



Proposed Revisions to the Gopher
Tortoise Permitting Guidelines

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Florida Fish and Wildlife Conservation Commission
Division of Habitat and Species Conservation



This presentation is intended to be an executive level overview of the proposed guidelines revisions. A more detailed description on specific changes is provided on the supplemental background document provided. Guiding principles for the permitting framework include consistency with the approved Gopher Tortoise Management Plan, technical and legal feasibility of the guidelines, and relevance to pertinent gopher tortoise conservation issues.

History

- Original management plan approved 2007
 - Gopher tortoise listed as Threatened
- Permitting guidelines approved 2008
- Revised management plan approved September 2012
- Today - Revise permitting guidelines to make consistent with the new management plan



The Florida Fish and Wildlife Conservation Commission (FWC) published its first gopher tortoise (*Gopherus polyphemus*) management plan in 2007 and species was reclassified as *Threatened*. Revisions to the management plan were approved in September 2012. The goal of the Gopher Tortoise Management Plan is: *to restore and maintain secure, viable populations throughout Florida so the species no longer warrants listing*. The goal of the plan will be accomplished by meeting the following conservation objectives:

- Minimize the loss of gopher tortoises
- Increase and improve gopher tortoise habitat
- Enhance and restore gopher tortoise populations
- Maintain the gopher tortoise's function as a keystone species

The Plan outlines a series of conservation strategies and actions that will help us to meet the objectives. These include: habitat preservation and management; population and disease management; landowner incentives; local government coordination; monitoring and research; permitting; law enforcement; education and outreach; conservation of commensal species.

The management plan and permitting guidelines' updates allow for an adaptive process that benefits both the conservation of the tortoise and stakeholders who depend on the documents for guidance. Permitting guidelines were first approved in 2008 and have been updated several times since. The permitting guidelines include permits for relocating tortoises to protected, managed lands; a permit for qualified individuals to perform relocation activities; and a permit to temporarily displace tortoises from linear utility projects. Continued improvements to these guidelines help us meet the first objective of the management plan; minimize the loss of gopher tortoises by ensuring humane relocation prior to commencing development activities.

Stakeholder input

- Revisions based on stakeholder feedback
- Meetings with the Gopher Tortoise Technical Assistance Group (GTTAG)
 - Backhoe guidelines ad hoc committee
 - Written public comment accepted throughout February 2013
- Drafts improved based on input



Members of the Gopher Tortoise Technical Assistance Group (GTTAG) and FWC gopher tortoise team (GT3) staff worked together to draft revised language for the guidelines. Over the past year, members of the GTTAG group and public agency partners have participated in ongoing dialogue with FWC on the proposed changes. Meetings of the GTTAG were held in November and February which provided an opportunity for the public to comment on these changes. The last meeting in February has resulted in the proposed revisions brought to you today.

Guidelines' revisions

- Updates to make consistent with the management plan
 - Categorical exclusion for military installations
 - Large, landscape-scale conservation agreements
 - Waif gopher tortoise guidelines
 - Updated glossary terms



When the revised Gopher Tortoise Management Plan was presented in September 2012, staff noted that revisions to the permitting guidelines would follow to improve clarity and concordance with the revised plan. In addition to those consistency items, staff have identified other needed improvements to the permitting guidelines which are also included in the proposed revisions presented today.

Guidelines' revisions

- Guidance for financial assurances for recipient sites
- Guidelines for capture of gopher tortoises using a mechanical excavation
- Criteria for suspension, revocation, or nonrenewal of authorized gopher tortoise agent permits



Some of the other substantive improvements include the development of better guidance for financial assurances for long-term protected recipient sites, guidelines for capture of gopher tortoises using backhoe excavation, and new criteria for suspension, revocation, or nonrenewal of authorized gopher tortoise agent permits. All of these proposed revisions help to clarify current guidelines, ensure transparency, and improve consistency.

Financial assurances

- Revised guidelines for gopher tortoise recipient sites
 - Ensure long-term financial wherewithal on recipient sites
 - Reduce risk to the agency (if FWC has to manage habitat, funds will be needed)
 - Need for expertise, better guidance, and consistency for financial assurance



FWC staff contracted with a financial expert to evaluate the current guidelines for financial assurances and recommend changes/guidelines that ensure long-term fiduciary responsibility of recipient sites, reduce risk to the agency, and provide FWC staff better guidance and expertise.

The purpose of having financial assurance is to ensure that adequate funds will be available in the timing and amounts necessary to provide for the long-term management of gopher tortoise habitat of a recipient site. Financial assurance is established based on today's cost of habitat management of the site and length of easement (perpetual). A principal amount is funded by the recipient site owner and invested, with interest generated used to pay for future habitat management of the site. If a recipient site falls out of compliance with its management plan, FWC has the authority to access the financial assurance and conduct the appropriate habitat management for the site. Financial assurances help ensure that the long-term conservation of the relocated gopher tortoises is secure.

Financial assurances

- Limit the types of instruments accepted by FWC
- Include a Trust Management fee calculated into the overall principal amount (1%)
- Addresses transfer of ownership of the property
- Provides standard templates to use for trust agreements
- Consistency with other state and federal programs' financial assurance requirements



The proposed changes to the financial assurance guidelines include:

- Accepting only a trust fund as a long-term financial assurance instrument.
- Interim, short-term instruments can be used until the trust fund can be established.
 - performance bond
 - irrevocable letter of credit
- The principal amount can be either established up front or incrementally as tortoises are received at the recipient site.
- Trust includes a Trust Management fee (1%) calculated into the overall principal amount in order to generate the interest needed to pay the trustee.
- Includes specific guidelines regarding what type of investments the Trust can invest in. These include a combination of investment grade corporate securities, investment grade municipal securities, and U.S. treasuries.
- Transfer of ownership of the recipient site does not relieve the permittee of its financial assurance obligations established under the permit except as specified. The seller can keep the trust fully funded for that site or new owner must establish a trust in full.
- Provides FWC standard templates for a Trust Agreement, Performance Bond, Irrevocable Standby Letter of Credit (fill in the blank format).
- Proposed guidelines for financial assurance provides clarity to the recipient site owner and help reduce the overall risk to the agency.
- Proposed guidelines are consistent with other state and federal financial assurance requirements.
- Proposed guidelines still provide flexibility for FWC and the recipient site owner within constraints.

Mechanical excavation

- Guidelines for capture of gopher tortoises using mechanical excavation (backhoe)
 - Provides minimum actions that an Authorized Agent must take during capture efforts using a backhoe
 - Guidelines are practical; most Authorized Agents already comply



Currently, the permitting guidelines do not provide specific guidance on actions an Authorized Gopher Tortoise Agent must take when using backhoe excavation to capture gopher tortoises. Working with stakeholders, the proposed revision clarifies FWC's expectation as to the actions an authorized agent must take to exhaust capture efforts that ensures all tortoises are safely captured and relocated. Input from stakeholders was critical to ensuring that the proposed revisions are practical and reasonable.

Criteria for authorized agent permits

- Criteria for suspension, revocation, or nonrenewal
 - Stakeholders want a transparent process to hold everyone equally accountable
 - Implements 68A-5.004 F.A.C.; tiered criteria addressing administrative infractions
 - Provides 3 chances to “remedy” multiple administrative infractions



The FWC has the authority to suspend, revoke, or not renew Authorized Gopher Tortoise Agent permits under 68A-5.004 F.A.C. However, no implementing criteria exist for these types of agency actions for gopher tortoise permits. The proposed criterion addresses administrative infractions and provides multiple opportunities for authorized agents to remedy an administrative infraction.

Emerging issues

- Financial assurances
 - Considering the cost of inflation
 - Increasing costs of management



The FWC staff has continued to work with stakeholders to discuss the costs associated with relocation and managing recipient sites. Although many of the proposed changes presented today address the long-term security of recipient sites, there are a few significant issues that will be evaluated for future guidelines. These include factoring into cost estimates for habitat management the rate of inflation, and adjusting the trust fund's principal to accommodate inflationary costs of management for the duration of the permit (perpetual).

Staff is committed to working with stakeholders to address these emerging issues in the future.

Staff recommendation

- *Approve the proposed revisions to the Gopher Tortoise Permitting Guidelines*



Staff recommends approval of the revisions to the Gopher Tortoise Permitting Guidelines.