

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

UNITED STATES ASSOCIATION
OF REPTILE KEEPERS, FLORIDA
CHAPTER, CHRIS CANNAROZZI,
CARLOS MICHAELSEN, MIKE
VAN NOSTRAND, MICHAEL BARRERA,
AMIR SOLEYMANI, and RIAN GITTMAN,

Case No. _____

Plaintiffs,

v.

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION and
ERIC SUTTON, in his official capacity as
Executive Director of the Florida Fish and
Wildlife Commission,

Defendants.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs United States Association of Reptile Keepers, Florida Chapter (“USARK Florida”), and individuals Chris Cannarozzi, Carlos Michaelsen, Mike Van Nostrand, Michael Barrera, Amir Soleymani, and Rian Gittman (collectively, the “Individual Plaintiffs,” and together with USARK Florida, “Plaintiffs”) sue Defendants Florida Fish and Wildlife Conservation Commission (“the Commission”) and Eric Sutton, in his official capacity as the Executive Director of the Commission (“the Executive Director”), seeking: (1) a declaratory judgment that section 379.372, Florida Statutes, as amended on July 1, 2020 by 2020 CS/CS/CS/Senate Bill 1414 (“SB 1414”), is unconstitutional as it usurps the Commission’s exclusive regulatory authority with respect to wild animal life; (2) a declaratory judgment that Executive Order No. 20-19, issued by the Executive Director on June 30, 2020 and purporting to implement Senate Bill 1414, violates the Commission’s due process rules and constitutional procedural due process; and (3) temporary

and permanent injunctive relief enjoining the Commission from enforcing section 379.372 as amended and the Executive Order, as both would devastate Florida's commercial reptile industry.

In support, Plaintiffs state as follows:

NATURE OF ACTION

1. This is a lawsuit for declaratory and injunctive relief, in which Plaintiffs challenge the constitutionality of section 379.372, Florida Statutes ("the Statute"), as amended by 2020 Senate Bill 1414, and Executive Order No. 20-19, issued by the Executive Director on behalf of the Commission on June 30, 2020.

2. On June 29, 2020, Governor Ron DeSantis signed into law Chapter No. 20-123, Laws of Florida, enacting SB 1414. Chapter 20-123 is attached as **Exhibit A**. In relevant part, Section 3 of SB 1414 amended the Statute to provide that no person, party, firm, association, or corporation shall keep, possess, import into the state, sell, barter, or breed certain reptiles except for educational, research, or eradication or control purposes. In effect, SB 1414 repeals the Commission's Conditional Species program, which permits the ownership, possession, and sale of numerous reptile species subject to strict regulations, as well as the Commission's regulatory scheme with respect to tegu lizards and green iguanas, and under which the Individual Plaintiffs and a substantial number of USARK Florida members have safely operated for many years—some more than a decade. By its own terms, the Statute as amended went into effect on July 1, 2020.

3. The Statute violates article IV, section 9 of the Florida Constitution because it usurps the Commission's exclusive authority to regulate wild animal life in Florida. In pertinent part, the Constitution states that

[t]here shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. *The commission shall exercise the regulatory authority and executive powers of the state with respect to wild animal life and*

fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law.

Art. IV, § 9, Fla. Const. (emphasis added).

4. Plaintiffs seek a declaration that the Statute is unconstitutional, unlawful, and invalid, and seek injunctive relief enjoining enforcement of these unconstitutional provisions.

5. Following Governor DeSantis’s signing SB 1414, the Executive Director issued Executive Order No. 20-19, entitled “Regulations on Reptiles in Chapter 68-5, F.A.C.,” on June 30, 2020 (“the Executive Order”). A copy of the Executive Order is attached as **Exhibit B**. The Executive Order purports to implement the unconstitutional changes to the Statute accomplished by SB 1414, although it differs in certain respects from SB 1414. By its own terms, the Executive Order went into effect on July 1, 2020, and among other things, immediately prohibits the breeding and commercial sale of the reptile species to which it applies. Although the Florida Constitution grants the Commission the exclusive authority to regulate wildlife, the Commission must still afford procedural due process in exercising that regulatory authority. The Commission did not as it failed to follow its own due process procedures in issuing the Executive Order.

6. Plaintiffs seek a declaration that the Executive Order is unconstitutional, unlawful, and invalid, as it violates procedural due process, and seek injunctive relief enjoining enforcement of the Executive Order.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under sections 26.012 and 86.011, Florida Statutes, and 42 U.S.C. § 1983. *See Crocker v. Pleasant*, 778 So. 2d 978, 982-83 & n.6 (Fla. 2001); *Lloyd v. Page*, 474 So. 2d 865, 867-68 (Fla. 1st DCA 1985).

8. Venue lies in this Court because the Commission maintains its principal headquarters and resides in Leon County, the Executive Director resides in this county, and the causes of action accrued in this county. *See* § 47.011, Fla. Stat.

PARTIES

9. Plaintiff USARK Florida is a non-profit trade organization which represents and promotes the reptile industry—an industry that generates approximately \$160 million in revenue every year in this state. USARK Florida’s goals and objectives are to facilitate cooperation between government agencies, the scientific community, and the private sector in order to produce policy proposals that will effectively address important wild animal life husbandry and conservation issues. Thus, the Statute and Executive Order are within USARK Florida’s general scope of interest and activity. A substantial number of USARK Florida’s members keep, possess, import into the state, sell, barter, and breed reptiles, including but not limited to red-eared sliders (a type of turtle), reticulated pythons, green iguanas, and tegu lizards, and therefore will be substantially affected by the challenged Statute and Executive Order. USARK Florida serves as the united voice for reptile keepers in Florida and has associational standing.

10. All Individual Plaintiffs are members of USARK Florida and own, are in possession of, or transact business with at least one reptile subject to the Statute and Executive Order, and as such are businesses and individuals who are adversely affected by the Statute and Executive Order. Before the amended Statute and Executive Order became effective, the ownership, breeding, and possession of these reptiles and transaction of business involving these reptiles were lawful.

11. Plaintiff Chris Cannarozzi is an individual and resident of Alachua County, Florida. He owns and operates Mystic Reptiles, LLC.

12. Plaintiff Carlos Michaelsen is an individual and resident of Miami-Dade County, Florida. He owns and operates Tropical Reptiles & Exotics, LLC.

13. Plaintiff Mike Van Nostrand is an individual and resident of Broward County, Florida. He owns and operates Strictly Reptiles.

14. Plaintiff Michael Barrera is an individual and resident of Miami-Dade County, Florida. He owns and operates Snakes at Sunset.

15. Plaintiff Amir Soleymani is an individual and resident of Miami-Dade County, Florida. He owns and operates Miami Reptile Co. and XYZ Reptiles.

16. Plaintiff Rian Gittman is an individual and resident of Broward County, Florida. He owns and operates Underground Reptiles.

17. Defendant Florida Fish and Wildlife Conservation Commission is a governmental agency, created by the Florida Constitution, and charged with enforcing the Statute.

18. Defendant Eric Sutton is the Executive Director of the Commission and is sued in his official capacity as Executive Director. Mr. Sutton is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law.

GENERAL ALLEGATIONS

The Commission's Conditional Species Program and the Reptile Industry

19. Pursuant to article IV, section 9 of the Florida Constitution, the Commission has exercised its exclusive regulatory authority to adopt comprehensive and stringent rules regarding non-native wildlife species. Per these regulations, Chapter 68-5 of the Florida Administrative Code, a Florida “non-native” wildlife species can be classified as a “Conditional Non-native Species” (“Conditional Species”). *See* Fla. Admin. Code R. 68-5.004. A copy of Chapter 68-5, Florida Administrative Code, is attached as **Exhibit C**. The Commission has designated as

Conditional Species red-eared sliders, reticulated pythons, and green anacondas, among others. *See id.* 68-5.004(3), (4). Green iguanas and tegu lizards are not designated as Conditional Species, nor are they designated as prohibited species by the Commission.

20. Conditional Species are heavily controlled by the Commission's extensive regulatory framework and may, with proper permitting and pursuant to rigorous standards, be imported and possessed for commercial use. *See Fla. Admin. Code R. 68-5.005.* As examples, snakes and lizards that are designated as Conditional Species must be kept indoors or in outdoor enclosures with a fixed roof and must be permanently identified with a passive integrated transponder tag or microchip. *Id.* 68-5.005(5). Those holding Conditional Species permits for the possession and sale of snakes and lizards must submit a Captive Wildlife Disaster and Critical Incident Plan to the Commission and maintain accurate records of inventory. *Id.* The Commission has also reserved for itself broad authority to inspect snake and lizard Conditional Species held in captivity. *Id.* Conditional Species cannot be kept privately as pets and must qualify under one of the listed conditions. *See id.* 68-5.005.

21. The industry surrounding the commercial sale and breeding of Conditional Species is a lucrative one. The red-eared slider industry alone is estimated to generate \$10 million to \$15 million in revenue each year in this state. In reliance upon the existence of the Conditional Species program, a substantial number of USARK Florida members and Individual Plaintiffs have expended millions of dollars to assure their compliance with this program.

Tegu Lizards and Green Iguanas

22. Tegu lizards are a large species of lizard not native to Florida. Although the tegu lizard is not designated as a Conditional Species or prohibited species, a person must possess a Class III wildlife license from the Commission to sell a tegu lizard or use it for public exhibition

in Florida. A November 2019 survey conducted by the Commission found approximately 106 Class III license holders authorized to sell tegu lizards, with more than 1,245 in inventory at that time.¹ Tegus are a profitable business, as they can be bred to have non-natural and specialized colors like red, blue, and even color morphs.

23. Green iguanas are lizards that are typically green but can also be found in other colors. Like tegu lizards, green iguanas are not designated as a Conditional Species or prohibited species, but a person must possess a Class III wildlife license to sell green iguanas or display them for public exhibition. A November 2019 survey conducted by the Commission determined that approximately 382 license holders were authorized to sell green iguanas, with more than 5,307 in inventory.²

24. The commercial tegu lizard and green iguana industry in Florida is estimated to generate between \$7 million to \$12 million in revenue each year in Florida.

***The Amended Statute Usurps the Commission’s
Exclusive Constitutional Authority to Regulate Wild Animal Life***

25. Since 1885, the Commission (and its earlier incarnations, including the Florida Game and Fresh Water Fish Commission) has been constitutionally charged with the exclusive powers of the state to regulate wild animal life. *See* art. IV, § 30, Fla. Const. of 1885; art. IV, § 9, Fla. Const.; *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm’n*, 838 So. 2d 492, 494-95, 501 (Fla. 2003); *City of Miramar v. Bain*, 429 So. 2d 40, 42 (Fla. 4th DCA 1983) (“We recognize that the Commission has exclusive authority to enact rules and regulations governing wildlife”); *see also* Op. Att’y Gen. 80-04 (1980) (“Section 9, Art. IV, State Const.,

¹ *See* Fla. S. Comm. on Rules, CS/CS/CS/SB 1414 (2020) Staff Analysis 6 (<https://flsenate.gov/Session/Bill/2020/1414/Analyses/2020s01414.rc.PDF>) (hereinafter “S. Rules Comm. Staff Analysis”).

² S. Rules Comm. Staff Analysis 7.

vests in the Game and Fresh Water Fish Commission the exclusive authority to exercise all of the state's regulatory power over all wild animal life (except for penalties and license fees)”).

26. Prior to amendment, the Statute provided, in relevant part, that

[n]o person, party, firm, association, or corporation shall keep, possess, import into the state, sell, barter, trade, or breed the following species *for personal use or for sale for personal use*:

1. Burmese or Indian python (*Python molurus*).
2. Reticulated python (*Python reticulatus*).
3. Northern African python (*Python sebae*).
4. Southern African python (*Python natalensis*).
5. Amethystine or scrub python (*Morelia amethystinus*).
6. Green Anaconda (*Eunectes murinus*).
7. Nile monitor (*Varanus niloticus*).
8. Any other reptile designated as a conditional or prohibited species by the commission.

§ 379.372(2)(a), Fla. Stat. (2019) (emphasis added).

27. Thus, under the Statute before amendment, only the import, export, sale, and breeding for *personal* use of the listed species and Conditional Species were prohibited. The Commission's Conditional Species program—which designates reptiles subject to the Conditional Species program and authorizes permit holders to keep, possess, import, sell, barter, trade, and breed Conditional Species for *commercial* use subject to stringent regulation—was harmonious with the Statute. The Commission also authorized those owning or otherwise engaged in the possession, import, sale, barter, trade, and/or breeding of tegus and green lizards to operate, which was not contrary to the Statute.

28. Beginning on July 1, 2020, however, the Legislature through the amendment of the Statute has usurped the Commission's exclusive constitutional authority to regulate and exercise all executive powers regarding wild animal life in Florida. SB 1414 revises the Statute as follows:

A ~~No~~ person, party, firm, association, or corporation may not ~~shall~~ keep, possess, import into the state, sell, barter, trade, or breed the following species except for

educational, research, or eradication or control purposes ~~personal use or for sale for personal use:~~

1. Burmese or Indian python (*Python molurus*).
2. Reticulated python (*Python reticulatus*).
3. Northern African python (*Python sebae*).
4. Southern African python (*Python natalensis*).
5. Amethystine or scrub python (*Morelia amethystinus*).
6. Green Anaconda (*Eunectes murinus*).
7. Nile monitor (*Varanus niloticus*).
8. Green iguana (*Iguana iguana*).
9. Tegu lizard (any species of the genera *Salvator* or *Tupinambis*).
10. Any other reptile designated as a conditional or prohibited species by the commission.

SB 1414 § 3 (to be codified at § 379.372(2)(a), Fla. Stat. (2020)).

29. Through SB 1414, the Legislature has: (1) repealed the Commission’s Conditional Species program, prohibiting anyone from keeping, possessing, importing, selling, bartering, trading, or breeding Conditional Species for commercial use, including, for example, the red-eared slider and reticulated python; and (2) prohibited the keeping, possession, importation, sale, barter, trade, or breeding of green iguanas and tegu lizards for commercial use.

30. SB 1414 authorizes the Commission to “grandfather” or exempt from the changes a person, firm, or corporation holding a Class III wildlife license on January 1, 2020, with a documented inventory of green iguanas or tegu lizards. However, the Legislature through SB 1414 purports to limit this provision so that: (1) those exempt by this clause are permitted to “continue to exhibit, sell, or breed green iguanas or tegu lizards commercially” only so long as the current license remains active; and (2) those exempt “may only sell such inventory of green iguanas or tegu lizards outside of this state and may not import the species into this state.” SB 1414 § 3 (to be codified at § 379.372(2)(b), Fla. Stat. (2020)). Although the legislation claims to allow the Commission to adopt rules addressing those “persons presently in possession of either a green iguana or a tegu lizard who do not meet the grandfathering provisions of this paragraph,” *id.*, the

fact remains that the Legislature has unconstitutionally regulated wild animal life, in contravention of article IV, section 9 of the Florida Constitution. The Legislature also implicitly forbids the Commission from exempting from the changes other persons and businesses holding permits related to Conditional Species, like the red-eared slider, in violation of the constitutional mandate that the Commission possesses this exclusive regulatory authority.

31. Article IV, section 9 of the Florida Constitution states that “[t]he legislature may enact laws *in aid of the commission, not inconsistent with this section.*” Art. IV, § 9, Fla. Const. (emphasis added). SB 1414, however, was not “in aid” of the Commission as it effectively repealed the Commission’s own regulations of wild animal life and limits the Commission’s exercise of its regulatory authority.³

The Executive Order Violates Due Process

32. On June 30, 2020, the Executive Director of the Commission, acting purportedly through the authority of article IV, section 9 of the Florida Constitution, as well as Florida Administrative Code R. 68-1.009, Delegations of Authority, Paragraph 17,⁴ issued the Executive Order, establishing “special regulations” to take effect the next day, July 1, 2020, “in order to conform with Laws of Florida that amend[] Section 379.372, Florida Statutes.”⁵

³ Indeed, and as explained below, the Executive Order purports to make radical changes to the Commission’s rules to conform to SB 1414.

⁴ That delegation states that the “Executive Director may grant, renew or deny any application for permit, license or authorization as provided in Commission rule or appropriate statute. The Executive Director may suspend or revoke any license, permit or authorization as provided in Commission rule or appropriate statute.” The delegation does not appear to authorize the promulgation of “special regulations” or generally applicable rules.

⁵ As noted, the Executive Order was issued pursuant to the Commission’s constitutional authority, article IV, section 9, and not pursuant to the Commission’s statutory authority. To the extent the Executive Order and the “special regulations” are issued pursuant to any statutory authority, then the Commission must comply with the Administrative Procedure Act, Chapter 120, Florida Statutes. Here, there has been no effort to do so.

33. The Executive Order provides a list of reptiles to which the regulations apply, which matches the list included in the amended Statute, except that the Commission specifically excludes from the list in the Executive Order “red-eared sliders,” despite the language of SB 1414 which provides no such exception. Otherwise, like the amended Statute, the Executive Order bars keeping, possessing, importing, selling, bartering, trading, or breeding the listed species “except for educational, research, or eradication or control purposes.”

34. Unlike SB 1414, the Executive Order states that those holding valid licenses on June 30, 2020 allowing for commercial use of the listed species “will have until 90 days after new rules are established to liquidate current inventories of those species or place them with facilities that will continue to qualify under a valid license or permit for educational or research purposes.” Breeding after June 30, 2020, however, is prohibited. “Commercial sale after that time is prohibited,” although the Executive Order does not specify what “after that time” means; in other public documents, the Commission indicates that it intends to bar commercial sale after June 30.

35. With respect to green iguanas and tegu lizards, the Executive Order essentially copies the Statute as amended, authorizing “grandfathering” of some commercial use with the caveat that such excepted permitholders “may only sell such inventory of green iguanas or tegu lizards outside of this state and may not import the species into Florida.”

36. The Executive Order, effective July 1, 2020, “shall remain in effect until rescinded or superseded by subsequent order or rule.”

37. The Executive Order is an agency statement of general applicability that implements, interprets, or prescribes law or policy. Indeed, by its own terms, it seeks to establish special regulations. Thus, it is, in effect, a rule.

38. The Executive Director did not follow the Commission’s due process procedures before issuing the Executive Order, nor did it otherwise provide reasonable notice or opportunity for hearing prior to the adoption of the Executive Order.

39. When the Florida Constitution was amended in 1998, the Constitution Revision Commission specifically directed the Commission to “establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions.” Fla. Admin. Code R. 68-1.008(2); *see also id.* 68-1.008(5)(a); § 20.331(9)(a), Fla. Stat. (“The commission shall adopt a rule establishing due process procedures to be accorded any party [within the meaning of the Administrative Procedure Act].”). As codified in statute, the Constitution Revision Commission and the Legislature “encourage[d] the [C]ommission to incorporate into its process the provisions of s. 120.54(3)(c) when adopting rules in the performance of its constitutional duties or responsibilities.” § 20.331(9)(b), Fla. Stat.

40. The Commission adopted due process procedures through Florida Administrative Code Rule 68-1.008 (the “Due Process Rule”). A copy of the Due Process Rule is attached as **Exhibit D**. In that rule, the Commission recognizes that “[p]rocedural due process, in a broad sense, encompasses the procedural requirements that must be observed in the course of a legal proceeding to ensure the protection of private rights and property. Procedural due process, in an administrative setting, consists of requirements for notice, a meaningful opportunity to be heard and a fair, impartial decision-making authority.” Fla. Admin. Code R. 68-1.008(5)(b). To accord procedural due process in rulemaking, the Commission agreed that it “shall follow the A[dministrative Procedure Act, Chapter 120, Florida Statutes (‘APA’),] for all notices of FWC rule development and rulemaking, . . . [and] in the use of rule development workshops and shall

prepare statements of estimated regulatory cost and statements of lower cost regulatory alternative in accordance with the APA.” Fla. Admin. Code R. 68-1.008(5)(b)3., 4.

41. Thus, under the applicable provisions of the 2007 APA incorporated into the Due Process Rule,⁶ the Commission was required to provide specific notice “*prior to* the adoption, amendment, or repeal of any rule other than an emergency rule”⁷ which, among other things, outlines the purpose and effect of the proposed action, the full text of the proposed rule or amendment and a summary of the same, and a reference to the specific rulemaking authority. § 120.54(3)(a)1., Fla. Stat. (2007) (emphasis added). The Commission was also required to provide opportunities for interested persons to submit information relevant to a “statement of estimated regulatory costs” and “a lower cost regulatory alternative.” *Id.* The Commission was also required to notify interested parties of the procedure for requesting a public hearing on the proposed rule and to offer such a hearing. *Id.* § 120.54(3)(a)1., (c).

42. The Commission abided by none of these requirements and others applicable through the APA to rulemaking—all which were mandated by the Commission’s own Due Process Rule prior to issuing and making effective the Executive Order. Consequently, the Commission has failed to accord Plaintiffs and other interested parties procedural due process.⁸

⁶ Under then-applicable section 120.54(1)(i)1., Florida Statutes (2007), rules incorporating materials by reference—like the APA—only incorporate that material as it exists on the date the rule is adopted. Consequently, the 2007 APA applies with respect to the provisions of the APA incorporated by the Commission in the Due Process Rule, which was the version of the APA in effect when the Due Process Rule was adopted in January 2008. This is also consistent with the position taken by the Commission in other litigation regarding its rulemaking authority.

⁷ The Executive Order does not purport to be an emergency rule, nor could it be. An emergency rule is justified only to address an “immediate danger to the public health, safety, or welfare” and must meet other stringent requirements. § 120.54(4), Fla. Stat. (2007).

⁸ Nor did the issuance of the Executive Order comport with the provisions of the Due Process Rule applicable to, e.g., “discretionary actions, orders, or decisions of the FWC which affect substantial interests” as the Executive Order did not provide affected parties with a clear point of entry to challenge it under sections 120.57, 120.569, and 120.60, Florida Statutes. *See* Fla. Admin. Code

The Statute as Amended and the Executive Order Will Devastate the Reptile Industry

43. The Individual Plaintiffs and a substantial number of USARK Florida’s members face irreparable harm—from both the Statute as amended and the Executive Order.

44. As a consequence of the Statute as amended, the Individual Plaintiffs and a substantial number of USARK Florida’s members will suffer irreparable harm. The Individual Plaintiffs and a substantial number of USARK Florida’s members have been in compliance with the Conditional Species program for many years, some for more than a decade. They have invested substantial money and other resources into compliance and now face the imminent destruction of their businesses and investments. Many will be forced to give up their reptile inventories, which in my instances contain invaluable animals that have been specially bred for their genetics. Some businesses will be forced to hastily relocate their animals, and may in some instances have no other recourse but to euthanize these animals in an attempt to abide with the abrupt change in regulation by the state.

45. For businesses like Plaintiff Gittman’s and other members of USARK Florida who deal in green iguanas and tegu lizards, they will similarly lose their investments and businesses given the sudden shift in regulation. Even if “grandfathered,” these businesses will lose the ability to sell these animals within Florida and import these animals into the state, which are necessary to the continuation of their businesses.

R. 68-1.008(5)(b)6. & (c)(3); *see Capeletti Bros. v. State, Dep’t of Transp.*, 362 So. 2d 346, 348-49 (Fla. 1st DCA 1978); *see also Fla. League of Cities, Inc. v. Admin. Comm’n*, 586 So. 2d 397, 413 (Fla. 1st DCA 1991). Indeed, the purpose of proceedings under sections 120.569, 120.57, and 120.60 is to formulate final agency action, not to simply review action the agency has already taken, as has been done through the Executive Order. *Fla. Dep’t of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 785 (Fla. 1st DCA 1981).

46. The Executive Order will also cause irreparable harm. The Executive Order bars the breeding and commercial sale of Conditional Species, and makes clear that the “grandfathering” offered by the Statute as amended will be rare. Plaintiffs were not provided with reasonable notice and an opportunity to be heard on the regulations imposed through the Executive Order.

47. All conditions precedent to bringing this action, if any, have occurred, been performed, or waived.

48. Plaintiffs have retained the law firm of Holland & Knight LLP to represent them in this action and are obligated to pay the firm a reasonable fee for its services.

COUNT I

Declaratory Judgment Section 379.372, Florida Statutes, as Amended

49. Plaintiffs incorporate by reference paragraphs 1-48 as if fully set forth herein.

50. This is an action for declaratory relief under Chapter 86, Florida Statutes.

51. Plaintiffs seek a declaration as to the constitutionality and validity of the Statute as amended.

52. Article IV, section 9 of the Florida Constitution provides, in relevant part, that the Commission “shall exercise the regulatory authority and executive powers of the state with respect to wild animal life.” The Statute as amended constitutes an impermissible encroachment by the Florida Legislature into the exclusive regulatory authority of the Commission. As such, the Statute as amended violates article IV, section 9 of the Florida Constitution, and Plaintiffs are entitled to a declaration to that effect.

53. A bona fide dispute exists between Plaintiffs and the Commission as to whether the Statute as amended violates article IV, section 9 of the Florida Constitution.

54. As a result of this dispute, Plaintiffs are in doubt as to whether the Commission may enforce the unconstitutional Statute, as under it Plaintiffs are now prohibited from keeping, possessing, importing, selling, bartering, trading, and breeding Conditional Species, tegu lizards, and green iguanas for commercial use with limited exception notwithstanding the Commission's regulations authorizing that conduct.

55. Under the circumstances, there is a bona fide, actual, present, and practical need of a judicial declaration to remove these doubts.

56. The declaratory relief sought deals with present, ascertainable facts and is not merely seeking legal advice by the Court or answers to questions propounded for mere curiosity.

57. Plaintiffs' rights to keep, possess, import, sell, barter, trade, and breed Conditional Species, tegu lizards, and green iguanas depend upon whether the Statute as amended is unconstitutional.

58. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

59. The Commission is before this Court by proper process. The Commission, charged with enforcing the Statute as amended, has an adverse and antagonistic interest in the subject matter of this Complaint.

COUNT II

Temporary and Permanent Injunctive Relief Section 379.372, Florida Statutes, as Amended by SB 1414

60. Plaintiffs incorporate by reference paragraphs 1-48 as if fully set forth herein.

61. This is an action for temporary and permanent injunctive relief.

62. Enforcement of the Statute as amended will cause Plaintiffs actual, substantial, immediate, and irreparable harm as the amended law would prohibit them from keeping,

possessing, importing, selling, bartering, trading, and breeding Conditional Species, tegu lizards, and green iguanas for commercial use, destroying their businesses including the value of their investments. They will also be forced to part with invaluable personal property, their reptiles.

63. Plaintiffs have no adequate remedy at law. The only adequate remedy available to Plaintiffs is the entry of injunctive relief to prevent the enforcement of the unconstitutional law.

64. Based on article IV, section 9 of the Florida Constitution, its predecessors, and authority interpreting that constitutional provision, Plaintiffs have a clear legal and equitable right to the relief requested and there is a substantial likelihood that Plaintiffs will prevail on the merits of their claims.

65. Entering an injunction will serve the public interest as the Florida Constitution specifically places “*the* regulatory authority and executive powers of the state with respect to wild animal life” with the Commission, not with the Legislature or any other governmental entity, *see* art. IV, § 9, Fla. Const. (emphasis added), and there is a strong public interest in ensuring the Florida Constitution is followed.

66. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

COUNT III

Declaratory Judgment Executive Order No. 20-19

67. Plaintiffs incorporate by reference paragraphs 1-48 as if fully set forth herein.

68. This is an action for declaratory relief under Chapter 86, Florida Statutes.

69. Plaintiffs seek a declaration as to the constitutionality and validity of the Executive Order.

70. The Executive Order constitutes a rule within the meaning of the APA and the Commission's Due Process Rule.

71. Under the Florida Constitution, "[n]o person shall be deprived of . . . property without due process of law." Art. I, § 9, Fla. Const.

72. Likewise, the Fourteenth Amendment of the U.S. Constitution provides that a state may not "deprive any person of . . . property, without due process of law." U.S. Const. amend. XIV, § 1.

73. The Commission has adopted the Due Process Rule to ensure it affords due process in the exercise of its executive and regulatory authority. Fla. Admin. Code R. 68-1.008(1), (2).

74. Pursuant to the Commission's own Due Process Rule, before adopting the Executive Order, the Commission must provide specific notice and an opportunity to be heard, among other requirements. *See* Fla. Admin. Code R. 68-1.008; § 120.54, Fla. Stat. (2007).

75. The Commission issued the Executive Order without complying with its Due Process Rule and thus violated its own rule and failed to afford constitutional due process.

76. Furthermore, the Executive Order does not and cannot implement the Statute as the Statute is unconstitutional and a legal nullity.

77. A bona fide dispute exists between Plaintiffs and the Commission as to whether the Executive Order violates the Commission's Due Process Rule and the due process clauses of the Florida Constitution and U.S. Constitution.

78. As a result of this dispute, Plaintiffs are in doubt as to whether the Commission may enforce the unconstitutional Executive Order, as under it Plaintiffs are now prohibited from keeping, possessing, importing, selling, bartering, trading, and breeding Conditional Species, tegu

lizards, and green iguanas for commercial use with limited exception and notwithstanding the Commission's properly-promulgated regulations authorizing that conduct.

79. Under the circumstances, there is a bona fide, actual, present, and practical need of a judicial declaration to remove these doubts.

80. The declaratory relief sought deals with present, ascertainable facts and is not merely seeking legal advice by the Court or answers to questions propounded for mere curiosity.

81. Plaintiffs' rights to keep, possess, import, sell, barter, trade, and breed Conditional Species, tegu lizards, and green iguanas depend upon whether the Executive Order is unconstitutional.

82. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

83. The Commission is before this Court by proper process. The Commission, charged with enforcing the Statute as amended, has an adverse and antagonistic interest in the subject matter of this Complaint.

COUNT IV

Violation of Procedural Due Process U.S. Const. Amend. XIV, § 1, 42 U.S.C. § 1983 Executive Order No. 20-19

84. Plaintiffs incorporate by reference paragraphs 1-48 as if fully set forth herein.

85. This is an action for relief under 42 U.S.C. § 1983.

86. Plaintiffs have constitutionally-protected property interests in their businesses and livelihoods, their personal property, and their licenses and/or permits to commercially operate under the Conditional Species Program and with respect to tegu lizards and green iguanas. Under the Executive Order, most Plaintiffs must immediately stop breeding and selling certain reptiles,

depriving them of their businesses and livelihoods, and they will be forced to give up their personal property, their reptiles.

87. Under the Due Process Clause of the U.S. Constitution, a state may not deprive “any person of . . . property, without due process of law.” U.S. Const. amend. XIV, § 1. Through the Due Process Rule, the Commission has acknowledged that its exercise of executive and regulatory authority must comport with due process and it has set forth procedures for affording due process within the meaning of the U.S. Constitution and Florida Constitution.

88. The Executive Director issued the Executive Order on June 30, 2020, to be made effective on July 1, 2020, without complying with the Commission’s due process procedures, which would have afforded, at the very least, notice and an opportunity to be heard before making the Executive Order effective.

89. An agency’s failure to follow its own due process rules is a due process violation. *See Byle v. Pasco Cty. ex rel. Bd. of Cty. Comm’rs*, 970 So. 2d 366, 367–68 (Fla. 2d DCA 2007).

90. The process followed by the Executive Director in issuing the Executive Order was constitutionally inadequate.

91. Compliance with the Due Process Rule after deprivation of Plaintiffs’ property interests would also be constitutionally inadequate.

92. Plaintiffs are not required to exhaust any administrative remedies because challenges to rules promulgated using the Commission’s constitutional authority may be challenged only in state circuit court. *See Fla. Admin. Code R. 68-1.008(1), (5)(c)*. Although the Commission cites the Statute in its Executive Order, it cites as its primary authority article IV, section 9 of the Florida Constitution, and the Commission has made no pretense of complying with the provisions of the APA in issuing the Executive Order.

93. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

COUNT V

**Temporary and Permanent Injunctive Relief
Executive Order No. 20-19**

94. Plaintiffs incorporate by reference paragraphs 1-48 as if fully set forth herein.

95. This is an action for temporary and permanent injunctive relief.

96. Enforcement of the Executive Order will cause Plaintiffs actual, substantial, immediate, and irreparable harm as the Executive Order would prohibit Plaintiffs from breeding and selling certain reptile species, destroying their businesses including the value of their investments.

97. Plaintiffs have no adequate remedy at law. The only adequate remedy available to Plaintiffs is the entry of injunctive relief to prevent the enforcement of the unconstitutional Executive Order.

98. Based on the Commission's Due Process Rule and the due process clauses of the Florida Constitution and U.S. Constitution, Plaintiffs have a clear legal and equitable right to the relief requested and there is a substantial likelihood that Plaintiffs will prevail on the merits of their claims.

99. Entering an injunction will serve the public interest as it will ensure the protection of constitutionally-protected rights.

100. The relief requested is the type appropriate for USARK Florida to receive on behalf of its members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment in their favor and that this Court:

- (A) declare the Statute as amended by SB 1414 is unconstitutional under article IV, section 9 of the Florida Constitution;
- (B) enjoin the Commission, and all persons acting under its direction or in concert with it, from implementing or enforcing the Statute as amended;
- (C) declare the Executive Order as unlawful under the Commission's Due Process Rule and unconstitutional under article I, section 9 of the Florida Constitution and the Fourteenth Amendment of the U.S. Constitution;
- (D) enjoin the Commission and Executive Director, and all persons acting under their direction or in concert with them, from implementing or enforcing the Executive Order; and
- (E) order such other and further relief as this Court may deem appropriate, including costs as provided in section 86.081, Florida Statutes, and Plaintiffs' attorneys' fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted on July 10, 2020.

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CHAPTER 2020-123

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 1414

An act relating to fish and wildlife activities; amending s. 379.105, F.S.; prohibiting certain harassment of hunters, trappers, and fishers within or on public lands or publicly or privately owned wildlife and fish management areas, or in or on public waters; amending s. 379.354, F.S.; authorizing the Fish and Wildlife Conservation Commission to designate additional annual free freshwater and saltwater fishing days; amending s. 379.372, F.S.; prohibiting the keeping, possessing, importing, selling, bartering, trading, or breeding of certain species except for educational, research, or eradication or control purposes; including green iguanas and species of the genera *Salvator* and *Tupinambis* in such prohibition; providing that certain persons, firms, or corporations may continue to exhibit, sell, or breed green iguanas or tegu lizards commercially under certain circumstances; requiring such green iguanas or tegu lizards to be sold outside of this state; prohibiting the import of green iguanas or tegu lizards; requiring the commission to adopt rules that meet certain requirements; reenacting s. 379.2311(1), F.S., relating to the definition of the term “priority invasive species,” to incorporate the amendment made to s. 379.372, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 379.105, Florida Statutes, is amended to read:

379.105 Harassment of hunters, trappers, or fishers.—

(1) A person may not intentionally, within or on any public lands or a publicly or privately owned wildlife management and or fish management areas, area or in or on any public waters state-owned water body:

(a) Interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another within or on such lands or areas, or in or on such waters.

(b) Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another within or on such lands or areas, or in or on such waters.

Section 2. Subsection (15) of section 379.354, Florida Statutes, is amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(15) FREE FISHING DAYS.—The commission may designate by rule no more than 6 4 consecutive or nonconsecutive days in each year as free freshwater fishing days and no more than 6 4 consecutive or nonconsecutive days in each year as free saltwater fishing days. Notwithstanding any other provision of this chapter, ~~a~~ any person may take freshwater fish for noncommercial purposes on a free freshwater fishing day and may take saltwater fish for noncommercial purposes on a free saltwater fishing day, without obtaining or possessing a license or permit or paying a license or permit fee as set forth ~~prescribed~~ in this section. A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.

Section 3. Present paragraphs (b) through (e) of subsection (2) of section 379.372, Florida Statutes, are redesignated as paragraphs (c) through (f), respectively, a new paragraph (b) is added to that subsection, and paragraph (a) of that subsection is amended, to read:

379.372 Capturing, keeping, possessing, transporting, or exhibiting venomous reptiles, reptiles of concern, conditional reptiles, or prohibited reptiles; license required.—

(2)(a) ~~A~~ No person, party, firm, association, or corporation may not shall keep, possess, import into the state, sell, barter, trade, or breed the following species except for educational, research, or eradication or control purposes ~~personal use or for sale for personal use~~:

1. Burmese or Indian python (*Python molurus*).
2. Reticulated python (*Python reticulatus*).
3. Northern African python (*Python sebae*).
4. Southern African python (*Python natalensis*).
5. Amethystine or scrub python (*Morelia amethystinus*).
6. Green Anaconda (*Eunectes murinus*).
7. Nile monitor (*Varanus niloticus*).
8. Green iguana (*Iguana iguana*).
9. Tegu lizard (any species of the genera *Salvator* or *Tupinambis*).
10. Any other reptile designated as a conditional or prohibited species by the commission.

(b) If a person, firm, or corporation holds a valid captive wildlife class III exhibition or sale license on January 1, 2020, and documented an inventory of green iguanas or tegu lizards on his or her or its 2019 application, the

commission may grandfather that person, firm, or corporation so as to allow them to continue to exhibit, sell, or breed green iguanas or tegu lizards commercially for as long as the license remains active. Such status is void upon any license transfer or lapse. The person, firm, or corporation may only sell such inventory of green iguanas or tegu lizards outside of this state and may not import the species into this state. The commission shall adopt rules that address all of the following:

1. Reporting requirements.

2. Biosecurity measures to prevent escape of these species.

3. Any necessary grandfathering provisions for those persons presently in possession of either a green iguana or a tegu lizard who do not meet the grandfathering provisions of this paragraph.

Section 4. For the purpose of incorporating the amendment made by this act to section 379.372, Florida Statutes, in a reference thereto, subsection (1) of section 379.2311, Florida Statutes, is reenacted to read:

379.2311 Nonnative animal management.—

(1) As used in this section, the term “priority invasive species” means the following:

- (a) Lizards of the genus *Tupinambis*, also known as tegu lizards;
- (b) Species identified in s. 379.372(2)(a);
- (c) *Pterois volitans*, also known as red lionfish; and
- (d) *Pterois miles*, also known as the common lionfish or devil firefish.

Section 5. This act shall take effect July 1, 2020.

Approved by the Governor June 29, 2020.

Filed in Office Secretary of State June 29, 2020.

EXHIBIT B

STATE OF FLORIDA
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

Executive Order Number: EO 20-19

Regulations of Reptiles in Chapter 68-5, F.A.C.

The Florida Fish and Wildlife Conservation Commission, acting under the authority of Article IV, Section 9, of the Florida Constitution, and acting through its Executive Director under 68-1.009, F.A.C., Delegations of Authority, February 14, 2013, Paragraph 17, hereby establishes special regulations to take effect July 1, 2020, in order to conform with Laws of Florida that amends Section 379.372, Florida Statutes. This statute regulates certain high-risk nonnative invasive reptiles in Florida, particularly those listed as Conditional, Prohibited, Venomous, and Reptiles of Concern. These regulations are necessary due to ecological, economic and human health and safety concerns related to potential impacts of nonnative reptiles in Florida.

1) The regulations below apply to the following species of reptile:

- a. Burmese or Indian python (*Python molurus*)
- b. Reticulated python (*Python reticulatus*)
- c. Northern African python (*Python sebae*)
- d. Southern African python (*Python natalensis*)
- e. Amethystine or scrub python (*Morelia amenthystinus*)
- f. Green anaconda (*Eunectes murinus*)
- g. Nile monitor (*Varanus niloticus*)
- h. Green iguana (*Iguana iguana*)
- i. Tegus lizard (any species of the genera *Salvator* or *Tupinambis*)
- j. Reptiles designated as Conditional or Prohibited by the Commission in Rules 68-5.004 and 68-5.006, F.A.C., except red-eared sliders, which are regulated as identified below.

2) A person, party, firm, association, or corporation may not keep, possess, import into the state, sell, barter, trade, or breed the above species except for educational, research, or eradication or control purposes. Facilities that meet the requirements for the possession of Prohibited species as described in Rule 68-5.007, F.A.C., may apply for an FWC Conditional/Prohibited/Nonnative Species Permit for these uses.

3) Persons who desire to hold live green iguanas, tegus, or other reptile species currently listed as "Conditional" during eradication and control activities shall obtain a Conditional/Prohibited/Nonnative Species Permit as described in Rule 68-5.007, F.A.C. with a specific authorization for that purpose.

4) License holders who had valid licenses on June 30, 2020 that allow for commercial use of species listed in 1) a-i above will have until 90 days after new rules are established to liquidate current inventories of those species or place them with facilities that will continue to qualify under a valid license or permit for educational or research purposes unless they obtain a permit pursuant to paragraph 2 or 6. Breeding the above listed species for commercial sale as defined in 379.372, F.S., after June 30, 2020 is prohibited. Commercial sale after that time is prohibited.

5) Red-eared sliders will continue to be regulated as described in section 68-5.004(3), F.A.C. until

superseded by subsequent rule.

- 6) A person, party, firm, association, or corporation which held a valid captive wildlife class III exhibition or sale license on January 1, 2020, with a documented inventory of green iguanas or tegu lizards on their 2019 application, may obtain a limited exception commercial use Conditional/Prohibited/Nonnative Species Permit to allow them to continue to exhibit, sell, or breed green iguanas or tegu lizards commercially for as long as the person, party, firm, association, or corporation retains appropriate and active licensure. Such status is void upon any license transfer or lapse. The limited exception permitholder may only sell such inventory of green iguanas or tegu lizards outside of this state and may not import the species into Florida.
- 7) An individual who possessed green iguanas or tegu lizards in personal possession prior to July 1, 2020 may obtain a permit for Prohibited species for personal use by FWC to lawfully possess that animal for the remainder of its life. Individuals holding these animals as personal pets will have 90 days after new rules are established to obtain a Prohibited species for personal use permit for those animals. If an animal remains alive following the death or dissolution of the licensee, the animal may be legally transferred to another entity holding a permit authorizing possession of the animal for the remainder of the life of the animal. No new or additional green iguanas or tegu lizards may be acquired after July 1, 2020 for personal use. Notwithstanding anything to the contrary, no person shall possess tegus or green iguanas as personal pets, except those meeting the requirements for possession of Prohibited species for personal use described in 68-5.007(4), F.A.C.
- 8) All other provisions of Chapter 68-5 and 68A-6, F.A.C., shall remain in full force and effect.
- 9) This order shall take effect on July 1, 2020 and shall remain in effect until rescinded or superseded by subsequent order or rule.

AUTHORITY: Article IV, Section 9, Florida Constitution; 379.372, F.S.



Given under my hand and seal of the Florida Fish and Wildlife Conservation Commission on this 30th of June 2020.

Eric Sutton
Executive Director

Attest 
Agency Clerk

/s/ Quilla Miralia
Approved as to form and legal sufficiency

EXHIBIT C

CHAPTER 68-5 RULES RELATING TO NON-NATIVE SPECIES

68-5.001	Purpose and Intent
68-5.002	Definitions
68-5.003	Introduction of Non-native into the State
68-5.004	Conditional Non-native Species
68-5.005	Possession of Conditional Non-native Species
68-5.006	Prohibited Non-native Species
68-5.007	Possession of Prohibited Non-native Species
68-5.008	Amnesty for Persons Relinquishing Non-native Pets
68-5.009	Lionfish

68-5.001 Purpose and Intent.

(1) The purpose of this chapter is to establish definitions, provide requirements for import permits, provide Conditional and Prohibited species lists, establish requirements for possession of Conditional and Prohibited species, establish criteria for amnesty for persons relinquishing nonnative fish and wildlife, and regulations related to lionfish.

(2) Unless otherwise specifically provided in divisions 68A through 68E, F.A.C., all species of freshwater aquatic life and wild animal life not native to Florida may be taken throughout the year, without restrictions.

(3) No person shall allow or permit any freshwater fish, aquatic invertebrate, marine plant, marine animal, or wild animal life not native to the state, to remain in any facility that is no longer maintained or operated for the production or maintenance of such non-native species. The presence of any such non-native species in any facility shall constitute possession by the owner or operator of the facility.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 6-7-07, Amended 8-23-10, 12-27-18.

68-5.002 Definitions.

(1) Closed tank system – enclosed recirculating systems having no water discharge, or systems having water discharge through a closed drain system, or other system designed to prevent discharge of water containing adults, juveniles, eggs, or disease vectors from the permittee’s property.

(2) Commercial import or export business – a business whose activity includes the commercial purchase, sale, or trade through importing and/or exporting nonnative fish and wildlife.

(3) Educational exhibit – an organized presentation or display of a nonnative fish or wildlife species along with a selection of educational materials to include interpretive signs, presentations, brochures, handouts, or other materials which impart knowledge about the displayed species. Such materials shall include information about the species’ range, habitat, biology, and threats the species poses to Florida’s ecology, economy, or human health and safety.

(4) Escape-proof – all potential escape routes, to include but not limited to drains, gates, windows, vents, gaps, cracks and doors, are secured in a manner to prevent escape.

(5) Export – to depart from, to send from, to ship from, or to carry out of, or attempt to depart from, send from, ship from, or carry out of, or to consign to a carrier any nonnative fish or wildlife species in any place in Florida with an intended destination of any place outside of Florida.

(6) Import – to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce any nonnative fish or wildlife species into any place subject to the jurisdiction of the State of Florida.

(7) Personal possession – possession of fish or wildlife maintained in captivity for personal use or enjoyment.

(8) Public aquaria – permanent, fixed aquaria in which Conditional and/or Prohibited species are confined in such a manner that the general public is able to view them during regularly scheduled business hours, with or without a fee.

(9) Public exhibitor – a permanent, fixed facility in which Conditional and/or Prohibited species are confined in such a manner that the general public is able to view them during regularly scheduled business hours, either through scheduled tours or general admission, with or without a fee.

(10) Public zoological park – a permanent, fixed zoological park in which Conditional and/or Prohibited species are confined in

such a manner that the general public is able to view them during regularly scheduled business hours, with or without a fee.

(11) Research – means any activity that uses nonnative organisms to conduct one or more of the following:

(a) Research activity that involves the application of rigorous, systematic, and objective procedures of observation, measurement, and experiment to obtain reliable and pertinent data using an experimental design, controls, and data analysis to test a stated hypothesis.

(b) Monitoring activity that involves making technical and scientific observations as a means of gathering data according to a predetermined study plan.

(c) Restoration or management activity that facilitates the control or removal of nonnative fish or wildlife species and includes subsequent monitoring to measure the success of the effort.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 6-7-07, Amended 7-1-10, 8-23-10, 3-14-17, 12-27-18, 5-2-19.

68-5.003 Introduction of Non-native Species into the State.

(1) No person shall transport into the state, introduce, or possess, for any purpose that might reasonably be expected to result in liberation into the state, any freshwater fish, aquatic invertebrate, marine plant, marine animal, or wild animal life not native to the state, without having secured a permit from the Commission, except:

(a) Fathead minnow (*Pimephales promelas*).

(b) Variable platy (*Xiphophorus variatus*).

(c) Coturnix quail (*Coturnix coturnix*).

(d) Ring-necked pheasant (*Phasianus colchicus*).

(2) No leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), or Bell's hingeback tortoise (*Kinixys belliana*) shall be imported or transported into this state, without a Conditional/Prohibited/Nonnative Species permit subject to the following:

(a) Tortoises shall be inspected by a veterinarian and certified as being free of external parasites prior to being imported. Certified veterinary health certificates and written notice of the shipment shall be submitted to the Commission no less than 10 days before arrival of any tortoise.

(b) Containers used to transport tortoises shall be disinfected prior to importation, and shall be incinerated within 24 hours of arrival or exported out of Florida within 72 hours.

(c) Such other conditions as may be necessary to ensure that no tortoise infested with ticks capable of transmitting the Heartwater disease is imported into Florida.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 6-7-07, Amended 7-1-10, 8-26-10, 12-27-18.

68-5.004 Conditional Non-native Species.

Live specimens of the following species, including their taxonomic successors, subspecies, or hybrids or eggs thereof may be possessed only pursuant to permit issued by the Executive Director except as provided in section 68-5.005, F.A.C.

(1) Non-native freshwater fish and aquatic invertebrate species.

(a) Bighead carp (*Aristichthys nobilis*).

(b) Bony-tongue fishes (Family Arapaimidae).

1. Arapaima (*Arapaima gigas*).

2. Heterotis (*Heterotis niloticus*).

(c) Dorados (Genus *Salminus*, all species).

(d) Freshwater stingrays (Family Potamotrygonidae, all species).

(e) Grass carp (*Ctenopharyngodon idella*), with restrictions as provided in rule 68A-23.088, F.A.C.

(f) Silver carp (*Hypophthalmichthys molitrix*).

(g) Snail or black carp (*Mylopharyngodon piceus*).

(h) Nile perches (Genus *Lates*, all species). For owners of aquaculture facilities that are operating under permit or a certificate of registration, but which are not cultivating Nile perches as of April 11, 2007, and for owners of aquaculture facilities which are issued original permits or certificates of registration after April 11, 2007, Nile perches:

1. Shall be held only in indoor facilities.
2. Shall not be taken on a fee or for-hire basis using hook and line or rod and reel.
 - (i) Blue tilapia (*Oreochromis aureus*), except that *Oreochromis aureus* may be possessed, cultured, and transported without permit in all counties of the Northeast, North Central, South and Southwest Regions.
 - (j) Wami tilapia (*Oreochromis urolepis*).
 - (k) Mozambique tilapia (*Oreochromis mossambicus*).
 - (l) Nile tilapia (*Oreochromis niloticus*), except that *Oreochromis niloticus* may be possessed, cultured, and transported without permit in all counties of the Northeast, North Central, South and Southwest Regions.
 - (m) Walking catfish (*Clarias batrachus*).
 - (n) Blue catfish (*Ictalurus furcatus*), except that blue catfish may be possessed in the Suwannee River and its tributaries and north and west of the Suwannee River.
 - (o) Australian red claw crayfish (*Cherax quadricarinatus*) only in closed tank culture systems.
 - (p) Red swamp crayfish (*Procambarus clarkii*) and white river crayfish (*Procambarus zonangulus*).
 1. Pond aquaculture of either species is prohibited.
 2. Red swamp crayfish and white river crayfish may be possessed west of the Apalachicola River and its tributaries or imported for direct sale to food wholesalers and food retailers for resale to consumers without permit.
 - (q) Arowanas (Family Osteoglossidae, all species except silver arowana, *Osteoglossum bicirrhosum*).
 - (r) Northern largemouth bass (*Micropterus salmoides salmoides*), except that intergrade largemouth bass (northern largemouth bass x Florida largemouth bass *Micropterus salmoides floridanus*) may be possessed in the Suwannee River and its tributaries and north and west of the Suwannee River.
 - (2) Non-native mammals – Nutria (*Myocaster coypus*).
 - (3) Non-native turtles. Red-eared slider (*Trachemys scripta elegans*): red-eared sliders may be possessed only by permitted individuals or commercial import or export businesses according to the provisions of subsection 68-5.005(4) F.A.C., except as provided below:
 - (a) Red-eared sliders in personal possession prior to July 1, 2007 may continue in the possession of the owner without a permit, except that red-eared sliders less than four inches carapace length may not be possessed after July 1, 2008 without a permit.
 - (b) Red-eared sliders with distinctive aberrant color patterns, including albino or amelanistic specimens, may be possessed without a permit otherwise required by this rule.
 - (4) Non-native Snakes and lizards: The following species possessed for personal use by reptile of concern license holders prior to July 1, 2010 may continue in the possession of the owner for the life of the animal. A valid license to possess these animals must be maintained pursuant to section 379.372, F.S.
 - (a) Indian or Burmese python (*Python molurus*).
 - (b) Reticulated python (*Python reticulatus*).
 - (c) Northern African python (*Python sebae*).
 - (d) Southern African python (*Python natalensis*).
 - (e) Amethystine python (*Morelia amethystinus*).
 - (f) Scrub python (*Morelia kinghorni*).
 - (g) Green anaconda (*Eunectes murinus*).
 - (h) Nile monitor (*Varanus niloticus*).

Rulemaking Authority Article IV, Section 9, Florida Constitution. Law Implemented Article IV, Section 9, Florida Constitution. History—New 10-23-08, Amended 8-23-10, 12-27-18.

68-5.005 Possession of Conditional Non-native Species.

No person shall import into the state, sell, possess, or transport any live specimens of the species, or hybrids or eggs thereof, listed in rule 68-5.004, F.A.C., except by Conditional/Prohibited/Nonnative species permit and as provided in subsections (1) through (6) below:

(1) Permits shall be issued only to individuals or institutions engaged in research, or to commercial import or export businesses, public aquaria, public zoological parks, or public exhibitors providing educational exhibits. Permits shall not be issued for display of these species in private aquaria, private zoological parks, or for personal possession, except as provided in rule 68-5.004, F.A.C.

(2) Any person engaged in aquaculture who possesses a valid certificate of registration from the Department of Agriculture and Consumer Services issued pursuant to chapter 597, F.S., and who is authorized to possess such species in accordance with chapter 597, F.S., is not required to obtain the permit.

(3) Conditional freshwater fish and aquatic invertebrate species:

(a) Species held outdoors may only be held in a water body that has the lowest point of the top edge of its levee, dike, bank, or tank at an elevation of at least one foot above the 100-year flood elevation determined by reference to elevation maps issued by the National Flood Insurance Program, U.S. Department of Homeland Security. Such water body shall have no water discharge or shall be constructed with a barrier system designed to prevent escape of adults, juveniles, and eggs in the water effluent discharged from the permittee's property. Public visitation at facilities in possession of conditional non-native species shall occur only under supervision of the permittee or his/her designee.

(b) Conditional freshwater fish and aquatic invertebrate species held indoors may only be held in culture systems having no water discharge, having a water discharge through a closed drain system, or other system designed to prevent discharge of water containing adults, juveniles and eggs from the permittee's property.

(c) Conditional non-native aquatic species shall not be taken on a fee- or for-hire basis using hook and line or rod and reel.

(4) Conditional turtle species:

(a) Outdoor facilities must have a permanent containment barrier secured at least six inches below ground level to prevent escape by digging, erosion, climbing or by passing through gaps. Such barriers may be constructed of solid metal or weather-resistant and rot-resistant material, and may not use mesh material.

(b) All eggs must be removed and destroyed daily from outdoor facilities.

(5) Snakes and lizards:

(a) Conditional snake and lizard species may only be held in safe, secure and proper housing in cases, cages, pits or enclosures of the following specifications:

1. Cage may be constructed of a variety of materials including: plate glass of at least one-quarter inch thickness, break-resistant plastic of similar strength, concrete reinforced with wire, sheet metal, molded fiberglass, plywood or interlocking lumber that has been treated to be impervious to moisture and is not less than one-half inch in thickness, or other materials which provide equivalent stability and security against escape and unauthorized intrusion. Cages and doors to cages shall be sealed. The doors of each cage shall be securely locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion.

2. A room or out-building may contain conditional snake and lizard species in cages that are not locked provided that such a room or out building is locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion, is inaccessible to unauthorized personnel, is constructed and maintained as to be escape-proof, and has been inspected and approved as conforming to these rules by Commission personnel prior to use. Any out building so used must be of strong construction with concrete or other suitable flooring and securely anchored to the ground. Such building shall be clearly posted at point of entry with a sign stating "Danger – Dangerous Reptiles."

3. Facilities with one or more permittee at the same facility location may not commingle their respective live conditional species inventories. All cages or enclosures must be clearly identified or visibly marked with the name of the permittee or other identifier to facilitate inventory inspections.

4. All individuals associated with a facility authorized to possess conditional snake and lizard species shall demonstrate knowledge of facility requirements, and secure handling protocols for conditional snakes and lizards as established by the permittee.

(b) Identification: Conditional snakes and lizards shall be permanently identified with a unique passive integrated transponder (PIT tag). Identification shall consist of the implantation of a unique PIT tag under the specimen's skin in a manner to maintain the PIT tag permanently in place.

1. For snakes implantation shall be in specimens with a one (1) inch or greater diameter. The PIT tag shall be implanted in the rear one-third (1/3) of the snake, forward of the anal plate.

2. For lizards implantation shall be in the body cavity in close proximity to and forward of a rear leg, or in a rear leg.

3. The requirement pertaining to the location of the PIT tag implantation shall not apply to specimens implanted prior to acquisition of the animal or prior to the effective date of this rule.

4. Records of identification including PIT tag number where applicable, along with information about the specimen being identified (species, specimen name or number, gender, and age) must be provided to the Commission within 72 hours of acquisition

and maintained in the possessor's records for as long as the specimen is possessed.

5. Exemption: Conditional snakes and lizards being held for export by any person who possesses such animals in accordance with sections 379.304 and 379.372, F.S., are exempt from the permanent identification requirement of this section for a period not to exceed 180 days provided such animals or their enclosures are permanently marked so as to be traceable to written records indicating the date such conditional snakes and lizards were acquired.

(c) Inspection: Conditional snake and lizard species held in captivity are subject to inspection by Commission personnel. Commission personnel shall determine whether the snakes or lizards are securely, properly and safely housed. In the event that any conditional snakes or lizards are not safely housed, Commission personnel shall report the situation in writing to the person authorized to possess or exhibit such reptiles. Failure of the possessor or exhibitor to correct the situation within 30 days after such written notice shall be grounds for revocation of the permit.

(d) Transporting: Conditional snake and lizard species shall be transported only after placement in a closely woven, double-seam sewn, cloth sack. This cloth sack shall be placed in a second cloth sack of similar construction, which shall be placed in a secure container. Said containers shall be prominently labeled "Dangerous Reptiles."

(e) Disaster and Critical Incidents Plans.

1. A plan to secure conditional snakes or lizards in the event of disasters or critical incidents shall be documented on the Captive Wildlife Critical Incident/Disaster Plan form FWCDLE_619 (06-10), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/License/Index.htm. This form shall consist of two parts. Part A of form FWCDLE_619 shall be submitted at the time of initial application to possess conditional snake and lizard species; and Part B shall be retained on file at the facility and be made available for inspection upon request of Commission personnel.

2. No later than 24 hours prior to the National Weather Center's projected onset of hurricane-force winds of Category 3 or greater, all conditional snakes and lizards shall be placed in a closely woven, double-seam sewn, cloth sack. This cloth sack shall be placed in a second cloth sack of similar construction, which shall be placed in a secure container. Any conditional snakes and lizards in an outdoor enclosure shall be moved to a secure indoor facility of strong construction with concrete or other suitable flooring and securely anchored to the ground. Persons authorized to possess conditional snakes and lizards shall report their critical incident preparation status to their county emergency management agency prior to the onset of critical conditions.

(f) Record Keeping: Persons authorized to possess conditional snake and lizard species shall maintain an accurate record of all changes in inventory including births, deaths, acquisitions, sales and transfers of all conditional snakes or lizards. Such records shall be kept on the permitted premises on a Captive Wildlife Inventory-Reptile form, FWCDLE_620IV-R (06-10), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/License/Index.htm. Such records shall be open to inspection upon request by Commission personnel.

1. Records of births or deaths shall include the date of the birth or death; and the quantity and species of each birth or death. For the purposes of this section "birth" shall be defined as the initial hatch or live birth date for the clutch.

2. Records of acquisition shall include the date of acquisition; quantity and species of reptiles acquired; method of identification and unique passive integrated transponder (PIT tag) number, if applicable, for each specimen; name and complete address of supplier, except for animals acquired under the provisions of paragraph 68-5.008(3)(c), F.A.C.; and conditional species permit number of supplier where applicable.

3. Transfer: Conditional snake and lizard species may be transferred to persons authorized to possess conditional snakes and lizards. Such transfers must be accompanied by Captive Wildlife Inventory-Reptile form, FWCDLE_620IV-R (06-10), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/License/Index.htm. This form shall be signed by the originator upon shipment and by the recipient upon receipt and shall list the common name, scientific name, and quantity of each species in transport; name and address of the originator and recipient; conditional species permit number of the recipient; if the shipment originates within Florida, the conditional species permit number of the originator.

(g) Reporting:

1. Persons exhibiting or selling live conditional snakes and lizards in accordance with section 379.304, F.S., shall complete a

Captive Wildlife Inventory-Reptile form, FWCDLE_620IV-R (06-10), and submit same to Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, upon annual renewal of permit and six months thereafter.

2. Any person authorized to possess conditional snakes and lizards must report any escapes to the Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement immediately upon discovery of escape.

(6) Research involving conditional species:

(a) A detailed research proposal shall accompany the application for the permit. The proposal shall state with particularity research objectives, methodology and study duration, and outline planned safeguards to assure proper containment of the species. An annual record of progress toward the research project objectives shall be maintained, and such research proposal and record of progress shall be available for inspection upon request of Commission personnel.

(b) All research involving conditional species shall be conducted according to the provisions of paragraphs (3)(c)-(e) above.

(c) The permit shall expire 12 months from the date of issuance and shall not be renewed until a detailed report of research findings is received and approved by the Commission. The report shall include a description of activities undertaken in the permit period, progress toward research project objectives, and proposed additional activities to be undertaken during any renewal period. Such reports are public records subject to the requirements for public disclosure under chapter 119, F.S.

(d) Any escape or release of conditional species shall be reported immediately to the Commission.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 8-1-14, Amended 11-26-14, 12-27-18.

68-5.006 Prohibited Non-native Species.

Live specimens of the following species, including their taxonomic successors, subspecies, or hybrids or eggs thereof may be possessed only pursuant to permit issued by the Executive Director except as provided in section 68-5.007, F.A.C.

(1) Non-native freshwater aquatic species:

(a) African electric catfishes (Family Malapteruridae, all species).

(b) African tigerfishes (Genus *Hydrocynus*, all species).

(c) Airbreathing catfishes (Family Clariidae, all species except *Clarias batrachus*).

(d) Candiru catfishes (Family Trichomycteridae, all species).

(e) Freshwater electric eels (*Electrophorus electricus*).

(f) Lampreys (Family Petromyzontidae, all species).

(g) All species of piranha and pirambeba (subfamily Serrasalminae).

(h) Snakeheads (Family Channidae, all species).

(i) Tilapias (Genera *Tilapia*, *Sarotherodon*, *Alcolapia* and *Oreochromis*, all species except *Oreochromis aureus*, *Oreochromis urolepis*, *Oreochromis mossambicus*, and *Oreochromis niloticus*).

(j) Trahiras or Tigerfishes (Family Erythrinidae, all species).

(k) Airsac catfishes (Family Heteropneustidae, all species).

(l) Green sunfish (*Lepomis cyanellus*).

(m) Australian crayfish (Genus *Cherax*, all species except *Cherax quadricarinatus* cultured in a closed tank system).

(n) Zebra mussel (*Dreissena polymorpha*).

(o) Quagga mussel (*Dreissena bugensis*).

(2) Non-native mammals:

(a) African giant pouched rats (Genus *Cricetomys*, all species).

(b) Brushtail possum (*Trichosurus vulpecula*).

(c) Dhole (Genus *Cuon*, all species).

(d) Flying foxes (Genus *Pteropus*, all species).

(e) Mongoose, meerkats (Genera *Atilax*, *Cynictis*, *Helogale*, *Herpestes*, *Ichneumia*, *Mungos*, and *Suricata*, all species).

(f) Raccoon dog (*Nyctereutes procyonoides*).

(3) Non-native marine species:

(a) Mitten crab (Genus *Eriocheir*, all species).

(b) Sea snakes (Family Hydrophiidae, all species), except that sea snakes may be possessed as described in paragraph 68-5.007(1)(f), F.A.C.

- (c) Weeverfishes (Family Trachinidae, all species).
- (d) Stone fishes (Genus *Synanceia*, all species).
- (e) Genus *Synanceia*, all species.
- (f) Pitted stonefish (*Erosa erosa*).
- (g) Red rock cod (*Scorpaena papillosa*).
- (h) Stonefish (*Leptosynanceia asteroblepa*).
- (i) Stargazing stonefish (*Trachicephalus uranoscopus*).
- (4) Non-native reptiles:
 - (a) Yellow anaconda (*Eunectes notaeus*).
 - (b) Beni anaconda (*Eunectes beniensis*).
 - (c) DeSchauensee's anaconda (*Eunectes deschauenseei*).
 - (d) Brown tree snake (*Boiga irregularis*).
- (5) Non-native birds:
 - (a) Dioch (*Quelea quelea*).
 - (b) Java sparrow (*Lonchura oryzivora*).
 - (c) Pink starling (*Pastor roseus*).
 - (d) Red-whiskered bul-bul (*Pycnonotus jocosus*).

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-27-18, Amended 5-2-19.

68-5.007 Possession of Prohibited Non-native Species.

No person shall import into the state, sell, possess, or transport any live specimens of the species, or hybrids or eggs thereof, listed in rule 68-5.006, F.A.C., except by Conditional/Prohibited/Nonnative Species permit and as provided in paragraphs (a) and (b) below:

(1) Exhibition of prohibited species: public aquaria, zoological parks, or public exhibitors shall be granted a permit provided the following requirements are met:

(a) Prohibited aquatic species shall be maintained in indoor facilities in containers or other confinement facilities designed to prevent escape and having no exterior water discharge or having a water discharge through a closed drain system that terminates in a dry-bed wastewater retention area with no public access.

(b) Prohibited terrestrial species shall be maintained in indoor facilities in cages or other confinement facilities that prevent escape and public contact.

(c) Critical incident and disaster plan. A plan for securing animals on site, evacuating and/or euthanizing animals in the event of a natural disaster or critical incident shall be submitted by the applicant and approved by the Commission before a permit will be issued. The critical incident and disaster plan shall also include methods to transport and return evacuated animals to the exhibition facility. Commission personnel will review the critical incident and disaster plan to ensure the State of Florida is adequately protected from the risk of introduction of the species.

(d) Inspections. Exhibitors permitted to possess prohibited species may be inspected by Commission personnel or an authorized representative of the Commission prior to issuance of a permit. Scheduled and unannounced inspections to ensure general security measures are followed may be conducted at any time during the permit period.

(e) The permit will expire 12 months from the date of issuance.

(f) Possession of sea snakes (Family Hydrophiidae, all species) is limited to public aquaria, public zoological parks, or public exhibitors providing educational exhibits, for public exhibition purposes only, under the following conditions:

1. Only male sea snakes may be possessed.
2. A public aquarium, zoological park, or public exhibitor possessing sea snakes shall not be located in a coastal county and shall have no contiguous connection with any waters of the state.
3. Each public aquarium, public zoological park, or public exhibitor possessing sea snakes shall provide quarterly reports to the Commission regarding the number of each species of sea snakes on the premises and any changes in inventory resulting from death or additions by importation.

4. Each public aquarium, zoological park, or public exhibitor possessing sea snakes shall post with the Commission a \$1 million letter of credit. The letter of credit shall be in favor of the State of Florida, Fish and Wildlife Conservation Commission, for use by the Commission to remove any sea snake accidentally or intentionally introduced into waters of the state. The letter of credit shall be

written in the form determined by the Commission. The letter of credit shall provide that the zoological park or aquarium is responsible for the sea snakes within that facility and shall be in effect at all times that the zoological park or aquarium or public exhibitor possesses sea snakes.

5. No person or public aquarium, public zoological park, or public exhibitor shall barter, sell, or trade sea snakes within this state.

6. A public aquarium, public zoological park, or public exhibitor that imports sea snakes pursuant to this subsection may transport sea snakes into this state only by airplane that may land only at an airport located in a non-coastal county within this state.

7. A public aquarium, public zoological park, or public exhibitor possessing sea snakes pursuant to this subsection shall abide by all regulatory requirements of the Fish and Wildlife Conservation Commission with respect to venomous reptiles.

(2) Research involving prohibited species: Individuals or institutions engaged in research shall be granted a permit, provided the following requirements are met:

(a) Eligibility. A permit for research involving prohibited species shall be issued only to a principal investigator who is a faculty member of a college or university, is affiliated with an accredited institution, or is a member of a federal, state or county agency.

(b) Research proposal. A detailed research proposal shall be submitted and shall state with particularity research objectives, methodology and study duration, and shall outline planned safeguards to ensure proper containment of all specimens. An annual record of progress toward the research project objectives shall be maintained, and such research proposal and record of progress shall be available for inspection upon request of Commission personnel.

(c) General security measures and containment.

1. Applicants shall submit to the Commission a list of personnel that have access to the prohibited species and arrangements for final disposition or euthanization of specimens.

2. All research on prohibited aquatic species shall be conducted in indoor facilities in containers or other confinement facilities designed to prevent escape and having no exterior water discharge or having a water discharge through a closed drain system that terminates in a dry-bed wastewater retention area with no public access.

3. All research on prohibited terrestrial wildlife species shall be conducted in indoor facilities in cages or other confinement facilities that prevent escape.

(d) Critical incident and disaster plan. A plan for securing animals on site, evacuating and/or euthanizing animals in the event of a natural disaster or critical incident shall be submitted by the applicant and approved by the Commission before a permit will be issued. The critical incident and disaster plan shall include methods to transport and return evacuated animals back to the research facility. Commission personnel will review the critical incident and disaster plan to ensure the State of Florida is adequately protected from the risk of introduction of the species.

(e) Inspections. All research facilities where research involving prohibited species is to be conducted will be inspected by Commission personnel or an authorized representative of the Commission prior to issuance of a permit. Scheduled and unannounced inspections to ensure general security measures are followed may be conducted at any time during the permit period.

(f) The permit shall expire 12 months from the date of issuance and shall not be renewed until a detailed report of research findings is received and approved by the Commission. The report will include a description of activities undertaken in the permit period, progress toward research project objectives, and proposed additional activities to be undertaken during any renewal period. Such reports are public records subject to the requirements for public disclosure under chapter 119, F.S.

(g) Any escape or release of prohibited species shall be reported immediately to the Commission, and escape or release shall constitute grounds for revocation of the permit to conduct research involving prohibited species.

(3) No permits shall be granted for possession of any species of piranha or pirambeba (subfamily Serrasalminae).

(4) Personal possession of Prohibited species:

(a) Reptiles: Prohibited reptile species shall only be permitted to be possessed for personal use in accordance with section 379.372, F.S.

(b) Other Prohibited species: if the Commission designates a species as a Prohibited species after May 2, 2019, the Commission may authorize the personal possession of that newly designated species by those licensed or otherwise authorized to possess that species before the effective date of the species' designation by the Commission as a Prohibited species.

1. Permits may only be granted to persons in lawful possession of such species prior to the species' listing as Prohibited for the remainder of the life of the animal. No additional individuals may be acquired. If the animal remains alive following the death or

dissolution of the licensee, the animal may be legally transferred to another entity holding a permit authorizing possession of the animal for the remainder of the life of the animal.

2. Identification: Prohibited species possessed for personal use shall be permanently identified with a unique passive integrated transponder (PIT tag). Identification shall consist of the implantation of a unique PIT tag under the specimen's skin in a manner to maintain the PIT tag permanently in place.

(c) Permit qualifications:

1. Applicants for permits to possess Prohibited species for personal use in accordance with this section shall submit a completed Conditional/Prohibited/Nonnative Species Permit application form WIM 01 (02/19) available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-10435> which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

2. Disaster and Critical Incident Plans: Applicants for permits to possess Prohibited species as authorized pursuant to the provisions of this chapter shall document in writing a course of action to be taken in preparation for disasters or critical incidents. Such course of action shall be documented on the Captive Wildlife Critical Incident/Disaster Plan form FWCDLE_619 (06/09) available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-10436> which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600. This form shall consist of two parts. Part A of form FWCDLE_619 shall be submitted at the time of initial application or renewal; and Part B shall be retained in the permittee's files at the facility location and be made available for inspection upon request of Commission personnel and the director of the local emergency management agency for the county where the facility is located.

3. Records of identification including PIT tag number where applicable, along with information about the specimen being identified (species, specimen name or number, gender, and age) must be provided to the Commission upon permit application.

(5) Persons in possession of species listed as Prohibited after May 2, 2019 shall have ninety (90) days from the effective date of the species' listing as Prohibited to come into compliance with the provisions of this section.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-27-18, Amended 5-2-19.

68-5.008 Amnesty for Persons Relinquishing Non-native Pets.

It is the policy of the Fish and Wildlife Conservation Commission to encourage persons possessing unwanted non-native fish or wildlife as pets to relinquish such pets to qualified adopters as an alternative to releasing them into Florida's environment. In furtherance of this policy, the Commission will sponsor amnesty events for such purpose.

(1) Persons adopting nonnative species through an FWC sponsored amnesty event may accept non-native fish or wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife.

(2) Any person relinquishing or adopting non-native fish or wildlife pursuant to this rule is hereby deemed not to be in violation of the permit requirement of subsection 68A-6.0023(7), F.A.C.

(3) Relinquishing reptiles of concern, or conditional snakes and lizards.

(a) Persons with a valid license to possess or exhibit reptiles designated as reptiles of concern after July 1, 2010, may accept reptiles of concern as defined in subsection 68A-6.007(1), F.A.C. from persons who have not obtained a permit from the Commission for possession of such reptiles without violating the provisions of subsection 68A-6.0023(7), F.A.C., which prohibits the buying, selling or transferring of wildlife to or from an unpermitted entity within Florida.

(b) Persons authorized to possess conditional snakes and lizards may accept conditional snakes and lizards listed in subsection 68-5.004(4), F.A.C., from persons who have not obtained a permit from the Commission for possession of such conditional snakes and lizards without violating the provisions of subsection 68A-6.0023(7), F.A.C., which prohibits the buying, selling or transferring of wildlife to or from an unpermitted entity within Florida.

(c) Persons accepting unpermitted reptiles of concern, or conditional snakes and lizards, shall complete a Captive Wildlife Inventory-Donated Reptile form FWCDLE_624IV (06-10), which is adopted and incorporated herein by reference, which is available from the Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, and submit the form to the same address within 72 hours of acquisition.

(d) Any person relinquishing or accepting reptiles of concern, or conditional snakes and lizards, under this subsection is authorized to make such transfer and is not in violation of the prohibitions on buying, selling or transferring contained in subsection

68A-6.0023(7), F.A.C.

(e) Persons accepting unpermitted reptiles of concern, or conditional snakes or lizards, under this subsection must otherwise comply with all permit conditions and Commission rules, specifically including provisions in rules 68A-6.007, 68A-6.0071, and 68A-6.0072, F.A.C.

(4) State and county wildlife control agencies may accept non-native fish and wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-27-18.

68-5.009 Lionfish.

(1) As used in this rule, “lionfish” means any finfish of the genus *Pterois*.

(2) The importation of live lionfish or hybrids or eggs thereof is prohibited.

(3) Live lionfish imported from outside the State of Florida after August 1, 2014, may not be sold, offered for sale, bartered, or otherwise exchanged.

(4)(a) Except as provided in paragraph (b), a wholesale or retail dealer, or any other wholesale or retail establishment possessing live lionfish, or any hybrids thereof may only possess live lionfish harvested from Florida waters or adjacent federal waters. Any wholesale or retail establishment shall maintain the invoices, receipts, bills of sale, bills of lading, or other documentation affirmatively showing that all lionfish possessed or purchased by the dealer have been sourced from Florida waters or adjacent federal waters.

(b) A wholesale dealer or retailer may possess and offer for sale live lionfish imported prior to August 1, 2014. However, the burden shall be upon any person possessing imported live lionfish to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and to show that such live lionfish were imported and entered the state in interstate commerce prior to August 1, 2014. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute a violation of this section.

(5) No common carrier or employee of said carrier may carry, knowingly receive for carriage, or permit the carriage of any live lionfish, including hybrids or eggs thereof, except for lionfish lawfully harvested from Florida waters or adjacent federal waters.

(6) Any person engaged in aquaculture who possesses a valid certificate of registration from the Department of Agriculture and Consumer services issued pursuant to chapter 597, F.S., and who is authorized to possess such species in accordance with chapter 597, F.S., may raise juvenile or adult lionfish lawfully harvested from Florida waters or adjacent waters.

(7) Except for the activities authorized by a Conditional/Prohibited/Nonnative Species permit as provided in subsection (8) below, the harvest or possession of lionfish eggs or larvae for any purposes other than destruction is prohibited.

(8) The intentional breeding of lionfish or cultivation of lionfish eggs or larvae in captivity is prohibited except as authorized by Conditional/Prohibited/Nonnative species permit as provided in paragraphs (a) through (f) below:

(a) Eligibility.

1. A permit for research involving lionfish cultivation shall be issued only to a principal investigator who is a faculty member of a college or university, is affiliated with an accredited institution, or is a member of a federal, state or county agency.

2. Permits shall be issued only for the purposes of researching lionfish population control measures or mitigating negative impacts to native species and ecosystems.

(b) Lionfish cultivation held outdoors may only be held in a water body that has the lowest point of the top edge of its levee, dike, bank, or tank at an elevation of at least one foot above the 100-year flood elevation determined by reference to elevation maps issued by the National Flood Insurance Program, U.S. Department of Homeland Security. Such water body shall have no water discharge or shall be constructed with a barrier system designed to prevent escape of adults, juveniles, and eggs in the water effluent discharged from the permittee’s property.

(c) Lionfish cultivation held indoors may only be held in culture systems having no water discharge, having a water discharge through a closed drain system, or other system designed to prevent discharge of water containing adults, juveniles and eggs from the permittee’s property.

(d) A detailed research proposal shall accompany the application for the permit. The proposal shall state the research objectives, methodology and study duration, and outline planned safeguards to assure proper containment of the species. An annual record of progress toward the research project objectives shall be maintained, and such research proposal and record of progress shall be available for inspection upon request of Commission personnel.

(e) The permit shall expire 12 months from the date of issuance and shall not be renewed until a detailed report of research findings is received and approved by the Commission. The report shall include a description of activities undertaken in the permit period, progress toward research project objectives, and proposed additional activities to be undertaken during any renewal period. Such reports are public records subject to the requirements for public disclosure under chapter 119, F.S.

(f) Any escape or release of lionfish, or the eggs thereof, shall be reported immediately to the Commission.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-27-18.

EXHIBIT D

68-1.008 Due Process Procedures.

(1) Summary of Due Process Procedures: The due process procedures adopted by the Fish and Wildlife Conservation Commission (FWC) are designed to satisfy Article IV, Section 9, Florida Constitution, and to address the recommendations in Section 20.331(9)(a)(b) and (c), F.S. (1999). The procedures adopted by the FWC are adequate within the meaning of the constitution because the procedures fully comply with the applicable procedural and substantive due process provisions of Chapter 120, F.S., and its companion provisions, the Uniform Rules of Procedure. As to rules promulgated under the FWC's constitutional authority, there are adequate judicial remedies to adjudicate such rules and provide due process of law. With respect to FWC proposed rules to list or delist species as endangered, threatened or of special concern, the FWC has adopted an additional procedure, not required by law, which assures that any party shall receive a special hearing, known as a "draw-out," before an Administrative Law Judge as to the phase one part of the listing process, and that such special "draw-out" hearing shall suspend the rule. FWC rulemaking authority over endangered marine species, such as manatees and sea turtles, is derived from the legislature and adjudication of proposed rules on these species is subject to Administrative Procedures Act (APA).

(2) Background: Article IV, Section 9, Florida Constitution, as amended by Constitution Revision Commission Revision 5, adopted in 1998, created the Fish and Wildlife Conservation Commission (FWC) to exercise the state's regulatory and executive authority with respect to wild animal life and freshwater aquatic life and to exercise executive and regulatory authority with respect to marine life. The issue of due process is specifically addressed in Revision 5 which states that the Commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. Due process is also addressed in the "merger bill" which implements Revision 5. See, Chapter 99-245, Laws of Florida, now codified in pertinent part as Section 20.331, F.S. While this law does not mandate that any particular due process procedure must be followed by FWC, it provides several recommendations in Sections 20.331(6)(a)-(c), F.S. First, it states that FWC shall implement a system of adequate due process procedures to be accorded to any party, as defined in Section 120.52, F.S., whose substantial interests will be affected by any action of the Fish and Wildlife Conservation Commission in the performance of its constitutional duties or responsibilities. Second, the legislation encourages the commission to incorporate in its process the provisions of Section 120.54(3)(c), F.S., when adopting rules in the performance of its constitutional duties or responsibilities. Third, the provisions of Chapter 120, F.S., shall be accorded to any party whose substantial interests will be affected by any action of the commission in the performance of its statutory duties or responsibilities. For purposes of this subsection, statutory duties or responsibilities include, but are not limited to, the following:

- (a) Research and management responsibilities for marine species listed as endangered, threatened, or of special concern, including, but not limited to, manatees and marine turtles;
- (b) Establishment and enforcement of boating safety regulations;
- (c) Land acquisition and management;
- (d) Enforcement and collection of fees for all recreational and commercial hunting or fishing licenses or permits;
- (e) Aquatic plant removal and management using fish as a biological control agent;
- (f) Enforcement of penalties for violations of commission rules, including, but not limited to, the seizure and forfeiture of vessels and other equipment used to commit those violations;
- (g) Establishment of free fishing days;
- (h) Regulation of off-road vehicles on state lands;
- (i) Establishment and coordination of a statewide hunter safety course;
- (j) Establishment of programs and activities to develop and distribute public education materials;
- (k) Police powers of wildlife and marine officers;
- (l) Establishment of citizen support organizations to provide assistance, funding, and promotional support for programs of the commission;
- (m) Creation of the Voluntary Authorized Hunter Identification Program; and,
- (n) Regulation of required clothing of persons hunting deer.

(3) The commission is directed to provide a report on the development and implementation of its adequate due process provisions to the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive committees of the House of Representative and the Senate no later than December 1, 1999.

(4) In compliance with the constitution and the "merger bill," the FWC, at its inaugural meeting in Ft. Lauderdale, on July 7, 1999, approved and adopted due process procedures which address and satisfy the constitutional requirement and legislative

recommendations. Accordingly, the FWC submitted its Due Process Procedures to the Legislature on December 1, 1999, in compliance with Section 20.231, F.S. (1999).

(5) Due Process Procedures Adopted by the Fish and Wildlife Conservation Commission.

(a) Article IV, Section 9, Constitution of Florida, as amended by Revision 5 and as approved by the electorate in November 1998, requires that “The (Florida Fish and Wildlife Conservation) Commission shall establish procedures to ensure adequate due process in the exercise of its executive and regulatory functions.” The following due process procedures of the Florida Fish and Wildlife Conservation Commission (FWC) approved and adopted by the Commission on July 7, 1999, are designed to provide adequate due process, in compliance with Article IV, Section 9, Florida Constitution, as amended, and to address the special recommendations on due process of Section 20.331, F.S. (1999).

(b) Procedural Due Process: Procedural due process, in a broad sense, encompasses the procedural requirements that must be observed in the course of a legal proceeding to ensure the protection of private rights and property. Procedural due process, in an administrative setting, consists of requirements for notice, a meaningful opportunity to be heard and a fair, impartial decision-making authority.

1. The FWC has adopted, by Rule 68-1.001, F.A.C., The Uniform Rules of Procedure, and shall follow Chapter 28, F.A.C., as the rules of procedure for the FWC. The Uniform Rules of Procedure are a companion to the APA and shall govern the practical and procedural aspects of agency action on the following subjects:

- a. Statement of agency organization,
- b. Scheduling of meetings and workshops,
- c. Decisions determining substantial interests,
- d. Petitions for declaratory statements,
- e. Summary proceedings,
- f. Mediation,
- g. Bid challenges,
- h. Waivers and variances.

2. The FWC shall follow Chapter 120, F.S., the Administrative Procedures Act (APA), for all notices of FWC meetings and workshops.

3. The FWC shall follow the APA for all notices of FWC rule development and rulemaking.

4. The FWC shall follow the APA in the use of rule development workshops and shall prepare statements of estimated regulatory cost and statements of lower cost regulatory alternative in accordance with the APA.

5. The FWC shall comply with the Public Records Act (Chapter 119, F.S.) with respect to all records of the FWC and with the Sunshine Law with respect to meetings of the FWC.

6. The FWC due process procedures shall be accorded to any party as defined in Section 120.52, F.S., whose substantial interests will be affected by any action of the FWC.

(c) Substantive Due Process: Substantive due process refers to constitutional protections provided by the due process clause of the Florida and Federal Constitution. Therefore, substantive due process applies with respect to the decisions, orders and adjudications of government.

1. The FWC rules derived from constitutional authority are not to be subject to administrative rule challenges under Section 120.56, F.S. See, *Airboat Association of Florida, Inc. v. Florida Game and Fresh Water Fish Commission*, 498 So. 2d 629 (Fla. 3rd DCA 1986). Under the APA, The FWC is not defined as an agency except when it is acting pursuant to statutory authority derived from the Legislature. See, Section 120.52(1)(b), F.S. However, rules derived from constitutional authority can be challenged in a number of ways:

a. The FWC rules, and possible proposed rules, derived from constitutional authority may be challenged directly before the circuit court by declaratory action, injunctive action or, in appropriate circumstances, under the Bert J. Harris Private Property Rights Protection Act (Section 70.001, F.S.). Decisions of the circuit court can be appealed to the appropriate District Court of Appeal, and potentially to the Supreme Court of Florida.

b. The FWC rules derived from constitutional authority which carry a criminal or non-criminal sanction can, upon issuance of a citation, be challenged in county court. Decisions of the county court can be appealed to the circuit court, or, in some cases, directly to the District Court of Appeal.

c. FWC proposed rules derived from constitutional authority may also be subject to a special hearing, known as a “draw-out”

hearing. See, Section 120.54(3)(c), F.S. A “draw-out” is a special hearing which may be provided upon request of a party if the agency determines that the rulemaking proceeding is inadequate to protect the person's substantial interests and that the normal public hearing on a proposed rule does not provide that person with an adequate opportunity to protect their interests. The FWC, just as any other state agency, may consider, on a case by case basis, requests for use of a “draw-out” for proposed rules promulgated in performance of its constitutional duties in accordance with the statutory criteria.

2. The FWC rules which are derived from statutory authority are fully subject to administrative rule challenges under Section 120.56, F.S. See Section 20.331, F.S.

3. All discretionary actions, orders, or decisions of the FWC which affect substantial interests are subject to adjudication under Chapter 120, F.S. Accordingly, to the extent that agency action is discretionary, FWC action to grant or deny permits or licenses or to suspend or revoke such permits or licenses is subject to adjudication under Sections 120.57, 120.569 and 120.60, F.S. These discretionary decisions to grant or deny permits or licenses or to revoke or suspend such permits or licenses include, but are not limited to, the following subjects:

- a. Bid disputes,
- b. Commercial fishing licenses,
- c. Restricted species endorsements,
- d. Salt water products licenses,
- e. Marine special activity licenses,
- f. Captive wildlife permits,
- g. Permits to take, remove or relocate wildlife, including wildlife listed as endangered, threatened or of special concern,
- h. Permits to take freshwater fish, marine life, manatees, sea turtles or wildlife for educational or scientific purposes,
- i. Permits to operate alligator farms and management programs,
- j. Permits to operate game fish aquaculture facilities,
- k. Permits to operate haul seines in Lake Okeechobee.

4. The FWC shall also comply with the following provisions of law that assure adequate due process relating to various actions of the Commission.

a. FWC comments to other permitting agencies: If another agency relies upon recommendations of the FWC in granting or denying a license or permit, the FWC may be required to appear as a party in any legal challenge brought on such license or permit to show that the recommendation is within the FWC jurisdiction and is valid. See, Section 120.60(7), F.S. In addition, such recommendations or comments must be based upon credible, factual scientific data, are not binding on any permitting agency, must be submitted within a strict 30-day deadline, and the FWC must bear its costs in defending its recommendation. See, Section 20.331(7), F.S. (1999).

b. Alteration of hunting or fishing seasons: Agency action which has the effect of altering the established hunting or fishing seasons, or altering the established annual harvest limits for saltwater fishing is not a rule if the procedure for altering such harvest limits is set out by rule of the FWC. Such action shall be adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting via electronic media. Section 120.81(5), F.S.

c. Personnel and disciplinary actions: When FWC acts to suspend, reduce in pay, transfer, and layoff, demote or dismiss any permanent employee in the Career Service System; the employee shall have appeal rights to the Public Employees Relations Commission. Section 447.207(8), F.S.

(d) Additional Due Process Procedures by use of the draw-out procedure of Section 120.54(3)(c), F.S.: Section 20.331(9)(b), F.S., recommends that the FWC consider the use of the “draw out” procedure of Section 120.54(3)(c), F.S., in the performance of its constitutional duties. Accordingly, FWC shall require that upon timely request, a party shall receive a special “draw out” hearing conducted by an administrative law judge on proposed rules that list or delist fish or wildlife as endangered, threatened or of species of special concern, during the phase one process for listing or delisting such species. This draw-out will only be used specifically for phase one of the new listing process, as created by rule amendments approved by the GFC at its May 14, 1999 meeting. (See, Appendix; FWC rule sections governing the list and delisting of species). The “phase one” stage of the listing process determines if a species warrants a classification as endangered, threatened or of special concern, or, if the species is already classified, whether the species should be re-classified or removed from the list. The “phase two” stage deals with the specific conservation needs of the species, such as additional regulations or management. The draw-out process is appropriate for the “phase one” aspect of the listing process for a number of reasons: First, determining whether a species warrants classification or whether its classification should

change is a decision which must be based upon credible biological data and therefore, an evidentiary hearing, such as a draw-out, may be useful. Secondly, phase one of the listing process deals with whether a species qualifies for higher level of protection or management and therefore, the decision should be factually correct and afforded special care and deliberation. Finally, listing affects a broad constituency and may significantly affect land-use decisions by other levels or agencies of government, including the federal government, and accordingly, an extra level of care and deliberation is appropriate. The effect of a draw-out is to suspend any proposed rule until the completion of the draw-out proceeding. The draw-out proceeding consists of a hearing before an administrative law judge, the preparation of a record and the transmittal to and review of the record by the FWC. The draw-out is an evidentiary hearing only; there are no recommended findings of fact or conclusions of law and the draw-out record is not binding on the FWC nor is subject to appeal. It should be noted that the use of a special draw-out in these circumstances goes beyond what is legally required of state agencies under the draw-out provision of Section 120.54(3)(c), F.S. Under the statute, the use of a draw-out is left to the discretion of the state agencies, and is decided on a case by case basis.

(c) Due Process relating to marine species that are endangered, threatened or of special concern, and turtles and manatees: Under the merger bill, research and management responsibilities for marine species listed as endangered or threatened, including marine turtles and manatees, is a statutory responsibility that has been delegated to FWC. See; Section 20.331(6)(c)1., F.S. (1999), and Section 379.2401(4)(a), F.S. (1999). Under the bill, the FWC can only promulgate rules pertaining to endangered or threatened marine species if specifically authorized by the statutes. These provisions of the merger bill were the subject of a complaint in the case Caribbean Conservation Corporation and Save the Manatee Club, Inc. et al. v. Florida Fish and Wildlife Conservation Commission, et al., Case No. 99-4188 (Circuit Court for the Second Judicial Circuit, Leon County). This complaint alleges that parts of merger bill encroach upon the Commission's constitutional authority and violate the recently amended version of Article IV, Section 9, of the Florida Constitution. Currently, the FWC is enjoined from complying with the merger bill. Therefore, until such time as a court order to the contrary is entered, FWC rules or proposed rules promulgated with respect to endangered or threatened marine species, including the West Indian manatee and sea turtles, shall be subject to APA administrative appeal procedures under Section 120.56, F.S. (1999). On January 16, 2003, the Supreme Court of Florida upheld the Legislative bill (Chapter 99-245, Laws of Florida) which implemented FWC. In this ruling, the Supreme Court concluded that endangered and threatened marine species such as the Florida manatee, whales and sea turtles were not regulated by FWC under the Florida Constitution. FWC's authority to regulate these species was derived not from the constitution but from statute (Section 379.2431, F.S.). Therefore, the Administrative Procedures Act (Chapter 120, F.S.) applied in all respects to rulemaking for these species. *See, Save the Manatee Club, et al v. FWC, 838 So.2d 492 (Fla. 2003).*

Rulemaking Authority Article IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla.Const. 20.331(9) FS. History—New 1-8-08.