

# Unofficial Until Approved

## Florida Fish and Wildlife Conservation Commission

### Minutes of the Commission Meeting

April 14-15, 2005

Tallahassee

A regular meeting of the Florida Fish and Wildlife Conservation Commission was held at the Ramada Inn and Conference Center, 2900 North Monroe Street, Tallahassee, April 14-15, 2005, and called to order at 8:40 a.m., by Chairman Herky Huffman with the following members in attendance:

Mr. David K. Meehan, St. Petersburg	Mr. Rodney Barreto, Miami
Ms. Sandra T. Kaupe, Palm Beach	Mr. Richard A. Corbett, Tampa
Mr. Brian S. Yablonski, Tallahassee	Ms. Kathy Barco, Jacksonville

#### Staff

Mr. Kenneth D. Haddad	Executive Director
Mr. Victor J. Heller	Assistant Executive Director
Mr. James V. Antista	General Counsel
Colonel Julie L. Jones	Director, Division of Law Enforcement
Mr. Nick Wiley	Director, Division of Hunting and Game Management
Mr. Timothy Breault	Director, Division of Habitat and Species Conservation
Mr. Darrell Scovell	Director, Division of Freshwater Fisheries Management
Mr. Mark S. Robson	Director, Division of Marine Fisheries Management
Mr. Gil McRae	Director, Fish and Wildlife Research Institute
Ms. Jacqueline Fauls	Director, Legislative Affairs Office
Ms. Mary Ann Poole	Director, Policy and Stakeholder Coordination Office
Mr. Scott C. Ball	Acting Director, Community Relations Office
Mr. Gregory L. Holder	Director, Southwest Region
Mr. Rolando J. Garcia	Director, North Central Region
Lt. Col. Louie S. Roberson	Director, Northwest Region
Mr. Charles E. Collins	Director, South Region
Mr. Dennis N. David	Director, Northeast Region

Thirty-two persons registered as guests/speakers for the two-day meeting.

Regional Director Garcia gave the invocation. Commissioner Yablonski led the assembly in the Pledge of Allegiance to the Flag, and Commissioner Meehan asked every one to join him in song to wish Chairman Huffman a Happy Birthday.

## Special Presentations and Recognitions

Executive Director Haddad introduced the following area staff to the Commission: Division of Law Enforcement—Officers Curt Perry and Gary Herndon; Division of Marine Fisheries Management—Rich Abrams and Chad Hanson; Division of Habitat and Species Conservation—Dr. Brad Gruver and Angie Raines; Division of Hunting and Game Management—Tony Young; Community Relations Office—Kelly Broderick and Gus Holzer; and Fish and Wildlife Research Institute—Dr. David Harding and Stuart Cumberbatch.

Mr. Haddad also introduced Mary Ann Poole, newly hired director of the Office of Policy and Stakeholder Coordination.

## Approval of Minutes, Consent Agenda, and Agenda

Chairman Huffman asked if there were any changes or corrections to the minutes of the February meeting. The Commission Secretary advised that other than typographical corrections and minor word edits, there were no substantive edits to the minutes that would change the outcome of Commission deliberations or actions as recorded in the minutes document distributed to the Commission. Upon motion of Commissioner Meehan seconded and carried, the minutes of the February 2-4, 2005 Commission meeting were approved.

Chairman Huffman asked for Commission concurrence to remove rules 68B-27.017 and 68B-27.019, Apalachicola Bay Oyster Harvesting Restrictions and Seasons from the Consent Agenda to allow for their discussion during Friday's session of the Commission Meeting.

Upon motion of Commissioner Kaupe, seconded and carried, rules 68B-27.017 and 68B-27.019 were removed from the Consent Agenda and placed on the agenda for consideration at Friday's session.

The Chairman requested Commission approval of the Consent Agenda (attached) as modified and the meeting agenda. Upon motion of Commissioner Kaupe, seconded and carried, the Consent Agenda and meeting agenda were approved.

## Executive Director's Report

Mr. Haddad highlighted portions of the April Executive Director's Report:

- Division of Freshwater Fisheries Management

>Official groundbreaking for the \$1.3 million Windy Point Recreation Park on Lake Istokpoga Fish Management Area took place in February. Park development is being accomplished through a partnership between FWC and Highlands County on 38 acres purchased by FWC with Florida Forever funds. The primary use of the property is to provide parking for an FWC-maintained public boat ramp.

>The muck containment site for Lake Trafford is currently under construction and will be completed in time for hydraulic dredging to begin in May.

- Division of Habitat and Species Conservation

>Lake Wales Ridge Wildlife and Environmental Area staff have been working to coordinate the Ridge Ranger Volunteer Program, which assists 12 federal, state, and county agencies in implementation of conservation programs for the rapidly vanishing ancient scrub of Lake Wales Ridge in Highlands and Polk counties.

>The Black Bear Management and Research Program hosted the 18<sup>th</sup> Eastern Black Bear Workshop in Tallahassee recently.

>The FWC, U.S. Fish and Wildlife Service and National Park Service established the Florida Panther Interagency Response Team to manage panther/human interactions while promoting human safety and assuring the continued existence and recovery of this endangered animal.

>The third Manatee Forum was held in February at the Fish and Wildlife Research Institute. The focus was science related to the status of the manatee population.

- Division of Law Enforcement

>Since August 2004, staff has been working with local and state marine enforcement officers and county staff to determine the best location and type of waterway markers needed to post regulatory zones within counties of the Tampa Bay Manatee Protection Zones approved by the Commission.

>In February the division initiated a statewide investigation detail to address the illegal sale of fish into the commercial market. This action was in response to increased information of illegal activity taking place.

- Division of Marine Fisheries Management

>The Navy and the Environmental Protection Agency have reassessed the timetable for sinking the aircraft carrier *Oriskany*. Periodic updates will be provided.

>The second in a series of summit meetings with stakeholders, intended to create a future vision for Florida's marine fisheries, was completed in February. Staff intends to convene a governmental group discussion prior to scheduling a combined meeting of all the participants to share the results of the group meetings.

- Division of Hunting and Game Management

>The Nuisance Alligator Program has been transferred from the Division of Law Enforcement to the Division of Hunting and Game Management's Alligator Management Program to improve program coordination.

## Revised Delegation of Authority to the Executive Director

General Counsel Antista explained that at the February Commission meeting, the Commission was presented a proposal to enhance productivity of the Commission at its meetings. One of the proposal's goals was to reduce administrative matters brought to the Commission. To achieve this goal, the Commission may delegate more administrative matters to the Executive Director by revising the July 1999 Resolution of the Commission Establishing Delegations of Authority to the Executive Director. The proposed revisions would:

- Clarify that the Executive Director may, to the extent allowable by law, further delegate duties and responsibilities delegated to him.
- Authorize the Executive Director to add or delete lands in areas established for FWC Management.
- Clarify that the Executive Director has authority to bring or defend lawsuits provided that the Executive Director shall consult with the Chairman or the Commission if the lawsuit has a substantial administrative, fiscal, or legal impact on the agency.
- Clarify that the Executive Director has authority to settle claims, lawsuits, or legal actions provided that if such a settlement has a substantial administrative, fiscal, or legal impact, the Executive Director will consult with the Commission or Chairman prior to final settlement.
- Clarify the Executive Director's authority to file rules for adoption, including emergency rules, and conforming FWC rules in response to new federal regulations.
- Clarifies the Executive Director's authority to execute Executive Orders in response to emergencies, such as hurricanes or other exigent circumstances that affect management areas, hunting or fishing.
- Ratify and approve all actions taken by the Executive Director pursuant to existing delegations.

Mr. Antista stated the staff recommends revisions to the current delegations between the Executive Director and Commission as set forth in the July 1999 resolution.

## Commission Discussion

The Commissioners asked that the Executive Director include in his Executive Director Report any major action items, and, if the Chairman has any concerns on any action, that the Chairman and Executive Director report to the Commission for discussion.

Upon motion of Commissioner Corbett, seconded and carried, the revised Delegations of Authority document was approved.

### Report on the Pilot Deer Dog Registration Program in the Northwest Region

Lieutenant Colonel Mike Wiwi provided a final report on the pilot deer dog registration program in the Northwest Region, adding that this evaluation was a concerted effort between the divisions of Law Enforcement and Hunting and Game management and the Office of Licensing and Permitting.

LTC Wiwi provided a recap of statistics on registered properties, current statistics regarding enforcement of the registration requirements including complaint and citation data compared with previous years, an evaluation of the feasibility and cost of administering the permit application process, and results of a recent survey of deer-dog hunt club registration participants to determine their level of satisfaction with the pilot program.

During the pilot program, the Commission registered seventy different properties representing 57 deer-dog hunt clubs. Properties ranged in size from 40 acres to 31,000 acres, and were represented in 14 of the 16 counties in the region. Only Escambia and Franklin counties had no registered deer-dog clubs.

Most important was the documented complaints associated with deer-dog hunting on private lands, which have been used as an indicator of conflict. The preliminary report presented at the February Commission meeting suggested a significant reduction in complaints compared to previous hunting seasons. Final analysis of the complete 2004-05 hunting season reflected this reduction. The most notable complaint statistic, however, was that there were only five valid complaints attributed to private properties that were registered for deer-dog hunting throughout the entire hunting season.

In late February, a survey was mailed to all individuals who registered private lands for deer-dog hunting. The majority of respondents (47% of the registered clubs responded) indicated satisfaction with the program components. Recommendations for the program from respondents included: (1) issue a deer-dog hunting stamp and require it to be carried with the license; (2) include public lands in the program; (3) issue one number per hunt club instead of one number per property; and (4) make the registration paper smaller (wallet size). Some comments included that registration requirements were expensive (shock and tracking collars); the program did not help to manage dog/hunting conflicts; all dog hunters are being penalized because of a few unethical hunters; and this program is the first step toward eliminating dog hunting.

With consideration given to the overall success of the Northwest Region pilot registration program, and the input received from the registered clubs, staff recommends moving forward with seeking public input to expand the registration program statewide for the 2005-2006 hunting season. This effort will include a mass mailing to the leadership of deer-dog hunting groups/clubs and other stakeholders to seek public input and provide the opportunity for interested parties

to participate in public workshops. The results of these workshops will be presented to the Commission at the June 2005 Commission meeting along with a final staff recommendation regarding statewide expansion of the program.

### Public Comment

Rusty McKeithen (Florida State Dog Hunters and Sportsmens Association) stated he was pleased with the pilot registration program results and offered his support of the staff recommendation to go forward with a statewide rule. He believes it will make Florida a leader in protecting dog hunting in the southeast.

Preston Robertson conveyed his support of a statewide deer dog registration program. He suggested an addition of a "date certain" for submission of registration applications to allow a review of information to ensure accuracy before the hunting season begins, and suggested an application deadline of "10 days before general gun season." These suggestions would be helpful to the Office and Licensing and Permitting if the program goes statewide.

### Commission Discussion

Commissioner Meehan commented that dog hunters who do not want their dogs to trespass on private property must purchase shock or tracking collars whether or not the FWC institutes the registration program statewide. He pointed out that the pilot program was a success and another tool for the continued sport of dog hunting in Florida, and asked the General Counsel if the Commission should approve a statewide rule.

Mr. Antista responded that to continue the program in just one region would violate equal protection rights of the Northwest Region hunters.

Commissioner Corbett asked staff to review the required use of shock collars for all deer hunting dogs to ensure a reduction in trespass problems. Statistics indicate the pilot program has been a success and it is his belief the agency should move forward to initiate a statewide program. He asked LTC Wiwi if staff had considered some of the public recommendations from the survey.

LTC Wiwi responded that staff is reviewing and will consider issuing the same registration number next year to reduce purchase of collars, and issuing one number per hunt club instead of one number per property.

Chairman Huffman thanked the staff for working with the landowners and dog hunters to draft an acceptable rule for the continued sport of dog hunting in Florida.

Upon motion of Commissioner Meehan, seconded and carried, staff was directed to begin the rule-making process to proceed with a statewide deer-dog registration program.

## Rules

Mr. Nick Wiley presented the following rules for Commission consideration:

(1) 68A-15.062, Specific Regulations for Wildlife Management Areas (WMA)-North Central Region—San Pedro Bay WMA—The proposed rule change would no longer allow deer-dog hunting on a 7,481-acre, linear-shaped portion of the WMA which lays between two parcels that have been withdrawn from the WMA by the landowners. The 21,205 acres remaining in the WMA would remain available for hunting deer with dogs.

Mr. Wiley explained that the reasons for the still hunt proposal are because it is a narrow strip of land, there are few interior cutoff roads for dogs allowing for the potential for trespass on the east and west sides, the landowners (Foley and Buckeye timber companies) agreed to allow boundary access conditioned upon avoiding trespass conflicts, and 21,200 acres will remain open for deer-dog hunting.

Regarding public notice and input on the proposed change, staff mailed letters to all 306 individuals who currently have a recreational-use permit for the WMA, and provided opportunity for public comment. Three responses were received: two objected to the changes and one requested further reduction in the number of permits.

Mr. Wiley asked for Commission approval of the proposed rule.

## Public Comment

Tim Johnson stated that he can not understand why the land is being converted from dog hunting to still hunting when there have never been any dog hunting problems within the boundaries. He stated that the area is not a good still hunt area because the vegetation is too thick.

Robert Tramentana agreed with Mr. Johnson's comments adding that this new configuration will place too many dog hunters in the north hunt area of San Pedro Bay.

## Commission Discussion

Commissioner Barco asked Mr. Wiley about the fees collected by the landowner to permit hunting on the property and whether the landowner would be interested in reducing permit costs as available acreage to hunt and hunting opportunities are reduced.

Mr. Wiley responded that the Foley Timber Company is not interested in reducing the permit costs.

Commissioner Yablonski commented that if Foley has not asked that dog hunting be eliminated on the land in question, only that they wanted to eliminate conflict, staff may be premature in closing the area to dog hunting. He suggested

staff listen to the comments of those who hunt the area and consider postponing any action to reduce dog hunting for at least one year. Commissioner Corbett agreed.

Commissioner Meehan asked if the criteria used to place boundaries on dog hunt areas was considered in this change.

Mr. Wiley responded that the criteria were approved for establishment of new areas only. This proposed change is a change to an existing area.

Mr. Wiley replied that he will discuss the proposal with the landowner and return to the Commission with new information.

Chairman Huffman pointed out that the hunting public does not need to lose any more hunting land and suggested renegotiations be handled cautiously. The other Commissioners agreed.

Commissioner Barco offered a motion to defer Rule 68A-15.062 until staff attempts to renegotiate with the landowner for the dog hunting area and reduction in permit costs if there is a reduction in dog hunting area. The motion was seconded and carried.

(2) 68A-9.004, Permits for Hunting and Other Recreational Use on WMAs—The proposed rule change would reduce the quota of recreational use permits for San Pedro Bay WMA from 355 to 310 as a result of lands being removed from the WMA.

Upon motion of Commissioner Meehan, seconded and carried, Rule 68A-9.004 was approved.

Captain Richard Moore, Office of Boating and Waterways, presented the following rule for Commission consideration:

(3) 68D-36, Minimum Standards for Mandatory Boating Safety Courses—The proposed rule changes would: (1) update boating safety course curriculum and require that curriculum in Florida boating safety courses conform to standards of the National Association of State Boating Law Administrators; (2) create a new rule section that codifies policies and procedures for the boater education temporary certificate examination program; (3) revise the rule section on proof of successful completion of the boating safety course by eliminating obsolete requirements; (4) combine in one rule section all safety training requirements for liveries that rent personal watercraft and other vessels; (5) revise training requirements for the mandatory education for violators program to require an additional four-hour course for criminal boating law violators and those involved and charged in a boating accident; and (6) conform this rule to changes made in Florida Statutes.

Amendments to the advertised rule would change the term "complete name" to "full name," and change the requirement for violator education from persons

convicted of boating infractions “arising from involvement in a boating accident” to those infractions that “resulted in a reportable boating accident.”

### Commission Discussion

Commissioner Meehan mentioned the importance of boater education for safety in Florida’s waterways and his hope that the Florida Legislature will look at a mandatory boater education bill next year.

Upon motion of Commissioner Meehan, seconded and carried, Rule 68D-36 was approved as amended.

Mr. Dan Sullivan, Division of Habitat and Species Conservation, presented the following rules for Commission consideration:

(4) 68A-1.004 Definitions—The proposed rule change would revise the definitions of endangered, threatened, and species of special concern to be consistent with the most recent definitions of similar categories established by the International Union for the Conservation of Nature (IUCN).

(5) 68A-27.0012, Procedures for Listing, Delisting and Reclassifying Endangered, Threatened, and Species of Special Concern—The proposed rule change would update the process for listing imperiled species by specifying the time petitions will be evaluated, adding language to address harvested marine species, altering the biological review panel, and requiring use of the IUCN regional guidelines and IUCN criteria application guidelines.

Mr. Sullivan stated that following the February Commission meeting, staff held another stakeholder forum to provide for further comment and input on the listing rule. Input received at this forum and other stakeholder input resulted in staff recommending several modifications to the advertised rules that would enhance or clarify the draft rules presented in February. These floor amendments include:

(1) Referencing the listing process rule in the definitions. This change ensures the definition incorporates the process described in 68A-27.0012, which includes evaluating the criteria in definition within the context of the IUCN process guidelines and regional guidelines, and the option for modifying the classification based on sound biological justification. This clarifies that the criteria listed in the definition can be modified by applying the evaluation process contained in 68A-27.0012.

(2) Specifying the versions of the IUCN documents to be used.

(3) Inclusion of an independent scientific review of the biological status report.

(4) Various minor edits to improve grammar or clarity.

In addition to the advertised rule and its amendments, Mr. Sullivan provided a brief history of the listing process. Staff recommends adoption of the imperiled species listing rules as amended, that the moratorium on imperiled species listing actions be rescinded, and that the Commission direct staff to reinstate listing evaluations on the five pending petitions (bald eagle, gopher tortoise, manatee, Panama City crayfish and peregrine falcon) using the new listing criteria.

Commissioner Corbett asked Mr. Sullivan to comment on the April 13 IUCN letter.

Mr. Sullivan replied that the IUCN letter, while neither endorsing nor opposing the proposal, was generally supportive to the proposed process being proposed by Commission staff.

### Public Comment

The following people spoke in opposition to or suggested postponement on the proposed rule changes to revise Florida's Imperiled Species Listing Process: Chuck Hess, Elizabeth Fleming and Laurie Macdonald (Defenders of Wildlife), Russell Lande (University of California), B.A. Fusaro and David Auth (Sierra Club), Frances C. James, Carol Gray (Environmental Defense), Brett Pabel (WildLaw), Cynthia Frisch (Pegasus Foundation), Virginia Splitt, Pat Rose, Laura Combs and Patti Thompson (Save the Manatee Club), Jim Cox (Florida Ornithological Society), Denise Redgrave, Laura Bevan (Humane Society of the United States), Matt Bixler (Conservancy of SW Florida), Joanne Kowal, Dr. Ron Masters (Tall Timbers Research Station), Richard Hilsenbeck (The Nature Conservancy), and Jessica Koelsch (The Ocean Conservancy). (All letters provided to the Commission will become part of the record of this meeting.) Their comments included, but were not limited to:

- Subject the proposed rule to a scientific peer review
- Conduct an analysis of legal consequences of the rule's implementation
- Ensure FWC staff undergoes training from IUCN on the application of the criteria.
- Consider the misalignment of FWC listing criteria with the IUCN because the proposed criteria will undermine rather than support endangered species protection by not providing adequate protection for the species they intended to safeguard.
- Adopt the federal species listing process
- FWC proposed categories violate the original intent of the IUCN Red List Categories and Criteria.
- A mismatch of the IUCN criteria with FWC categories of threat will reduce the level of protection provide for many currently listed species and accelerate the loss of biological diversity in Florida.
- FWC process is not scientifically defensible
- Federal funding would be lost for many species that would be downlisted on or delisted from the state list.
- There is no funding available for species that may be de-listed under the new rules.

- Individual species' life histories should be considered in the process
- Management plans may not provide appropriate species protection
- Require the biological review panel to determine that threats to the species have declined or been managed sufficiently to lower its risk of extinction before making a recommendation that a species be downlisted or delisted.
- Run several species through the process before adopting the final rule
- Convene a workshop of distinguished ecological and conservation experts to assist the Commission in consideration of the imperiled species listing process as employed by the IUCN in developing their criteria.
- The rule does not consider species outside of Florida
- Do not remove a species that occurs on a federal list
- Florida human population increases are going to have more adverse effects on imperiled species.
- Some species depend on other species for needed protection
- Species protection would be eroded through the public perception that a species no longer is threatened or endangered, which could limit land management protection.

The following people offered their support of the staff-proposed rules addressing the Imperiled Species Listing Process: Matt Harrison (Florida Farm Bureau), John Kinney (Standing Watch), Doug Rillstone (Florida Chamber of Commerce), and Ted Forsgren (Coastal Conservation Association). Their comments included but were not limited to:

- The new species listing process will use science rather than emotion or intuition when identifying species for listing.
- Species evaluations will be done on a scientific and quantitative basis
- Imperiled Species Listing Process rules should be Florida-specific rather than global.
- The rules are transparent and will provide public input into species listings
- The system will provide management plans for species that are downlisted or delisted, yet the regulation of the species could be increased.
- There will be no wholesale shifting in categories of currently listed species
- Petitions will have to be accepted and run through the process for reclassification for any species either currently listed or not listed.
- The Commission's programs and rules for protecting endangered and threatened species are excellent.
- Management plans will be provided for listed species.

### Commission Discussion

The Commissioners asked Mr. Sullivan and Dr. Perran Ross to respond to some of the public comments.

Regarding the question of similar definitions, Mr. Sullivan responded that the proposed state definitions are consistent with federal and IUCN species listing definitions.

Regarding alignment, he stated that the verbal definition is more important to species protection than the name. He explained that in 1999, when the process was adopted, staff and the stakeholder panel looked at the IUCN definition for Critically Endangered and compared it to the FWC's endangered definition and the two definitions matched closely and compared the IUCN's Endangered definition to the FWC's Threatened definition and the two matched very closely. It was determined that the verbal definition was more important than the label for the term, therefore, they were aligned based on the verbal definition.

Comments were made regarding management plans and Mr. Sullivan responded that management plans would be provided not only for those species being listed but also for those being delisted.

Commissioner Meehan asked Mr. Sullivan how many scientists have been involved in the FWC Imperiled Species Listing Process discussions.

Mr. Sullivan stated there has been a very good representation from scientific community, not only on the stakeholder panel, but through his personal interactions with other agencies.

Commissioner Corbett asked for an explanation of the regional application portion of the process.

Mr. Sullivan responded that the region would define its boundaries, e.g., state of Florida. Then, instead of using global data on the original analysis, data would be used only from within the state of Florida. For example, we would only count the number of red cockaded woodpeckers (RCW) there are in Florida; following the IUCN guidance on how to determine what a mature individual RCW is and other aspects. The species would be run through the criteria, see which ones it meets at what levels for, then the species would be reviewed in the context with the global picture.

Commissioner Kaupe asked if historical data is taken into account in the process.

Mr. Sullivan responded that the IUCN system does not have a criterion that just looks at historic rates of decline. The IUCN system was built to identify the different aspects of life's history that may result in an extinction: (1) rate of decline; (2) species numbers; (3) areas where the species occurs; (4) review of models; and (5) small population and fragmentation or decline.

Dr. Ross stated that training for FWC staff and Listing Process Stakeholders Panel members is scheduled for May and if other are interested in the training, they should contact Mr. Sullivan. He pointed out that 25 countries are using IUCN criteria and six more are developing their listing processes. Forty-three percent of these countries have modified the IUCN criteria. The Commission's adoption of this rule will not immediately affect the listing states of species currently listed. Species will be evaluated individually for proposed listing and staff will develop a management plan specifically for that species' needs.

Commissioner Yablonski asked what process other states use for listing species.

Dr. Ross responded that, to his knowledge, no other U.S state is using the IUCN process.

Laurie Macdonald pointed out that there was no consensus on the LPSP regarding the misalignment of listing categories and the LPSP still has not heard from scientists with IUCN experience. She believes the critically endangered and endangered categories should be joined. She suggested that if the process is approved, there be a scientific review during Phase 1 of the listing process; and voiced her concern that if the rules are approved it will take too long to amend them if they are proven to be in error.

Dr. Thomas Eason, Division of Habitat and Species Conservation, stated the pre-1999 way of listing species was intuitive. The proposed process mirrors the IUCN process and provides for the use of Florida-specific data, and is just one piece of an overall process for all fish and wildlife that can be adjusted with an open process and public input. He stated that the FWC had a good process in 1999 but it contained some serious flaws. Staff has worked with stakeholders and addressed the flaws. Staff is confident they are proposing a better process that will work well, which can be adjusted if needed. All of the checks and balances in place with the new process provides for a very strong listing process providing the most important part of the process, which is the management plan. He asked the Commission to move forward with approval of the staff proposed rules.

#### Commission Discussion

Commissioner Corbett commented that the proposed process is open and transparent and believes the Commission should go forward with the process, which includes the opportunity for the public to respond and comment as a species moves forward for review.

Commissioner Barreto suggested imperiled species process stakeholders be included in the training process. He believes staff has worked hard on the process and Florida needs to move forward to test the process and adjust the rules if necessary.

Commissioner Yablonski agreed with the comments of Mr. Barreto, adding that lists and labels will not determine protection because protection will be provided by the management plans. He is confident that the staff has drafted a process that will work for the state's fish and wildlife on a biological and scientific basis.

Commissioner Meehan said that he was disappointed that after two and a half years there was no consensus among the LPSP on alignment, however, he is comfortable with the proposed rules and supports the staff recommendation.

Chairman Huffman commented that these are “living documents,” which may be amended as needed. He asked for a motion on the two proposed rules before the Commission as amended.

Commissioner Barreto offered a motion to accept the staff recommendation to adopt the imperiled species listing rules as amended, rescind the moratorium on imperiled species listing actions, and direct staff to reinstate listing evaluations on the five pending petitions (bald eagle, gopher tortoise, manatee, Panama City crayfish and peregrine falcon) using the new listing criteria. The motion was seconded.

Commissioner Barreto urged the staff to keep the Commission up to date on stakeholders concerns as the process moves forward, and prepare a plan of action for species review. He urged stakeholders to contact him by telephone, if they have concerns, as the process moves forward; and asked Mr. Haddad for a plan of action on the process as species are evaluated.

Commissioner Kaupe stated her concern over the number of people moving to Florida each week and the rate of fish and wildlife habitat loss. She stated that she has faith in the staff to provide needed protection for Florida’s fish and wildlife resources.

The Chairman called the question and the motion carried.

Mr. Kipp Frohlich, Division of Habitat and Species Conservation, presented a brief history of the Lee County Manatee Protection Zones and the following rule for Commission consideration:

(6) 68C-22.005, Lee County Manatee Protection Zones—The proposed rule changes would establish new manatee protection zones that limit allowable motorboat speed in portions of Lee County, and change or re-promulgate zones in other portions of the county. Higher speeds (25 mph or unregulated) would be allowed in many of the marked channels and in other areas on a year-round or seasonal basis. In addition, the proposed rule would no longer allow the issuance of permits to professional fishing guides or commercial fishers to exceed established speed limits in manatee protection zones, except to commercial fishers to temporarily exceed speed limits for the purpose of setting nets to encircle fish.

Regarding biological goals for manatees, Mr. Frohlich explained that manatees in this part of the state are part of the Southwest Florida subpopulation, which, according to scientists, is the least robust subpopulation in Florida and the biological goals for manatee recovery are not being met. The proposed regulations will help maintain the level of protection that has been in place since 1999. Mr. Frohlich further explained that if the Commission takes no action on the proposed rules the federal zones currently in place would remain with no state zones, which could make appropriate law enforcement difficult.

The staff recommendation is to approve the rule for adoption as advertised, with the following amendments:

Hendry Creek: After reevaluating this area (including conducting another site visit with Lee County staff) and consulting with the U.S. Fish and Wildlife Service (USFWS), staff is recommending that the proposed zones be revised to be the same as the Local Rule Review Committee (LRRC) majority recommendation that would remove the existing seasonal FWC zone on the southern portion of the creek and replace it with a year-round 25 MPH zone that includes the entire creek. USFWS staff has indicated that the FWC staff-recommended configuration would provide comparable protection to what is currently in place pursuant to the new federal zones and that the USFWS would consider withdrawing the federal designation if this configuration is implemented by the Commission.

Hell Peckney Bay: After reevaluating this area (including conducting another site visit with Lee County staff) and consulting with the USFWS, staff is recommending that the zone be revised to make the entire bay 25 MPH year-round. Although this would not be exactly what was recommended by an LRRC majority, it is fairly close (25 MPH instead of unregulated). USFWS staff has indicated that the FWC staff recommended configuration would provide comparable protection to what is currently in place pursuant to the new federal zones and that the USFWS would consider withdrawing the federal designation if this configuration is implemented by the Commission.

Mr. Frohlich stated that staff carefully considered the recommendations of the LRRC, other stakeholders, and the public at large in proposing these rules. FWC action will not result in more on-water zones in Lee County but will maintain manatee protection already established and enhance local partnerships and FWC's ability to enforce the zones.

#### Public Comment

Lee County Commissioner Tammy Hall commented that the Lee County Commission voted unanimously to support the proposed manatee protections for the County as proposed by staff; however, she pointed out that individual commissioners support the recommendations of the LRRC. She conveyed that the County and FWC need to work together to provide state rules instead of federal regulations for less confusion among those using the waterways.

Commissioner Barco asked the timeframe for the USFWS to remove federal regulations.

Mr. Frohlich commented that staff will meet with staff of the USFWS to discuss the state and federal rules.

The following people spoke in opposition to the staff recommendation and offered recommendations for changes to the rule, which are listed below: Ted Forsgren, Ernie Hendry (member of the Lee County LRRC), and John Kinney (member of the Lee County LRRC).

- Establish a 25 MPH bypass corridor for smaller boats north of Shell Island at the mouth of the Caloosahatchee River.
- Change the current slow speed zone to 25 MPH in the middle of Matlacha Pass.
- FWC should support the findings of the LRRC, particularly around Big Shell and Little Shell Islands where a corridor is needed for boater safety.
- Red tide and other natural causes of manatee deaths need to be studied if the manatee is to be truly protected. Manatee mortality due to boating has decreased in Lee County.

The following people spoke in support of the staff recommendation and some offered additional recommendations, which are listed below: Elizabeth Fleming, Matt Bixler (member of the Lee County LRRC), Cynthia Frisch, Laura Bevan, Jessica Koelsch, Virginia Splitt, Laura Combs (member of the Lee County LRRC), and Pat Rose.

- Federal zones should overlap state zones
- State should work with federal government on enforcement
- Manatee protection rules for Matlacha Pass, Bokeelia, San Carlos Bay, the St. James City area, and Estero Bay should be expanded.
- Consider increased human population when enacting manatee protection rules, especially in southwest Florida where the manatee population is at risk of further loss.
- Man can not control manatee deaths due to red tide but he can control speeding boats that harm manatees.
- A 25 MPH zone in the mouth of the Caloosahatchee River is not appropriate for manatee protection and should not be considered.
- Biological goals for manatees are not being met
- Do not weaken current federal zones
- LRRC membership representation was unbalanced
- Use federal proposal for Redfish Point

### Commission Discussion

Commissioner Meehan asked staff to explain the proposed speed zone around the north side of Little Shell and Big Shell Islands, currently posted as Slow Speed/Minimum Wake shore to shore, which would allow a "Local Knowledge Corridor" for boaters to operate at a maximum of 25 MPH.

Major Jim Brown, Division of Law Enforcement, stated that Boating and Waterways staff does not support this proposal because the area is shallow and there is considerable boat traffic going north, which is a human safety concern.

Commissioner Barreto stated that the Commission has been doing a great job in manatee protection because there are more boaters and more manatees than ever before. Many people come to Florida to enjoy the boating opportunities provided by this state and there needs to be a balance between manatee protection and boating opportunities.

Commissioner Corbett stated he would like to provide some type of relief for boaters using the area around Shell Island, without limiting manatee protection.

Mr. Frohlich commented that if "relief" was going to be provided to boaters in this area, the Redfish Point area would be more suitable for a 25 MPH corridor, if the federal government would agree.

Commissioner Barco conveyed that rules should not overburden boaters or recreational users but understands the need for manatee protection regulations.

Commissioner Barreto offered a motion to accept staff recommendations for Rule 68C-22.005, including the two amendments provided by Mr. Frohlich. The motion was seconded.

Commissioner Meehan offered an amendment to the main motion to add FWC zones in the Redfish Point area of the Caloosahatchee River that are the same as the existing federal zones except for allowing a 25 MPH corridor in the main channel. The motion was second and carried. Commissioner Meehan asked Mr. Frohlich to discuss this amendment with the U.S. Fish and Wildlife Service.

Commissioner Meehan offered an amendment to the main motion to make the central portion of Matlacha Pass (north of where the Sword Point channel intersects with the main channel to just south of the bridge) a 25 MPH zone. The motion was seconded and carried.

Chairman Huffman called the question on the main motion as amended. The motion carried with the two amendments.

#### Presentations by the Public

Pat Rose asked the Commission to avail itself to additional expert opinion when going forth with reviewing species under the new Imperiled Species Listing Process.

Patti Thompson conveyed her disappointment with the Commission's decision to approve the Imperiled Species Listing Process rules. She asked that the five petitions being held by the Commission for review be resubmitted under the new process.

Laura Combs stated her disappointment over the Commission's decision on the Imperiled Species Listing Process and Lee County Manatee Protection Zone rules.

Virginia Splitt asked the Commission to use species specific definitions similar to what the federal government uses to list species.

Jessica Koelsch voiced her disagreement with the Commission's decision regarding establishment of a 25 MPH corridor in Matlacha Pass, pointing out that neither FWC staff nor the Lee County Commission recommended such a corridor.

Cynthia Frisch stated her disappointment that the Commission did not heed the concerns of the experts who spoke in opposition of the Commission going forward with the Imperiled Species Listing Process rules. She asked the Commission to adopt the IUCN criteria, pointing out that if a species is dropped from imperiled species listing there may be no funding for a management plan. She also mentioned her concern over the Matlacha Pass amendment to the Lee County manatee protection rules.

### Commission Exchange

Commissioner Yablonski stated he is confident that Commission action on the Imperiled Species Listing Process will provide more protection for listed species. He thanked the Bear Management staff for their work in hosting the 18<sup>th</sup> Eastern Black Bear Management Workshop in Tallahassee last week, and for the work of FWC law enforcement officers in the Florida Keys on the E-Force TV show. Commissioner Yablonski mentioned that evening dinner sessions of the Commission might be considered when there is an opportunity to bring in a guest speaker to a meeting venue.

Commissioner Barco stated that the Commission made a good decision on the species listing rules and she is not concerned that there will be less protection because of criteria needed for downlisting or delisting. Ms. Barco stated that she is aware of a National Marine Fisheries Service proposal to allow experimental fishing permits to test longline gear modifications for highly migratory species, and suggested the Commission send a letter to the Service opposing such testing in the closed waters off Florida.

Commissioner Meehan conveyed that he believes the Commission made the right decision on the listing process, and stated his confidence in the agency's biologists to tweak the process if necessary. Regarding the Lee County manatee protection zones, he stated the revised recommendations supporting 19 of the 22 LRRC recommendations were appropriate. He pointed out the need to consider boater safety when making decisions on manatee protection zones.

Commissioner Corbett expressed his contentment with the success of the deer dog pilot program in the Northwest Region and the decision to consider a statewide program. He pointed out the need to move forward with the Imperiled Species Listing Process.

Commissioner Kaupe agreed that the Commission must write a letter to the National Marine Fisheries Service regarding experimental longlining in closed areas, and asked the public to work with the Commission as it goes forward with the Imperiled Species Listing Process.

Commissioner Barreto stated he is comfortable with the listing process rules and Lee County manatee protection zones enacted by the Commission. He asked the Chairman to forward a letter to the National Marine Fisheries Service regarding the longlining issue.

The Chairman recessed the meeting at 6:10 p.m., to reconvene Friday, April 15 at 8:30 a.m.

The Chairman reconvened the meeting on Friday, April 15 at 8:30 a.m., and called on the Executive Director, who spoke regarding a Commission rule amendment acted upon during the Thursday session.

Mr. Haddad asked the Commission to reconsider its action on the amendment affecting the Matlacha Pass portion of Rule 68C-22.005. He pointed out that Lee County government had been supportive of the staff recommendation and the Commission action to create a 25 MPH zone in the pass jeopardizes the staff's ability to work with the federal government to remove federal rules from the area. He conveyed that it is the Commission's prerogative to offer a motion to (1) amend the agenda to take up the Lee County manatee protection rule for the purpose of a motion for reconsideration, (2) offer a motion for reconsideration to modify the advertised Lee County manatee protection rule as it relates to Matlacha pass, (3) or entertain a motion to defer action on the Matlacha Pass amendment until the June 2005 Commission meeting.

Upon motion of Commissioner Corbett, seconded and carried, the Commission modified the day's agenda to discuss Rule 68C-22.005 for the purpose of a motion for reconsideration.

Commissioner Corbett explained that this action is being requested due to the fact that Thursday's meeting was long and there was not sufficient discussion on the Matlacha Pass amendment.

Commissioner Meehan stated that it is his understanding that the main motion to approve the staff recommended Lee County Manatee Rule (as amended for Redfish Point) would still stand as approved, and offered a motion for reconsideration of the Matlacha Pass amendment at the June 2005 Commission Meeting. The motion was seconded and carried.

### Rules

Mr. Bill Sharp, Division of Marine Fisheries Management, presented the following rules for Commission consideration:

(1) 68B-27.017, Apalachicola Bay Oyster Harvesting Restrictions—The proposed rule change would make adjustments to harvesting days to accommodate moving the commercial oyster harvesting seasons in Apalachicola Bay earlier in the year by 30 days as proposed in Rule 68B-27.019 (below).

(2) 68B-27.019, Seasons—The proposed rule would change the oyster harvesting seasons in Apalachicola Bay. The proposed rule would change the summer season from July 1 through September 30 to June 1 through August 31, and change the winter season from October 1 through June 30 to September 1 through May 31.

Mr. Sharp explained a proposed floor amendment. The rules as formally proposed for changing the Apalachicola Bay oyster harvesting seasons did not explicitly state the date for the implementation of the season change. The FWC regulates the oyster fishery with regards to gear, size limits and bag limits. However the Department of Agriculture and Consumer Services (DACS) regulates allowable harvesting areas based on water quality. Since oyster harvest is jointly managed between FWC and DACS, corresponding rules must be developed by both agencies. DACS has requested that the effective date of the rule change be synchronized in both agencies such that it goes into effect on September 1, 2005.

Staff recommends approval of the two rules affecting the Apalachicola oyster season as amended.

### Commission Discussion

Upon motion of Commissioner Kaupe, seconded and carried, Rules 68B-27.017 and 68B-27.019 were approved as amended.

Mr. Sharp continued with blue crab program rules:

(3) 68B-45.002, Definitions—The proposed rule would establish definitions for hard shell crab, offshore, immediate family, and soft shell crab, as they relate to the blue crab effort management program.

(4) 68B-45.007, Blue Crab License Limitation Program—The proposed rule would control fishing effort in the blue crab fishery by implementing a license system that caps the number of blue crab endorsements in the fishery. The proposed rule would: (1) require a blue crab limited entry endorsement in order to engage in the commercial harvest, possession, or sale of blue crab; (2) establish eligibility and qualifying criteria for receiving the endorsement; (3) establish separate qualifying criteria for the hard shell blue crab fishery and the soft shell blue crab fishery; (4) establish trap tag requirements; (5) establish a date after which no additional endorsements will be issued; (6) establish criteria for annual renewal of endorsements; (7) establish requalifying criteria for endorsements; (8) establish criteria for an appeals board to address disputes or problems arising from the initial denial of an endorsement; (10) establish a Blue Crab Advisory Board; (11) prohibit leasing or renting of endorsements, tags, or traps; (12) establish endorsement holder's responsibilities; (13) establish criteria for transferring the endorsement; and, (14) establish apprenticeship criteria for acquisition of an endorsement by a person who does not already possess an endorsement.

A floor amendment will (a) specify that the Executive Director may appoint to the Blue Crab Limited Entry Appeals Board any blue crab limited entry endorsement holder or wholesale dealer up to the number specified in rule, and (b) lower the required number of V-H endorsement holders from five persons to four. The Board would thus consist of at least four V-H endorsement holders, at least one V-S endorsement holder, and one FWC staff member.

## Public Comment

Ronnie Day (Organized Fishermen of Florida [OFF]) offered his support of the staff recommendation.

David Capo, a member of the BCAB, asked the Commission to support the staff recommendation and offered that this is just the beginning to securing information on the blue crab industry in Florida to ensure its continuance.

Jimmy Brannen explained that as a commercial fisherman he uses his blue crab endorsement on his saltwater products license as a secondary fishery, when he needs a fishery to fall back on for income. He does not want to lose the endorsement due to lack of qualified landings. He suggested he be able to keep his endorsement but that it be made nontransferable.

Janie Thomas (Shrimp Producers Association) agreed with the comments of Mr. Brennen, and stated that commercial shrimpers may sell crabs as incidental take and they would like to keep their V numbers and sell the crabs. She asked that language be added to the rule that commercial shrimp fishermen with a V number and a VS number on their SPL cards may sell incidental caught crabs, and offered her support of the staff-proposed rule.

Mr. Teehan advised that the shrimpers with incidental take will qualify to take 200 pounds of crabs as incidental take per trip but will need a VH or VS number to sell them. He pointed out that it is not the staff's intention to eliminate this opportunity for the shrimpers, and staff is reviewing a special endorsement for incidental take. Rule changes could be ready for Commission consideration at either the June or September 2005 Commission meeting.

Ed Olsen (Florida Fishermen's Federation) stated that many fishermen will not meet the criteria set forth in the rule. He asked for consideration of a special provision for commercial fishermen adversely affected by the Net Limitation Amendment to keep their permits and use 200 traps.

Robert Rowan expressed that he has had his V number for 12 years but has not participated in the fishery. He would like a permit to use 200 traps.

Jerry Sansom (OFF) stated that it was 1993 when talks began about a blue crab trapping plan and in 1995 the moratorium was enacted. Fishers have had the opportunity to get their endorsements. He pointed out that the BCAB public workshops were open to the public and crabbers were notified. He believes the board did their job in developing the program. The proposed rule will be effective on May 1, 2005, but will not go into practice for 14 months. This will allow the Commission plenty of time to review the program for additional modifications.

## Commission Discussion

Following a discussion on the work of the Blue Crab Advisory Board, the apprentice program, the re-qualification requirement, and initiation of a nontransferable endorsement, Commissioner Barreto stated that the rule process has been very transparent and fair.

Commissioner Meehan asked how Mr. Brannen might get into the fishery other than going before the advisory board.

Mr. Capo stated he would have to find someone getting out of the fishery, who wishes to sell him the endorsement.

Commissioner Yablonski voiced his concern that there are no members of the advisory board who do not qualify for an endorsement.

Commissioner Barreto offered a motion to accept the staff recommendation for rules 68B-45.002 and 68B-45.007 as amended, with an effective date of May 2005. The motion was seconded.

Commissioner Yablonski spoke against the apprentice program stating that he does not believe in a government mandate to educate people before they go into a fishery. He asked who is going to do this education? whose boat will be used? what will be the cost? etc. He believes an educational pamphlet might be more appropriate. Commissioner Yablonski offered an amendment to the motion to delete the apprentice program. Commissioner Barreto accepted the change to his main motion.

Commissioner Barreto asked Mr. Teehan to address the apprentice program.

Mr. Teehan expressed that it was a BCAB recommendation. Staff believes it will be difficult to enforce.

Commissioner Barreto suggested the apprentice program be optional but that educational brochures be made available to those interested in the fishery.

Jerry Sansom offered that blue crab is a natural resource that the Commission is giving the commercial fishing industry the opportunity to harvest for the public. The commercial fishermen want to make sure that it is done responsibly and believes an apprentice program is appropriate for people to understand that this is hard work and not a job to be taken lightly.

Commissioner Kaupe asked how many various traps are in the waters off the coast of Florida.

Mr. Teehan responded that there are approximately 500,000 spiny lobster traps, 1.47 million stone crab traps, and 300,000 to 900,000 blue crab traps; however, not all are in the water at the same time.

Regarding the amendment for elimination of the apprentice program, Commissioner Barco stated that if the industry has asked for it through the BCAB she can support it. She offered her support the staff-recommended rule as presented.

Commissioner Barreto suggested to Commissioner Yablonski that he remove his amendment from the original motion and charge the Blue Crab Advisory Board to return to the Commission with a viable volunteer apprentice program for Commission consideration.

Commissioner Yablonski agreed that a volunteer education program would be more appropriate.

Commissioner Meehan reminded the Commission that the BCAB wanted mandatory education to ensure that those people getting into the fishery knew exactly the amount worked involved. Mr. Meehan asked that the BCAB return to the Commission with more information on the program, including the cost of the education program.

Mr. Haddad suggested the Commission act on the staff proposal and direct the BCAB to revisit the apprentice program and return to the Commission with a recommendation.

Commissioner Barreto withdrew his original motion and offered a motion to accept the staff recommendation with the amendment regarding the BCAB membership, with the direction to the BCAB to revisit the apprentice program and return to the Commission with a recommendation on mandatory education. The motion was seconded and carried.

Staff was directed to work with the BCAB with any issues that come up prior the implementation date of the rule.

#### Draft Rule to Standardize Methods for Measuring Length of Marine Fish

Ms. Jessica McCawley, Division of Marine Fisheries Management (DMFM), explained that Commission rules express size limits of marine fish in either fork length (FL) or total length (TL). Currently, the DMFM believes the current designations of FL and TL, except for gray triggerfish, are appropriately assigned to the respective species. However, DMFM rules do not clearly specify how to measure total length, which leaves this measurement open to interpretation by anglers and law enforcement officers. At the February meeting, the Commission directed staff to develop a draft rule to specify that total length be measured at TLmax (squeezed tail). The clarification of this definition is intended to eliminate confusion among anglers and create consistency. This change will make the measurement more consistent with the Division of Freshwater Fisheries Management, which already specifies that total length be measured as the maximum length of the fish with the mouth closed and the tail fin pinched together, which is essentially a TLmax measurement. Also, Florida attracts many out-of-

state anglers whose home-state regulations advise squeezing the tail to obtain a total length measurement.

Ms. McCawley advised that ten rules will need to be modified to include the new definition.

In considering this clarification an understanding of how it may affect the size of fish being harvested is important. The difference this measurement clarification will make on harvest depends on the shape of the tail, which varies according to species. In eight of the eleven affected species, the new interpretation will have minimal effects. However, for species measured as total length that have a more concave or "forked" tail the new interpretation would allow smaller fish to be retained by anglers who formerly interpreted total length as TL relaxed (unsqueezed tail).

For species with a slot limit, the new interpretation could allow fish that are just below the legal size limit when measured with the tail relaxed to be retained by anglers. However, fish that were just below maximum legal size with the tail relaxed would now be released.

Staff also recommends changing the way the gray triggerfish are measured. Currently the rule specifies that they be measured as TL. However, their tail filaments pose problems when trying to determine this measure. The filaments should not be included within the TL measurement; however, anglers often include the filaments in the measurement of total length, which allow them to harvest fish that are below the intended size limit. Changing the measurement of gray triggerfish to FL would allow them to be measured similarly to hog fish, which are currently measured as fork length and have similar tail filaments.

Ms. McCawley mentioned that staff has received numerous comments regarding the effect of the rule change on snook stocks and whether its minimum size should be increased accordingly. The snook stock assessment by the Fish and Wildlife Research Institute is due in the fall of 2005. If that stock assessment necessitates any management changes for snook, the Commission may address the rule changes in early 2006.

Ms. McCawley stated that staff recommends, in order to clearly define how to measure a saltwater finfish, the definition for TL should be modified in all rules where fish are measured with a TL measurement. Also for clarity, the measurement of gray triggerfish would be changed to the FL method. Staff recommends Commission concurrence with the draft rules which will be discussed with a working group, and sent to public workshops to gather stakeholder input before proceeding to a final public hearing in September. Staff further recommends an effective date of January 1, 2006, in order to provide enough time for a thorough public information and education effort.

## Public Comment

Tony Murray (Gulf Atlantic Florida Fishing Magazine) voiced his concern over "shrinkage" that might occur over time on a fish placed on the boat in ice. He believes the proposed pinched tail measurements could have an adverse impact on certain species and appropriate law enforcement effort. He asked the Commission to read his article, "Conservatively Measure Fish to Account for Shrinkage When Placing on Ice."

Ted Forsgren supported the proposed rule and asked the Commission to "keep it simple."

## Commission Discussion

Commissioner Corbett stated that the snook fishery is highly sensitive to bag and size limits and asked staff to include Mr. Scott Moore on the working group.

Upon motion of Commissioner Barreto, seconded and carried, staff was directed to conduct stakeholder meetings and workshops before proceeding to a final public hearing in September 2005.

## Draft Rule for Black Sea Bass Trap Marking Requirements

Ms. McCawley provided background information on Rule 68B-55, which states that for a trap to be considered actively fished it must contain two of the following elements: buoy, line, current trap tag or identification, and a current license.

At the February 2005 Commission meeting, the Commission directed staff to proceed with a draft rule for black sea bass trap marking requirements and gather public testimony. Staff has recommended marking black sea bass trip buoys using the letter "B" and the fisher's saltwater products license number in 1½-inch characters. Workshops were held in Steinhatchee and Crawfordville; the fishermen who attended supported the proposed black sea bass trap marking requirements.

Staff recommends Commission concurrence with the draft rule, with a final public hearing scheduled for the June 2005 Commission meeting.

## Public Comment

Ted Forsgren commented that fish traps are unnecessary and not a good piece of fishing gear, which allows a loophole for poachers. He suggested the fishery be closed over time, adding that he believes the majority of commercially caught black sea bass are coming in through other gear, such as stone crab or blue crab traps. He asked about the legality of fishermen bringing in commercial quantities of snapper and grouper in black sea bass traps.

Jerry Sansom stated that there is no reason to suspend the use of black sea bass traps. He explained that black sea bass are not a high-dollar fish but commercially must be caught with traps, and mentioned there is no issue with the

taking of snapper or grouper in sea bass traps. He said the rule is needed to understand how many traps are in the fishery. Mr. Sansom asked the Commission to move forward with the staff recommendation.

### Commission Discussion

Upon motion of Commissioner Barreto, seconded and carried, staff was directed to prepare a final rule for Commission consideration at the June 2005 Commission meeting.

### Plan to Develop and Recommend Consistency Among Penalties for Fish and Wildlife Violations

Colonel Jones explained that the plan is to consolidate penalties found in Florida Statutes Chapters 370 and 372, which address recreational hunting, fishing and boating. The two-phase approach is now one project for consideration for the 2006 legislative session.

The groups of regulations will include: recreational licenses and permits, fishing/hunting gear and equipment, fishing/hunting size and bag limits, closed seasons and hours, state-managed areas, and boating.

The proposal for Level One non-criminal infractions includes: (1) up to a \$50 fine plus court costs and any applicable license costs where infraction is associated with license requirement, and (2) judicial discretion—no proposed change from current penalties associated with this category.

Level Two Penalty, second-degree misdemeanor: (1) up to \$500 fine, (2) up to 60 days in jail, and (3) judicial discretion—no proposed change from current penalties associated with a second-degree misdemeanor.

Level Three Penalty, second-degree misdemeanor (with minimum mandatory fine and license suspension): (1) minimum mandatory fine of \$250, (2) fine may be increased up to \$500 per judicial discretion, (3) mandatory suspension of license for six months, and (4) up to 60 days in jail per judicial discretion.

Level Four Penalty, first degree misdemeanor (with minimum mandatory fine and license suspension): (1) minimum mandatory fine of \$500, (2) fine may be increased up to \$1,000 per judicial discretion, (3) mandatory suspension of license for one year, and (4) up to one year in jail per judicial discretion.

Level Five Penalty, first-degree misdemeanor (with minimum mandatory fine and license suspension): (1) mandatory fine of \$1,000, (2) mandatory suspension of license for three years, and (3) up to one year in jail per judicial discretion.

Level Six Penalty, felony convictions per Florida Statutes (up to a \$5,000 fine and/or up to five years in jail): There are no proposed changes regarding penalties; only felony penalties currently in law; and no enhancements of penalties to this level.

## Habitual or Repeat Violations/Convictions Draft Framework:

(1) Non-criminal Infractions: first conviction, Level 1; second conviction within a two-year period, Level 2; third conviction within a four-year period, Level 4; and fourth and subsequent conviction within a five-year period, Level 4.

(2) Criminal Violations (second-degree misdemeanors): first conviction, Level 2; second conviction within a two-year period, Level 3; third conviction within a four-year period, Level 4; and fourth and subsequent conviction within a five year period, Level 5.

(3) Criminal Violations (first-degree misdemeanors): first conviction, Level 4; and, second and subsequent convictions, Level 5.

Development schedule: March 2005, develop the scope of work; April, develop penalty matrix and start work with stakeholders; May through November, stakeholder survey and meetings; and July, status report to Commission; November, present proposal to Commission; December through January 2006, draft legislative language and continue to brief stakeholders and legislative staff; March, legislative session begins.

### Commission Discussion

Commissioner Corbett pointed out the need for penalty consistency in the statutes and clarity for the judiciary and enforcement officers. The other Commissioners agreed.

Commissioner Barreto mentioned that mandatory penalties would be better than discretionary penalties, and would provide clear rules for the judiciary when the violator is brought to court for sentencing.

Colonel Jones mentioned that stakeholders in this process include judges and states attorneys, who meet annually. General Counsel Antista has volunteered to take this initiative to the two groups for concurrence.

Chairman Huffman reminded the Commission that it will be up to the 2006 Legislature to enact the bill and therefore they or their staffs should be included in the process. He pointed out that the suspension or revocation of hunting or fishing license usually will get the attention of a violator.

Commissioner Meehan commented that the Legislature needs to know the economic value of fish and wildlife and asked if staff could place a value on fish and wildlife. He stated that nonresidents are paying \$1,000 to come to Florida to shoot an Osceola turkey, therefore, anyone caught poaching a turkey is either stealing \$1,000 from the private landowner or \$1,000 from the citizens of Florida.

Colonel Jones stated that staff had not discussed the value of the resource but will investigate the idea as suggested by the Commission. She pointed out that staff is looking for consistency and simplicity in these groupings.

Commissioner Barco suggested juvenile violators be sentenced to mandatory hunter education classes or consider the severity of the violation and whether or not it would mandate their not being able to hunt until they are 18.

Commissioner Barreto asked that the Commissioners be provided a rule history on rules to be amended.

Upon motion of Commissioner Corbett, seconded and carried, staff was directed to go forth with the Plan to Develop and Recommend Consistency Among Penalties for Fish and Wildlife Violations as outlined by Colonel Jones.

### Scope of Exotic Species in Florida

Mr. Scott Hardin, Division of Habitat and Species Conservation, presented a brief overview and discussion of the scope of exotic species in Florida.

Eighty-six species of freshwater fish have been collected, 34 species with reproducing populations, more than any other place in the world. Notable exotics are blue tilapia, suckermouth catfish, armored catfish, and Mayan cichlid.

One hundred two exotic wildlife species have been breeding more than ten years and sixty are considered established. Notable exotics are Cuban tree frogs, monk parakeets, Gambian pouch rats, Burmese pythons, Nile monitors, and feral hogs.

Thirty-one exotic marine species are known, excluding harmful algal bloom species. Notable exotics are green mussel, marine alga, lionfish, and Australian jellyfish. A comprehensive inventory is virtually impossible for marine species.

There are also 1,180 exotic plant species established in Florida; 69 are considered noxious by the Exotic Pest Plant Council. Notable exotics are hydrilla, melaleuca, Brazilian pepper, cogon grass, and old world climbing fern. The Florida Department of Environmental Protection has an annual budget of \$30 million for controlling the spread of these exotics.

Mr. Hardin explained the pathways for release of exotic species into the wild include: Pet owner releases, recreational boaters, ballast/fouling organisms, packing materials, multicultural food markets, Internet trade, and aquaculture.

State regulations regarding exotic species include: 68A-23.008, Restricted and Prohibited List; 68A-6.002, Captive Wildlife; Florida Statutes 372.26, Imported Fish and 372.265, Regulation of foreign animals.

Mr. Hardin pointed out that the key to the definition of an "invasive species" is that the nonindigenous species may cause economic or environmental harm. The

interagency working group will try to use risk assessments to determine exactly how much economic or environmental harm a species may cause, whether proposed for introduction or a species that is already in Florida. He pointed out that most of the exotic species in Florida have not become invasive.

Mr. Hardin stated that as the working group moves forward from a policy, regulatory and management perspective their job will be to make sure that we do not foreclose what has become a significant industry and a significant source of enjoyment for a lot of people while protecting the native fish and wildlife and other natural resources of Florida.

Staff will present a more detailed report on exotic species coordination at the June 2005 Commission meeting.

### Commission Discussion

Commissioner Corbett asked if there is federal funding available for exotic species control. Mr. Hardin responded that there is not. Commissioner Corbett suggested seeking private funding for exotic species control.

Mr. Hardin mentioned that states have sought to receive federal appropriations for the control of exotic species but these efforts, so far, have been unsuccessful.

Chairman Huffman mentioned that staff has been in contact with the Florida Department of Agriculture and Consumer Services and Department of Environmental Protection to work with the Commission for a cohesive state plan of action regarding exotic species in Florida. He pointed out that exotics are affecting the carrying capacity of native fish and causing other adverse affects on native wildlife; and mentioned grants or some other financial incentives that might be made available for landowners and ranchers to rid their land of exotics.

Mr. Haddad explained that the policy level working group, which will include Colleen Castille and Charles Bronson, will be looking at this problem as a critical statewide issue.

Commissioner Yablonski thanked Chairman Huffman for suggesting the harm of exotic species on native species be highlighted in Florida. He suggested a ranking of threat level in the state, with focus on those that are the most direct threat to native fish and wildlife, and a public education campaign on the adverse effects of the introduction of invasive exotic species into Florida, or a "bounty" campaign for those bringing attention to an invasive exotic species in Florida.

Mr. Haddad responded that a ranking list is being addressed by the working group.

## Federal Legislative Issues

Mr. Bob Reinshuttle (Legislative Affairs Office) provided a detailed list of agency federal appropriations requests, which include funds for Florida Manatee Rescue and Necropsy Program (\$275,000), Vessel Replacement (\$3 million), Recreational Boating Characterization (mapping) (\$400,000 for five years), and Cooperative Reef Fish Research and Monitoring in the Gulf of Mexico (\$1 million). FWC Joint Appropriations Requests include: State Wildlife Grants, Southeast Cooperative Wildlife Disease Study, Southeast Aquatic Resources Partnership (Funding Initiative), and Science Consortium for Ocean Replenishment (SCORE).

Other federal legislation of agency interest includes: Magnuson-Stevens reauthorization, open fields legislation, the Transportation Bill, and an Ocean Mapping Bill.

These priority federal issues were submitted to the Florida Congressional Delegation, and specifically the members on the House Appropriations Committee. Mr. Reinshuttle stated that he and Mr. Haddad recently traveled to Washington DC and spoke with some members of the Florida Delegation or their staffs.

Mr. Reinshuttle stated that the Executive Director and Legislative staff are planning a return trip to Washington DC in May to meet with certain members of Florida's Congressional Delegation, and asked Commissioners to contact him regarding interest in the trip.

## Commission Discussion

Commissioner Barreto pointed out the need for a federal legislation plan of action. He asked that the Commission be provided a list of federal funding sought last year and what was received versus what is being sought this year, and the names of the congressmen on the appropriations committee. He suggested the plan be worked like a grass-roots campaign with Commissioners contacting congressman with whom they are personally acquainted and inviting them to hunt or fish and discuss agency needs. He suggested the Commission be provided a weekly report on federal legislation issues.

Mr. Haddad responded that staff has a plan and is moving forward but would like the Commission to get involved first-hand in the process. He added that the organizers (Sportsmens Caucus) of the Florida Hunting Summit have invited the Florida Delegation to attend the three-day event to be held in August.

## 2005 Legislative Session Report

Ms. Jackie Fauls discussed the agency legislative package and advised that two issues approved by the Commission but amended out of the agency's legislative package during committee meetings were the increased penalties for those who habitually violate deer/dog hunting laws and hunting with a suspended/revoked license, and increasing the age requirement for those who must take/pass the boating safety course. The requirement that minors hunting on

private lands wear hunter orange, which was placed in the bill by Senator Smith, was pulled from the bill; in addition to the requirement that FWC subagents offer voter registration to anyone buying hunting or fishing licenses.

The House Environmental Regulation Committee recently heard House Joint Resolution 1581 (Constitutional amendment eliminating the Constitutional authority of Commission). Chairman Huffman and Mr. Haddad spoke on behalf of the agency, with Commissioner Corbett in attendance. Several other advocates also spoke on behalf of the FWC including former Senator Curt Kiser and Ted Forsgren, as well as others. Those speaking against the agency were commercial fishing interests who want a net with a mesh size larger than 2" stretched. The Committee temporarily postponed the bill and agreed to request approval for an interim project that would study some of the operations and processes of the agency.

The House Water and Natural Committee heard HB 741 (Mullet Gill/Entangling Nets). Staff's role was to answer questions for committee members, but none were asked. Testimony was given by the Coastal Conservation Association in support of the FWC 2" mesh rule, and commercial fishing representatives spoke in opposition. Instead of voting on the bill, the Committee temporarily postponed it and will ask the Office of Program Policy and Governmental Accountability to oversee a study conducted by Florida State University, University of Florida's Institute of Food and Agricultural Sciences, and Florida Atlantic University on the science and economics associated with the 2" stretched mesh net.

### Commission Discussion

Commissioner Barreto stated that in the morning paper there was a quote from Representative Will Kendrick that a lot of FWC's rules are based on public opinion rather than science. Mr. Barreto commented that in the 3.5 years he has sat on the Commission, at least 99% of all decisions have been based on science and biology.

Chairman Huffman asked staff to keep the Commission up to date on the study.

### Improving Effectiveness of Commission Meetings

Mr. Heller explained that the goals for improving effectiveness of Commission meetings are to (1) devote more time to being proactive and less to being reactive; (2) devote less Commission meeting time to issues that have minimal resource benefit; (3) use Commissioners' time more efficiently by adjusting Commission meeting agenda; and, (4) use Commissioners' time more efficiently by establishing a process for determining how issues make it to a Commission meeting agenda.

To attain these goals staff intends to (1) focus on important issues by annually identifying Commissioners' Areas of Emphasis (CAEs) and determine how CAEs will be addressed at future Commission meetings; (2) change Commission meetings to make time for important issues, and (3) make process improvements.

This will include limiting the number of informational reports; delegating more administrative matters to the Executive Director; expanding use of the Consent Agenda; striving to address rule-related issues in two meetings; and batching approval of rules with little or no controversy.

Regarding process improvements the following is recommended: (1) improve stakeholder coordination and issue resolution prior to placing issue on Commission meeting agendas; (2) develop process for determining how issues are placed on a meeting agenda; (3) improve the process for briefing Commissioners (ensure stakeholder comments are included); and (4) appoint Commissioner(s) to be lead on key issues. Mr. Heller explained that these process improvements and others were developed following his individual contacts with Commissioners.

For 2005, CAEs being addressed are:

- Exotics: Previewed at this meeting, with updates during 2005 and 2006.
- Individual Transferable Quotas (ITQs): Division of Marine Fisheries Management looking for an applicable fishery.
- Vision for the future of hunting, saltwater fishing and freshwater fishing: Vision processes for hunting and fishing progressing and scheduled for two Commission meeting discussions in 2005 and 2006.
- Increased penalties: Team and process have been established. Presented at this meeting with two other discussions in 2005.
- Fees: Team established, exploring options. To be discussed at July Commission meeting and two additional Commission meetings in 2005 and 2006.

Mr. Heller explained the process for selecting CAEs:

- Commission annually reviews progress on existing CAEs and proposes new CAEs at December Commission meeting.
- Chairman and staff review new CAEs and schedule continuation of CAEs and new CAEs into Commission meetings for the coming year. Review with Commission at February Commission meeting.

### Commission Discussion

Chairman Huffman stated that he worked with Mr. Heller on this process and asked for Commission comments.

The Commissioners pointed out the need to continue to work with stakeholders while developing meeting agenda items, and expressed their support for more efficiency in the Commission meeting process.

Commissioner Meehan stated that he continues to believe in conflict resolution on contentious issues before they are brought before the Commission.

Commissioner Barreto asked how an item on the Consent Agenda might be brought forth for formal discussion on the Commission meeting agenda.

Chairman Huffman explained that if someone from the public wishes to address a Consent Agenda item, a Commissioner would need to be approached to offer a motion to amend the meeting agenda to place the Consent Agenda item in question before the Commission.

Chairman Huffman suggested that when staff holds workshops on issues a information be provided to the speaking public so they understand that their comments will be "considered" in the final decision making. He explained that too many people are leaving these workshops believing their comments are definitely going to be included in the final draft rules.

Commissioner Barreto suggested that the Commission and staff could consider evening workshop sessions or shorter lunches to hear various division/office informational reports and program reviews.

Mr. Heller stated that staff were considering suggesting 1.5 hour workshop sessions the evening before the official Commission meeting to present informational reports.

#### Presentations by the Public

Ted Forsgren asked the Commission to advise the National Marine Fisheries Service that Florida opposes the federal proposal to permit commercial swordfish longline boats to fish in closed areas off Florida's coast for research purposes; and its proposal to reduce recreational harvest of red and gag grouper in the Gulf of Mexico. He suggested the Commission concur with statements of the CCA that NMFS conduct public workshops in Florida, that Florida should manage Florida-exclusive fishes, and that NMFS should evaluate the potential economic impact of proposed rules that would restrict recreational activity in Florida.

Mr. Forsgren also mentioned NMFS data that claims that estimated recreational landings of red grouper increased by 130% in 2004. He pointed out that the numbers are suspect considering there were four major hurricanes in 2004 and many boats continue to be in dry dock or not sea ready.

At the Commission's direction, Mr. Haddad will send a letter to the NMFS regarding the experimental longlining proposal, public workshops in Florida regarding proposals to reduce recreational harvest of red and gag grouper, and an evaluation of the potential economic impact of proposed rules that would restrict recreational activity in Florida.

Mr. Haddad brought to the Commission's attention that the subject of management of Florida fishes would need to be an item for discussion at a Commission meeting.

Janie Thomas asked the Commission to consider changing its June meeting date because it interferes with meetings of the South Atlantic Fishery Management Council.

### Commission Exchange

Commissioner Barreto asked the Executive Director to forward a letter to Curt Kiser thanking him for his support of the current Constitutional structure of the Commission. Regarding the blue crab rules, Commissioner Barreto stated that all unused licenses should be eliminated—no landings, no license.

Commissioner Kaupe thanked Mr. Heller for his efforts to reduce the Commission meeting agenda items to allow for a two-day meeting and more Commission efficiency.

Commissioner Corbett thanked the Chairman for an efficient meeting; Nick Wiley for his work to ensure success of the deer dog pilot registration program; Dr. Eason, Dan Sullivan, and Dr. Ross for their work, and the Commission for their courage to go forth, with the species listing process; Jessica McCawley for finalizing the fish measurement rule; Colonel Jones for a clear presentation on penalties; the Commission for the Lee County Manatee Protection Rules; and Mr. Heller for a concise two-day agenda.

Commissioner Barco thanked the staff for being so attentive to the Commissioners' needs and their efficiency with redesigning the meeting agenda. She suggested elimination of one of the two agenda books distributed to the Commission, along with some of the paperwork. She suggested using E-mail to forward documents rather than mailings, and using CDs for Commission Meeting briefing materials.

Commissioner Yablonski thanked staff and the Chairman for an efficient meeting, and Mr. Haddad for inviting the Commissioners and staff to his home for a pot luck dinner.

Chairman Huffman thanked all FWC staff, especially Tim Donovan, Terry Mara, Henry Cabbage, Kim Jamerson, Connie Lord, Sabrina Menendez, Monia French, Brenda Collins, and Stan Kirkland for their expertise in ensuring a smooth meeting. He stated he is relieved that the Volusia County Manatee Protection Plan is complete, mentioned that the airboat usage issue will be contentious, and mentioned his on-site inspection of the Tide Swamp area that is being considered for dog hunting. He pointed out the need for individual Commissioners to make field inspections when they have time.

Administrative Matters

Mr. Heller presented the proposed 2006 Commission meeting dates and locations for Commission consideration: February 1-2, Gainesville; April 5-6, Tallahassee; June 14-15 [changed to June 7-8], West Palm Beach; July 19-20, Tallahassee, September 20-21, St. Petersburg; and, December 6-7, Key Largo.

Upon motion of Commissioner Meehan, seconded and carried, the 2006 Commission meeting dates were approved as amended.

Colonel Jones showed the Division of Law Enforcement recruitment DVD, entitled "Patrol, Protect, Preserve," developed by the Community Relations Office. She will forward a copy to each Commissioner.

The next regularly scheduled Commission meeting is scheduled for June 15-17, 2005 at the Hilton, 100 North Atlantic Avenue, Daytona Beach.

There being no further business, the meeting was adjourned at 2:50 p.m.

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H.A. "Herky" Huffman  
Chairman

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Kenneth D. Haddad  
Executive Director

Respectfully submitted:

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Commission Secretary

/tm  
minutes\april 2005

Establishment Orders

1. WMA 05-01, Grove Park Wildlife Management Area (WMA)—Reestablishes the Grove Park WMA in Alachua County, removing approximately 696 acres.
2. WMA 05-06, San Pedro Bay WMA—Reestablishes the San Pedro Bay WMA in Madison and Taylor counties, removing 18,362 acres.
3. WMA 05-02, Fort McCoy WMA—Reestablishes the Fort McCoy WMA in Marion County, removing 642 acres.
4. WMA 05-04, Tiger Bay WMA—Reestablishes the Tiger Bay WMA in Volusia County, adding 3,751 acres.
5. WMA 05-05, Salt Lake WMA—Reestablishes the Salt Lake WMA in Brevard County, adding 2,760 acres.
6. WMA 05-03, Box-R Ranch WMA— Reestablishes the Box R WMA in Franklin County, adding 800 acres.
7. WEA 05-01, Apalachicola River Wildlife and Environmental Area (WEA)— Reestablishes the Apalachicola River WEA in Franklin and Gulf counties, removing 800 acres.

Rules

68A-13.003, Hunting Regulations for Ducks, Geese, and Coots—The proposed rule change would modify the dates of the Canada goose season to conform to Executive Order NO. E-04-04, dated August 30, 2004, which expanded the Canada goose season to coincide with Georgia's season. *[This rule change was discussed with the Commission at the September 2004 Commission meeting at St. Petersburg.]*