

Background Report
Final Rule 68A-9.0012
Consent Agenda Item 5
December 5-6, 2012

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

DIVISION: Division of Habitat and Species Conservation

RULE NO: 68A-9.012

RULE TITLE: Taking of Wildlife on Airport Property.

PURPOSE AND EFFECT: The purpose and effect of this rule revision is to amend language making the rule easier to understand and implement.

SUMMARY: The rule became effective in July 2010. In implementing the rule, staff and airport personnel and consultants have found some of the language unclear or difficult to interpret. Minor revisions are proposed to clarify that eggs as well as animals may be taken as provided for in the rule, and that the rule applies to airports with a military bird/animal aircraft strike hazard plan as well as airports with a FAA approved wildlife hazard management plan. The revised rule also adds a provision that wildlife nests may be destroyed when wildlife and eggs are no longer present. Stakeholders reviewed the amended rule and had no concerns.

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.*

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 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 PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

DATE AND TIME: During the regular meeting of the Commission, December 5-6, 2012, 8:30 a.m. to 5:00 p.m., each day.

PLACE: Franklin County Courthouse, 33 Market Street, Apalachicola, Florida 32320

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: Mr. Eric Sutton, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

68A-9.012 Take of Wildlife on Airport Property.

Any airport may take wildlife on airport property for the purpose of ensuring aircraft and human safety in accordance with this rule. An airport or other entity owning or operating an airport as defined in Section 330.27(2), F.S., or their officers, employees, contractors (or employee of a contractor) or member of the airport's governing body as referenced in Section 379.2293(5), F.S., may carry out the activities specified in this rule. Notwithstanding the provisions of this section, the executive director or a designee may issue permits authorizing the take of additional species of wildlife, additional methods of take or alternative forms of disposition and transportation for justifiable purposes pursuant to Rule 68A-9.002, F.A.C., provided authorizations shall be denied or revoked upon reasonable conclusion that the requested or permitted activity would be detrimental to fish and wildlife resources or public health and safety.

(1) The taking and disposition of species, including eggs, regulated by the United States Departments of Interior or Commerce in 50 C.F.R. §10.13 (Migratory Birds), 50 C.F.R. § 17.11 and §17.12 (Threatened and Endangered Species), 50 C.F.R. §22 (Bald Eagle), 50 C.F.R. §223.102 and §224.102 (Marine Species), is allowed pursuant to appropriate federal permit or other federal authorization. No additional Commission authorization is required.

(2) The following paragraphs control the take of black bears and species described in Chapter 68A-27, F.A.C., except species described in subsection (1):

(a) Any of these species may be harassed by persistent, non-injurious disturbance without physical capture or direct handling to disperse wildlife when the wildlife poses an imminent threat to aircraft and human safety.

(b) Any of these species and their eggs may be otherwise taken when:

1. The wildlife poses an imminent threat to aircraft and human safety; and
2. A situation requires an emergency response which does not allow time for paragraph (2)(a); or
3. Attempts using paragraph (2)(a) have been documented as unsuccessful and when:

a. The airport is implementing a Federal Aviation Administration approved wildlife hazard management plan, or military bird/animal aircraft strike hazard plan; and

b. The airport has made habitat management alteration that has eliminated or significantly reduced hazardous wildlife attractants on airport property.

(c) Wildlife burrows, including burrowing owl and gopher tortoise burrows, within the safety area as defined in 14 C.F.R. § 139.5 may be destroyed after or while all existing burrowing owls and gopher tortoise(s) within the burrows are flushed or live captured.

(d) Wildlife nests may be destroyed when wildlife and eggs are no longer present or have been taken as authorized in subsection (1) or (2).

(3) Notwithstanding any provision of Commission rule, an airport authority may take all other wildlife not described in subsections (1) and (2) on airport property if their presence poses a potential threat to aircraft and human safety.

(4) Notwithstanding any provision of Commission rule, wildlife in subsections (2) and (3) taken pursuant to this rule may be taken by any method except the following:

(a) Poison, other than those pesticides that are registered by the Florida Department of Agriculture and Consumer Services without additional authorizations and are only used in a manner consistent with the product labeling.

(b) Leg hold traps except those commercially manufactured padded-jaw traps.

(c) Traps, nets and snares unless they are visited at intervals not exceeding 24 hours.

(d) Any method prohibited pursuant to Section 828.12, F.S.

(e) Live capture of any deer, except Key deer as authorized by subsection (1).

(f) The killing of gopher tortoises is prohibited.

(5) Disposition of live-captured wildlife.

(a) Any species described in subsection (2) live captured shall be immediately released provided the release site and capture site are located on a contiguous piece of airport property or a permit or authorization has been obtained from the Commission for off-site release or alternative forms of disposition.

(b) Any species described in subsection (3) live captured by any method shall be released or euthanized within 24 hours following capture or inspection of a trapping device containing wildlife except,

1. Wildlife may only be released if:

a. The wildlife is released on the property of the airport provided the release site and capture site are located on a contiguous piece of property; or

b. The wildlife is a native species; and

c. The property where the animal is to be released is located within the county of capture and is a minimum of 40 contiguous acres; and

d. The person releasing the wildlife is in possession, at time of release, of written permission from the property owner allowing such action.

2. Euthanasia of wildlife shall be humane as defined by the American Association of Zoo Veterinarians or the American Veterinary Medical Association.

3. Euthanasia of any live captured bobcat is prohibited and any live captured bobcat shall be released as provided in subparagraph 1.

(6) Transportation of wildlife.

(a) Live-captured wildlife described in subsection (3), may be transported pursuant to this subsection only for:

1. The purpose of euthanasia as provided in subsection (5); or

2. The purpose of release as provided in subsection (5).

(b) Transportation of wildlife authorized by this subsection shall not supersede the provisions of any rabies alert or area quarantine issued by County Health Departments or County Animal Services.

(7) Wildlife described in subsections (2) and (3) that is killed pursuant to this rule or parts of that wildlife shall not be retained for personal use and shall be buried or incinerated.

(8) Any take that kills wildlife described in subsection (2) shall be reported by the airport. An Airport Wildlife Incident Report (Form FWC-AWIR ~~06-201001-2013~~, herein incorporated by reference) must be submitted to the Commission within 5 business days. The form is available at MyFWC.com and must be submitted to the Protected Species Permit Coordinator, 620 S. Meridian Street, Mail Station 2A, Tallahassee, FL 32399-1600 or by email at AirportIncidents@myFWC.com.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-27-10, Amended _____.

NAME OF PERSON(S) ORIGINATING PROPOSED RULE: Mr. Eric Sutton, Director, Division of Habitat and Species Conservation, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October , 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: December 22, 2011

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

DIVISION: Division of Habitat and Species Conservation

RULE NO: 68A-9.012

RULE TITLE: Taking of Wildlife on Airport Property.

Rule 68A-9.012 was developed to eliminate the need for State permits if the taking of wildlife on airport property if required to ensure aircraft and human safety, and became effective in July 2010. In implementing this rule, staff and airport personnel/consultants have found areas needing clarification to improve implementation. Staff proposes to revise this rule to clarify that eggs as well animals may be taken as provided for in the rule, and that the rule applies

to airports with a military bird/animal aircraft strike hazard plan as well as airports with a FAA approved wildlife hazard management plan. The revision also adds a provision that wildlife nests may be destroyed when wildlife and eggs are no longer present. Stakeholders reviewed the amended rule and had no major concerns. Staff is requesting the Commission approve advertising, adopting, and filing the rule revision.

