

# COMMENTS IN RESPONSE TO THE CONSULTATION DRAFT DATED JUNE 17, 2015

## FISHERIES RESOURCES (JURISDICTION AND CONSERVATION) (FLATS FISHING) REGULATIONS, 2015

### 1. Citation.

These Regulations may be cited as the Fisheries Resources (Jurisdiction and Conservation) (Flats Fishing) Regulations, 2015.

- When would the proposed legislation take effect? This legislation proposes numerous policy changes including the certification of guides.
- We strongly suggest a gradual roll out so that there are a sufficient number of certified, licensed guides to meet present demand. Enacting this before the requisite guide corps is in place will create immediate deficiencies for visiting anglers.
- We appreciate the democratic approach to this new legislation, however the comment period is too brief and seems a bit rushed given the scope of the economic impact. So that all voices and constituents have the opportunity to participate in the process, we believe it would be invaluable that an updated draft be shared with the fly-fishing community and the public with a longer comment period that allows for careful consideration of each new regulation.

### 2. Interpretation.

In these Regulations —

“**Act**” means the Fisheries Resources (Jurisdiction and Conservation) Act;

“**Conservation Fund**” means the Fund referred to in regulation 6 into which fifty per cent of revenues collected from the issuance of flats fishing permits shall be deposited;

“**fishing guide**” means a person who acts, for compensation or reward, as a flats fishing guide for another who fishes in the flats by hook or bait (angling) and includes a person who —

(a) accompanies and assists another person to angle;

(b) attends another person at or near the flats in a way that directly or indirectly assists that person to angle;

(c) transports another person to and from the flats, or between different areas of the flats, for the purpose of angling;

- The definition of a guide is too restrictive and could create problems for hosted trips, which are a big business for Orvis, our industry peers, and many of our partners in the Bahamas.
- You should focus on supporting the certification and training of guides to ensure an adequate number of skilled guides to support the economic potential of the resource.
- “Assists or indirectly assists” – water or road taxi drivers to a flat, fathers walking the flat teaching their kids; this language opens up prosecution to almost any non-guide who comes in contact with an angler.

### 3. Permit required for foreign fishing in the flats.

(1) A **non-Bahamian** shall not, unless the holder of a personal permit, engage in foreign fishing within the flats.

- It is quite unusual for residents not to be required to have a permit, although usually a permit is less costly for a resident.
- Resident/non-resident permit systems provide for equal responsibility toward the use and protection of the resource from all involved, as well as an increased revenue stream for conservation of the resource.

(2) A **vessel**, other than a Bahamian owned and licensed charter vessel, shall not engage in flats fishing unless —

- You need to define what a vessel is and what it means to fish from a vessel.
- Do kayaks and paddleboards count as vessels?
- What if someone accesses the flats via a skiff, dingy, or kayak but then fishes by wading?
- If a boat is legally in the Bahamas, and the angler has a license are they not allowed to fish for pleasure?
- Boats can legally be in the Bahamas numerous ways, not requiring it be “Bahamian owned and licensed” e.g. lodge boats. They are imported legally with duty paid and registered under a company that is not Bahamian ownership. A second home owner can do the same. You can run a boat over from Florida and buy a cruising permit to fish in Bahamian waters. This language overreaches and prevents too much.

(a) **a permit to engage in sports fishing has been issued in respect of the vessel in accordance with the Act and regulation 47 of the Fisheries Resources (Jurisdiction and Conservation) Regulations;** and

- Isn't this an existing requirement for cruising in the Bahamas?
- It seems to us that foreign vessels are already required to have a cruising permit and that it usually includes a fishing permit for everyone on the boat.

(b) each person, other than a Bahamian, intending to fish in the flats by means of the vessel is the holder of a valid permit granted under regulation 4.

(4) **Application for a personal permit to engage in flats fishing shall be addressed to the Minister and may be submitted to the Department of Marine Resources or to a fishing guide, fishing lodge operator or a Family Island administrator authorised in accordance with regulation 4.**

(5) **An application may be submitted in hard copy or electronically.**

- While the process of applying for a permit through a guide or fishing lodge operator may be convenient for guided anglers, permits should also be available online for any angler that is planning a trip in advance so that there is no risk of planning a vacation and encountering difficulty obtaining a flats fishing permit. Obtaining permits online has become the standard in many countries. It saves time and money and unnecessary paperwork and red tape for all involved.

- The process of applying for a permit should be done on the national level by making permits available online at any time through the Department of Marine Resources with equal and equitable requirements for all anglers without restrictions or qualifications.
- The process needs to be easy and straightforward so that guided and non-guided anglers can obtain a license in a timely manner.

#### 4. Grant of flats fishing permit.

(1) The Minister may authorise in writing a fishing guide, fishing lodge operator or a Family Island administrator, for and on behalf of the Minister, to accept and process applications and grant and issue permits to persons, **not being Bahamians**, to engage in flats fishing.

- As noted above, it is quite unusual to not require residents to also obtain a fishing permit.

(5) **Where application for a flats fishing permit is refused by an authorised fishing guide or fishing lodge operator, or a Family Island administrator, the applicant may appeal the decision to refuse the application directly to the Minister and the Minister may confirm the decision or grant the permit.**

- If the process of applying for a permit becomes subjective and variable, it will have a negative impact on tourism.
- What criteria would constitute denying permits? Permits should be available to anyone who is willing to buy them like the US. Everyone can buy a license, but you can lose that right if you severely abuse the resource.
- The process of applying for a permit should be consistent and simple in order to promote tourism.

(6) A flats fishing permit granted under this regulation —

(a) shall be issued in Form No. 2 as set out in the *First Schedule*;

(b) shall state the period for which it is granted;

(c) **may be granted subject to such conditions, restrictions or limitations as the granter considers appropriate;** and

- The criteria for a permit should be concise and consistent across the resource. There should be national unrestricted access with no room on the local level to prohibit access to flats or a license.
- As it is currently written, the legislation suggests that guides, lodge operators and local administrators would be in the position to “independently govern a region”, impose conditions, restrictions or limitations for a permit as they deem appropriate.
- This allows too much room for restrictions subject to the whims of the individual grantor, especially if a guide simply doesn’t want an angler to fish in a certain area.

(8) A sports fishing permit referred to in regulation 3(2)(a) shall, where the vessel engages in foreign fishing in the flats, be subject to the requirements that —

(a) **the vessel employs a minimum of one certified fishing guide;** and

- This should refer to guided fishing, not foreign fishing. This eliminates any foreign angler from fishing on their own and will quickly eliminate the revenue from self-guided angler permits.

- Currently this is overly burdensome as there are places where there are not enough guides, let alone certified guides and they are all booked by lodges long in advance.
- This goes back to supporting a focus on the certification of guides to build a skilled guide corps to enhance the business as opposed to restricting it.
- If a foreign angler has booked a guide long in advance and booked flights and hotels around the premise of that guide's availability and the guide later becomes unavailable, then the foreign angler has had a well-planned and expensive trip ruined. There are many examples of this happening even among guides of high reputation.

(b) a certified fishing guide be employed at a ratio of one to two, namely, one guide for every two anglers fishing in the flats by means of the vessel.

- The requirement of one guide per two anglers for foreign vessels is not realistic as there are not enough guides to serve that need. This will create an immediate reduction in potential business.
- We also know from numerous personal experiences with highly reputed guides in the country that this occurs with some regularity.
- Then what does the foreign angler do who was trying to comply with the law? There is no faster way to diminish a business than to disappoint a consumer.
- Does this eliminate two parents and their child fishing from the same boat? Or other similar and likely combinations?
- This seems overly rigid and untenable given the present circumstances.

(2) A person eligible to apply for certification as a fishing guide under paragraph (1) must —

- (a) be a citizen or permanent resident of The Bahamas;
- (b) hold a minimum of a Class-B Captain's licence;
- (c) successfully complete the fly-fishing training and certification programme offered by the Ministry of Tourism and attend regular refresher courses; and

- Does this requirement exist now and if so, how many certified guides are there?
- If not, how long will it take to certify enough guides to serve the demand?
- Is there a target number of certified guides that coincides with current and future demand and what is the plan to achieve this?

(4) A person eligible to apply for certification as a fishing lodge operator under paragraph (1) must —

- (a) be a citizen or permanent resident of The Bahamas; and

- How would this regulation impact foreign lodge owners and companies who have already gone through the process of applying to the board to operate a fishing lodge in the Bahamas?
- There are numerous foreign fishing lodge owners who have already been granted permission to operate a fishing lodge in the Bahamas through Foreign Investment Board Approval which is an arduous process. They provide the creation of jobs for local Bahamians, and a positive impact on the local economy.
- Any new regulation that would restrict their ability to operate fishing lodges in the Bahamas is unnecessary and could be extremely detrimental to incoming tourism as well as result in a loss of jobs and income for local Bahamians.

- The influx of foreign investment into an economy within the proper guidelines is generally seen as a benefit to employment and the strength of that economy.

### 9. General offences and penalties.

(1) A person who contravenes or fails to comply with any provision of these Regulations commits an offence and, except as otherwise provided by the Act or these Regulations, or any other regulation, is liable on summary conviction to a fine not exceeding three thousand dollars, or to imprisonment for a term not exceeding three months, or to both fine and imprisonment.

(2) A court may, where a person is convicted of an offence against these Regulations, in addition to any other penalty, order the confiscation and forfeiture to the Crown of any fishing gear and related supplies or devices inclusive of boats, engines, trailers, trucks and vehicles used in the commission of the offence or that is the subject matter of the offence.

- These penalties seem rather severe, especially considering that well-intentioned foreign anglers may find themselves in an unlawful position if there are not a sufficient number of certified local guides to meet the present demand.
- This along with subjective restrictions stated above (Sec.4, 6, c) could contribute to an overall unwelcoming atmosphere that will eventually erode the interest of the global angling public, thus eroding the positive perception of the Bahamas and the economy that currently exists.

### THIRD SCHEDULE (Regulation 6(4))

#### FEES

##### Processing Fees:

Application for flats fishing permit (personal): 10.00

- Will the processing fees for personal permits be imposed by day or by each occurrence?
- Why can't this be simplified into the license fee?

Application for certification (fishing guide): 10.00

Application for certification (fishing lodge operator): 10.00

##### Fees for Issuance of Documents:

Flats Fishing Permit (Personal): 20.00 per day

- Many foreign anglers book one to two-week or longer trips, as well as own homes in the Bahamas. Paying a daily fee could be cost prohibitive and result in a decline in tourism and consequently have a negative impact on the local economy.
- As such, based on experience in other venues we strongly recommend implementing a sliding scale that would allow personal anglers to purchase a permit for varying lengths of time.
- Suggested fees: \$20/day, \$100/week, \$200/year.

Certificate (Flats Fishing Guide): 150.00 per annum

Certificate (Fishing Lodge Operator): 250.00 per annum

- Relative to the cost of the personal fishing permit, and the potential income production, the guide and lodge operator fees seem very light, particularly given that they are the greatest beneficiary of the resource that these fees support.
- It could be done by boat, independent guides \$250, lodges \$250 per boat.