

Florida Fish and Wildlife Conservation Commission

Legislative Affairs Office

620 South Meridian Street • Tallahassee, FL 32399-1600

(850) 487-3795 • FAX (850) 410-5265



2015 Legislative Proposal Wildlife Feeding Rule Penalties

Title: Wildlife Feeding Rule Penalties

Submitted by: Habitat and Species Conservation

I. Summary of the Proposal

This proposal would change the penalty structure for violations of wildlife and freshwater fish feeding rules (note: there are currently no rules prohibiting the feeding of fresh fish). The result would be to lessen the penalty for first-time violations of these rules to a noncriminal infraction. Subsequent violations would result in increased criminal penalties, with more significant penalties imposed for those who violate rules relating to feeding bears, alligators, and other crocodilia. This increased penalty structure for violations of these species-specific rules reflect the serious nature and potential increase in of human injury from human interactions with these species in particular.

II. Present Situation

The Fish and Wildlife Conservation Commission (FWC) has adopted rules in the Florida Administrative Code (F.A.C.) that prohibit feeding specified species of wildlife. These rules, together with types of feeding that are common for the species for which feeding is prohibited, are listed in the table below:

<u>F.A.C. Rule Number/Species</u>	<u>F.A.C. Rule Language</u>	<u>Common Types of Feeding</u>
68A-4.001 (3)/Bear, Fox, Raccoon	Intentionally placing food or garbage, allowing the placement of food or garbage, or offering food or garbage in such a manner that it attracts black bears, foxes or raccoons and in a manner that is likely to create or creates a public nuisance is prohibited.	Garbage, pet or livestock food, bird seed, or other foods left unsecured outside or placed out intentionally for these/other wildlife
68A-4.001 (4)/Pelican	The intentional feeding or the placement of food that attracts pelicans and modifies the natural behavior of the pelican so as to be detrimental to the survival or health of a local population is prohibited.	Fish and food scraps handed out or dumped in ways that allow the animals to feed on that material
68A-4.001 (5)/Sandhill Crane	The intentional feeding of sandhill cranes is prohibited.	Bird feeders or bread/corn people leave out, whether for cranes or for other wildlife
68A-16.002/ Bald Eagle	No person shall take, feed, disturb, possess, sell, purchase or barter, or attempt to engage in any such conduct, any bald eagle or parts thereof, or their nests or eggs, [except when authorized by permit or consistent with FWC Eagle Management	Food scraps handed out or dumped in ways that allow the animals to feed on that material

	Guidelines].	
68A-25.001/ Alligator and Crocodile	No person shall intentionally feed, or entice with feed, any crocodilia unless held in captivity under a permit issued by the Fish and Wildlife Conservation Commission or otherwise provided by this Title.	Food scraps handed out or dumped in ways that allow the animals to feed on that material

The purpose of these rules is to protect both the species and the public. All wild animals have a natural fear of people, but when wild animals are fed by people, the animals’ natural fear is diminished. This results in wildlife having more frequent and closer contact with people. Feeding wildlife also results in nuisance and aggressive behavior by the animals, which can pose a risk to public safety, danger to pets and small livestock, and property damage. Wildlife that are fed by humans also spend more time in developed areas, which exposes them to increased risks of vehicle strikes, sickness from disrupted natural diets and behaviors, killing by the public, euthanization by FWC in order to protect public safety, and/or in some cases killing by domesticated pets. For example, an average of 15 bears per year is euthanized by FWC for conflict behavior and 78% of those bears have a history of accessing human-provided foods. The table below details the impacts of feeding of bears, and the resulting human interactions with bears, under Rule 68A-4.001(3), F.A.C.:

<u>Year</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Number of reports from public listing 'Bear in Garbage'	848	916	1,347	1,626	1,329	2,064	2,363
Percent of all public reports that listed 'Bear in Garbage'	30%	33%	40%	39%	33%	33%	35%
Bears euthanized due to conflicts	15	14	19	14	13	22	25
Number of euthanizations that were food-related*	10	11	11	9	10	21	23
Percent of euthanizations that were food-related*	67%	79%	58%	64%	77%	95%	92%
Feeding rule warnings issued	6	7	10	25	29	22	28
Feeding rule citations issued	7	1	6	4	8	6	4

**Food-related refers to situations where the bear previously received or was actively seeking out food from people, whether people were intentionally or unintentionally feeding the bear*

When investigating potential feeding rule violations, the first step FWC officers take is to educate people about the potential consequences of their actions. After multiple attempts to educate and dissuade those behaviors, a warning is often issued, and if actions continue, a citation may be issued.

A first violation of the feeding prohibition rules listed above is currently a 2nd degree misdemeanor, under sections 379.401(2)(a)4 and 379.401(2)(a)20, F.S., resulting in punishment of up to 60 days in jail and/or up to a \$500 fine, at the discretion of the. Those who are convicted of a Level II violation (including violations of the above-listed feeding rules) within three years after a previous conviction for a Level II or higher violation, commit a misdemeanor of the first degree, punishable by imprisonment of up to a year and/or a fine up to \$1000, with a minimum mandatory fine of \$250. If a person is convicted of a Level II violation within 5 years after two previous convictions for a Level II or higher violation he/she commits a misdemeanor of the 1st degree, punishable by imprisonment of up to a year and/or a fine up to \$1000, with a minimum mandatory fine of \$500 and suspension of all recreational licenses for a year. If a person is convicted of a Level II violation within 10 years after three previous convictions for a Level II or higher violation, he/she commits a misdemeanor of the first degree, punishable by imprisonment of up to a year and/or a fine of up to \$1000, with a minimum mandatory fine of \$750 and suspension of all recreational licenses for 3 years. For all of these penalties, see section 379.401(2)(b), F.S. This penalty structure also applies to violations of saltwater fish feeding rules; the penalty structure for feeding marine species is unchanged by this proposal.

When FWC officers issue citations for violations of feeding rules, Assistant State Attorneys (ASAs) reject 28% of them, and 25% of those charged have their adjudications withheld (no criminal misdemeanor finding but fines are assessed). Below is a table showing the outcomes of FWC officer encounters and criminal charges for violations of feeding rules from the years 2007-2013:

<u>F.A.C. Rule Number/Species</u>	<u>Warnings (#)</u>	<u>Citations (#)</u>	<u>Adjudications Withheld (%)</u>	<u>Adjudications Guilty (%)</u>	<u>Dismissed (%)</u>	<u>Open (%)</u>	<u>Pre-Trial Diversion (%)</u>	<u>Unknown (%)</u>
68A-4.001(3) Bear, Fox, Raccoon	127	36	36%	28%	25%	0%	3%	8%
68A-4.001(4) Sandhill Crane	23	2	0%	50%	0%	0%	0%	50%
68A-4.001(5) Pelican	3	2	0%	50%	0%	0%	0%	50%
68A-16.002 Bald Eagle	0	1	0%	0%	0%	0%	0%	100%
68A-25.001 Alligator, Crocodile	17	45	18%	9%	33%	2%	4%	33%
TOTALS	170	85	25%	19%	28%	1%	2%	24%

FWC officers’ experiences as well as adjudication results of citations issued for feeding prohibition rules reveal that there are varying degrees of severity and willfulness in feeding violations despite the single criminal penalty of a second degree misdemeanor. Communications with ASAs have revealed that some believe that a second degree misdemeanor is too steep a penalty for some initial violations of animal feeding rules, and this may be the reason for the reluctance to prosecute some violations. Yet, some of the citations are prosecuted, and the violator issued significant sentences.

FWC has recorded higher levels of human-wildlife conflict in 2012 and 2013 than in any previous years. Incidents of human injuries caused by bears and alligators have also been more prevalent. In 2013 and 2014, FWC documented the most serious human injuries caused by bears since records have been kept in 1976. Many of these human-wildlife interactions result from violations of the animal feeding rules, but since many violations of these rules are not prosecuted, the penalty may have little deterrent effect.

There are currently no rules prohibiting the feeding of freshwater fish. For marine fish, Rule 68B-5.005, F.A.C, prohibits the introduction of any food or other substance into the water by a diver for the purpose of feeding or attracting marine species, except for the purpose of harvesting such marine species as otherwise allowed by FWC rules.

III. Effect of Proposed Changes in the Bill

This proposal would change the penalty structure for wildlife and freshwater fish feeding rule violators (note – there are no current rules prohibiting the feeding of freshwater fish). A first offense for violating any animal or freshwater fish feeding rules would be a noncriminal infraction, with a penalty of a \$100 fine. A second offense would be a 2nd degree misdemeanor, with up to a \$500 fine and/or up to 60 days in jail, at the discretion of the judge. All subsequent offenses of feeding rules for species other than bears, alligators, and other crocodilia would also be 2nd degree misdemeanors, punishable by up to a \$500 fine and/or up to 60 days in jail, at the judge’s discretion. For violations of bear, alligator, or other crocodilia feeding rules, a third offense would be a 1st degree misdemeanor, with up to a \$1,000 fine and/or up to 1 year in jail, at the judge’s discretion. Fourth and subsequent offenses of rules relating to feeding bears, alligators, and other crocodilia would be a 3rd degree felony, with up to \$5,000 fine and/or up to five years in prison, at the discretion of the judge. In addition, this proposal would provide that if a violation of the feeding rules for bears, alligators, or other crocodilia results in injury to a person, regardless of the number of the offense, is the penalty would be a 1st degree misdemeanor, punishable by up to a \$1000 fine and/or up to a year in jail, at the discretion of the judge. If the violation of one of these specific rules results in serious bodily harm or death, regardless of the number of the offense, is the penalty would be a 3rd degree felony, punishable by up to a \$5000 fine and/or up to five years in prison, at the discretion of the judge.

Violations of saltwater fish feeding rules are unchanged by this proposal.

The new penalty structure, resulting from this proposal, is reflected in the table below.

<u>Feeding Rules Violated</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>	<u>4th or Subsequent Offense</u>	<u>Any offense resulting in injury to a person</u>	<u>Any offense relating in serious bodily harm or death of a person</u>
Bears, Alligators, or Other Crocodilia	Noncriminal Infraction (\$100 fine)	2 nd Degree Misdemeanor (up to a \$500 fine and/or up to 60 days in	1 st Degree Misdemeanor (up to a \$1000 fine and/or up to a year in	3 rd Degree Felony (up to \$5000 fine and/or up to five years in	1 st Degree Misdemeanor (up to a \$1000 fine and/or up to a year in jail)	3 rd Degree Felony (up to \$5000 fine and/or up to five years in prison)

		jail)	jail)	prison)		
All other species of wildlife or freshwater fish	Noncriminal Infraction (\$100 fine)	2 nd Degree Misdemeanor (up to a \$500 fine and/or up to 60 days in jail)	2 nd Degree Misdemeanor (up to a \$500 fine and/or up to 60 days in jail)	2 nd Degree Misdemeanor (up to a \$500 fine and/or up to 60 days in jail)	Either a noncriminal infraction (\$100) for a first offense, or a 2 nd Degree Misdemeanor (up to a \$500 fine and/or up to 60 days in jail) for a second or subsequent offense	Either a noncriminal infraction (\$100) for a first offense, or a 2 nd Degree Misdemeanor (up to a \$500 fine and/or up to 60 days in jail) for a second or subsequent offense

These new progressive civil-to-criminal penalty structures will likely result in fewer criminal citations, reserving a more severe penalty for those who continually choose to violate the law despite receiving education, warnings, and a civil penalty. While law enforcement will continue to rely heavily on education before regulation, the new penalty structure will provide an effective tool in the form of a civil penalty for first time offenders. Once issued a civil penalty, first time offenders should better understand the serious nature of the violation, and therefore be less likely to incur a criminal penalty for future violations.

FWC believes there may be an initial increase in the number of citations issued following the implementation of this proposal, but the agency believes the number of citations issued will decrease over time as the public becomes more aware of the consequences of feeding wildlife.

IV. Impact on All Pertinent Statutes/Rules/Constitution

Draft statutory language –

Subsection (1) and paragraph (a) of subsection (2) of section 379.401, Florida Statutes, are amended to read:

(1)(a) **LEVEL ONE VIOLATIONS.**—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.
2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.
3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.
4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.
5. Section [379.354](#) (1)-(15), providing for recreational licenses to hunt, fish, and trap.
6. Section [379.3581](#), providing hunter safety course requirements.
7. Section [379.3003](#), prohibiting deer hunting unless required clothing is worn.
8. Paragraph [379.412\(2\)\(a\)](#) providing for wildlife feeding and enticing penalties

(b) A person who commits a Level One violation commits a noncriminal infraction and shall be cited to appear before the county court.

(c)1. The civil penalty for committing a Level One violation involving the license and permit requirements

of s. [379.354](#) is \$50 plus the cost of the license or permit, unless subparagraph 2. applies.

2. The civil penalty for committing a Level One violation involving the license and permit requirements of s. [379.354](#) is \$100 plus the cost of the license or permit if the person cited has previously committed the same Level One violation within the preceding 36 months.

3. The civil penalty for committing a Level One violation under 379.412(2)(a) is \$100.

(d)1. The civil penalty for any other Level One violation is \$50 unless subparagraph 2. applies.

2. The civil penalty for any other Level One violation is \$100 if the person cited has previously committed the same Level One violation within the preceding 36 months.

(e) A person cited for a Level One violation shall sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(f) A person cited for a Level One violation may pay the civil penalty by mail or in person within 30 days after receipt of the citation. If the civil penalty is paid, the person shall be deemed to have admitted committing the Level One violation and to have waived his or her right to a hearing before the county court. Such admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

(g) A person who refuses to accept a citation, who fails to pay the civil penalty for a Level One violation, or who fails to appear before a county court as required commits a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(h) A person who elects to appear before the county court or who is required to appear before the county court shall be deemed to have waived the limitations on civil penalties provided under paragraphs (c) and

(d). After a hearing, the county court shall determine if a Level One violation has been committed, and if so, may impose a civil penalty of not less than \$50 for a first-time violation, and not more than \$500 for subsequent violations. A person found guilty of committing a Level One violation may appeal that finding to the circuit court. The commission of a violation must be proved beyond a reasonable doubt.

(i) A person cited for violating the requirements of s. [379.354](#) relating to personal possession of a license or permit may not be convicted if, prior to or at the time of a county court hearing, the person produces the required license or permit for verification by the hearing officer or the court clerk. The license or permit must have been valid at the time the person was cited. The clerk or hearing officer may assess a \$10 fee for costs under this paragraph.

(2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.

2. Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.

4. Rules or orders of the commission relating to the feeding of ~~wildlife, freshwater fish, or saltwater fish.~~

5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.

6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.

7. Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.

8. Rules or orders of the commission relating to the use of dogs for the taking of wildlife.

9. Rules or orders of the commission which are not otherwise classified.

10. Rules or orders of the commission prohibiting the unlawful use of finfish traps.

11. All prohibitions in this chapter which are not otherwise classified.

12. Section [379.33](#), prohibiting the violation of or noncompliance with commission rules.

13. Section [379.407](#)(7), prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater

product with intent to sell.

14. Section [379.2421](#), prohibiting the obstruction of waterways with net gear.
15. Section [379.413](#), prohibiting the unlawful taking of bonefish.
16. Section [379.365](#)(2)(a) and (b), prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
17. Section [379.366](#)(4)(b), prohibiting the theft of blue crab trap contents or trap gear.
18. Section [379.3671](#)(2)(c), prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
19. Section [379.357](#), prohibiting the possession of tarpon without purchasing a tarpon tag.
20. ~~Rules or orders of the commission prohibiting the feeding or enticement of alligators or crocodiles.~~
21. Section [379.105](#), prohibiting the intentional harassment of hunters, fishers, or trappers.

Section 379.412, Florida Statutes, is created to read:

379.412 Penalties for feeding wildlife and freshwater fish.

(1) The penalties in this section apply to a violation of any rules or orders of the commission that prohibit or restrict the following: feeding wildlife or freshwater fish with food or garbage; attracting wildlife or freshwater fish with food or garbage; or allowing the placement of food or garbage in a manner that attracts wildlife or freshwater fish. This section does not apply to rules or orders of the commission relating to animals held in captivity or those restricting the take of or hunting of species over bait, over intentionally placed or deposited food, or in proximity to feeding stations.

(2) Except as provided in subsection (3), any person who violates a prohibition identified in subsection (1) shall be subject to the most serious of the following penalties that applies:

(a) For a first offense, commits a Level One violation under s. 379.401.

(b) For an offense committed after a previous violation identified in subsection (1), commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) For an offense related to bears, alligators or other crocodilians committed after two previous violations identified in subsection (1) related to bears, alligators or other crocodilians, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) For an offense related bears, alligators or other crocodilians committed after three previous violations identified in subsection (1) related to bears, alligators or other crocodilians, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) An applicable penalty in this subsection applies as an alternate, enhanced penalty when the penalty is greater than a penalty that would result from applying subsection (2).

(a) A person who commits an offense identified in subsection (1) related to bears, alligators or other crocodilians and whose actions cause or contribute to the injury of another, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who commits an offense identified in subsection (1) related to bears, alligators or other crocodilians and his or her actions result in death or serious bodily injury to another, he or she commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Serious bodily injury shall include injury resulting in a physical condition that creates a substantial risk of death, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(4) Violation Defined.—As used in this section, the term “violation” means any judicial disposition other than acquittal or dismissal.

- A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No

B. Does the proposed legislation raise significant constitutional concerns under the United States or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, and impairment of contracts)?

No

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

No

V. Affected Agencies and Groups

Violators of wildlife feeding rules, Florida Assistant State Attorneys, Florida’s county clerks of court, FWC

Several non-governmental organizations have expressed an interest in this issue, as well. In 2012, Defenders of Wildlife made a public information request to gather information about how many bears FWC euthanized due to public safety concerns, and how many of those bears were habituated to people and food-conditioned. They then asked for the number of warnings and citations that were issued with F.A.C. 68A-4.001(3). Defenders of Wildlife presented that information to a meeting of representatives of private organizations and public agencies hosted by FWC. In addition to Defenders of Wildlife, the Humane Society of the United States, Sierra Club, and Conservancy of Southwest Florida are also very aware and interested in the effectiveness of the feeding rules. In 2013, Defenders of Wildlife indicated they would like to approach the Florida Legislature if FWC did not move forward with changes to the penalties to the feeding rules. Defenders of Wildlife and the Humane Society of the United States both expressed clear support for the legislative change FWC is proposing for penalties, although they have not had the opportunity to consider the most recent change when a higher penalty has been added for more egregious feeding incidents.

Government agencies that provide outdoor recreational opportunities such as the Florida Department of Environmental Protection, Florida Forest Service, and the U.S. Forest Service will be interested in this proposal because it could affect wildlife conflict levels in their public use areas. In addition, military bases such as Eglin Air Force Base would also be interested in how this change might affect personnel on their installations.

VI. Fiscal Impact

A. On FWC

None

B. On Other State Agencies

State Government may experience a small reduction in fine revenues. Fines imposed when adjudication is withheld are remitted to the Department of Revenue for deposit in the General Revenue Fund (section 775.083, F.S.).

D. On Private Sector

There could be a positive fiscal impact on individuals or companies that violate feeding prohibitions

initially, since they will be subject only to a \$100 fine and not to the current fine of up to \$500 for first-time offenders. Repeat offenders, particularly of violations of bear, alligator, and other crocodilia feeding rules, may experience negative fiscal impacts as the violations and resulting penalties increase for subsequent violations.

E. On Local Governments

Fines assessed for convictions of violations of wildlife feeding rules will be deposited in the Clerk of the Circuit Court Fine and Forfeiture Fund (section 142.01, F.S.) The money collected per animal feeding rule citation for a first violation will be less under the proposed change in penalty structure than under the current penalty structure. Currently, a first time violation could lead to fines of up to \$500, whereas under the proposed penalty structure, a first-time violation would lead to a fine of \$100.

F. Tax/Fee Issues

None