

Consent Agenda Item 2
Agricultural BMPs
September 2, 2015
Notice of Proposed Rule

FISH AND WILDLIFE CONSERVATION COMMISSION
Freshwater Fish and Wildlife

RULE NO.: RULE TITLE:

68A-27.007: Permits and Authorizations for the Take of Florida Endangered and Threatened Species

PURPOSE AND EFFECT: The purpose of the proposed rule amendment is to incorporate reference to the sections of Florida Administrative Code wherein Florida Department of Agriculture and Consumer Services (FDACS) is adopting wildlife BMPs for agriculture. The effect of the proposed rule amendment would be to incorporate reference to Chapter 5M-18, including Section 5M-18.001 F.A.C.

SUMMARY: Wildlife BMPs will provide a voluntary alternative to incidental take permitting for landowners engaged in agriculture. This rule amendment would incorporate reference to the sections of Florida Administrative Code wherein FDACS is adopting wildlife BMPs for Agriculture.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not 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:

A SERC is not required for this proposed rule amendment because the wildlife BMPs are being developed as a voluntary alternative to existing Incidental Take permitting requirements.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative 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](#)

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE F.A.R.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Scott Sanders, Director of Conservation Planning Services, 620 South Meridian Street, Tallahassee, FL 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-27.007 Permits and Authorizations for the Take of Florida Endangered and Threatened Species.

(1) No change.

(2) The permit requirements for the taking of a State-designated Threatened species are as follows:

(a) through (c) No change.

(d) Agriculture, as defined in Section 570.02, F.S., conducted in accordance with Chapter 5I-8 or Chapter 5M-18, F.A.C., and the wildlife best management practices (BMPs) adopted in Sections 5I-8.001 or 5M-18.001, F.A.C., by the Department of Agriculture and Consumer Service pursuant to section 570.94, F.S., is authorized and does not require a permit authorizing incidental take despite any other provision of this section or section 68A-27.005, F.A.C.

(e) through (f) No change.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const., Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 11-8-10, Amended 10-9-13, 1-19-15_____.

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: Thomas Eason, Director of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, FL 32399-1600

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: _____

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 1/8/2015

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

DIVISION: *Freshwater Fish and Wildlife*

RULE TITLES: Permits and Authorizations for the Take of Florida Endangered and Threatened Species

RULE NOS.: 68A-27.007

In 2010, as part of FWC's updated Endangered and Threatened Species Rule, FWC Commissioners directed staff to work with landowners, Florida Department of Agriculture and Consumer Services (FDACS) staff, and other stakeholders to legislatively authorize, develop and adopt wildlife best management practices (BMPs) for agriculture. Wildlife BMPs will provide a voluntary alternative to permitting incidental take of state listed species for landowners engaged in agriculture.

During the 2013 Legislative Session, Section 570.087 of the Florida Statutes was created by 2013-296, Laws of Florida, to provide authority for the Florida Department of Agriculture and Consumer Services (FDACS) to work cooperatively with the FWC to develop wildlife best management practices (BMPs) for agriculture-related activities and to codify such wildlife BMPs through FDACS' rulemaking process. Section 570.087 was renumbered to 570.94 in the 2014 legislative session by 2014-150, Laws of Florida. This section also requires that FWC and FDACS develop a Memorandum of Agreement (MOA) detailing how the two agencies will work cooperatively to administer a voluntary wildlife BMP program for agricultural landowners, which the agencies have executed.

FDACS has adopted Chapter 5I-8 and 5M-18. These rule chapters adopt wildlife BMPs and establish a procedure for submitting a "Notice of Intent to Implement" for the wildlife BMPs. These Chapters each include Sections 5I-8.001 and 5M-18.001 F.A.C. that specifically incorporate the wildlife BMPs.

There are no federal regulations or standards regarding the same subject as this rule. Endangered and Threatened wildlife are regulated under the federal Endangered and Threatened Species Act 16 U.S.C §1531 et seq. (ESA) and implementing regulations. That act allows states to regulate wildlife in a manner that is at least as restrictive as the Act. This amendment relates to exemptions for State designated endangered and threatened species that are not federally designated under the federal ESA. Therefore Florida's regulation of additional, state-listed species is consistent with federal regulation.