

NOTICE OF PROPOSED RULE

Rule 68A-27.003

Agenda Item 5, A, 4

FISH AND WILDLIFE CONSERVATION COMMISSION

Division of Habitat and Species Conservation

RULE NO: 68A-27.003 **RULE TITLE:** Designation of Endangered Species; Prohibitions; Permits.

PURPOSE AND EFFECT: The purpose of this rule change is to remove the peregrine falcon (*Falco peregrinus*) from the State list of endangered species. The effect of this rule change is to change the status of the peregrine falcon from an endangered species to an unlisted migratory bird species.

SUMMARY: The Florida Fish and Wildlife Conservation Commission pursuant to 68A-27.0012 determined that removing the peregrine falcon from the State list of endangered species was warranted. This rule change implements that decision.

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 alternatives 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 Commission's regular meeting June 17-18, 2009, 8:30 a.m. to 5:00 p.m., each day.

PLACE: Plantation Inn, 9301 West Fort Island Trail, Crystal River, FL 34429

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: Jim Antista, General Counsel, Legal Office, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399-1600.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

68A-27.003 Designation of Endangered Species; Prohibitions; Permits.

(1) The following species, listed prior to June 23, 1999, are hereby declared to be endangered and shall be afforded the protective provisions specified. No person shall pursue, molest, harm, harass, capture, possess, or sell any of the endangered species included in this subsection, or parts thereof or their nests or eggs except as authorized by specific permit, permits being issued only when the permitted activity will clearly enhance the survival potential of the species.

(a) – (l) No change.

~~(m) Peregrine falcon (*Falco peregrinus*)~~

(n) – (nn) renumbered as (m) – (mm) No change.

(2) No change.

PROPOSED EFFECTIVE DATE: As soon as possible following Commission action.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 8-1-79,

Amended 6-22-80, 7-1-83, 7-1-84, 7-1-85, Formerly 39-27.03, Amended 6-1-86, 5-10-87, 4-27-89, 9-14-93, 6-23-99, Formerly 39-27.003. Amended 12-16-03,_____.

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: Mr. Tim Breault, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: December 5, 2008

**STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES
FISH AND WILDLIFE CONSERVATION COMMISSION**

Division of Habitat and Species Conservation

RULE TITLES: 68A-27.003 **RULE NOS.:** Designation of Endangered Species; Prohibitions; Permits.

This rule change is based on the Commission's two-phase listing process specified in 68A-27.0012. In 1999, the FWC received a petition complying with 68A-27.0012 that requested removing the peregrine falcon from Florida's imperiled species lists. A Biological Review Panel (BRP) evaluated the status of the peregrine falcon using the criteria specified in 68A-1.004 for each of the imperiled designations. The BRP found that the peregrine falcon did not meet any of the endangered, threatened, or species of special concern criteria. The BRP completed a biological status report in June 2008 that recommended delisting the peregrine falcon in Florida. This report was reviewed by five independent scientists, who concurred with the recommendation. The biological status report was presented to the Commission at their June 2008 meeting where the Commission accepted the findings and recommendation of the BRP and concluded that delisting the peregrine falcon was warranted. This completed phase one of the listing process.

Phase two required development and Commission approval of a management plan before the peregrine falcon could be removed from the list of endangered species. The Commission chartered a team to draft the management plan in collaboration with a diverse group of stakeholders. There was a comment period to solicit information on the conservation needs of the species and any economic and social factors that should be considered in its management. The management plan team considered comments in developing a draft management plan. The draft management plan became available for public comment in February 2009.

Pursuant to (3)(d) of 68A-27.0012, the proposed rule to remove the peregrine falcon from the list of endangered species is proposed for final action at the June 2009 Commission meeting concurrent with final approval of the plan.

On August 25, 1999, the peregrine falcon was declared recovered and removed from the federal endangered species list. See 64 FR 46542. The peregrine falcon continues to be protected by the U.S. Migratory Bird Treaty Act. This rule is not inconsistent with the continued federal regulation of peregrine falcons under the Migratory Bird Treaty Act.