means individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(20) "Regional biologist" means a biologist employed by the section who is located in a region of the state designated by the section, and whose duties are to carry out the responsibilities of the section within the region as assigned.

(21) "Riparian owner" means a person who possesses fee title to property that extends to the ordinary high water mark of navigable waters, or to the bottom.

(22) "Sovereignty lands" means, pursuant to Article X, Section 11, Constitution of the State of Florida, the title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people.

(23) "Waters" or "Waters of the State" means rivers, streams, lakes, navigable waters and associated tributaries, canals, meandered lakes, enclosed water systems, and all other bodies of water.

(24) "Waters of Special Concern" means Class I and II waters, Outstanding Florida Waters, and waters designated by rule as a fish management area by the commission.

Specific Authority 369.20, 369.22 FS. Law Implemented 369.20, 369.22, 403.088 FS. History—New 2-9-82, Amended 7-9-85, Formerly 16C-20.015, 16C-20.0015, Amended 5-3-95, Formerly 62C-20.0015.

68F-20.002 Permits – Applications.

(1) No person shall attempt to control, eradicate, remove, or otherwise alter any aquatic plants in waters of the state, including those listed in Section 369.251, F.S., except as provided in a permit issued by the commission unless the waters in which aquatic plant management activities are to take place are expressly exempted in Rule 68F-20.0035, F.A.C.

(2) Permits issued pursuant to this chapter are not intended to allow for the collection and subsequent use of the removed plants, unless specifically provided for in the permit conditions.

(3) Application format and requirements:

(a) All applications for new permits or modifications to existing permits shall be submitted in accordance with the requirements of this rule.

(b) All application documents shall be submitted in an 8 1/2 by 11 inch format and be of good quality and

clearly legible.

(c) Each application shall be submitted on FWC form 50-032(16) (Aquatic Plant Management Application, effective date 5-3-95, which is hereby incorporated by reference), and is available at no cost from the section.

(d) All applications, except for those from government agencies, research institutions, and wastewater treatment facilities approved by the Department of Environmental Protection, shall be in the name of and signed by the riparian owner who shall, upon request, provide proof of riparian ownership. An application may be submitted by an agent of the riparian owner provided that the name, address, telephone number, signature of the riparian owner, and agent is provided on the application. Persons representing multiple riparian owners such as, but not limited to, governmental agencies and officers of homeowners associations may submit an application without the name, address, telephone number, and signature of all riparian owners. However, the name, signature, address, and telephone number of the contact person must be shown.

(e) As part of the application, the applicant shall provide the name of the waterbody, if it is named, and a map with directions to the proposed management site using county, state, and U.S. highway names and route numbers.

(f) As part of the application the applicant shall provide a detailed diagram of the proposed management site which shall contain at a minimum the following information:

1. Riparian owner's property boundaries, including dimensions.
2. Approximate water's edge at the time of the proposed application.
3. All prominent features such as docks, fences, trees, etc., located near the water's edge.
4. All aquatic plant communities located at the site identified by name or symbol, with a clear depiction of the aquatic plants proposed for control including the dimensions of the control area and the vegetation not to be controlled.
5. The proposed control method to be used.
6. Type of public notification to be used when applying herbicides with water use restrictions required by the herbicide product label.
7. Legends that explain all symbols and patterns used.

(g) Each applicant shall submit one complete application bearing original signatures and two copies of the complete application to the appropriate regional biologist.

(4) The regional biologist shall review and determine the completeness of each application and may conduct an on-site inspection.

(5) Final agency action on permit applications.

(a) All conditions of the permit shall be stated on the permit.

(b) Permits shall be effective for a period of three years from the date issued.

(6) Permit amendments:

(a) The permittee may request an amendment subject to the procedures and review criteria of this chapter.

(b) Following notice to the permittee, the commission is authorized to amend a permit issued pursuant to this chapter during the term of the permit to restrict or limit the scope of the permitted activity. This shall be done if necessary to ensure the protection of human health, safety, recreation, plant and animal life, and property.

(c) A permit issued pursuant to this chapter may be transferred at the written request of a new owner or assignee of the permitted property when accompanied by written consent from the permit holder. If any changes, additions, or modifications to the permit are requested, an application for a new permit must be filed for processing.

(7) It shall be the responsibility of the permittee to submit a renewal application 45 days prior to the expiration date of the permit.

(8) When a person enters into a contract with the commission to conduct aquatic plant management for research purposes or pursuant to an eradication or maintenance program initiated under Chapter 5B-64, F.A.C., or Chapter 68F-54, F.A.C., the execution of the contract shall constitute the commission's permit for aquatic plant management.

Specific Authority 369.20, 369.22 FS. Law Implemented 369.20, 369.22, 403.088 FS. History—New 5-8-77, Amended 2-9-82, 7-9-85, Formerly 16C-20.02, 16C-20.002, Amended 5-3-95, Formerly 62C-20.002.

68F-20.0035 Waters Exempt from Permitting.

- (1) No aquatic plant management permit is required by the commission for the following waters:
 - (a) Waters wholly owned by one person, other than the state, provided there is no connection to Waters of Special Concern.
 - (b) Class IV waters or artificially created waters used exclusively for agricultural purposes, provided there is no connection to Waters of Special Concern.
 - (c) Electrical power plant cooling ponds, reservoirs, or canals unless used as or connected to waters designated by the commission as manatee aggregation sites.
 - (d) In waters of 10 surface acres or less provided there is no connection to Waters of Special Concern. The acreage of waters in systems with any connections shall be calculated for each individual water rather than collectively as a system. Natural connections between non-exempt waters shall be considered part of those waters.
 - (e) In that specific area of a waterbody where a dredge and fill activity is permitted by the Department of Environmental Protection and aquatic plants are removed as a part of the permitted activity.
- (2) Although certain waters are exempt from the commission's permit requirements, all aquatic plant management activities shall be conducted in a manner so as to protect human health, safety, recreational use, and to prevent injury to non-target plant and animal life, and property, to the greatest degree practicable. When applying a herbicide in exempt waters, all persons shall comply with label rates, instructions, cautions, and directions, and shall follow the public notice requirements of paragraph 68F-20.0055(2)(c), F.A.C. No aquatic plant management activity using herbicides or mechanical harvesting equipment shall be conducted when manatees are in the control area in exempt waters. Copper-based herbicides shall not be used in any exempt waterbody connected to any natural waterbody designated as a manatee aggregation site without a permit from the commission.

Specific Authority 369.20, 369.22 FS. Law Implemented 369.20, 369.22, 403.088 FS. History—New 2-9-82, Amended 7-9-85, Formerly 16C-20.035, 16C-20.0035, Amended 5-3-95, Formerly 62C-20.0035.

68F-20.0045 Criteria for Issuing, Modifying or Denying Permit Applications.

- (1) The commission recognizes the varied human and environmental concerns for Florida's waters. Aquatic plant management permits shall be issued to allow persons reasonable access to, and use of, these waters while maintaining sufficient native vegetation to provide for environmental concerns such as the impact upon fish, wildlife, water quality, and shoreline stabilization. Native aquatic plant species in natural waters will not be considered for control unless the native species alone, or when intermingled with nonindigenous species, have become noxious.
- (2) In determining whether a permit shall be issued for aquatic plant management purposes, the commission shall consider the following criteria:
 - (a) The noxious aquatic plant species present and the potential of the target plants to create adverse effects.
 - (b) The amount and quality of the aquatic plants within the waterbody and the proposed management site, and their importance
 - (c) The positive or adverse impacts of the aquatic plant management activities on public interest considerations such as:
 1. Health and safety of the public.
 2. Navigation.
 3. General public's access to, or use of, the waterbody.
 4. Riparian property owners' access to, or use of, the waterbody.
 5. Swimming, fishing or other recreational activities.
 6. Water flow or the potential for flooding.

- (d) The positive or adverse impacts of the aquatic plant management activities on fish and wildlife considerations such as:
1. Endangered or threatened species, species of special concern, or their prey species and habitat.
 2. The potential of the management activities to improve habitat for the production of fish and wildlife, including non-game species.
 3. The potential of the plant management activities to increase or improve native aquatic plant species diversity.
- (e) The positive or adverse impacts of the proposed aquatic plant management activities on water quality considerations such as:
1. Native plant coverage which may protect or improve water quality.
 2. Native plant coverage which may prevent or reduce shoreline erosion and runoff.
 3. Nutrient levels, dissolved oxygen levels, deposition of organic matter, herbicide residues or other impacts on water quality outside of the control area designated by the commission.
- (f) The protection of the receiving waterbodies consistent with the classes of surface waters established pursuant to Chapter 62-302, F.A.C.
- (g) The potential of the proposed activity to spread noxious aquatic plants, or to promote the survival and growth of native aquatic plants.

(3) The commission will not issue more than one permit for the same activity at the same site, at the same time, in the behalf of a riparian owner.

(4) The removal, cutting, collecting, or altering in any way of mangroves, mangrove seeds (fruits) or propagules, or plants restricted by Rule 68B-42.001, F.A.C., are not regulated by this chapter and, therefore, shall not be permitted pursuant to Chapter 68F-20, F.A.C.

(5) If after review of a complete application the commission determines that the proposed activity does not conform to the criteria as established in Rule 68F-20.0045, F.A.C., the commission shall deny the permit.

Specific Authority 369.20, 369.22 FS. Law Implemented 369.20, 369.22, 403.088 FS. History—New 2-9-82, Formerly 16C-20.045, 16C-20.0045, Amended 5-3-95, Formerly 62C-20.0045.

68F-20.0055 Management Method Criteria and Standards, Operations and Reporting Requirements.

(1) Management Method Criteria and Standards

(a) Herbicide control activities:

1. All herbicide control activities shall be in conformity with label requirements of the product to be used.
2. Herbicides that require water use restrictions when used according to label requirements, and do not indicate a potable water intake setback distance on the label, must not be used to manage floating plants within 0.5 miles of a functioning potable water intake in a lake or within two miles upstream or 0.5 miles downstream of a functioning potable water intake in a river system.
3. When used to manage aquatic vegetation other than floating plants, herbicides that require water use restrictions when used according to label requirements, and do not indicate a potable water intake setback distance on the label, must not be used within two miles of a functioning potable water intake in a lake or within two miles upstream or 0.5 miles downstream of a functioning potable water intake in a river system.
4. When management activities, using a herbicide without a potable water setback distance, are to take place within two miles of a functioning potable water intake in a lake, or within two miles upstream or 0.5 miles downstream of a functioning potable water intake in a river system, written notice by certified mail must be given to the operator of the water treatment plant and to the section at least one week prior to the treatment activity, unless an alternative notification system has previously been approved by the commission.
5. When more than one herbicide is registered for use in an aquatic site, the commission shall require the use of the herbicide which it determines has the least adverse effect upon human health, safety,

recreational uses, non-target plants, fish, and wildlife. In determining which herbicide shall be used, the following criteria shall be considered:

- a. Which herbicide will provide the greatest protection to human health, safety, and recreational uses.
- b. Which herbicide will provide the greatest protection to non-target plant and animal life.
- c. Which herbicide will be most effective at controlling the targeted species.

6. No herbicide shall be permitted for use in violation of label requirements as registered by the Department of Agriculture and Consumer Services or the United States Environmental Protection Agency.

7. Application of herbicides shall be conducted at all times in a manner to cause the least possible adverse effect on human health, safety, recreational uses, non-target plants, fish, or wildlife.

8. Management activities using herbicides shall not be permitted in manatee aggregation sites when manatees are present except when automatic herbicide spreaders operating on timing devices have been authorized by a permit.

9. In order to protect the welfare, safety, and health of manatees, when manatees are sighted in a control area, all herbicide control operations must cease immediately (except when automatic herbicide spreaders operating on timing devices have been authorized by a permit), and shall not be resumed until all manatees have left the control area of their own volition. No manatee may be herded or harassed into leaving the control area.

10. Proposed herbicide treatments that may cause the rapid decay of aquatic vegetation and possible oxygen depletion, shall be required to be staggered or conducted in stages to allow time for recovery and stabilization of oxygen levels between treatments.

(b) Mechanical and Physical Control Activities:

1. Mechanical aquatic plant management operations shall be conducted in a manner which will not cause further significant spread of noxious aquatic plant species. All cut or harvested aquatic vegetation shall be deposited as prescribed in the permit. No substrate is authorized to be recontoured or removed under an aquatic plant management permit.

2. When manatees are sighted within 50 feet of mechanical operations, all operations must cease immediately and shall not be resumed until all manatees have left the mechanical operations area of their own volition. No manatees may be herded or harassed into leaving the control area.

3. An aquatic plant management permit is required to fluctuate water levels when the primary purpose is for aquatic plant management. A permit to fluctuate water levels may also be required from the appropriate water management district.

(c) Biological Control Activities:

1. The use of fish as a biological control for aquatic plants requires a permit from the commission which has statutory authority for the regulation of the use of fish.

2. All other biological control agents shall be used only if approved for general release by the U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services.

(2) Operations Requirements:

(a) All persons conducting aquatic plant management activities shall remove from the site and properly dispose of, in accordance with label instructions, all herbicide containers which result from aquatic plant management activities.

(b) All persons conducting aquatic plant management activities shall allow employees of the commission to conduct inspections, sample waters in management sites, observe control activities at management sites, and review records required by; subsection 68F-20.0055(3), F.A.C., of this chapter in order to determine compliance with the terms of this chapter and permit conditions. In addition, all persons shall allow employees of the commission, acting as agents of the Department of Agriculture and Consumer Services, pursuant to an interagency memorandum of understanding (effective date 22 May 1985, which is hereby incorporated by reference and is available from the section) to remove samples from spray tanks to ascertain compliance with the terms of this chapter, and permit conditions.

(c) Prior to undertaking herbicide control activities, each permittee shall notify potential users of waters, subject to or affected by the aquatic plant management activities, if there are use restrictions on the herbicide label for treated waters. The permittee must use one or more of the following methods of notice, which shall be stated on the permit, for posting water-use restrictions to properly notify the affected public:

1. The posting of signs at access points.
2. The publication of notice in a newspaper of general circulation in the affected area.
3. The placement of notices at the management site.
4. The establishment of a signal or marker system.
5. Giving notice at established point of contact.
6. Other methods, approved in advance by the commission, designed to reach the affected public.

(d) The notice shall include, at least, the types of activities which will be temporarily prohibited, or restricted, and the dates for which these prohibitions, or restrictions, are applicable. The notice must remain posted during the period for which any use restrictions are in effect.

(e) Any person engaged in aquatic plant management must have a copy of the aquatic plant management permit when conducting control activities, unless activities are being undertaken pursuant to Chapter 68F-54, F.A.C.

(f) If the commission finds that immediate, serious danger to the public health, safety, or welfare requires emergency action, it is authorized, to suspend, restrict, or limit the scope of the permitted activity by emergency order. Any emergency action taken pursuant to this rule shall be promptly reported to the Commissioners as agency head.

(3) Reporting Requirements:

(a) Each permittee shall maintain records of herbicide use conducted pursuant to this chapter on FWC Form 50-031(16) (Aquatic Plant Management Annual Operations Report, effective date 5-3-95, which is hereby incorporated by reference and is available from the section). An equivalent report may be used provided it is approved in advance by the section.

(b) The Operations Report Form, or other approved equivalent form, shall be sent to the section each year within 30 days following the anniversary of the issue date or the expiration date of the permit.

(c) Subsequent permits will not be issued or renewed until the Operations Report is received. A permit is subject to revocation if the Operations Report is not received within the required time frame.

Specific Authority 369.20, 369.22 FS. Law Implemented 369.20, 369.22, 403.088 FS. History—New 2-9-82, Amended 7-9-85, Formerly 16C-20.055, 16C-20.0055, Amended 5-3-95, Formerly 62C-20.0055.

68F-20.0075 Penalties.

(1) Following proper notice, the commission is authorized to modify, revoke, suspend, annul, or withdraw any permit granted by it, or deny or modify any permit request, if the commission determines that the following actions were committed by the permittee or applicant:

(a) Submission of false or inaccurate information in the permit application, requests for amendments or renewals, or records maintained pursuant to subsection 68F-20.0055(3), F.A.C.

(b) An unresolved violation of a permit, permit conditions, this chapter, or Florida Statutes relating to aquatic plant management activities.

(c) Failure to file an operations report within the specified period of paragraph 68F-20.0055(3)(b), F.A.C.

(2) Violators of this chapter involving the use of herbicides are subject to penalties as provided in Sections 403.141 and 403.161, F.S.

Specific Authority 369.20, 369.22 FS. Law Implemented 369.20, 369.22, 403.088, 403.141, 403.161 FS. History—New 2-9-82, Formerly 16C-20.075, 16C-20.0075, Amended 5-3-95, Formerly 62C-20.0075.

(from <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=68F-20> UF-IFAS CAIP, Feb. 7, 2012)