

Laws that Protect Florida's Wildlife¹

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Background

Endangered species are not the only wildlife protected by the legal system. All of Florida's wildlife is 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 United States Congress, 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 United States 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 Statute §379.411 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 68A-27.003 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. This rule also lists all of the endangered species in the state.

In Florida, there is also constitutional authority for the protection of wildlife. Article IV, Sec. 9, authorizes the Florida Fish and Wildlife Conservation Commission (FWC)--seven members appointed by the governor--to exercise the regulatory powers of the state for the purpose of management, protection, and conservation of wild animals and freshwater and marine aquatic life. The seven 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.

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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 Fish and Wildlife Conservation 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.

Legislative Summary: 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 United States Fish and Wildlife Service (USFWS) is the agency within the Department of the Interior that enforces most federal wildlife laws.

Lacey Act (1900, 1981)

This is the first federal law regulating interstate and international commerce in wildlife. "Wildlife" here refers to any wild animal, bird, amphibian, reptile, mollusk, or crustacean, and their dead bodies, skins, eggs, or offspring. In 1981, the Black Bass Act was incorporated into the Lacey Act. The Lacey Act and the Black Bass Act have been amended numerous times, most recently in 2008, adding protection to plants and trees illegally harvested outside the United States.

Black Bass Act (1926)

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. This act was combined with the Lacey Act in 1981.

Migratory Bird Treaty Act (1918, 1936, 1972, 1978)

In 1918, a treaty for the protection of migratory birds was established between Canada and the United States. In 1936, 1972, and 1978, the treaty was expanded to include Mexico, Japan, and the USSR (now Russia). The treaty states that it is unlawful to pursue, hunt, capture, kill, possess for sale, purchase, deliver for shipment, or 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 Sport Fish Restoration Act (1940)

This act is commonly referred to as the Dingell-Johnson Act or Wallop-Breaux Act. It provides federal aid to the states for management and restoration of marine and freshwater sport fish. Funds from a 10 percent excise tax on certain items of sport fishing tackle are apportioned to states. These funds may be used for education, wetlands restoration, boat safety or boat pumpout systems.

Bald Eagle Protection Act (1940, 1994)

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. In 1994, the act was amended to establish a policy for collection and distribution of eagle feathers for Native American religious purposes

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. The ESA has been amended numerous times (<http://www.fws.gov/endangered/esasum.html>).

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

CITES prohibits importing, exporting, or re-exporting endangered wild animals and plants, parts of endangered animals and plants, and derivatives of certain species unless permitted to do so by both the importing and exporting country. The

aim of this treaty is to ensure that international trade in plants and wild animals does not threaten their survival. Eighty countries signed the treaty in 1973; in 2008 that number had increased to 173.

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. It is described in 16 U.S. Code 2901-2911.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (1947) (1972)

The act prohibits the sale, 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. Initially, this responsibility was given to the United States Department of Agriculture. In 1972, an amendment transferred responsibility to the Environmental Protection Agency (EPA). The EPA's primary enforcement responsibilities for use-related violations are assigned to states with programs approved by EPA.

National Environmental Policy Act (NEPA) (1970)

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

Legislative Summary: Florida Statutes

Chapter 379 of the Florida Statutes provides direct protection of wildlife from activities that may harm or jeopardize species. Sections within Chapter 379 address topics such as endangered species, police

powers of the Florida Fish and Wildlife Conservation Commission (FWC) and its agents, authority of the commission to issue wildlife-related licenses and permits, illegal taking of alligators and crocodiles, illegal feeding of alligators and crocodiles, illegal killing of Florida panthers, and the release of large numbers of balloons inflated with lighter-than-air gases (helium, etc.). 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 379.2291, F.S.)

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 upland, freshwater and marine species is given to the Florida Fish and Wildlife Conservation Commission (FWC). The act also encourages FWC to develop a public education program dealing with endangered and threatened species.

Marine animals (Section 379.2401-379.26, F.S.)

This statute protects many marine animals including marine turtles, manatees, mammalian dolphins, fish, crustaceans and sponges

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 (Ch. 163, Part II, F.S.; and Rule 9J-5, F.A.C.)

This act requires local governments in Florida to 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 (Ch. 187, F.S.)

The State Comprehensive Plan includes goals and policies to conserve wildlife habitat and prohibit the destruction of endangered species and their habitats. 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, whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.
- Second, 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 (Ch. 373, F.S.)

This act provides authority for all Florida water management districts (there are five in Florida, based on hydrologic basins) and the Florida Department of Environmental Protection to protect the water resources of the state, including natural resources, fish, and wildlife. Thus far, 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 (Ch. 259, F.S.)

This act establishes a land acquisition program to conserve and protect environmentally endangered lands in Florida. Criteria for selecting lands include 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 created 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 II, F.S.)

The act requires that Orange, Lake, and Seminole counties adopt goals, policies, objectives, and land development regulations for the Wekiva River that protect wetlands, aquatic wildlife species and wetland-dependent wildlife species, the habitats 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 that protect the Wekiva River system, including the wetland and upland habitat needs of aquatic wildlife species and wetland-dependent species. 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 species abundance or the food sources or habitats 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 within 550 feet of the river's edge.

Legislative Summary: 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 Fish and Wildlife Conservation Commission (FWC)

Chapter 68 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

68A-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.

68-5 Rules relating to non-native species

68A-6 Wildlife as personal pets

68A-12 Rules relating to game

68A-13 General hunting regulations

68A-18 Wildlife refuges

68A-19 Bird sanctuaries or colonial nesting sites

68A-23 Freshwater fish

68A-24 Furbearing animals

68A-25 Reptiles

68A-26 Amphibians

68A-27 Threatened and endangered species

68B Marine Fisheries

Florida Department of Agriculture

Chapter 5E-2, F.A.C. regulates the use of pesticides

Legislative Summary: Local Ordinances

Ordinances (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.

Summary: Penalties and Effectiveness of Wildlife Laws

Penalties for convictions for violations of these laws range from a maximum of \$500 and/or 60 days imprisonment for first offenses of misdemeanor crimes—or up to \$50,000 and/or one year imprisonment for criminal violations against the federal 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

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

Support federal and state legislators, and county and city commissioners whom 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.

You can report violations to the Florida Fish and Wildlife Conservation Commission's *Wildlife Alert Reward Program*:

Panama City: 1-850-265-3676

Ocala: 1-352-732-1225

West Palm Beach: 1-561-625-5122

Lake City: 1-386-758-0525

Lakeland: 1-863-648-3200

<http://myfwc.com/law/alert>

(888-404-FWCC is the phone number for all wildlife emergencies, including stranded marine mammals, sea turtles etc. Unless you need to report a violation in progress or another emergency situation, please use one of the local numbers listed above.)