

August 18, 2005

Don C. Schmitz
Florida Department of Environmental Protection
Bureau of Invasive Plant Management
3900 Commonwealth Blvd., MS 705
Tallahassee, FL 32399.

Re: ISWG Call for Comments Concerning Invasive Species and Potential Gaps, Duplications, or a Lack of Authorities in Florida's Statutes and Rules

Dear Mr. Schmitz:

Thank you for the opportunity to provide comment on current rules and authorities regarding invasive species management to the Florida Invasive Species Working Group. We are providing an initial analysis of gaps in the Florida's statutes and rules. We would recommend that the Working Group take a deeper look at the State's statutes and rules with regards to prevention, early detection, eradication and management of invasive species in Florida.

As you know, The Nature Conservancy's conservation work is grounded on sound science, strong partnerships with other landowners, and tangible results. The Conservancy also owns the largest private system of nature sanctuaries in the world. As such, we are deeply concerned because invasive species pose a continuous threat to private land values and to conservation sites even after the threat of habitat destruction has been averted via land acquisition, easement or designation. Recent studies have shown that invasive species are threatening the persistence of almost 50% of 1,880 federally listed threatened and endangered species. An overwhelming 94% of our sites have identified invasive species as a significant threat to the native species and communities that we are working to protect.

The critical, global threat that non-native, invasive species pose to biological diversity is of particular concern in Florida. Our hospitable and productive temperate to sub-tropical climate make us a suitable new home for many species from both the new and old worlds. Eighty-five percent of the plants imported into the U.S. enter through the Miami ports. At this point, roughly 30% of Florida's plant species are not native: at least 133 (10%) of these species are now negatively impacting native plant species and communities. Similarly, the U.S. is responsible for 80% of the world trade in reptiles, the majority of which enter the country through Florida. Of the 400 non-native animal species in Florida, at least 125 are fully established and reproducing. These are just a few examples.

Effective actions for addressing this threat need to occur at many levels. The most effective approach is to prevent new introductions. Once species have entered, we need early detection and rapid response efforts to preclude development of large infestations. Management of established invaders is significantly more costly than prevention or early eradication. While the State of Florida is responding to these needs with increasing investment for invasive species control, the existing legislative authorities at the federal, state, and local levels are insufficient for effective prevention and rapid response. Our comments highlight some of gaps and insufficient authorities in Florida's existing rules

addressing noxious and invasive nonindigenous species and provide recommendations for their resolution.

Potential gaps/conflicts/funding shortfalls

1. *DEP does not have sole authority to update their lists of Prohibited Aquatic Plants when they identify aquatic plants that are causing environmental harm (as defined in Rule 62C-52.011(5)(a-d).*
DACS and FWC have approval authority over DEP list of noxious aquatic weeds (F.S. 369.25(3)(b)). There is potential conflict because these agencies serve different purposes, which means that some of the aquatic plants that DEP would argue should be listed because of threat to the environment may have agricultural or recreational use that that other agencies wish to protect. An example of this is absence of torpedograss on any state list. DEP petitioned to list torpedograss as a prohibited aquatic plant but DACS has not wanted to cause potential economic burden to sod farmers, since torpedograss is sometimes a contaminant in sod. As a result, torpedograss is not regulated and may potentially be sold in Florida.
Recommendation: A step toward resolution of this issue would be to include a member of the Bureau of Invasive Plant Management on the committee that determines the state noxious weeds and invasive plants and to prioritize species that DEP has identified as requiring management in conservation areas for assessment by that committee.
2. *Florida Statute 581.091(4) and Chapter 5B-57, do not include all prohibited aquatic plants listed pursuant to F.S. 369.25(3)(b), and Chapter 62C-52.011.*
The 2002 amendment to F.S. 581.091(4) limited a WMD or a local government to the use of the DACS lists of noxious weeds and invasive plants when developing local invasive plant regulatory lists. Under this 2002 amendment, the plants listed in F.S. 369.251 were incorporated into the department lists; however the list currently includes only melaleuca, two Australian pine species, Brazilian pepper and *Mimosa pigra*. DEP Class I and II Prohibited Aquatic Plants are not included. While the rule change does not restrict DEP's ability to regulate their lists, local agencies (county, municipality, WMD) cannot regulate any DEP Class I or II Prohibited Aquatic Plants not on the DACS list unless those species were on a local list prior to this amendment.
Recommendation: This inconsistency would be resolved if DACS included the DEP lists as invasive plants under Chapter 5B-57.010 since the species were already approved by DACS as appropriate for inclusion on the DEP lists.
3. *There are no procedures set by rule for amending the lists established in 62C-52.011, Prohibited Aquatic Plants.*
Examples or rule chapters with such procedures are the Procedures for Amending the Regulated Plant Index in Chapter 5B-40.0056 and the Noxious Weed and Invasive Plant Classification Procedures in Chapter 5B-57.010.
Recommendation: Similar procedures for amending the prohibited list should be developed for rule amendment in upcoming legislative sessions.

4. *There are no procedures set by rule for amending the lists established in Chapter 5B-2.0025(2), Plant pests of limited distribution in Florida requiring immediate quarantine action.*

Examples or rule chapters with such procedures are the Procedures for Amending the Regulated Plant Index in Chapter 5B-40.0056 and the Noxious Weed and Invasive Plant Classification Procedures in Chapter 5B-57.010.

Recommendation: Similar procedures for amending the list should be developed for rule amendment in upcoming legislative sessions.

5. *The Cactus moth (*Cactoblastis cactorum*) is not included in Chapter 5B-2.0025(2)(a) Insects of limited distribution in Florida.*

This is a list of known insects that if nursery stock is found infested by or infected with or exposed to, the stock would be immediately quarantined and certification held until the stock is treated and released from quarantine by DACS. Cactus moth has been found in Florida and is harmful both to the agricultural and environmental interests of Florida and other states. USDA ARS and APHIS are currently testing control methods in northwest Florida.

Recommendation: Include *Cactoblastis cactorum* under Chapter 5B-2.0025(2)(a).

6. *The Cactus moth (*Cactoblastis cactorum*) is not included in Chapter 5B-3.0038(2)(a), which lists examples of insects of limited distribution in Florida that would require immediate quarantine action.*

This is a list of known insects that would require immediate quarantine if found in interstate or international shipments of plants and plant products. Cactus moth has been found in Florida and is harmful both to the agricultural and environmental interests of Florida and other states. USDA ARS and APHIS are currently testing control methods in northwest Florida.

Recommendation: Include *Cactoblastis cactorum* under Chapter 5B-3.0038(2)(a).

7. *Chapter 5E-4.003, Noxious Weed Seed, does not include seeds of all plants listed as noxious weeds pursuant to Chapter 5B-57.007 and prohibited aquatic plants pursuant to Chapter 62C-52.001.*

Allowing movement and trade in one propagule type of species when the same action is prohibited for all other propagule types of that species creates inherent inconsistency among rules.

Recommendation: Include all seeds of all species listed as noxious weeds, invasive plants, or prohibited aquatic plants under Chapter 5E-4.003.

8. *There are no procedures set by rule for amending the lists of Class I and II captive wildlife established in F.A.C. 68A-6.002.*

Examples for rule chapters with such procedures are the Procedures for Amending the Regulated Plant Index in Chapter 5B-40.0056 and the Noxious Weed and Invasive Plant Classification Procedures in Chapter 5B-57.010. Recent evidence of breeding populations of pythons in Everglades National Park and Gambian pouch rats in the Keys highlights the need to update the Class I and II lists. Nonindigenous animals that have a high potential for ecological impact in Florida's natural areas should be included on these lists. The permit fees assessed for owning these animals could be put into an emergency eradication fund to pay for FWC services in early detection and rapid response of reported occurrences of escaped, invasive nonindigenous animals.

Funding for similar activities for early control of invasive aquatic plants is derived in part from boat registration fees.

Recommendations: 1) Similar procedures for amending the prohibited wildlife list should be developed by rule. 2) Funding for an Emergency Eradication Fund for detection and eradication or containment of new invasions of invasive nonindigenous wildlife should be identified and adopted in upcoming legislative sessions. 3) Over time, additional funding should also be sought or designated for education of the pet, aquaculture, and fishing trades and public.

9. *In Chapter 68A-21.004, General Regulations Relating to Wild Hog Areas, FWC specifies a season and size restriction for taking wild hogs in established Wild Hog Areas.*

The Water Management Districts, Florida State Parks Division, and other public agencies would manage for hog eradication on some or all of their properties not designated as Wild Hog Areas. While there is a provision for exceptions to be made by specific regulation, the mobility of hogs across ownerships and areas with differing management goals and the damage to native Florida ecosystems and species caused by wild hogs suggest that the current approach is not meeting statewide management needs.

Recommendation: FWC should convene an interagency, stakeholder and expert committee to make recommendations on improving the rule for wild hog management in Florida in FY06 with the intent of preparing any recommended rule changes for the FY07 legislative session.

10. *FWC has the authority to enforce regulation of listed freshwater fish, non-native aquatic species, nonindigenous wildlife and nonindigenous marine life; however there are no dedicated FWC law enforcement officers to enforce these rules.*

It is a criminal offense to release freshwater fish, nonindigenous wildlife and nonindigenous marine life into the wild. However, enforcement of these rules is insufficient, as is education for pet and aquarium owners and fishers about the impacts of regulated animal species.

Recommendations: 1) A mechanism for increasing the funding for enforcement of existing rules should be identified and proposed in upcoming legislative sessions (perhaps through a fee associated with the species and license sales similar to aquatic plant control funds raised through boat licenses). 2) adequate training should be provided to law enforcement officers on the identification of invasive nonindigenous animals, 3) Educational materials should accompany any sales of pet and aquarium species and fishing licenses.

11. *DACS has the authority to enforce rules on the nursery possession and importation and transport for sale of noxious weeds as well as for the detection and control of plant pests; however, there are inadequate DACS inspection and enforcement staff to cover the large numbers of nurseries and the agriculture inspection stations in Florida.*

Again, there is a need to increase the capacity of staff dedicated to enforcement of rules in line with the enormity of the threat to Florida's agriculture and environment. These staff must also be adequately trained in recognizing noxious weeds, invasive plants, and prohibited aquatic plants and plant pests.

Recommendations: 1) A mechanism for increasing the funding for enforcement of existing rules should be identified and proposed in upcoming legislative sessions (see

above). 2) DACS should evaluate whether current training is sufficient to meet the identification need for the range of plants and pests for which inspectors are responsible.

12. *DEP is responsible for the non-nursery possession of noxious weeds and prohibited aquatic plants, however, DEP regional biologists that are tasked with aquatic plant control enforcement often have insufficient time to inspect non-nursery commercial sale of these plants.*

Recommendation: A mechanism for increasing the funding for enforcement of existing rules should be identified and proposed in upcoming legislative sessions (see above).

Lack of authorities

1. *The authority of the ISWG as an advisory committee has not been established formally by statute or rule.*

The analogous Pest Exclusion Advisory Committee (PEAC) is appointed by the Commissioner of DACS under F.S. 570.0705. PEAC was created under F.S. 570.235. <http://www.doacs.state.fl.us/pi/images/peac-full.pdf>

Recommendation: The authority of ISWG should be established by statute or rule similar to the authority given to the Pest Exclusion Advisory Committee (PEAC).

2. *Quarantine language in Chapter 5B-3.0038(1), Quarantine Action, does not include language that would allow DACS to quarantine shipments of plant pests not known to occur in the state of Florida, which could be potentially damaging to Florida's natural resources.*

This rule provides quarantine action for interstate and international shipments of plants and plant products into Florida for plant pests not known in Florida and which are found to be potentially damaging to Florida agriculture. The rule does not recognize that threat that these plant pests may have on Florida's environment.

Recommendation: Chapter 5B-3.0038(1) should be amended to specify the quarantine of plants and plant products for pests potentially damaging to Florida's agriculture or environment.

3. *Florida currently has only limited capacity to rapidly respond and eradicate observed occurrences of incipient populations of potentially invasive non-native plants, animals, insects and diseases on public or private lands.*

While DACS mobilizes staff from many departments when fire or agricultural pest emergencies are declared, their capacity is limited and other programs suffer. No similar action is possible for other agencies, or in response to natural resource pests. An Emergency Response Team for control of new populations of invasive species should be formed through a multi-agency, collaborative effort. Staff should be identified at each agency that would participate on this team and funding for this team should be shared by all participating agencies.

Recommendation: ISWG or a designated agency should convene an interagency, stakeholder and expert committee to make recommendations for creation of an interagency, Multi-taxa Emergency Response Team in FY06 with the intent of preparing any recommended rule changes for the FY07 legislative session.

- a. *No rule establishes an emergency eradication trust fund for an animal or plant disease, insect infestation, or plant or pest endangering or threatening Florida's environment.*

F.S. 570.191 establishes an Agricultural Emergency Eradication Trust Fund for threats to agricultural interests of the state. There is also language in 570.1912 to appropriate this funding. No such language exists for natural resource emergencies.

Recommendation: Expand the existing statutes to provide an Invasive Species Eradication Trust Fund with a funding source that addresses threats to Florida's agriculture or natural resources in upcoming legislative sessions.

- b. *No rule establishes an emergency eradication trust fund for the rapid response of FWC officers upon reported observation of a non-native aquatic species, nonindigenous wildlife and nonindigenous marine life that has the potential to endanger or threaten the public and/or environmental interests in the state.*

Recommendation: Either provide FWC with access to the F.S. 570.191 Invasive Species Eradication Trust Fund described under (4) above, or develop an analogous fund that provides FWC with capacity for emergency eradication of non-native aquatic species, nonindigenous wildlife and nonindigenous marine life.

- c. *No rule gives FWC officers authority to enter onto private lands for the purpose of eradicating non-native aquatic species, nonindigenous wildlife and nonindigenous marine life that has the potential to endanger or threaten the public and/or environmental interests of the state.*

Recommendation: FWC should develop a rule that provides authorization for FWC officers to enter onto private lands for the purpose of emergency eradication of non-native aquatic species, nonindigenous wildlife and nonindigenous marine life.

4. *No clear state policy addresses the methods for humane euthanasia in the field of invasive nonindigenous animals.*

As more and more public land managers start dealing with the threat of invasive, non-native animals, FWC needs to develop a statewide policy for the humane euthanasia of these animals

Recommendation: FWC should develop a statewide policy for the humane euthanasia of invasive nonindigenous animals.

5. *No clear state policy or rule allows the control of invasive nonindigenous animals by agencies other than FWC in areas managed for game by FWC.*

A process by which appropriately trained public land managers obtain a permit from FWC to control invasive nonindigenous animals does not exist. The recent need for SFWMD to dispatch pythons in the water conservation areas highlighted the need for a clear process to be developed. SFWMD and FWC worked together to successfully implement a plan for control of the species, however, there was no precedent for this transfer of control responsibility and there was some delay in implementation.

Recommendation: FWC should develop criteria and permission authority to allow all agencies to control invasive nonindigenous animals on their agency's public lands.

Again, we would like to thank you for this opportunity. We are excited to work with the Invasive Species Working Group to address the threat of invasive species in Florida. If you would like additional information or have comments or questions with regards to this letter, please contact Kristina Serbesoff-King, Invasive Species Coordinator, at 561-744-6668 or kserbesoffking@tnc.org.

Sincerely,

Doria Gordon, Senior Ecologist
The Nature Conservancy, Florida Chapter