

**Background Report
Draft Rule 68A-27.003
Agenda Item C2
February 10, 2016**

**NOTICE OF PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION**

DIVISION: Freshwater Fish and Wildlife

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

PURPOSE AND EFFECT: The purposes of this proposed rule revision are to change the rule title; authorize take, possession, or selling of State-designated Threatened species if such conduct is authorized in a management plan approved by the Commission; and to implement species status changes found warranted by the Commission. The effect of this rule revision is a title that better describes the rule, more clarity on what conduct may be permitted to cause take or possession of State-designated Threatened species, and a listing status for species as found warranted by the Commission.

SUMMARY: The Commission's imperiled species rules were significantly revised in 2010, and as a result, all then listed species that had not had their status recently reviewed were evaluated against the listing criteria. Based on these evaluations, staff made listing status recommendations to the Commission. The Commission approved these recommendation in June 2011. However, as specified by rule, any listing status changes were not to be implemented until a management plan for the species was approved. The Imperiled Species Management Plan (ISMP) covering these species is being approved concurrently with this rule revision. This revision includes reclassifying 23 species from Species of Special Concern to State designated Threatened and adding them to the Florida Endangered and Threatened Species List, and reclassifying two species from State-designated Threatened to unlisted and removing them from the list.

Additionally, during development of the ISMP it was determined that some activities or conduct which may cause some minor amount of take may be authorized in the management plan because they are known to benefit species or not to cause significant impacts to species. Under the current rule, these activities or conduct would be a violation of the rule even though the overall impact is beneficial. Proposed revisions to the rule allow for such activities or conduct.

Finally, the rule title is being revised to more clearly label the content of the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: *[place an "X" in one of the choices for each of the two statements as directed by the memo on small business impacts] 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.*

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the nature of the rule and the preliminary analysis conducted to determine whether a SERC was required.

Any person who wishes to provide information regarding the statement of estimated regulatory

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costs, or to provide a proposal for lower cost regulatory alternatives must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: Art. IV, Sec. 9, Florida Constitution

LAW IMPLEMENTED: Art. IV, Sec. 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 April 13-14, 2016, 8:30 a.m. to 5:00 p.m., each day.

PLACE: Wyndham Grand Jupiter at Harbourside Place, 122 Soundings Way, Jupiter, FL 33458.

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: Dr. Thomas H. Eason, Ph.D., Director, Division of Habitat and Species Conservation, Florida Fish and Wildlife Conservation Commission, 620 S. Meridian St., Tallahassee, FL 32399-1600.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

68A-27.003 Florida Endangered and Threatened Species List; Prohibitions Designation of Endangered and Threatened Species; Prohibitions.

(1) No changes.

(2) State-designated Threatened species:

(a) No person shall take, possess, or sell any threatened species included in this subsection or parts thereof or their nests or eggs except as authorized by Commission rule or by permit from the Commission or when such conduct is authorized in a management plan or guidelines as defined in this Chapter and approved by the Commission.

(b) The species in this subsection are hereby declared to be State-designated Threatened Species, and shall be afforded the protective provisions specified.

(c) Fish:

1. Blackmouth shiner (*Notropis melanostomus*),

2. Bluenose shiner (*Pteronotropis welaka*),

32. Crystal darter (*Crystallaria asprella*),

43. Key silverside (*Menidia conchorum*),

5. Saltmarsh topminnow (*Fundulus jenkinsi*),

6. Southern tessellated darter (*Etheostoma olmstedi maculaticeps*).

(d) Amphibians:

1. Florida bog frog (*Lithobates okaloosae*),

2. Georgia blind salamander (*Eurycea wallacei*).

(e) Reptiles:

1. Barbour's map turtle (*Graptemys barbouri*),

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- 21. Florida brownsnake (*Storeria victa*); lower Keys population only,
- 2. Peninsula ribbon snake (*Thamnophis sauritus sackenii*); lower Keys population only,
- 3. Florida Keys mole skink (*Plestiodon egregius egregius*),
- 4. Florida pine snake (*Pituophis melanoleucus mugitus*),

53. Gopher tortoise (*Gopherus polyphemus*). The Gopher tortoise shall be afforded the protective provisions specified in this subparagraph. No person shall take, attempt to take, pursue, hunt, harass, capture, possess, sell or transport any gopher tortoise or parts thereof or their eggs, or molest, damage, or destroy gopher tortoise burrows, except as authorized by Commission permit or when complying with Commission approved guidelines for specific actions which may impact gopher tortoises and their burrows. A gopher tortoise burrow is a tunnel with a cross-section that closely approximates the shape of a gopher tortoise. Permits will be issued based upon whether issuance would further management plan goals and objectives.

- 64. Key ringneck snake (*Diadophis punctatus acricus*),
- 75. Rim rock crowned snake (*Tantilla oolitica*),
- 86. Short-tailed snake (*Stilosoma extenuatum*),
- 7. Striped mud turtle (*Kinosternon baurii*); lower Keys population only.

(fe) Birds:

- 1. American oystercatcher (*Haematopus palliatus*),
- 2. Black skimmer (*Rynchops niger*),
- 3. Florida burrowing owl (*Athene cunicularia floridana*),
- 44. Florida sandhill crane (*Grus canadensis pratensis*),
- 52. Least tern (*Sternula ~~Sterna~~ antillarum*),
- 6. Little blue heron (*Egretta caerulea*),
- 7. Marian's marsh wren (*Cistothorus palustris marianae*),
- 8. Reddish egret (*Egretta rufescens*),
- 9. Roseate spoonbill (*Platalea ajaja*),
- 10. Scott's seaside sparrow (*Ammodramus maritimus peninsulae*),
- 113. Snowy plover (*Charadrius nivosus ~~alexandrinus~~*),
- 124. Southeastern American kestrel (*Falco sparverius paulus*),
- 13. Tricolored heron (*Egretta tricolor*),
- 14. Wakulla seaside sparrow (*Ammodramus maritimus juncicola*),
- 15. White-crowned pigeon (*Patagioenas leucocephala*),
- 16. Worthington's marsh wren (*Cistothorus palustris griseus*).

(gf) Mammals:

- 1. Big Cypress fox squirrel (*Sciurus niger avicennia*),
- 2. Everglades mink (*Neovison vison evergladensis*),
- 3. Sanibel rice rat (*Oryzomys palustris sanibeli*),
- 4. Sherman's short-tailed shrew (*Blarina shermani*),

(h) Crustaceans:

- 1. Black Creek crayfish (*Procambarus pictus*),
- 2. Santa Fe crayfish (*Procambarus erythrops*).

Rulemaking 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, 7-20-09, 11-8-10, 11-14-11, 8-23-12, 9-19-12, 6-10-15, _____.

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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.R.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Thomas H. Eason, Ph.D.

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2015

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.R.:
January 8, 2015

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

DIVISION: Freshwater Fish and Wildlife

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Species; Prohibitions.

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**SMALL BUSINESS IMPACT ASSESSMENT
FISH AND WILDLIFE CONSERVATION COMMISSION**

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Species; Prohibitions.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

The nature of the rule and the preliminary analysis conducted to determine whether a SERC was required.

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**STATEMENT OF ESTIMATED REGULATORY COSTS
FISH AND WILDLIFE CONSERVATION COMMISSION**

RULE CHAPTER TITLE: Rules Relating to Endangered or Threatened Species

RULE NO: 68A-27.003 **RULE TITLE:** Designation of Endangered and Threatened Species; Prohibitions

- 1. A GOOD FAITH ESTIMATE OF NUMBER AND TYPE OF INDIVIDUALS AND ENTITIES LIKELY TO BE REQUIRED TO COMPLY WITH THE RULE:**

- 2. A GOOD FAITH ESTIMATE OF THE COST TO FWC AND OTHER GOVERNMENTAL AGENCIES OF IMPLEMENTING AND ENFORCING THE RULE:**

- 3. ANTICIPATED EFFECT ON STATE AND LOCAL REVENUES:**

- 4. AN ESTIMATE OF TRANSACTIONAL COSTS LIKELY TO BE INCURRED BY INDIVIDUALS AND PUBLIC AND PRIVATE ENTITIES THAT ARE REQUIRED TO COMPLY WITH THE RULE:**

- 5. ANALYSIS OF IMPACT ON SMALL BUSINESS AS DEFINED BY SECTION 288.703, F.S.:**

- 6. ANALYSIS OF IMPACT ON SMALL COUNTIES AND CITIES AS DEFINED BY SECTION 120.52, F.S.:**

- 7. REASONS FOR ACCEPTING (OR REJECTING) A PROPOSAL FOR A LOWER COST REGULATORY ALTERNATIVE:**

Note: Species to be added to the Endangered and Threatened Species list under rule 68A-27.003 may result in an economic impact more than \$200,000 annually as defined in Section 120.54(3)(b), Florida Statutes. A more detailed analysis will be conducted to evaluate the level of economic impacts prior to final rule adoption. If that additional analysis shows that the impact will exceed \$200,000 annually, a Statement of Regulatory Cost (SERC) will be completed and included in the final rule noticing process. Some of the species proposed for listing, such as the Scott's seaside sparrow, the Wakulla seaside sparrow, and Worthington's marsh wren are range limited and the estimated economic impact would not meet the impact thresholds as defined in Section 120.54(3)(b), F.S.

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**SUMMARY OF PUBLIC HEARINGS FOR PROPOSED RULES
FISH AND WILDLIFE CONSERVATION COMMISSION**

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Species; Prohibitions.

A hearing on the proposed rule was held at the Commission's regularly scheduled meeting on April 13-14, 2016, at Jupiter. In addition to agency personnel, this hearing was attended by the public. Public comment was received and considered at the Commission's meeting. A record of any comments relating to this rule is preserved in the Commission's minutes.

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