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LAWS THAT PROTECT FLORIDA'S WILDLIFE

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Endangered species are not the only wildlife protected by the legal system. All of Florida's wildlife are more or less safeguarded by a variety of laws. Laws addressing wildlife can be found at the federal, state, regional, and local levels of government. Wildlife protection may also take the form of conventions, treaties, and executive orders. All are subject to periodic change. For example, legislators can alter or delete laws every year.

Federal statutes are enacted by the Congress of the United States, while state statutes are enacted by the Florida Legislature. Statutes provide the legal authority for federal and state agencies to develop more detailed regulations or rules. Statutes set out the basic goals of the U.S. Congress or Florida Legislature, while agencies implement the goals through more detailed and specific rules.

Some state laws duplicate federal laws. However, state law standards often are more strict than federal law standards. For example, the federal Endangered Species Act (16 U. S. Code § 1531-1544) prohibits the taking, possession, sale, and transport of species determined by the federal government to be in danger of extinction. Florida Statutes § 372.0725 declares that it is unlawful for a person to intentionally kill or wound any fish or wildlife of endangered, threatened, or special concern species (as determined by the State of Florida) or to intentionally destroy the eggs or nest of any such fish or wildlife, except as provided for in the rules of various state agencies. Wildlife Rule 39-27.002 of the Florida Administrative Code states that no person shall pursue, molest, harm, harass, capture, possess, or sell any endangered species or parts thereof or their nests or eggs except as authorized by specific permit. Then Rule 39-27.003 lists all of the endangered species.

In Florida, there is also constitutional authority for the protection of wildlife. Article IV, Section 9, authorizes the Game and Fresh Water Commission (5 members appointed by the governor) to exercise regulatory powers of the state for the purpose of management, protection, and conservation of wild animal and fresh water aquatic life. The five appointees exercise executive powers of the state by overseeing the planning, budgeting,



personnel management, and purchasing of the Commission. The Commission is the only constitutionally created agency in Florida.

Wildlife protection laws also exist at the local level. Local governments (town, cities, counties) have authority to regulate land use practices for the protection and conservation of natural resources, including wildlife and wildlife habitats. Local governments also can restrict wildlife activities permitted by the Florida Game and Fresh Water Fish Commission. They derive authority to regulate wildlife from general authority to regulate for the health, safety, and welfare of citizens and from state planning statutes which specifically require protection and conservation of wildlife. Local government laws are typically referred to as land development regulations or ordinances.

FEDERAL LAWS

The United States Congress has enacted several pieces of legislation that are intended to control certain human activities that if unregulated could cause extinction of some species. The U.S. Fish and Wildlife Service is the agency within the Department of Interior that enforces most federal wildlife laws.

Lacey Act (1900)

This is the first federal law regulating interstate and international commerce in wildlife. "Wildlife" here refers to any wild animal, bird, amphibian, reptile, mollusk, crustacean, and their dead bodies, skins, eggs, or offspring.

Black Bass Act (1916)

This act prohibits any fish caught, killed, taken, sold, purchased, or transported contrary to the law of a state or country and transported across a state line or United States border.

Migratory Bird Treaty Act (1916, 1936, 1972)

In 1916, a treaty for the protection of migratory birds was established between Canada and the United States. Later in 1936 and 1972, the treaty was expanded to include the United Mexican States and Japan. The treaty states that it is unlawful to pursue, hunt, capture, kill, possess for sale, purchase, deliver for shipment, cause to be exported, any migratory birds including their eggs, nests, and body parts unless allowed by rule or appropriate federal and state permits.

Migratory Bird Hunting and Conservation Act (1934)

This act was created to supplement the Migratory Bird Treaty Act by providing funds for the acquisition of areas as sanctuaries and breeding grounds for the protection of certain birds. Persons who want to hunt migratory waterfowl are required to purchase

a Federal Migratory Waterfowl Hunting Stamp (Duck Stamp) in addition to a state hunting license. Funds raised from the Duck Stamp are used to purchase land.

Federal Aid in Wildlife Restoration Act (1937)

This Act is commonly referred to as the "Pittman-Robertson Act". It provides Federal aid to States for game and nongame wildlife restoration work. Funds from an 11 percent excise tax on sporting arms and ammunition are apportioned to the states based on a formula that considers the land area and the number of licensed hunters in each state.

Federal Aid in Fish Restoration Act (1940)

This Act is commonly referred to as the "Dingell-Johnson Act". It provides Federal aid to the States for management and restoration of fish. Funds from a 10 percent excise tax on certain items of sport fishing tackle are apportioned to states.

Bald Eagle Protection Act (1940)

This act protects bald and golden eagles within the United States and its jurisdiction. It prohibits the possession, sale, harassment, purchase, transportation, export and import of bald and golden eagles, including their parts, nests, and eggs.

Airborne Hunting Act (1971)

This law prohibits herding, harassing, or hunting wildlife from an aircraft or to knowingly participate in such activities.

Marine Mammal Protection Act (1972)

This act states that certain species or populations of marine mammals (including manatees, dolphins, and whales) are, or may be, in danger of extinction, or depletion, as a result of human activities.

Endangered Species Act (1973)

The ESA provides for the conservation of threatened and endangered species of fish, wildlife, and plants by federal action and by encouraging state conservation programs. The Act authorizes the determination and listing of endangered and threatened species and their habitats. Section 9 of this Act prohibits unauthorized taking, possession, sale, and transport of all endangered species or destruction of their habitat and provides authority to acquire land and water conservation funds. Section 7, which applies only to actions of the federal government, prohibits any federal agency from jeopardizing the continued existence of an endangered or threatened species.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)

CITES prohibits importing, exporting, or re-exporting wildlife or plant, or their parts or derivatives of certain species unless permitted to do so by both the importing and exporting country.

Fish and Wildlife Conservation Act

This act encourages federal agencies to conserve and promote conservation of nongame fish and wildlife and their habitats to the maximum extent possible within each agency's statutory responsibilities.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The Act prohibits the registration or use of pesticides that have unreasonable adverse effects on the environment. Pesticides must be evaluated to determine adverse impacts to non-target species of wildlife and endangered or threatened species. The EPA is responsible for implementing FIFRA; primary enforcement responsibilities for use-related violations are assigned to states with programs approved by EPA.

National Environmental Policy Act (NEPA)

NEPA requires that an environmental impact assessment be conducted for certain projects in which there is federal participation. Major federal actions significantly affecting the quality of the human environment may be required to conduct an environmental impact assessment, including the degree to which the action may adversely affect an endangered or threatened species or its habitat.

STATE STATUTES

Chapter 372 of the Florida Statutes provides direct protection of wildlife from activities that may harm or jeopardize species. Sections within this Chapter address topics such as endangered species, police powers of the Commission and its agents, authority of the Commission to issue wildlife-related licenses and permits, illegal taking of alligators and crocodiles, feeding alligators and crocodiles, killing of the Florida panther, and releasing large numbers of balloons inflated with lighter-than-air gases. Most of the other Chapters that have anything to do with wildlife deal with habitat issues.

Florida Endangered and Threatened Species Act of 1977 (Section 372.072, Florida Statutes)

The Florida Endangered and Threatened Species Act of 1977 provides for research and management to conserve and protect threatened and endangered species as a natural resource. Responsibility for the research and management of freshwater and upland species is given to the Game and Fresh Water Fish Commission, while responsibility for marine species is given to the Department of Natural Resources. The

act also encourages these agencies to develop a public education program dealing with endangered and threatened species.

Marine animals (Section 370.12, F.S.)

This statute protects marine turtles, manatees, mammalian dolphins, and manta rays.

Cruelty to animals (Section 828.12, F.S.)

This section prohibits killing animals in cruel or inhumane ways that cause unjustifiable pain or suffering.

Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.; and Rule 9J-5, Florida Administrative Code)

This Act requires that local governments in Florida adopt local government comprehensive plans which provide for the conservation, use, and protection of natural resources, including fisheries and wildlife. Local government land development regulations and development orders must be consistent with the comprehensive plan.

State Comprehensive Plan (Chapter 187, F.S.)

The State Comprehensive Plan includes goals and policies to conserve wildlife habitat and prohibit the destruction of endangered species and their habitat. Local government comprehensive plans must be consistent with these provisions in the State Plan.

Warren S. Henderson Wetlands Protection Act of 1984 (Sections 403.91-403.929, F.S.)

The Henderson Act regulates activities involving the dredging and filling of wetlands, which includes most construction activities in or adjacent to wetlands. When determining whether to issue a permit under the Act, the agency must consider and balance a number of factors, two of which pertain directly to wildlife. First, the agency must examine whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats. Second, the agency must consider whether the project will adversely affect the fishing or recreational values or marine productivity in the vicinity of the project.

The Florida Water Resources Act of 1972 (Chapter 373, F.S.)

This Act provides authority for the water management districts (there are five in Florida, based on hydrologic basins) to protect the water resources of the state, including natural resources, fish, and wildlife. Thus far, the water management districts have interpreted this statute as providing them with authority to regulate for the benefit of only wetland-dependent wildlife.

The Land Conservation Act of 1972 (Chapter 259, F.S.)

This Act establishes a land acquisition program to conserve and protect environmentally endangered lands in Florida. Criteria for selecting lands includes consideration of important wildlife and plant habitats, including endangered and threatened species' habitats.

Florida Preservation 2000 Act (Section 259.101, F.S.)

This Act creates a funding mechanism to support land acquisition programs in Florida. The Act states that acquisition programs should protect the integrity of ecological systems and provide multiple benefits, including preservation of fish and wildlife.

Tidal and submerged bottom lands, including islands (Section 253.12, F.S.)

All tidal and submerged bottom lands, including islands, are owned by the state of Florida (unless previously conveyed to a private owner by deed or statutes). This law establishes criteria to govern the sale of such lands to private individuals. The primary consideration is to what extent the sale would interfere with the conservation of fish, marine and other wildlife, or other natural resources, including habitat. Such sales are extremely rare today.

The Florida Environmental Land and Water Management Act of 1972 (Sections 380.12 - 380.10, F.S.)

This Act creates the Area of Critical State Concern Program, which establishes a procedure for increased protection of lands of statewide importance, including wildlife refuges, wilderness areas, and critical habitat of threatened or endangered species. The Act also establishes the Development of Regional Impact Program, which requires that certain large scale developments that impact more than one county must undergo more stringent development review, including review of the development's impact on wildlife habitat.

The Wekiva River Protection Act (1989) (Chapter 369, Part III, F.S.)

The Act requires that Orange, Lake, and Seminole counties adopt goals, policies, objectives, and land development regulations for the Wekiva River which protect wetlands, aquatic and wetland-dependent wildlife species, the habitat of threatened and endangered species, and native vegetation.

Section 373.415, F.S.; and Rules 40C-4.041, 40C-41.063, Florida Administrative Code

This amendment to the Florida Water Resources Act requires that the St. Johns River Water Management District adopt protection zones along the Wekiva River which protect the Wekiva River system, including the wetland and upland habitat needs of aquatic and wetland-dependent species of wildlife. District rules establish five criteria that must be

satisfied before a permit will be issued for projects within the Wekiva River Hydrologic Basin. One of these is a "Riparian Wildlife Habitat Standard" that requires an applicant to provide reasonable assurance that the construction or alteration of a system will not adversely affect the abundance, food sources, or habitat of aquatic or wetland-dependent species in the Riparian Habitat Protection Zone which includes 1) wetlands abutting the river and its tributaries, 2) uplands within 50 feet of abutting wetlands, and 3) uplands which are within 550 feet of the river's edge.

STATE RULES

State rules are legal doctrines that guide or control actions, adopted by an administrative agency under the authority vested by the Florida Legislature to carry out specific goals of the legislature pertaining to wildlife.

Florida Game and Fresh Water Fish Commission

Chapter 39 in the Florida Administrative Code (F.A.C.) is the Wildlife Code of the State of Florida and includes many of the rules (regulations) regarding wildlife.

- 39-4.001 General Prohibitions - prohibits taking, transporting, storing, buying, selling, possessing, and wantonly or willfully wasting any wildlife or freshwater fish or their nests, eggs, young, homes or dens except as specifically permitted by rules in the Florida Administrative Code.
- 39.6 Wildlife in captivity
- 39.12 Birds and Mammals
- 39.13 General hunting regulations
- 39.18 Wildlife refuges
- 39.19 Bird sanctuaries or critical wildlife areas
- 39.23 Freshwater fish
- 39.24 Furbearing animals
- 39.25 Reptiles
- 39.26 Amphibians
- 39.27 Threatened and endangered species

Florida Department of Natural Resources

Chapter 46, F.A.C. prohibits the taking of sturgeon and snook.

Florida Department of Agriculture

Chapter 5, F.A.C. regulates the use of pesticides.

LOCAL ORDINANCES

Several ordinances or local laws have been enacted to provide some protection for dwindling wildlife habitats. As local governments begin to implement their comprehensive plans, ordinances addressing wildlife habitat needs are developing rapidly. We provide only one example here.

Ordinance 91-9, Seminole County, Fla. (1991)

The ordinance limits development within 550 feet of the main channel of the Econlockhatchee River to creation of wetlands and passive recreation uses. Development between 550 and 1100 feet from the main channel is also restricted. A primary objective of the ordinance is to protect habitat for aquatic and wetland dependent species of wildlife. Orange County has a similar ordinance.

PENALTIES AND EFFECTIVENESS OF WILDLIFE LAWS

Penalties for persons convicted of violations of these laws range from a maximum of \$500 and/or 60 days imprisonment for first offenses of misdemeanor crimes up to \$50,000 and/or one year imprisonment for criminal violations against the U.S. Endangered Species Act.

Although there are many laws protecting wildlife, they are only as effective as their interpretation, implementation, and enforcement. The strongest laws are the federal and state endangered species acts. Habitat laws are the most difficult to implement because they are more vague and therefore, less effective. Another problem with habitat laws is that severe restrictions of use of land can conflict with private property rights as stated in the Federal Constitution.

WHAT YOU CAN DO

Support federal and state legislators, and county and city commissioners who you think will develop good laws protecting wildlife and wildlife habitats.

Write or call your legislators and commissioners to express your opinion about wildlife laws and issues. You can influence their decisions.

Learn about various wildlife laws and teach others how to help assure the development and enforcement of effective wildlife laws.

Report violations to 1/800/342-8105 (The Florida Game and Fresh Water Fish Commission's "Wildlife Alert" Program).