

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

USARK FLORIDA, INC., MARK & KIM BELL,
REPTILE INDUSTRIES, INC., HECTOR BERRIOS,
HECTOR'S HABITAT, LLC, JESSE HARDIN,
JESSE'S JUNGLE, MICHELLE WATTS & JOHN
MCHUGH, EGG TOOTH REPTILES, BRUCE
& LAURA ROBERTS, ZOO MOM SCIENCE,
LLC, MARTIN SPILKIN, and DIALUP LLC,

Case No. 2021-CA-977

Plaintiffs,

v.

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

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs USARK Florida, Inc. ("USARK Florida"), and Mark and Kim Bell, Reptile Industries, Inc., Hector Berrios, Hector's Habitat, LLC, Jesse Hardin, Jesse's Jungle, Michelle Watts and John McHugh, Egg Tooth Reptiles, Bruce and Laura Roberts, Zoo Mom Science, LLC, Martin Spilkin, and Dialup, LLC (collectively, the "Individual Plaintiffs," and together with USARK Florida, "Plaintiffs") sue Defendants Florida Fish and Wildlife Conservation Commission ("the Commission"), Rodney Barreto, in his official capacity as the Chairman of the Commission ("the Chairman"), and Eric Sutton, in his official capacity as the Executive Director of the Commission ("the Executive Director"), seeking a declaration that the Commission's amendments to Chapter 68-5, Florida Administrative Code, are arbitrary and capricious and lack a rational

basis; a declaration that the Commission's rulemaking failed to afford procedural due process in the promulgation and adoption of the challenged rule amendments; a declaration that the Commission is without jurisdiction to promulgate the challenged rules absent demonstrated adverse impacts to *ferae naturae*, which the Commission has not demonstrated; and injunctive relief enjoining enforcement of the challenged rule amendments and requiring the Commission, the Chairman, and the Executive Director to afford procedural due process, in addition to ordering relief under 42 U.S.C. § 1983. In support, Plaintiffs state as follows:

NATURE OF ACTION

1. This is a lawsuit for declaratory and injunctive relief, in which Plaintiffs challenge the Commission's adoption of amendments to Rules 68-5.004, 68-5.006, 68-5.007, and 68-5.008, Florida Administrative Code (the "Amended Rules"). Copies of the Amended Rules as originally proposed and a Notice of Change reflecting significant revisions to proposed Rule 68-5.007 are attached as **Composite Exhibit A**.

2. In short, the challenged Amended Rules would do as follows:

- a. remove Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, amethystine pythons, scrub pythons, green anacondas, and Nile monitors from the so-called Conditional Species List (Rule 68-5.004);
- b. add the reptiles listed above, along with green iguanas and tegu lizards, to the Prohibited Species List (Rule 68-5.006);
- c. substantially revise the regulations applicable to the possession of Prohibited Species (Rule 68-5.007); and

- d. revise certain requirements with respect to relinquishing non-native pets in light of the above changes (Rule 68-5.008).

3. The Amended Rules' ultimate effect is to dispossess owners of their animals and end the commercial pet trade for certain reptiles. All the Individual Plaintiffs and a substantial number of USARK Florida members own and transact business with at least one of the reptiles impacted by the changes.

4. The Commission's Amended Rules are arbitrary and capricious and lack a rational basis, and in adopting the Amended Rules, the Commission failed to adhere to the rulemaking procedures it created to ensure due process. More specifically, and without limitation, the Commission:

- a. failed to notice the true purpose and effect of the Amended Rules;
- b. adopted the arbitrary and capricious Amended Rules that are unsupported by logic as there is no competent evidence that the Amended Rules will further the claimed goal of reducing the impacts of non-native species;
- c. failed to prepare a statement of estimated regulatory costs that complies with the Commission's own due process procedures;
- d. citing a previously unnoticed purpose of the Amended Rules, failed to consider and adopt less costly regulatory alternatives that would accomplish the Commission's objectives without destroying an entire industry and dispossessing hundreds of individuals of their personal property; and
- e. failed to follow its own due process procedures at the February 25, 2021 Commission hearing.

5. As a result of the Amended Rules, Plaintiffs will suffer and have suffered not only losses in revenue from the breeding, trade, import, export, and sale of the impacted species but also in some circumstances are required to surrender, relocate, or euthanize their beloved reptiles. Plaintiffs will also be deprived of the expected economic benefits of raising the affected reptiles to maturity and selling offspring, as well as the significant investments they have made to comply with the existing Commission regulations which authorized commercial use of these species subject to stringent requirements.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under sections 26.012 and 86.011, Florida Statutes, Florida Administrative Code Rule 68-1.008(5)(c)1., and 42 U.S.C. § 1983. *See Crocker v. Pleasant*, 778 So. 2d 978, 982-83 & n.6 (Fla. 2001); *Lloyd v. Page*, 474 So. 2d 865, 867-68 (Fla. 1st DCA 1985).

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

PARTIES

8. Plaintiff USARK Florida is a trade organization and Florida not-for-profit corporation which represents and promotes the reptile industry—an industry that generates approximately \$160 million in revenue every year in this state. USARK Florida's goals and objectives are to facilitate cooperation between government agencies, the scientific community, and the private sector in order to produce policy proposals that will effectively address important wild animal life husbandry and conservation issues. Thus, the Amended Rules are within USARK Florida's general scope of interest and activity. A substantial number of USARK Florida's

members keep, possess, import, export, sell, and breed reptiles, including the species at issue under the Amended Rules, and therefore will be and are substantially affected by the challenged Amended Rules. USARK Florida serves as the united voice for reptile keepers in Florida and has associational standing.

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

10. Plaintiffs Mark and Kim Bell are individuals and residents of Collier County, Florida. They own and operate Plaintiff Reptile Industries, Inc., which has maintained a Class III wildlife license including a Conditional Species permit with the Commission. The Bells through their business possess and transact business with tegu lizards and have maintained Conditional Species permits authorizing them to possess and transact business with reticulated pythons, Burmese pythons, and Nile monitors, among other reptiles.

11. Plaintiff Hector Berrios is an individual and resident of Pinellas County, Florida. He owns and operates Plaintiff business Hector's Habitat, LLC, which has maintained a Class III wildlife license with the Commission. Mr. Berrios through his business possesses and transacts business with tegu lizards.

12. Plaintiff Jesse Hardin was an individual and resident of Charlotte County, Florida, and has relocated to Louisiana given the difficulty of complying with the Amended Rules. Mr. Hardin owns and operates Plaintiff business Jesse's Jungle, which previously maintained a Class

III wildlife license with the Commission. Mr. Hardin through his business possesses and transacts business with tegu lizards.

13. Plaintiffs John McHugh and Michelle Watts (“McHughs”) are individuals and residents of St. Johns County, Florida, although they are in the process of moving to Georgia as a result of the Amended Rules. They own and operate Plaintiff business Egg Tooth Reptiles. Mr. McHugh maintained a Class III wildlife license including a Conditional Species permit with the Commission, and the McHughs possess and transact business with Burmese/Indian pythons and reticulated pythons.

14. Plaintiffs Bruce and Laura Roberts are individuals and residents of Seminole County, Florida. They own and operate Plaintiff business Zoo Mom Science, LLC, which has maintained a Class III wildlife license with the Commission. The Robertses and their business possess and transact business with tegu lizards.

15. Plaintiff Martin Spilkin is an individual and resident of Broward County, Florida. Mr. Spilkin owns and operates Plaintiff business Dialup LLC, which has maintained a Class III wildlife license with the Commission. Mr. Spilkin and his business possess and transact business with green iguanas and tegu lizards.

16. Defendant Florida Fish and Wildlife Conservation Commission is a governmental agency, created by the Florida Constitution, which adopted the Amended Rules and is charged with enforcing the Amended Rules.

17. Defendant Rodney Barreto is the appointed Chairman of the Commission and is sued in his official capacity as Chairman. Mr. Barreto is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law.

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

GENERAL ALLEGATIONS

Background Concerning the Commission and Application of Due Process to the Commission

19. Prior to the creation of the Florida Fish and Wildlife Commission, the regulation of wild animal life was reserved to the Florida Game and Fresh Water Fish Commission (“Game Commission”). The Game Commission was created in 1943 as an independent, constitutionally-created agency vested with “the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.” Clay Henderson, *The Conservation Amendment*, 52 Fla. L. Rev. 285, 294 (2000). The term “wild animal life” first became part of the Florida Constitution in 1968 when article IV, section 30 was amended to replace “birds, game, fur bearing animals . . . of the State of Florida” with “wild animal life,” and renumbered as article IV, section 9, then pertaining to the Game Commission. The term has been central to both the jurisdiction of Game Commission and the Commission ever since. Nevertheless, “wild animal life” is not defined in law.

20. Given its constitutional stature, the Game Commission was not subject to the Administrative Procedure Act (“APA”) when acting pursuant to constitutionally-derived authority. *See* § 120.52(1)(b), Fla. Stat. (1998) (“agency” for purposes of the APA applies to the Game Commission only “when acting pursuant to statutory authority derived from the Legislature”). The APA is designed to ensure that executive agencies afford due process to individuals when making administrative decisions, but it applies to only administrative actions arising from exercises of legislative authority.

21. That the Game Commission was not subject to the APA was of great concern to the 1998 Constitution Revision Commission (“1998 CRC”). The 1998 CRC put forward Proposal 45, a constitutional amendment that would streamline the state’s regulation of wild animal and marine life by merging the Game Commission with the statutorily-created Florida Marine Fisheries Commission to create the Florida Fish and Wildlife Conservation Commission. In doing so, the 1998 CRC recommended constitutional language that would require the newly-formed Commission to adopt due process procedures to “increase[] citizen access to the new commission.” Fla. S. Jour. 261-262 (CRC Sess. 1998) (Statement of Intent Regarding Conservation of Natural Resources and Creation of Fish and Wildlife Conservation Commission).¹

22. In explaining the rationale for this recommendation, Commissioner James Harold Thompson stated that it was critical for those regulated by the Commission to have the opportunity to be heard, as many individuals’ very livelihoods would depend on the Commission’s regulations. Commissioner Thompson also pressed that the Commission’s decisions must be based on “scientific research and data.” Florida Constitution Revision Comm’n Meeting Nov. 14, 1997 Tr. 75:7-76:3 (comments by Commissioner Thompson).²

23. In 1999, Florida voters approved the CRC’s proposed amendment of article IV, section 9 of the Florida Constitution, including the requirement that the Commission afford “due process” in its decision making. As article IV, section 9 still states today, “[t]he commission *shall* establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions.” Art. IV, § 9, Fla. Const. (emphasis added).

24. After Florida voters approved the amendment, the Florida Legislature implemented changes necessary to the creation of the Commission and also expressly required the Commission

¹ Available at https://fall.law.fsu.edu/new_crc/pdf/crc30.pdf.

² Available at https://fall.law.fsu.edu/new_crc/minutes/crcminutes111497.html.

to implement rules pursuant to section 120.52, Florida Statutes, for even its constitutional responsibilities. *See* Ch. 99-245, § 1, at 5, Laws of Fla. (codified at § 20.331, Fla. Stat.) Specifically, the Legislature required the Commission to “implement a system of adequate due process procedures to be accorded to any party, as defined in s. 120.52, whose substantial interests will be affected by any action of the [Commission] in the performance of its constitutional duties or responsibilities.” *Id.* The Legislature also “encourage[d]” the Commission to use provisions of the APA when adopting rules. *Id.* Finally, the Legislature directed the Commission to report to the Legislature on how it intended to implement “adequate due process” by December 1, 1999. *Id.*

25. The Commission responded by adopting certain due process procedures through policies, not formal rules. The adequacy of these procedures was soon subject to criticism. *See, e.g.,* Bob L. Harris, et al., *Wanted: Due Process from the Florida Fish and Wildlife Conservation Commission*, The Florida Bar Administrative Law Section Newsletter, Vol. XXIX, No. 1 (Sept. 2007).³ The Commission through its general counsel responded to this criticism, stating that the Commission’s conduct comported with due process principles, and assured constituents that its rules would “be supported by *the best information available*.” *See* James V. Antista, *FWC Met Due Process Standards in Shark Feeding Case*, The Florida Bar Administrative Law Section Newsletter, Vol. XXIX, No. 2, at 4 (Dec. 2007) (emphasis added).⁴

26. Nevertheless, the 2007 Florida Legislature required the Commission to formally adopt its due process procedures verbatim in rule, rather than by policy or by reference to procedures found outside of the rule. *See* Ch. 2007-223, Laws of Fla. (amending § 20.331, Fla. Stat.); Fla. H.R. Pol’y & Budget Council, CS for HB 7173 Staff Analysis (2007) Post-Meeting

³Available at <http://flaadminlaw.org/wp-content/uploads/2017/10/Adm-9-07.pdf>.

⁴ Available at <http://flaadminlaw.org/wp-content/uploads/2017/10/Adm-12-07.pdf>.

Analysis 2 (Apr. 26, 2007) (observing that the Commission’s mere incorporation of the processes by reference in a rule unnecessarily “require[d] further research by an interested party to ascertain the actual due process procedures of the FWC”).⁵

27. The Commission responded by formally adopting its due process procedures in Florida Administrative Code Rule 68-1.008 (the “Due Process Rule”), effective January 8, 2008.

The Commission’s Due Process Procedures

28. Through the Due Process Rule, the Commission has agreed to adhere to the 2007 APA⁶ in several respects, including in issuing notices of rule development and rulemaking and holding rule development workshops. Fla. Admin. Code R. 68-1.008(5)(b)3., 4.

29. Of importance here, the Commission also expressly stated that it “shall prepare statements of estimated regulatory cost and statements of lower cost regulatory alternative in accordance with the APA.” *Id.* R. 68.1008(5)(b)4.

30. The Due Process Rule acknowledges that the Commission’s rules derived from constitutional authority are not subject to administrative rule challenges under the APA. *Id.* R. 68.1008(5)(c)1. Instead, the Commission’s rules promulgated using constitutional authority may be challenged in either or both (1) declaratory or injunctive relief actions in circuit court or (2) through a draw-out hearing. *Id.*

31. The Commission has also adopted certain policies to ensure the public has an opportunity to be heard at Commission meetings.

⁵ Available at

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7173b.PBC.doc&DocumentType=Analysis&BillNumber=7173&Session=2007>.

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

32. Pursuant to those policies, “[a]ll persons who request an opportunity to speak at a Commission workshop or meeting will be allowed to speak within the following Commission guidelines.” Public Comment at Commission Workshops and Meetings, <https://myfwc.com/about/commission/meeting-protocol/>. Notably, “[w]hen a large number of people wish to speak, the Chairman may limit the time for each speaker, or the time allotted to public comment on specific agenda items, *in order to ensure that all speakers are heard within the time allotted for the meeting.*” *Id.* (emphasis added). According to agency representative Shanna Chatraw, the Commission’s public comment process is meant to be “first-come, first-serve[d].”

***The Commission’s Regulation of Conditional Non-native Reptile Species
including Burmese Pythons, Reticulated Pythons, and Nile Monitors Before April 29, 2021***

33. No one disputes that non-native, invasive species are a problem everywhere, including in Florida. Non-native invasive species in Florida run the gamut from Burmese pythons to Cane toads to domestic cats.⁷

34. Non-native invasive species are also not a new problem in Florida. Many non-native species have already established themselves in certain parts of the state. Burmese pythons, for instance, were first introduced to the state in 1979 and reached an established population in south Florida in the 1980s. *See* Kenneth L. Krysko et al., *New Verified Nonindigenous Amphibians and Reptiles in Florida through 2015, with a Summary of Over 152 Years of Introductions*, 23(2)

⁷ *See* Matt Morrison, *Killer Cats: The Invasive Species in Your Backyard*, CBS News (Oct. 27, 2018), <https://www.cbsnews.com/news/cats-invasive-species-in-your-backyard-cbsn-originals/> (“Domestic cats are directly responsible for the extinction of a number of animal species around the world, including 33 bird species. In the U.S., the popular pet is estimated to kill over 1 billion birds and over 6 billion other small animals every year. While the biggest threat are currently posed by feral cats—domesticated breeds that don’t have an owner and aren’t socialized to humans—even common house cats that are well cared for and fed will hunt and kill if let outside.”); *see also, e.g.*, David Ovalle, *We rescued an orphaned baby bird in Miami. Turns out, we did everything wrong*, Miami Herald (May 12, 2021), <https://www.miamiherald.com/news/local/environment/article251014374.html> (quoting Ron Magill, communications director at Zoo Miami and wildlife expert: “People don’t realize that the single most dangerous invasive species in the country is the feral cat.”).

IRCF Reptiles & Amphibians J. 110, 122 (Aug. 2016). Unfortunately, “[i]n most instances, once introductions have been allowed to establish, no amount of money or effort can change the situation.” *Id.* at 110.

35. Prior to 2007, the Commission did not require permits or licensure to possess non-venomous, non-native reptiles. In 2007, however, the Commission and industry stakeholders came together through a technical advisory group in order to craft regulations addressing the possession and use of certain non-native reptile species, then designated “Reptiles of Concern.” These regulations were designed to foster responsible pet ownership and a responsible commercial pet trade; at the time, the Commission’s view was that a highly regulated industry was preferable to an underground one. *See* Scott Hardin, Florida Fish & Wildlife Conservation Commission, *Managing Non-Native Wildlife in Florida: State Perspective, Policy and Practice*, Managing Vertebrate Invasive Species, USDA National Wildlife Research Center Symposia at 43 (2007).⁸

36. Since that time, and until April 29, 2021, the Commission has authorized the Individual Plaintiffs and many USARK Florida members to possess, sell, import, export, and breed certain non-native reptile species subject to stringent regulations for Reptiles of Concern, which are now known as Conditional Non-native Species (“Conditional Species”).

37. Pursuant to Chapter 68-5 of the Florida Administrative Code, the Commission has designated as Conditional Species certain snakes and lizards, specifically Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, Amethystine pythons, scrub pythons, green anacondas, and Nile monitors. Fla. Admin. Code R. 68-5.004(3), (4).⁹

⁸ Available at https://digitalcommons.unl.edu/nwrcinvasive/14/?utm_source=digitalcommons.unl.edu%2Fnwrcinvasive%2F14&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁹ Unless stated otherwise, references to provisions of Chapter 68-5, Florida Administrative Code, refer to those rules in effect prior to April 29, 2021.

38. Conditional Species are tightly controlled by the Commission's extensive regulatory framework and may, with proper permitting and pursuant to rigorous standards, be imported and possessed for commercial use. *See* Fla. Admin. Code R. 68-5.005. As examples, snakes and lizards that are designated as Conditional Species must be kept under strict caging requirements in escape-proof enclosures inspected and approved by the Commission, and must be permanently identified with a passive integrated transponder tag or microchip. *Id.* R. 68-5.005(5). Those holding Conditional Species permits for the possession and sale of snakes and lizards must submit a Captive Wildlife Disaster and Critical Incident Plan to the Commission and maintain accurate records of inventory, recording each and every birth, death, sale, and transfer. *Id.* The Commission has also reserved for itself broad authority to inspect snake and lizard Conditional Species held in captivity as well as the facilities holding them at any time. *Id.*

39. Importantly, Conditional Species cannot be kept for private purposes and must qualify under one of the listed conditions, such as use for research, commercial import or export, or education. *See id.* R. 68-5.005.

40. At a February 2019 meeting, the Commission confirmed the need to work closely with the industry in crafting regulations addressing non-native reptile species, including those designated as Conditional Species and already embedded in the pet trade. Commissioners and Commission staff also assured stakeholders at the same meeting that, in the context of adding one other reptile species to the Prohibited Species List—a list that bans most possession and use of animals so designated—that this was not “opening the faucet” or “setting precedent” of adding more species to the Prohibited Species List. The Commission's Director of the Division of Habitat and Species Conservation Kipp Frohlich specifically stated that with moving such embedded species to the Prohibited Species List, “the juice wouldn't be worth the squeeze, [as these animals

such as the Burmese python] are already in the environment . . . , and it really would have economic impacts” on numerous individuals and families that depend on that industry. *See* Feb. 21, 2019 Commission Meeting (46:30-48:05).¹⁰

41. In reliance upon the existence of the Conditional Species program and the Commission’s assurance it would continue those regulations, a substantial number of USARK Florida members and Individual Plaintiffs have expended thousands if not millions of dollars to assure their compliance with these regulations.

42. Given the nature of these animals, many of those permittees including the Individual Plaintiffs and a substantial number of USARK Florida members have forged longstanding relationships with their reptiles, as these reptiles require a substantial amount of work and nurturing to get them to the point of producing offspring.

The Commission’s Regulation of Tegu Lizards and Green Iguanas Before April 29, 2021

43. Prior to April 29, 2021, green iguanas and tegu lizards were not designated as Conditional Species or Prohibited Species, but were subject to other Commission regulations.

44. Tegu lizards are a large species of lizard not native to Florida. Although the tegu lizard was not designated as a Conditional Species or Prohibited Species before April 29, 2021, a person was required to possess a Class III wildlife license from the Commission to sell a tegu lizard or use it for public exhibition in Florida under the then-applicable regulations. Tegu lizards can be bred to have colors and patterns not typically seen in wild animals. These color and pattern variances are referred to as morphs and examples include anerythrism (lack of red color pigment) and albinism (lack of black color pigment).

45. Green iguanas are lizards that are typically green but can also be found in other

¹⁰ Available at <https://thefloridachannel.org/videos/2-21-19-florida-fish-wildlife-conservation-commission-part-3/>.

colors. Like tegu lizards, green iguanas were not designated as a Conditional Species or Prohibited Species before April 29, 2021, but a person was required to possess a Class III wildlife license to sell green iguanas or display them for public exhibition.

46. Under the Commission's regulations in existence prior to April 29, 2021, appropriately licensed persons could breed green iguanas and tegu lizards using outdoor facilities.

47. Florida's commercial tegu lizard and green iguana industry alone generates between \$7 million and \$12 million in revenue each year, although the Commission has incorrectly represented that the industry generates only \$620,000. *See* Commission Statement on Estimated Regulatory Costs, Dec. 2020, at 11-12.

The Commission's Amendments to Chapter 68-5, Florida Administrative Code

48. The existing regulations have worked, and the Commission did not seek to change these regulations until after the Florida Legislature passed legislation that would largely outlaw the commercial trade of these reptiles.

49. In 2020, the Legislature enacted and Governor DeSantis approved Senate Bill 1414, which amended section 379.372, Florida Statutes, to effectively repeal the Conditional Species program and end the possession of Burmese pythons, reticulated pythons, Nile monitors, green iguanas, and tegu lizards, among others, for commercial use. A Florida circuit court struck SB 1414 as unconstitutional, and no appeal was taken from the order. Order Granting Plaintiffs' Amended Motion for Partial Summary Judgment, *U.S. Ass'n of Reptile Keepers v. Fla. Fish & Wildlife Conservation Comm'n*, No. 2020 CA 001277 (Fla. 2d Cir. Ct. Sept. 24, 2020).

50. Nevertheless, the Commission moved forward with rulemaking that ultimately went beyond what SB 1414 proposed to do.¹¹ Under the Amended Rules, all non-native snakes

¹¹ As explained later, however, the Amended Rules were subsequently modified late in the rulemaking process without explanation to be more restrictive than the 2020 legislation that was invalidated.

and lizards currently part of the Conditional Species program would be moved to the Prohibited Species List. Additionally, tegu lizards and green iguanas would be placed on the Prohibited Species List. As a consequence of these changes, these reptile species may no longer be owned or possessed for commercial use, and Plaintiffs must stop possessing, selling, importing, exporting, and breeding these reptiles, subject to limited exception.

51. The Amended Rules became effective on April 29, 2021.

52. The Amended Rules authorize different grace periods by which existing permittees and licensees must come into compliance. With respect to green iguanas and tegu lizards, certain entities are exempted from the prohibition for a limited period of time, but they are only exempt to breed and sell iguanas and tegus until June 30, 2024. Practically speaking, however, those “exempted” have not been able to continue their activities, as the Amended Rules required those exempted to move all breeding activities, which were outdoors for most breeders, to indoor facilities within 90 days of the effective date of the Amended Rules. Regardless, to the extent those exempted can continue commercial use and possession in some respects, after June 30, 2024, no additional breeding is authorized. Any eggs produced after the date must be destroyed immediately. Fla. Admin. Code R. 68-5.007(4) (effective Apr. 29, 2021).

53. With respect to the other non-native reptile species impacted by the Amended Rules, including but not limited to Burmese pythons, reticulated pythons, and Nile monitors, those permittees impacted had 90 days from the effective date of the Amended Rules to come into compliance. Fla. Admin. Code R. 68-5.007(13) (effective Apr. 29, 2021). Thus, many of the Individual Plaintiffs and USARK Florida members not otherwise exempt from the Amended Rules’ changes have been required to surrender, relocate, or even euthanize their reptiles and stop all commercial use of the affected reptiles by July 28, 2021.

The Commission's Rulemaking Process

54. As noted above, notwithstanding a circuit court's determination that SB 1414 was unconstitutional, the Commission moved forward in promulgating the Amended Rules, which ultimately went beyond what SB 1414 proposed to do. The Amended Rules as initially proposed were published in the Florida Administrative Register on September 14, 2020.

55. The Notice of Proposed Rule the Commission promulgated states:

PURPOSE AND EFFECT: The purpose and effect of these rule drafts is to add new species to the Prohibited species list, create new definitions, establish permitting criteria, provide biosecurity and caging requirements, and clarify the rules related to the Commission's Exotic Pet Amnesty Program. This effort will improve clarity and conciseness and aid in addressing emerging invasive species issues.

(Composite Ex. A at 1.)

56. In September 2020, the Commission published a statement of estimated regulatory costs ("SERC") concerning the Amended Rules in an attempt to estimate their financial impact upon the Commission, the industry, and others, particularly small businesses. *See* § 120.541(2), Fla. Stat. (2007). Per the SERC, the Commission's stated reason for the Amended Rules' "[e]nhanced regulations" was "because of the threats that the Burmese pythons, reticulated pythons, amethystine python[s], scrub pythons, North African pythons, Southern African pythons, green anacondas, Nile monitor lizards, tegus (all species) and green iguanas pose to Florida's ecology, economy or human health and safety." Nowhere did the SERC indicate the Commission's purpose was to eliminate a commercial industry or commercial breeding. A copy of the Commission's September 2020 SERC is attached as **Exhibit B**.

57. The analysis presented in the SERC was largely cursory and superficial. As just one example, the Commission staff preparing the SERC relied on an "internet search" to erroneously estimate the financial impact to the commercial pet trade industry rather than reaching

out to the individuals within the industry who receive annual permits and licenses from the Commission and are thus known to the Commission. (Ex. B at 3.)

58. USARK Florida timely submitted written comments on the SERC to the Commission. A copy of USARK Florida's October 5, 2020 written comments is attached as **Exhibit C**. USARK Florida noted that the SERC largely failed to explain how the Amended Rules would reduce the harms caused by invasive non-native reptile species in Florida, particularly for those species that were established in the state long before the Commission's implementation of the Conditional Species Program in 2007. USARK Florida also observed that of the species affected by the Amended Rules that are not established in Florida, such as reticulated pythons and green anacondas, there are good reasons to doubt they would or could become established. Furthermore, the fact that the Commission had carved out exceptions to allow continued commercial sale and breeding for tegus and green iguanas—but none for reticulated pythons and the other Conditional Species reptiles—underscored the arbitrariness of the Commission's distinctions.

59. USARK Florida also demonstrated, with the support of an economist, that the Commission's SERC did not comport with the Due Process Rule because the SERC failed to provide a good faith estimate of those affected, failed to provide a good faith estimate of the transactional costs to be felt by the industry, and also more generally failed to establish any connection between the Amended Rules and the Commission's regulatory costs. To the last point, the SERC both grossly understated the Amended Rules' impact on the industry and overstated governmental entities' regulatory costs that the Commission suggested would be reduced as a result of the adoption of the Amended Rules.

60. USARK Florida also proposed three lower cost regulatory alternatives ("LCRAs")

that would better accomplish the Commission's stated goal of addressing emerging invasive species issues, while not destroying the reptile industry and the livelihoods of the many individuals and families it supports. Specifically, USARK Florida offered the following LCRAs: (1) continue with the existing regulations of snakes and lizards designated as Conditional Species, green iguanas, and tegu lizards, which had proven successful; (2) add tegu lizards to the Conditional Species List, thereby subjecting them to the same stringent regulations already applicable to reptiles like the Burmese python; or (3) add both iguanas and tegu lizards to the Conditional Species List.

61. USARK Florida also asked the Commission to consider appointment of a technical advisory group as it did with the original Reptiles of Concern regulations in order to craft any rule changes.

62. Finally, in accordance with the Due Process Rule, USARK Florida requested a draw-out hearing, observing that such a proceeding is particularly warranted here because Plaintiffs' substantial interests will be impacted by the Amended Rules.

63. In December 2020, the Commission responded with an "updated" SERC ("Amended SERC") that rejected the LCRAs proposed by USARK Florida and, in doing so, changed the objectives of the Proposed Rules. A copy of the Amended SERC is attached as **Exhibit D**. Instead of addressing USARK Florida's proposed LCRAs within the Commission's original goal of reducing the impacts associated with the reptile species at issue, the Commission rejected each LCRA for the stated reason that the LCRA would not "*eliminate commercial breeding in order to reduce risks to Florida's native species.*" (Ex. D at 15 (emphasis added).) And, notwithstanding the Commission's stated purpose in the Notice of Proposed Rule, the Commission stated in the Amended SERC, "The *purpose* of the proposed rules is to limit

possession and prohibit commercial breeding of high-risk nonnative species in Florida.” (*Id.* at 1 (emphasis added).)

64. This purpose was not provided by the Commission until the Amended SERC. Consequently, the public including Plaintiffs had no reason to know the Commission’s actual purpose was not to prevent harms to wildlife, but to shutter certain commercial breeders until after their opportunity to propose LCRAs was exhausted.

65. The Commission’s response to each of the concerns presented by USARK Florida also amounted to simply a concession that the Commission did not do, and was unwilling to do, any further research into the reptile industry because the Commission’s goal is to eliminate the industry with the enactment of the Amended Rules.

66. By separate letter, the Commission’s General Counsel denied USARK Florida’s request for a draw-out hearing, stating that USARK Florida had not “provide[d] adequate reason to believe that [USARK Florida’s members’] due process rights are not protected in this rule development process.” Indeed, the General Counsel stated that “[a]ll members of the public, including USARK Florida, have had and will continue to have ample opportunity to present their case to the FWC, including Commissioners.” The General Counsel advised that “[i]ndividuals will also be provided an opportunity to speak during the public Commission meeting/hearing.” As will be explained later, this proved to be untrue.¹² A copy of the Commission’s General Counsel’s November 30, 2020 letter denying the request for a draw-out hearing is attached as **Exhibit E**.¹³

67. USARK Florida submitted supplemental comments to the Commission in February

¹² Counsel for USARK Florida asked the Commission’s General Counsel prior to that final public meeting that USARK Florida, and particularly its economic and scientific experts, be provided a reasonable time to address the Commission at the hearing. The General Counsel denied this request.

¹³ Notably, the letter does not indicate that the Commission itself had denied the request or that the General Counsel was authorized to make that decision on behalf of the Commission.

2021, ahead of the Commission’s meeting to consider the Amended Rules, pointing out the concerns outlined above with respect to the Commission’s Amended SERC and rejection of USARK Florida’s proposed LCRAs. USARK Florida also attached written comments prepared by an economist, commenting on the additional shortcomings of the Amended SERC, and a scientist, who opined that the Amended Rules would not further the Commission’s original stated goal of reducing impacts associated with the non-native species at issue. A copy of USARK Florida’s supplemental comments with attachments is attached as **Exhibit F**.

The Commission’s “Risk Summaries”

68. In support of the Amended Rules, the Commission developed species-specific “Risk Summaries” purportedly aimed at helping explain to the Commission and the public the risks posed by the species at issue and why additional regulation was necessary. Commission staff provided the Risk Summaries to the commissioners before they voted on the Amended Rules.

69. But the Commission fails to show through these Risk Summaries, or anything else, that the commercially-bred captive reptile species at issue have caused *actual* ecological impacts, and to the extent the Commission attempts to rely on *potential* ecological impacts, those impacts are misstated or misleading. For example, several of the Risk Summaries prominently rely on a study that has since been walked back by the authors of the study. The non-ecological risks identified by Commission staff such as economic risks and human health and safety risks are not ones the Commission has jurisdiction to evaluate and are also impertinent, misstated, and misleading. For example, the Commission suggests that it spends more than \$3 million annually managing the species at issue, but that amount is overstated, including at least one animal not impacted by the rulemaking and not including any costs at all for many of the species that are impacted.

The Commission's February 25, 2021 Meeting

70. The Commission staff held workshops and some meetings with stakeholders, but was not interested in engaging with stakeholders on how to revise the Amended Rules. Few Commissioners attended the staff hearings and workshops, and even when Commissioners did attend, they only passively listened to comments. The only opportunity at which the public was invited to engage with all of the Commissioners regarding the Amended Rules was the meeting at which the Commission formally considered adopting the already-crafted Amended Rules, held on February 25, 2021 by video conferencing. Plaintiffs and the public were not permitted to attend the meeting in person or by video.

71. After a presentation by staff, the Chairman allotted two hours for public comment, with each commenter given three minutes each to speak. Though the meeting was held as a video conference, where Commissioners and staff were permitted to appear by video, commenters were not permitted to appear by video or in person. Instead, commenters were forced to call into a separate telephone conference line if they wished to offer public comment at the meeting.

72. The public comment portion of the meeting proved chaotic, with numerous technical issues. It was not entirely clear the order in which the Commission took public comment; in some instances, it appears that the Commission may have selected the speakers from which the Commission wanted to hear, including comments taken from multiple representatives of the same association supportive of the Amended Rules, notwithstanding the Commission's claim that public comments are taken on a "first-come, first-serve[d]" basis. Indeed, discovery has shown that the Commission specifically solicited the comment of two "stakeholders" and arranged for them to provide comments at the beginning of the meeting.

73. As examples, the first six callers from whom the Commission took public comment

spoke in support of the Amended Rules. The first caller—a Commission-designated “stakeholder” who spoke in support of the Amended Rules—was permitted to use 6 minutes and 46 seconds for public comment, notwithstanding the fact that speakers were allotted only three minutes.

74. At the end of the two hours originally allotted for public comment, the Chairman announced that going forward, speakers would have only two minutes each in which to make comments.

75. After three hours total had expired, the Commission cut off additional testimony and thereby denied numerous opponents—USARK Florida members and representatives—the opportunity to speak, including but not limited to USARK Florida board members Elizabeth Wisneski and Michael Barrera and scientist and expert Rick Engeman, who intended to offer evidence contrary to the Commission staff’s presentations. It also was not clear how the Commission determined which members of the public would receive the opportunity to speak, as many if not all of the opponents had called in prior to the start of the hearing and waited for their turn as the Commission instructed, a turn that would never come.

76. There was also no opportunity to object to this denial of the opportunity to be heard because the public was not allowed to attend the hearing in person or to attend via video, and interested persons could speak only if their phone line was opened by Commission staff, and there was no way to request that the line be opened in order to register an objection.

77. Notwithstanding that numerous persons had not yet had the opportunity to be heard, the Commission closed the public comment period and voted to approve the Amended Rules.

The March 15, 2021 Notice of Change and Significant Revisions to the Amended Rules

78. On March 15, 2021, the Commission published a Notice of Change in the Florida Administrative Register documenting some significant revisions to Rule 68-5.007. Of most

relevance here, the Commission added late in the process, and after the preparation of the SERC and Amended SERC, two entirely new provisions that, upon information and belief, were not supported by the record of public hearings held on the rules, proposed in response to written material received on or before the date of the final public hearing, or proposed in response to an objection by the Joint Administrative Procedures Committee:

- a. A new prohibition on the outdoor breeding of Prohibited Species—which would include under the Amended Rules green iguanas and tegu lizards (Composite Ex. A at 13 (new Fla. Admin. Code R. 68-5.007(7)(c)3.a.)); and
- b. A new sunset provision for those individuals and businesses allowed to continue commercial use of green iguanas and tegu lizards: under the Notice of Change, and as now in stated in Rule 68-5.007 effective on April 29, 2021, such entities may continue to breed iguanas and tegus only until June 30, 2024 (Composite Ex. A at 11 (new Fla. Admin. Code R. 68-5.007(4)(a)3.)).

79. Under the Amended Rules as originally proposed, those exempted for continued commercial use did not face any sunset on that use and were not prohibited from outdoor breeding. In fact, most iguana and tegu breeding currently occurs outdoors. Practically speaking, it was impossible to come into compliance with these requirements within the allowed timeframe given the inordinate expense required to build large enough indoor facilities to accomplish this breeding, which is permitted for only three more years. The impacts of these changes were not addressed in either the original SERC or the Amended SERC.

80. The Commission filed the Amended Rules for adoption with the Florida Secretary of State on April 9, 2021. The Amended Rules became effective 20 days later, or on April 29, 2021.

The Amended Rules Have Dispossessed Plaintiffs of Their Animals and Destroyed Businesses

81. As a consequence of the Amended Rules, the Individual Plaintiffs and a substantial number of USARK Florida's members will suffer and have suffered irreparable harm. The Individual Plaintiffs and a substantial number of USARK Florida's members have been in compliance with the Conditional Species program and the Commission's other regulations authorizing the possession and commercial use of iguanas and tegus for many years, some for more than a decade. They face the imminent destruction of their animals and businesses. Many will be forced to and have been forced to surrender their reptiles, which in numerous instances include irreplaceable animals that have been specially bred for their genetics over the course of decades. Some owners will be forced to hastily relocate their animals, and may in some instances have no other recourse but to euthanize these animals in an attempt to abide with the Amended Rules. All of the owners will experience a loss of consortium with their unique animals.

82. Shutting an entire industry is not within the jurisdiction of the Commission under the record available to this court. The Plaintiffs' reptiles are all caged or enclosed in some fashion and, thus, not *ferae naturae*. They are pets or personal property under the permanent dominion and control of their owners. *State v. Lee*, 41 So. 2d 662 (Fla. 1949). Moreover, the Commission has failed to prove that as caged, confined and controlled, Plaintiffs' reptiles nevertheless have an impact on *ferae naturae*.

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

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

COUNT I

Declaratory Relief under Article I, Section 9, Florida Constitution The Commission Failed to Afford Procedural Due Process During Rulemaking

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

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

87. Plaintiffs seek a declaration as to the constitutionality and validity of the process by which the Amended Rules were adopted under the Commission's Due Process Rule, the 2007 APA as incorporated into the Due Process Rule, and article I, section 9 of the Florida Constitution.

88. To afford affected individuals procedural due process, the Commission has adopted the Due Process Rule and the 2007 APA in certain respects when promulgating rules derived from constitutional authority.

89. The Commission has agreed to abide by the 2007 APA with respect to "all notices of FWC rule development and rulemaking." Fla. Admin. Code R. 68-1.008(5)(b). Under the 2007 APA, a notice of rule development "shall . . . provide a short, plain explanation of the purpose and effect of the proposed rule." § 120.54(2)(a), Fla. Stat. (2007).

90. Here, the Commission did not make clear until the Amended SERC that its true purpose in promulgating the rules was to eliminate commercial breeding. Because the Commission failed to provide the real purpose of the challenged rules in the Notice of Proposed Rules, neither Plaintiffs nor the public received adequate notice of the purpose and effect of the rules.

91. Under the Commission's Due Process Rule, the Commission has also obligated itself to comply with the 2007 APA in the preparation of SERCs. The failure to comply with these requirements is a material failure to follow the applicable rulemaking procedures or requirements

as set forth in the 2007 APA and the Commission's own Due Process Rule. *See* § 120.541(1)(b), Fla. Stat.

92. Under section 120.541(2), Florida Statutes (2007), a SERC "shall" include certain items, including: a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule; a good faith estimate of the transactional costs likely to be incurred by individuals and entities required to comply with the requirements of the rule; and an analysis of the impact on small businesses.

93. The Commission purportedly prepared a SERC in compliance with these requirements and does not dispute that the Amended Rules will impact small businesses within the meaning of the 2007 APA.

94. The Commission's SERC and Amended SERC, however, fail to contain good faith estimates of those impacted and the transactional costs likely to be incurred, and provides a cursory analysis of the Amended Rules' impact on small businesses. They also failed to address the impacts of the late changes to the Amended Rules made through the March 15, 2021 Notice of Change.

95. A substantially affected person, within 21 days after publication of the rule notice, may submit to an agency a good faith written proposal for a LCRA to a proposed rule that substantially accomplishes the objectives sought by the rule. *See* § 120.541(1)(a), Fla. Stat. Upon the submission of an LCRA, the agency shall revise its prior SERC and either adopt the alternative or give a statement of reasons for rejecting the alternative in favor of the proposed rule. *Id.* § 120.541(1)(b).

96. USARK Florida timely submitted three LCRAs for the Commission's consideration that would substantially accomplish the objectives of the Amended Rules.

97. The Commission rejected these LCRAs for not accomplishing the objectives of the Rules, but did so by improperly changing their objectives. Specifically, the Commission refused to consider the LCRAs on the basis of a previously unnoticed purpose that was not contained in the original Purpose and Effect as stated in the Notice of Proposed Rule. Thus, the Commission did not reject the LCRAs based upon the previously stated objectives in the Notice of Proposed Rule and in the initial SERC.

98. In rejecting the LCRAs, the Commission made clear its true goal: to end the commercial reptile industry, not to address impacts by non-native species in Florida.

99. The Commission should have but failed to adopt one of USARK Florida's LCRAs. At a minimum, proper notice of the real purpose of the challenged rules was essential in these circumstances involving a wholesale philosophical shift in regulation.

100. The Commission has also adopted procedures that provide that "all persons who request an opportunity to speak at a Commission workshop or meeting will be allowed to speak," on a "first-come, first-served" basis. Even when there is a large number of speakers, the Commission's policies state that the Chairman may impose a time limit for all public comment "in order to ensure that all speakers are provided an opportunity to speak within the time allotted for the Commission meeting." Indeed, in denying USARK Florida's request for a draw-out hearing, the Commission stated expressly that "[i]ndividuals will also be provided an opportunity to speak during the public Commission meeting/hearing." There is no authorization to deny persons the opportunity to speak.

101. Not all speakers—including many USARK Florida members and a scientist speaking in opposition to the Amended Rules—who wished to speak at the Commission’s February 25, 2021 meeting were granted an opportunity to speak.

102. By failing to comply with its own public participation policies, the Commission violated its Due Process Rule and consequently failed to provide the procedural due process to which Plaintiffs are entitled.

103. A bona fide dispute exists between Plaintiffs and the Commission as to whether the process by which the Amended Rules were adopted violates the APA, the Commission’s Due Process Rule and other due process procedures, and the constitutional principles of due process.

104. As a result of this dispute, Plaintiffs are in doubt as to whether the Commission may enforce the unconstitutional Amended Rules, as under those Amended Rules, Plaintiffs are now prohibited from keeping, possessing, importing, selling, bartering, trading, and breeding Conditional Species, tegu lizards, and green iguanas for commercial use with limited exception.

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

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

107. Plaintiffs’ rights to keep, possess, import, sell, barter, trade, and breed Conditional Species, tegu lizards, and green iguanas depend upon whether the process by which the Amended Rules were adopted renders them unconstitutional.

108. Plaintiffs are not required to exhaust any administrative remedies because challenges to rules promulgated using the Commission’s constitutional authority may be challenged only in state circuit court. *See* Fla. Admin. Code R. 68-1.008(1), (5)(c).

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

110. The Commission is before this Court by proper process. The Commission, charged with enforcing the Amended Rules, has an adverse and antagonistic interest in the subject matter of this complaint.

COUNT II

Declaratory Judgment under Article I, Section 9, Florida Constitution The Rules Are Arbitrary and Capricious

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

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

113. Plaintiffs seek a declaration as to the constitutionality and validity of the Amended Rules under the Commission's Due Process Rule, the 2007 APA as incorporated into the Due Process Rule, and article I, section 9 of the Florida Constitution.

114. To accord impacted individuals with substantive due process, the Commission has adopted the Due Process Rule and the 2007 APA in certain respects when promulgating rules derived from constitutional authority. Under the Commission's adoption of such procedures, rules may not be arbitrary or capricious and may be directly challenged in circuit court by declaratory and injunctive action. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational.

115. The Amended Rules are arbitrary and capricious and unsupported by logic because the Commission has not shown that the Amended Rules will reduce the impacts associated with non-native reptile species in Florida.

116. The Commission has demonstrated no need to ban the species at issue—particularly those that were already strictly regulated by the Commission's Conditional Species program

requirements—nor has it demonstrated that such a ban will actually address impacts associated with these species in Florida.

117. The Amended Rules are particularly arbitrary in treating some reptiles differently than others. Under the Amended Rules, all commercial use of Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, amethystine pythons, scrub pythons, green anacondas, and Nile monitors must cease on the effective date of the Amended Rules, and affected permittees had only 90 days to come into compliance with the Amended Rules. With respect to green iguanas and tegu lizards, however, the Commission has arbitrarily authorized personal possession in some instances, as well as limited commercial use until 2024 under significantly restrictive conditions with which licensees must comply within a short timeframe after the effective date of the Amended Rules.

118. Additionally, the late revisions made through the Notice of Change prohibiting outdoor breeding, imposing extreme caging requirements, and imposing a three-year sunset on the temporary authorization for continued commercial use of tegu lizards and green iguanas are likewise arbitrary and capricious as there is no demonstrated need for them. Likewise, the costs of these new and unnecessary requirements are so great as to be not worth incurring if they may be in place for only three years.

119. Furthermore, despite the Commission's commitment to follow the "best information available" in adopting rules using constitutional authority, the Commission's rulemaking process reveals that the Commission not only ignored but refused to listen to contrary scientific evidence, including from USARK Florida's expert, who would have testified that the Amended Rules will not accomplish the Commission's stated goal of addressing non-native species' impacts on Florida's ecology, economy, or human health and safety.

COUNT III

Declaratory Judgment under Article IV, Section 9, Florida Constitution The Amended Rules Exceed the Commission's Jurisdiction

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

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

122. Plaintiffs seek a declaration as to the constitutionality and validity of the Amended Rules under article IV, section 9 of the Florida Constitution.

123. The jurisdiction of the Commission is limited by article IV, section 9 of the Florida Constitution, which provides that “[t]he commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.”

124. “Wild animal life” means *ferae naturae*. *State v. Lee*, 41 So. 2d 662 (Fla. 1949).

125. Plaintiffs’ reptiles are caged and confined. Plaintiffs exercise dominion and control over them; therefore, Plaintiff’s reptiles are not *ferae naturae*. Because captive animals, by their nature, do not constitute “wild animal life,” they are not subject to regulation by the Commission. *See Barrow v. Holland*, 125 So. 2d 749, 751 (Fla. 1960) (“Once the animals are legitimately removed from their natural condition and are brought into confinement through private ownership, they cease to be a subject of regulation by appellee Commission.”).

126. Thus, the Commission’s jurisdiction is limited to the regulation of confined animals to the extent they pose adverse impacts to *ferae naturae*. Here, the Commission is without authority to close an industry without demonstrating that doing so is necessary to address adverse impacts to *ferae naturae*.

127. Nevertheless, by adopting the Amended Rules, the Commission has moved to shutter the Plaintiffs’ entire commercial breeding and trading industry without establishing that the Amended Rules will address adverse impacts to *ferae naturae*.

128. Moreover, the Commission also claims jurisdiction over caged animals on the basis of their purported economic and human health and safety risks. But no constitutional authority confers jurisdiction on the Commission to regulate captive animals based on either economic or human health and safety risks. The Commission's constitutional jurisdiction derives exclusively from the state's responsibility to protect, preserve, and promote wild animal life for the use and benefit of the people.

129. A bona fide dispute exists between Plaintiffs and the Commission as to whether the Amended Rules fall within the Commission's constitutional jurisdiction and whether the Commission has demonstrated the necessary adverse impacts to *ferae naturae* in order to promulgate the Amended Rules.

130. As a result of this dispute, Plaintiffs are in doubt as to whether the Commission may enforce the unconstitutional Amended Rules, as under those Amended Rules, Plaintiffs are now prohibited from keeping, possessing, importing, selling, bartering, trading, and breeding Conditional Species, tegu lizards, and green iguanas for commercial use with limited exception.

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

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

133. Plaintiffs' rights to keep, possess, import, sell, barter, trade, and breed Conditional Species, tegu lizards, and green iguanas depend upon whether the Amended Rules are constitutional.

134. Plaintiffs are not required to exhaust any administrative remedies because challenges to rules promulgated using the Commission's constitutional authority may be challenged only in state circuit court. *See* Fla. Admin. Code R. 68-1.008(1), (5)(c).

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

136. The Commission is before this Court by proper process. The Commission, charged with enforcing the Amended Rules, has an adverse and antagonistic interest in the subject matter of this complaint.

COUNT IV

U.S. Const. Amend. XIV, § 1, 42 U.S.C. § 1983 The Commission's Rulemaking Failed to Afford Procedural Due Process

137. Plaintiffs incorporate by reference paragraphs 1-102 as if fully set forth herein.

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

139. Plaintiffs have constitutionally-protected property interests in their businesses and livelihoods, their personal property, and their licenses and/or permits to commercially operate under the Conditional Species Program and with respect to tegu lizards and green iguanas. Under the Amended Rules, most Plaintiffs must stop breeding and selling certain reptiles, depriving them of their businesses and livelihoods, and they have been forced to give up their personal property, their reptiles.

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

141. An agency's failure to follow its own due process rules is a due process violation within the meaning of the U.S. Constitution and § 1983. *See Byle v. Pasco Cty. ex rel. Bd. of Cty. Comm'rs*, 970 So. 2d 366, 367–68 (Fla. 2d DCA 2007).

142. As detailed in above, the process followed by the Commission including its Chairman and Executive Director in adopting the Amended Rules was constitutionally inadequate.

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

144. Plaintiffs are not required to exhaust any administrative remedies because challenges to rules promulgated using the Commission's constitutional authority may be challenged only in state circuit court. *See Fla. Admin. Code R. 68-1.008(1), (5)(c)*.

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

PRAYER FOR RELIEF

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

(A) declare the Amended Rules are unconstitutional under article I, section 9 of the Florida Constitution because the Commission failed to afford procedural due process;

(B) declare the Amended Rules are unconstitutional under article I, section 9 of the Florida Constitution because they are arbitrary and capricious;

(C) declare the Amended Rules are unconstitutional under article IV, section 9 of the Florida Constitution because the Amended Rules exceed the Commission's jurisdiction;

(D) find that the Amended Rules violate procedural due process under 42 U.S.C. § 1983;

(E) enjoin the Commission, and all persons acting under its direction or in concert with it, from enforcing the Amended Rules;

(F) require the Commission, the Chairman, and the Executive Director to afford Plaintiffs due process; and

(G) order such other and further relief as this Court may deem appropriate, including costs as provided in section 86.081, Florida Statutes, and Plaintiffs' attorneys' fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted on May 3, 2022.

HOLLAND & KNIGHT LLP

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Counsel for Plaintiffs

COMPOSITE EXHIBIT A

Notice of Proposed Rule

FISH AND WILDLIFE CONSERVATION COMMISSION

RULE NOS.:RULE TITLES:

- 68-5.002 Definitions
- 68-5.004 Conditional Non-native Species
- 68-5.005 Possession of Conditional Non-native Species
- 68-5.006 Prohibited Non-Native Species
- 68-5.007 Possession of Prohibited Non-Native Species
- 68-5.008 Amnesty for Persons Relinquishing Non-Native Pets

PURPOSE AND EFFECT: The purpose and effect of these rule drafts is to add new species to the Prohibited species list, create new definitions, establish permitting criteria, provide biosecurity and caging requirements, and clarify the rules related to the Commission's Exotic Pet Amnesty Program. This effort will improve clarity and conciseness and aid in addressing emerging invasive species issues.

SUMMARY: These rules establish definitions for terms used in the Chapter, the lists of Conditional and Prohibited species, the criteria for possession of those species, and the Commission's Exotic Pet Amnesty Program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternatives must do so in writing within 21 days of this notice.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: Article IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Sec. 9, Florida Constitution.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: During the Commission's regular meeting December 16-17, 2020, 8:30 a.m. to 5:00 p.m., each day.

PLACE: Communications media technology. More information on how to connect will be available at <http://myfwc.com/about/commission/commission-meetings>.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting the ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kristen Sommers, Section Leader, Wildlife Impact Management Section, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

THE FULL TEXT OF THE PROPOSED RULE IS:

68-5.002 Definitions.

(1) Through (3) No change.

(4) Eradication and Control – a targeted, systematic effort to remove an entire population of a nonnative species or to contain or otherwise manage the population of an invasive species so as to minimize its spread and impacts.

(4) through (11) renumbered (5) through (12) No change.

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

68-5.004 Conditional Non-native Species.

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

(1) Through (3) no change.

(4) Non-native snakes and lizards: None listed at this time.

~~(4) Non-native Snakes and lizards: The following species possessed for personal use by reptile of concern license holders prior to July 1, 2010 may continue in the possession of the owner for the life of the animal. A valid license to possess these animals must be maintained pursuant to section 379.372, F.S.~~

~~(a) Indian or Burmese python (*Python molurus*).~~

~~(b) Reticulated python (*Python reticulatus*).~~

~~(c) Northern African python (*Python sebae*).~~

~~(d) Southern African python (*Python natalensis*).~~

~~(e) Amethystine python (*Morelia amethystinus*).~~

~~(f) Scrub python (*Morelia kinghorni*).~~

~~(g) Green anaconda (*Eunectes murinus*).~~

~~(h) Nile monitor (*Varanus niloticus*).~~

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

68-5.005 Possession of Conditional Non-native Species.

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

(1) through (5) No change.

(6) Research involving conditional species:

(a) No change.

~~(b) All research involving conditional species shall be conducted according to the provisions of subsections (1)-(5) above. paragraphs (3)(c)-(e) above.~~

(c) through (d) No change.

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

68-5.006 Prohibited Non-native Species.

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

(1) through (4) No change.

(4) Non-native reptiles:

(a) Yellow anaconda (*Eunectes notaeus*).

(b) Beni anaconda (*Eunectes beniensis*).

(c) DeSchauensee's anaconda (*Eunectes deschauenseei*).

(d) Brown tree snake (*Boiga irregularis*).

(e) Indian or Burmese python (*Python molurus*).

(f) Reticulated python (*Python reticulatus*).

(g) Northern African python (*Python sebae*).

(h) Southern African python (*Python natalensis*).

(i) Amethystine python (*Morelia amethystinus*).

- (j) Scrub python (*Morelia kinghorni*).
- (k) Green anaconda (*Eunectes murinus*).
- (l) Nile monitor (*Varanus niloticus*).
- (m) Green iguana (*Iguana iguana*)
- (n) Tegus (genera *Salvator* and *Tupinambis*, all species)
- (5) No change.

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

The following is a substantial rewording of 68-5.007, F.A.C.

68-5.007 Possession of Prohibited Non-native Species

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

(1) Exhibition of Prohibited Species:

(a) Eligibility:

1. A permit for educational exhibition of Prohibited species shall only be issued to public aquaria, zoological parks, or public exhibitors.

2. Permits shall not be issued to entities operating at private residences.

(b) Applicants for permits to possess Prohibited species for educational exhibition in accordance with this section shall submit a completed Conditional/Prohibited/Nonnative Species Permit application form [Form Number] available at [hyperlink] which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

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

1. Only male sea snakes may be possessed.

2. A public aquarium, zoological park, or public exhibitor possessing sea snakes shall not be located in a coastal county and shall have no contiguous connection with any waters of the state.

3. Each public aquarium, public zoological park, or public exhibitor possessing sea snakes shall provide quarterly reports to the Commission regarding the number of each species of sea snakes on the premises and any changes in inventory resulting from death or additions by importation.

4. Each public aquarium, zoological park, or public exhibitor possessing sea snakes shall post with the Commission a \$1 million letter of credit. The letter of credit shall be in favor of the State of Florida, Fish and Wildlife Conservation Commission, for use by the Commission to remove any sea snake accidentally or intentionally introduced into waters of the state. The letter of credit shall be written in the form determined by the Commission. The letter of credit shall provide that the zoological park or aquarium is responsible for the sea snakes within that facility and shall be in effect at all times that the zoological park or aquarium or public exhibitor possesses sea snakes.

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

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

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

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

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

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

(b) Applicants for permits to possess Prohibited species for research use in accordance with this section shall submit a completed Conditional/Prohibited/Nonnative Species Permit application form [Form Number] available at [hyperlink] which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

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

(d) General security measures and containment:

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

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

3. All research on captive Prohibited terrestrial wildlife species shall be conducted in indoor facilities in cages or other confinement facilities that prevent escape, unless otherwise authorized by the Commission.

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

(3) Eradication and Control

(a) Applicants for permits to possess Prohibited species for eradication and control purposes in accordance with this section shall submit a completed Conditional/Prohibited/Nonnative Species Permit application form [Form Number] available at [hyperlink] which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

(b) Permits for eradication and control projects involving the release of Prohibited species for telemetry projects

1. Eligibility: Permits shall only be issued to a principal investigator who is a faculty member of a college or university, is affiliated with an accredited institution, or is a member of a federal, state, county, or tribal agency.

2. Written proposal: A detailed proposal shall be submitted with the permit application and shall state with particularity the management objectives, methodology and duration, and shall outline planned safeguards to ensure proper containment and recovery of all specimens. An annual record of progress toward the project objectives shall be maintained, and such written proposal and record of progress shall be available for inspection upon request of Commission personnel.

(c) All animals removed under a permit for eradication and control shall be humanely killed, except green iguanas and tegus removed by persons in possession of a valid commercial use of green iguanas and tegus permit pursuant to subsection (4) below.

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

(4) Commercial Use of Green Iguanas (*Iguana iguana*) and Tegus (genera *Salvator* and *Tupinambis*, all species):

(a) If a person, firm, or corporation held a valid captive wildlife class III exhibition or sale license on January 1, 2020, and documented an inventory of green iguanas or tegu lizards on his or her or its 2019 application, the Commission may authorize that person, firm, or corporation so as to allow them to continue to exhibit, sell, or breed green iguanas or tegu lizards commercially for as long as the license remains active. Such status is void upon any

license transfer or lapse. The person, firm, or corporation may only sell such inventory of green iguanas or tegu lizards outside of this state and may not import the species into this state.

(b) Applicants for permits to possess green iguanas or tegus for commercial use purposes in accordance with this section shall submit a completed Conditional/Prohibited/Nonnative Species Permit application form [Form Number] available at [hyperlink] which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

(c) Permitted commercial users shall submit an annual report at the conclusion of each license period detailing the following:

1. The seller name, seller license number, source of each animal, recipient name, recipient location, species common name, species scientific name, and quantity sold for each sale or transfer.

2. Reports shall be submitted by email to NonnativePermitApps@MyFWC.com or by mail to the Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, Wildlife Impact Management Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600, within 90 days of permit expiration or upon application for permit renewal, whichever is precedent.

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

(5) Personal Possession of Prohibited Species:

(a) Eligibility:

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

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

3. Permits may only be granted to persons in lawful possession of such species prior to the species' listing as Prohibited for the remainder of the life of the animal. No additional individuals may be acquired. If the animal remains alive following the death or dissolution of the licensee, the animal may be legally transferred to another entity holding a permit authorizing possession of the animal for the remainder of the life of the animal.

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

(b) Permit qualifications:

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

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

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

(6) Caging and Biosecurity

(a) Inspections:

1. Permittees and applicants applying to possess captive Prohibited species shall be inspected by Commission personnel or an authorized representative of the Commission prior to issuance of a permit. Scheduled and unannounced inspections to ensure general security measures are followed may be conducted at any time during the permit and/or application period. Commission personnel shall determine whether the Prohibited species are securely, properly and safely housed. In the event that any Prohibited species are not securely, properly and safely housed, Commission personnel shall report the situation in writing to the person authorized to possess or exhibit such

Prohibited species. Failure of the possessor or exhibitor to correct the situation within 30 days after such written notice shall be grounds for revocation of the permit.

2. Refusal of inspection shall result in denial of permit application or revocation of existing permit.

(b) Prohibited species maintained for exhibition purposes shall only be exhibited from within approved enclosures. Prohibited species shall not be exhibited in any mobile exhibitions.

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

(d) Captive Prohibited terrestrial species shall be maintained in indoor facilities in cages that prevent escape and public contact.

(e) Captive Prohibited reptile species shall be maintained in indoor facilities in safe, secure, and proper housing in cases, cages, or enclosures of the following specifications:

1. Enclosures shall be structurally sound and constructed using the following authorized materials: plate glass of at least one-eighth (1/8) inch thickness, break-resistant or injection molded plastic of similar strength, concrete reinforced with wire, sheet metal, one-quarter (1/4) inch or smaller woven or welded wire mesh (hardware cloth), molded fiberglass, plywood or solid wood (excluding materials constructed of lumber by-products such as oriented strand board (OSB), medium density fiberboard (MDF) and melamine) that has been treated to be impervious to moisture and is not less than one-half (1/2) inch in thickness, or other materials which provide equivalent stability and security against escape and unauthorized intrusion. Enclosures equipped with tracks holding sliding panels shall have the tracks secured with screws or rivets and enclosure design shall be escape-proof for the species contained therein. Enclosures and doors to enclosures shall be secured. The doors of each enclosure shall be securely locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion.

2. Enclosures shall be equipped with a double doored safety entrance. For the purposes of this rule, a safety entrance is defined as a protected, escape-proof area that can be entered by a keeper and prevents escape of Prohibited reptiles from secondary containment. Any components constructed of lumber byproducts such as oriented strand board (OSB), medium density fiberboard (MDF), and melamine shall be no less than one-half (1/2) inch in thickness, shall not be directly exposed to weather and shall be constructed, covered, coated or treated to be impervious to moisture.

3. A room may contain Prohibited reptile species in cages that are not locked provided that such a room is equipped with a safety entrance as described in subparagraph 68-5.007(5)(e)2. above and locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion, is inaccessible to unauthorized personnel, is constructed and maintained as to be escape-proof, and has been inspected and approved as conforming to these rules by Commission personnel prior to use.

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

(g) All permittees shall develop a safe handling protocol establishing requirements for all caretakers to follow regarding biosecurity and safety. All individuals associated with a facility authorized to possess Prohibited reptile species shall demonstrate knowledge of facility requirements and secure handling protocols for Prohibited species as established by the permittee.

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

1. For snakes, implantation shall be in the rear one-third (1/3) of the snake, forward of the anal plate.

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

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

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

hours of acquisition and maintained in the possessor's records for as long as the specimen is possessed. Such reports shall be submitted by email to NonnativePermitApps@MyFWC.com or by mail to the Wildlife Impact Management Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

(i) Transporting:

1. Prohibited reptile species shall be transported only after placement in a closely woven, double-seam sewn, cloth sack. This cloth sack shall be placed in a second cloth sack of similar construction, which shall be placed in a secure, locked container. Said containers shall be prominently labeled "Dangerous Reptiles."

2. Placeholder for transport requirements for other taxa groups.

(7) Record Keeping and Reporting

(a) Record Keeping: Persons possessing Prohibited species shall maintain an accurate record of all changes in inventory including births, deaths, acquisitions, sales and transfers of all Prohibited species. Such records shall be kept on the permitted premises on a Prohibited Species Inventory Report Form (form number), available at (hyperlink) which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600. Such records shall be available for inspection upon request by Commission personnel at all times.

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

2. Records of acquisition shall include the date of acquisition; quantity and species of reptiles acquired; method of identification and unique passive integrated transponder (PIT tag) number, if applicable, for each specimen; name and complete address of supplier; and Prohibited species permit number of supplier where applicable.

3. Transfer: Prohibited species may be transferred to persons authorized to possess Prohibited species. Such transfers must be accompanied by a completed Prohibited Species Inventory Report Form (form number). This form shall be signed by the originator upon shipment and by the recipient upon receipt and shall list the common name, scientific name, and quantity of each species in transport; name and address of the originator and recipient; Prohibited species permit number of the recipient; if the shipment originates within Florida, the Prohibited species permit number of the originator.

(b) Reporting:

1. Persons exhibiting or selling live Prohibited reptiles in accordance with section 379.304, F.S., shall complete a Prohibited Species Inventory Report Form (form number) and submit same to Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600, upon annual renewal of permit and six months thereafter.

2. Persons permitted for eradication and control of Prohibited species shall submit a report to the Commission quarterly detailing the number, common and scientific name, location (longitude and latitude), date of removal, and final disposition of each animal.

(c) Any escape or unauthorized release of Prohibited species shall be reported immediately to the Commission, and escape or release shall constitute grounds for revocation of the permit to possess Prohibited species.

(8) Critical Incident and Disaster Plan:

(a) Applicants for permits to possess Prohibited species as authorized pursuant to the provisions of this chapter shall document in writing a course of action to be taken in preparation for disasters or critical incidents. Such course of action shall be documented on the Captive Wildlife Critical Incident/Disaster Plan form FWCDLE 619 (06/09) available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-10436> which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, Wildlife Impact Management Section 620 South Meridian Street, Tallahassee, Florida 32399-1600. This form shall consist of two parts. Part A of form FWCDLE 619 shall be submitted at the time of initial application or renewal; and Part B shall be submitted at the time of initial application or renewal and retained in the permittee's files at the facility location and be made available for inspection upon request of Commission personnel and the director of the local emergency management agency for the county where the facility is located.

(b) No later than 24 hours prior to the National Weather Center's projected onset of hurricane-force winds of Category 3 or greater, all Prohibited reptiles shall be placed individually in a closely woven, double-seam sewn,

cloth sack. This cloth sack shall be placed in a second cloth sack of similar construction, which shall be placed in a secure, locked container. Persons authorized to possess Prohibited reptiles shall report their critical incident preparation status to their local FWC Captive Wildlife Investigator prior to the onset of critical conditions.

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

(10) Prohibited reptiles shall not be bred, except by permitted facilities for educational exhibition at Association of Zoos and Aquariums-accredited institutions, research, or qualifying commercial use purposes. Any other males and females of a Prohibited species shall be caged separately, unless the individual animals have been spayed, neutered, or otherwise sterilized.

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

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

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

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

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

(2) Any person relinquishing or adopting ~~nonnative non-native~~ fish or wildlife through the Commission's Exotic Pet Amnesty Program pursuant to this rule is hereby deemed not to be in violation of the permit requirement of subsection 68A-6.008(2), F.A.C. 68A-6.0023(7), F.A.C.

(3) All adoptions occurring pursuant to this rule shall be reported to and approved by the Commission's Exotic Pet Amnesty Program before the surrendered animals may be accepted by the adopter. Any facility accepting wildlife pursuant to this rule must be an approved adopter with the Program and possess any required captive wildlife license(s), pursuant to Chapter 68A-6, F.A.C., and any other applicable licenses or permits.

~~(4)(3)~~ Relinquishing reptiles of concern, or ~~Prohibited eonditional~~ snakes and lizards.

(a) Persons with a valid license to possess or exhibit reptiles designated as reptiles of concern after July 1, 2010, may accept reptiles of concern as defined in subsection 68A-6.017(1), F.A.C., 68A-6.007(1), F.A.C. through the Commission's Exotic Pet Amnesty Program from persons who have not obtained a permit from the Commission for possession of such reptiles without violating the provisions of subsection 68A-6.008(2), F.A.C., 68A-6.0023(7), F.A.C., which prohibits the buying, selling or transferring of wildlife to or from an unpermitted entity within Florida.

(b) Persons authorized to possess ~~Prohibited eonditional~~ snakes and lizards may accept ~~Prohibited eonditional~~ snakes and lizards listed in subsection 68-5.004(4), F.A.C., 68-5.006(4), F.A.C., surrendered through the Commission's Exotic Pet Amnesty Program from persons who have not obtained a permit from the Commission for possession of such conditional snakes and lizards without violating the provisions of subsection 68A-6.008(2), F.A.C., 68A-6.0023(7), F.A.C., which prohibits the buying, selling or transferring of wildlife to or from an unpermitted entity within Florida.

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

(d) Any person relinquishing or accepting reptiles of concern, or ~~eonditional~~ Prohibited snakes and lizards, under this subsection is authorized to make such transfer and is not in violation of the prohibitions on buying, selling or transferring contained in subsection 68A-6.008(2), F.A.C. 68A-6.0023(7), F.A.C.

(e) Persons accepting unpermitted reptiles of concern, or ~~conditional~~ Prohibited snakes or lizards, under this subsection must otherwise comply with all permit conditions and Commission rules, specifically including provisions in rules 68A-6.017, 68A-6.0171, 68A-6.0172, 68A-6.0173, and 68-5.007, F.A.C. ~~68A-6.007, 68A-6.0071, and 68A-6.0072, F.A.C.~~

~~(5)~~(4) State and county wildlife control agencies may accept nonnative ~~non-native~~ fish and wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife or persons with the appropriate permit. Such animals shall be reported to the Commission's Exotic Pet Amnesty Program and to be placed with approved adopters through the program.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Kipp Frohlich, Director, Division of Habitat and Species Conservation.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 7, 2020.

Notice of Change/Withdrawal

FISH AND WILDLIFE CONSERVATION COMMISSION

RULE NO.: RULE TITLE:

68-5.007 Possession of Prohibited Non-Native Species

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 46 No. 179, September 14, 2020 issue of the Florida Administrative Register.

68-5.007 Possession of Prohibited Non-native Species.

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

(1) Exhibition of Prohibited Species:

(a) Eligibility:

1. A permit for educational exhibition of Prohibited species shall only be issued to public aquaria, zoological parks, or public exhibitors.

2. If a person, firm, or corporation held a valid captive wildlife class III exhibition or sale license on June 30, 2020, and documented an inventory of green iguanas or tegus on his or her or its 2018 or 2019 license application or indicated planned possession of green iguanas or tegus on his or her or its 2018 or 2019 license application, the Commission, upon receipt of a completed permit application, shall authorize that person, firm, or corporation to continue to exhibit green iguanas or tegu lizards for as long as the person, firm, or corporation maintains an active permit.

a. Such status is void upon any permit transfer or lapse.

b. The person, firm, or corporation may not import green iguanas or tegus into this state.

c. Public exhibitors without a facility that is open to the public during normal business hours must show proof of a minimum of 12 educational engagements equating to a minimum of 48 hours of public exhibit contact time annually. This proof shall be available for inspection at all times and must include venue, venue address, date of exhibit, exhibit times, number of public participants and advertisement or invitation information.

3. Permits shall not be issued to entities operating at residential properties ~~private residences~~, except that:

a. The Commission may authorize applicants or permittees that qualify for a permit under subparagraph 68-5.007(1)(a)2., to operate at a residential property.

b. If a person, firm or corporation held a valid captive wildlife license to exhibit Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, scrub pythons, amethystine pythons, green anacondas, or Nile monitors prior to these species becoming listed as Prohibited and documented the species in their inventory on their 2019 or 2020 captive wildlife license application, the Commission may authorize that person, firm or corporation to continue to operate at a residential property. Public exhibitors must show proof of a minimum of 12 educational engagements equating to a minimum of 48 hours of public exhibit contact time annually. This proof shall be available for inspection at all times and must include venue, venue address, date of exhibit, exhibit times, number of public participants and advertisement or invitation information.

c. Only individual animals possessed by the applicant or permittee prior to the species' listing as Prohibited may continue to be possessed under this exception. No additional specimens of those species may be acquired under this exception.

(b) through (d) No change.

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

(a) Eligibility: The Commission may issue permits authorizing possession of Prohibited species for scientific or conservation purposes which will benefit the eradication and control potential of the species. For the purposes of this rule, a scientific or conservation purpose shall mean activities that further the understanding of the biology of the species, impacts the species may have on Florida's ecology, economy, or human health and safety, and collection of scientific data needed for control and management of the species. The following factors shall be considered in

determining whether there is a scientific or conservation purpose: A permit for research involving Prohibited species shall be issued only to a principal investigator who is a faculty member of a college or university, is affiliated with an accredited institution, or is a member of a federal, state, county, or tribal agency.

1. Whether the purpose for which the permit is required justifies the risk of maintaining the species;
2. Whether the permit would conflict with any program intended to enhance survival of native species;
3. Whether the purpose of the permit would likely reduce the presence of nonnative species in the wild;
4. Whether the probable direct or indirect effects on native wildlife, habitat, and the economy posed by issuing the permit are justified by the benefits of the research;

5. The opinions or views of scientists or other persons or organizations having expertise concerning the species sought to be possessed or planned research methodology; and

6. Whether the expertise, facilities, or other resources available to the applicant are adequate to successfully accomplish the objective stated in the application.

(b) through (e) No change.

(3) Eradication and Control

(a) No change.

(b) Permits for eradication and control projects involving the release of Prohibited species for telemetry projects

1. Eligibility: Permits shall only be issued to a principal investigator who is a faculty member of a college or university, is affiliated with an Association of Zoos and Aquariums or Zoological Association of America accredited institution, or is a member of a federal, state, county, or tribal agency.

2. No change.

(c) All animals removed under a permit for eradication and control shall be humanely killed, ~~except~~ Green iguanas and tegus removed by persons in possession of a valid commercial use of green iguanas and tegus permit pursuant to subsection (4) below shall be maintained by the permittee for commercial sale under the provisions of that permit, transferred to other entities permitted under subsection (4) below, or humanely killed.

(d) All Prohibited species eggs encountered during permitted eradication and control activities shall be destroyed in place and shall not be removed intact from the nest location.

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

(4) Commercial Sales Use of Green Iguanas (*Iguana iguana*) and Tegus (genera *Salvator* and *Tupinambis*, all species):

(a) If a person, firm, or corporation held a valid captive wildlife class III exhibition or sale license on ~~June 30, January 1, 2020~~, and documented an inventory of green iguanas or tegus lizards on his or her or its 2018 or 2019 license application or indicated planned possession of green iguanas or tegus on his or her or its 2018 or 2019 license application, the Commission, upon receipt of a completed permit application, shall ~~may~~ authorize that person, firm, or corporation so as to allow them to continue to exhibit, sell, or breed green iguanas or tegu lizards commercially for as long as the person, firm, or corporation maintains an active permit ~~the license remains active~~.

1. Such status is void upon any permit license transfer or lapse.

2. The person, firm, or corporation may only sell such inventory outside of this state and may not import green iguanas or tegus the species into this state.

3. Such entities may only continue to breed green iguanas or tegus until June 30, 2024. After that date, no additional breeding of green iguanas or tegus will be authorized. Males and females shall be caged separately after that date. Proof of sex for each individual shall be made available upon request by Commission personnel. Any eggs produced after June 30, 2024 shall be destroyed immediately.

(b) Applicants for permits to possess green iguanas or tegus for commercial sales use purposes in accordance with this section shall submit a completed Conditional/Prohibited/Nonnative Species Permit application form FWC WIM 05 (12/20){Form Number} available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-12804> [hyperlink] which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

(c) Permitted commercial sales users shall submit an annual report at the conclusion of each license period detailing the following:

1. The seller name, seller license number, source of each animal, recipient name, recipient location, species common name, species scientific name, date of sale or transfer, and quantity sold for each sale or transfer.

2. Reports shall be submitted by email to NonnativePermitApps@MyFWC.com or by mail to the Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, Wildlife Impact Management Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600, within 90 days of permit expiration or upon application for permit renewal, whichever is precedent.

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

(5) Personal Possession of Prohibited Species:

(a) Eligibility:

1. Reptiles of Concern: persons with a valid license to possess Reptiles of Concern for personal use may continue to possess those animals in accordance with the provisions of that license and Chapter 68A-6, F.A.C. Prohibited reptile species shall only be permitted to be possessed for personal use in accordance with section 379.372, F.S.

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

3. Permits may only be granted to persons in lawful possession of such species prior to the species' listing as Prohibited for the remainder of the life of the animal. No additional specimens ~~individuals~~ may be acquired. If the animal remains alive following the death or dissolution of the licensee, the animal may be legally transferred to another entity holding a permit authorizing possession of the same species animal for the remainder of the life of the animal.

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

(b) Permit qualifications:

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

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

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

(6) Inspections Caging and Biosecurity

~~(a) Inspections:~~ 1. Permittees and applicants applying to possess captive Prohibited species may ~~shall~~ be inspected by Commission personnel or an authorized representative of the Commission prior to issuance of a permit. Scheduled and unannounced inspections to ensure general security measures are followed may be conducted at any time during the permit and/or application period. Commission personnel shall determine whether the Prohibited species are securely, properly and safely housed. In the event that any Prohibited species are not securely, properly and safely housed, Commission personnel shall report the situation in writing to the person authorized to possess or exhibit such Prohibited species. Failure of the possessor or exhibitor to correct the situation within 30 days after such written notice shall be grounds for revocation of the permit.

~~(b) 2.~~ Refusal of inspection shall result in denial of permit application or revocation of existing permit.

~~(b) Prohibited species maintained for exhibition purposes shall only be exhibited from within approved enclosures. Prohibited species shall not be exhibited in any mobile exhibitions.~~

(7) Caging and Biosecurity

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

~~(b)(d)~~ Captive Prohibited terrestrial species shall be maintained in facilities in cages or other confinement facilities that prevent escape and public contact, except as follows:

1. Prohibited reptile species used for mobile exhibition outdoors shall be exhibited from within locked enclosures and shall not be free-handled or have public contact.

2. Prohibited reptile species used for mobile exhibition indoors may be exhibited from within locked enclosures or free-handled by the exhibitor or an employee handler. For the purposes of this section, free-handling is defined as a situation in which an exhibitor or employee handler maintains control, possession, and supervision of the animal with no public contact. For the purposes of this section, indoors is defined as inside a room or building where all windows and doors are closed to prevent escape to the outdoor environment; indoors does not include tents or other non-permanent structures.

~~(c)(e)~~ Captive Prohibited reptile species shall be maintained in ~~indoor~~ facilities in safe, locked-secure, and proper housing in cases, cages, or enclosures of the following specifications:

1. Enclosures kept indoors shall be structurally sound and constructed using the following authorized materials: plate glass of at least one-eighth (1/8) inch thickness, break-resistant or injection molded plastic of similar strength, concrete reinforced with wire, sheet metal, one-quarter (1/4) inch or smaller woven or welded wire mesh (hardware cloth), molded fiberglass, plywood or solid wood (~~excluding materials constructed of lumber by-products such as oriented strand board (OSB), medium density fiberboard (MDF) and melamine~~) that has been treated to be impervious to moisture and is not less than one-half (1/2) inch in thickness, or other materials which provide equivalent stability and security against escape and unauthorized intrusion. Materials constructed of lumber by-products such as oriented strand board (OSB), medium density fiberboard (MDF) and melamine shall not be used for indoor enclosures. Enclosures equipped with tracks holding sliding panels shall have the tracks secured with screws or rivets and enclosure design shall be escape-proof for the species contained therein. Enclosures and doors to enclosures shall be locked secured. The doors of each enclosure shall be securely locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion.

2. A room or outbuilding may contain indoor Prohibited reptile species enclosures, provided that such a room or outbuilding is equipped with a safety entrance as described in subparagraph 68-5.007(7)(c)3. below and locked by a device operated by a key, combination lock, key card, or other locking device approved by the Commission to prevent unauthorized intrusion, is inaccessible to unauthorized personnel, is constructed and maintained as to be escape-proof, and has been inspected and approved as conforming to these rules by Commission personnel prior to use. If a viewing panel is used as a portion of an exterior wall, such panel shall be constructed of a minimum of one-quarter (1/4) inch thick, tempered, safety glass. Viewing panel shall not serve as an access point.

3. Outdoor enclosures shall be topped with a close-meshed wire or equivalent barrier. ~~2. Enclosures shall be equipped with a double doored safety entrance. For the purposes of this rule, a safety entrance is defined as a protected, escape-proof area that can be entered by a keeper and prevents escape of Prohibited reptiles from secondary containment. Lumber~~ Any components constructed of lumber byproducts such as oriented strand board (OSB), medium density fiberboard (MDF), and melamine shall not be used for outdoor enclosures. Outdoor enclosures shall be inspected and approved as conforming to these rules by Commission personnel prior to use be no less than one-half (1/2) inch in thickness, shall not be directly exposed to weather and shall be constructed, covered, coated or treated to be impervious to moisture.

3. ~~A room may contain Prohibited reptile species in cages that are not locked provided that such a room is equipped with a safety entrance as described in subparagraph 68-5.007(5)(e)2. above and locked by a device operated by a key, combination lock, key card or other locking device approved by the Commission to prevent unauthorized intrusion, is inaccessible to unauthorized personnel, is constructed and maintained as to be escape-proof, and has been inspected and approved as conforming to these rules by Commission personnel prior to use.~~

a. Prohibited reptile species shall not be bred in outdoor enclosures. No clutches shall be laid or maintained in outdoor enclosures and no births shall occur in outdoor enclosures. No juveniles shall be reared in outdoor enclosures unless the individual animal has been marked with a unique PIT tag, in accordance with paragraph 68-

5.007(7)(f), below.

b. Prohibited reptile species shall not be maintained in outdoor enclosures unless the individual animal has been marked with a unique PIT tag, in accordance with paragraph 68-5.007(7)(f), below.

c. The floors of outdoor enclosures shall be of concrete or masonry block construction at least two (2) inches in thickness. Sides shall be constructed of concrete at least eight (8) inches in thickness, with a minimum height of four (4) feet above the floor of the enclosure.

d. The corners of outdoor enclosures shall be designed or guarded to prevent the escape of reptiles by climbing.

e. All landscaping of outdoor enclosures shall be arranged to ensure that vegetation or other structures do not allow for the escape of reptiles.

f. All outdoor enclosures shall be equipped with shelter which is continuously available and sufficient to cover the body mass of all animals housed within such enclosure.

g. If a viewing panel is used as a portion of an exterior wall of an outdoor enclosure, such panel shall be constructed of a minimum of one-quarter (1/4) inch thick, tempered, safety glass. Viewing panel shall not serve as an access point.

h. Facilities with outdoor enclosures housing Prohibited reptiles shall have 180 days from the date the species is listed as Prohibited to bring such enclosures into compliance with the requirements listed in subsubparagraphs 68-5.007(7)(c)3.a.-g. above.

4. Each enclosure housing Prohibited reptiles shall be accurately, visibly and clearly marked with a label stating "Prohibited Reptile;" identifying the species contained therein by common and scientific name; and displaying the PIT tag number of the specimen(s) within, if applicable. A label as described above shall accompany the Prohibited reptile when it is removed from the enclosure. Prohibited reptile identification labels shall be removed from empty enclosures.

5. All enclosures shall meet the minimum standard caging size requirements as specified in Rule 68A-6.01214, F.A.C.

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

(e)(g) All permittees shall develop a safe handling protocol establishing requirements for all caretakers to follow regarding biosecurity and safety. All individuals associated with a facility authorized to possess Prohibited reptile species that may be in contact with or provide care for such Prohibited reptile species shall demonstrate knowledge of facility requirements and secure handling protocols for Prohibited species as established by the permittee.

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

1. For snakes, implantation shall be in the rear one-third (1/3) of the snake, forward of the anal plate. All snakes over ½ inch diameter must be PIT tagged. Any snake not meeting this size requirement must be housed indoors until it is PIT tagged and reported to the FWC.

2. For lizards, implantation shall be in the body cavity in close proximity to and forward of a rear leg, or in a rear leg. All lizards over 5 inches snout-to-vent length (SVL) must be PIT tagged. Any lizard not meeting this size requirement must be housed indoors until it is PIT Tagged and reported to the FWC.

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

4. Records of identification including PIT tag number where applicable, along with information about the specimen being identified (species, PIT tag number, sex gender, and age) must be provided to the Commission within 7 days 72 hours of acquisition and maintained in the possessor's records for as long as the specimen is possessed. Such reports shall be submitted by email to NonnativePermitApps@MyFWC.com or by mail to the Wildlife Impact Management Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

5. Persons with a permit to sell green iguanas or tegus in accordance with subsection (4) above shall mark all green iguanas or tegus with a unique PIT tag prior to sale.

(g)(i) Transporting:

1. Prohibited reptile species shall be transported only after placement in a closely woven, double-seam sewn,

cloth sack. This cloth sack shall be placed in a second cloth sack of similar construction, which shall be placed in a secure, locked container. Said containers shall be prominently labeled "Prohibited Dangerous Reptiles."

2. Placeholder for transport requirements for other taxa groups.

~~(8)~~ (7) Record Keeping and Reporting

(a) Record Keeping: Persons possessing Prohibited species shall maintain an accurate record of all changes in inventory including births, deaths, acquisitions, sales and transfers of all Prohibited species. Such records shall be kept on the permitted premises on a Prohibited Species Inventory Report Form FWC WIM 06 (12/20) (~~form number~~), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-12805> (~~hyperlink~~) which is adopted and incorporated herein by reference. Forms may also be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600. Such records shall be available for inspection upon request by Commission personnel at all times and shall be maintained for three (3) years.

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

2. Records of acquisition shall include the date of acquisition; quantity and species of reptiles acquired; method of identification and unique passive integrated transponder (PIT tag) number, if applicable, for each specimen; name and complete address of supplier; and Prohibited species permit number of supplier where applicable.

3. Sales and Transfers: Prohibited species may be transferred between permitted to persons that are authorized to possess Prohibited species for educational exhibition, research, or qualifying commercial use. Such transfers must be accompanied by a completed Prohibited Species Inventory Report Form FWC WIM 06 (12/20) (~~form number~~), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-12805>. This form shall be signed by the originator upon shipment and by the recipient upon receipt and shall list the common name, scientific name, and quantity of each species in transport; name and address of the originator and recipient; Prohibited species permit number of the recipient; if the shipment originates within Florida, the Prohibited species permit number of the originator.

(b) Reporting:

1. Persons exhibiting or selling live Prohibited reptiles in accordance with section 379.304, F.S., shall complete a Prohibited Species Inventory Report Form FWC WIM 06 (12/20) available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-12805>, (~~form number~~) and submit same to Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Tallahassee, Florida 32399-1600, upon annual renewal of permit and six months thereafter.

2. Persons permitted for eradication and control of Prohibited species shall submit a report to the Commission ~~quarterly~~ detailing the number, common and scientific name, location of removal (longitude and latitude), date of removal, and final disposition of each animal. Reports shall be submitted upon annual renewal of permit and six months thereafter.

(c) Any escape from primary enclosures or unauthorized release of Prohibited species shall be reported immediately to the Commission by contacting the local FWC Law Enforcement dispatch center. Failure to report an escape or release shall constitute grounds for revocation of the permit to possess Prohibited species.

~~(9)~~(8) Critical Incident and Disaster Plan:

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

(b) No change.

(9) through (10) renumbered (10) through (11) No change.

~~(12)~~(10) Prohibited reptiles shall not be bred, except as follows:

(a) ~~By~~ by permitted facilities for educational exhibition at Zoological Association of America- or Association of Zoos and Aquariums-accredited or certified institutions, research, or qualifying commercial use purposes as described in subsection 68-5.007(4) above.

(b) Permit applicants seeking authorization to breed Prohibited reptiles for research or educational exhibition purposes in accordance with this section shall submit a detailed proposal explaining the conservation value of breeding such species. Such proposal shall be reviewed and approved by Commission personnel prior to any Prohibited reptile breeding activity occurring at the facility.

(c) Any other males and females of a Prohibited species shall be caged separately, unless the individual animals have been spayed, neutered, or otherwise sterilized. If a permitted facility cannot determine the sex of an animal, that individual shall be caged separately.

~~(12)~~(11) No change.

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

Florida Fish and Wildlife Conservation Commission
Statement of Estimated Regulatory Costs of Proposed Changes to
Chapter 68-5, F.A.C.
September 2020

Executive Summary

In the July 2020 Florida Fish and Wildlife Conservation Commission (FWC) meeting, Commissioners directed staff to publish draft rules in Chapter 68-5 F.A.C. that address high-risk nonnative snake and lizard species. The proposed rules address possession, containment and reporting requirements of these species, along with providing limited exceptions to those members of the public that may currently possess green iguanas or tegus as personal pets or for license holders with verified commercial sales business activities in these species. After consideration of the factors outlined in 120.541 Florida Statutes (2007) in a Statement of Estimated Regulatory Costs, the FWC concluded that there may be costs to small businesses with the adoption of the proposed changes. However, these costs are outweighed by the impact that these high-risk species pose in Florida.

Introduction

Invasive nonnative species are those that are not native to an area, whose introduction would likely result in establishment of a reproducing population and cause harm to the economy, environment and/or human health. Invasive nonnative species are considered the second most significant threat to biodiversity in the United States, after habitat loss (Wilcox et al. 1998). Unlike other regions of the United States, Florida's subtropical climate and extensive natural habitats create an environment where many nonnative species survive and often thrive. Florida has gained notoriety for becoming home to a variety of unwanted and damaging species including pythons; large lizards, such as tegus, monitors and iguanas; many freshwater fish species; and marine species, such as lionfish. The species included in proposed changes to Chapter 68-5, F.A.C. either have a history of impacts in the State of Florida or are likely to have an impact should they be released and become established in Florida.

Most invasive fish and wildlife in Florida were established through the escape or intentional release from the pet trade (Hardin 2007, Krysko et al. 2016). Wildlife trade is one of the largest and most complex commercial exchanges in the world, and the Port of Miami is one of the top three areas in the U.S. that receives wildlife imports. Over 224 million individual animals are imported into the United States each year. The trade in wild animals has also been increasing; the number of declared animal shipments has doubled since 2000. Between 1999-2010 over 12 million wild caught reptiles from elsewhere in the world were imported into the U.S. and of these over 9 million reptiles were imported through Florida ports alone. In addition to Florida's role in importing wildlife, there is a significant and economically robust trade in Florida revolving around breeding and selling many species of animals, both to customers in the state and across the U.S. and international markets.

Despite current regulations, FWC's Captive Wildlife program and an expanding Nonnative Fish and Wildlife Program, Florida continues to experience impacts from nonnative fish and wildlife that escape captivity. Prevention tools such as alternatives to releasing pets into the wild are

helpful. However, it is not enough when facing potential impacts from the volume and diversity of species that are coming into Florida annually.

Impacts:

Burmese pythons, reticulated pythons, amethystine python, scrub pythons, Northern African pythons, Southern African pythons, green anacondas, Nile monitor lizards, tegus (all species) and green iguanas are a threat to Florida's ecology, economy or human health and safety. The large constrictor snakes identified in the draft rule changes are known to have or are likely to have ecological impacts in Florida. For example, Burmese pythons are currently established in South Florida where they have adverse impacts on Florida's ecology. Burmese pythons' broad diet of mammals, birds, reptiles and other items (Snow et al. 2007, Dove 2011) poses significant adverse impacts to Florida's native wildlife, including some threatened and endangered species. Due to their large size and reports of captive pythons injuring or killing humans, many members of the public also perceive these animals as a human health and safety threat that may equate to decreased recreational activity in Florida and ultimately a loss of tourism (Eason et al. 2018). Green iguanas are known to have ecological impacts such as disturbing burrowing owls (McKie et al. 2005) and may impact gopher tortoises and egret nesting sites (Arendt 1986). Green iguanas also known to adversely impact native plant communities. In addition to ecological impacts, iguanas are known to damage seawalls, water control structures, dams, levees, and canals creating a potential threat of flooding that may ultimately lead to significant costs to repair the damage (Sementelli et al. 2008). Nile monitors are known to be aggressive and injurious, and impact native fish and wildlife. Similarly, tegus are causing ecological harm to the Florida ecosystem by preying upon plants, eggs and insects (Mecolli and Yanokey 1994, Keifer and Aaima 2002, Barraco 2015) and are known to consume alligator and turtle eggs in Florida (Mazzotti et al. 2015). Tegus have also been documented occupying gopher tortoise burrows and consuming juvenile gopher tortoises, a threatened species in Florida (FWC data).

Costs of Control and Management:

The costs of controlling and reducing the impact of invasive fish and wildlife is substantial. In 2005, the costs of invasive species were documented to be over \$120 billion per year in the US (Pimental et al. 2005) and have likely risen in the last 15 years. Florida land managing partners documented over \$8 million in expenditures on invasive fish and wildlife in the area of Everglades restoration in 2013. The FWC alone spends more than \$3,000,000 annually on direct efforts related to regulation, prevention, control, and removal statewide and most of these resources are focused on tegus, green iguanas, pythons, lionfish, and Nile monitor lizards. "Managing invasive species is costly for multiple groups from the federal, state, and local levels. For example, tegu management costs in Florida for the FWC and seven of its partners totaled \$576,317, \$778,317, and \$828,092 in fiscal years 2014–2015, 2015–2016, and 2016–2017, respectively. That represents a total investment of \$2,182,726 across those three fiscal years." (Eason et al. 2018) Costs to address Burmese pythons across three agencies (USFWS, FWC and the South Florida Water Management District) was estimated at over \$2M in FY 2019/20. Python management control costs for FWC are also summarized in Table 1.

Many of the costs to control for the presence of these invasive reptiles are not paid for by the FWC but rather by other government agencies or members of the public. State and Federal

agencies spend millions of dollars to repair water control structures damaged or undermined by burrowing iguanas or Nile monitors (e.g. see <https://www.palmbeachpost.com/news/20200120/iguanas-not-just-nuisance-these-lizards-contributed-to-18m-repair-bill-in-west-palm>, over \$1.8 M repairs in West Palm Beach, FL). U.S. Army Corps of Engineers and the South Florida Water Management District spend federal and state dollars to repair water control structures. Homeowners or businesses frequently contact nuisance control operators to remove iguanas that are impacting landscape plants or undermining seawalls, costing the homeowner or businesses sometimes thousands of dollars, particularly if substantial damage has been sustained. The removal of iguanas from an area tends to be temporary as new iguanas move back in, making consistent and ongoing removal efforts necessary, at repeat costs to homeowners and businesses. Overall, the costs for managing, removing, controlling and addressing the impacts of the species proposed in the draft regulation is millions of tax dollars a year that are shared by local, state and federal agencies, along with additional direct costs to private individuals and businesses. In 2005, the costs of invasive species were documented to be over \$120 billion per year in the U.S. (Pimentel et al. 2005) and have likely risen in the last 15 years.

“Our data suggest that one of every three introduced herpetofaunal species becomes established in Florida. This is greater than the one of every four for most introduced vertebrates worldwide (Wilson 2016). Furthermore, we see no evidence that the increase in numbers of herpetofaunal introductions is slowing down.” (2016 Krysko et al. *New Verified Nonindigenous Amphibians and Reptiles in Florida through 2015, with a Summary of over 152 Years of Introductions.*)”

The above management costs are the result of previous releases and escapes of animals in trade. These management costs are expected to increase over time if more releases and escapes of these species occur. Additional regulation of these species that are part of live animal trade may reduce future expenditures to address management of these species should additional releases occur.

“The most common introduction pathway for nonnative species in Florida is through escapes or releases of captive animals. “Of the 180 non-native reptiles and amphibians that have been introduced into Florida, at least 85% arrived via the pet trade with at least 25% of the source of the introduction coming from likely one animal importer during the time period of 1995-2015 (2016 Krysko et al. *New Verified Nonindigenous Amphibians and Reptiles in Florida through 2015, with a Summary of over 152 Years of Introductions.*)”

Table 1. FWC Python Management and Control Expenditures for Fiscal Year 15/16- 19/20.

<u>Fiscal Year</u>	Research	Management	Dedicated FWC OPS personnel	Dedicated FWC FTE personnel	<u>Total budget spent on pythons per FY</u>
15/16	\$78,000.00	\$48,375.00	\$88,000.00		\$214,375.00
16-17	\$436,640.06	\$72,984.47	\$62,693.36		\$572,317.89
17-18	\$47,647.52	\$84,292.00	\$77,326.39		\$209,265.91
18-19	\$4,000.00	\$158,075.79	\$107,737.00		\$269,812.79
19-20	\$203,143.00	\$330,872.00	\$194,438.00	\$44,507.00	\$772,960.00

Total	\$769,430.58	\$694,599.26	\$530,194.75	\$44,507.00	\$2,038,731.59
<u>Note:</u> these expenditures are only for the Wildlife Impact Management Section's portion of the agency budget allocated to python control and management and do not include other Sections' budget (e.g. law enforcement) or full-time employees that are not 100% dedicated to Python Management and Control					

Draft Rule Summary

Enhanced regulations are necessary because of the threats that the Burmese pythons, reticulated pythons, amethystine python, scrub pythons, Northern African pythons, Southern African pythons, green anacondas, Nile monitor lizards, tegus (all species) and green iguanas pose to Florida's ecology, economy or human health and safety. The Florida Fish and Wildlife Conservation Commission (FWC) determined that the specific changes proposed to the rules in Chapter 68-5 F.A.C. regarding invasive nonnative reptiles are warranted based on these assessments. FWC staff have proposed rule changes across six rules to reduce the risk that some species of invasive lizards and snakes pose to the state of Florida. Draft rules address importation of these high-risk reptile species to limit species imported into the State, and limits possession to permitted facilities engaged in public exhibition, research, or eradication or control activities. Draft rule language provides limited exception to commercial sale entities that have documented commercial sale business with green iguanas or tegus; the draft rule also provides existing pet owners of these newly listed species free permitting options to keep their pets for the life of the animal. Draft rules outline additional provisions, reporting requirements for permittees, biosecurity requirements to limit escape of these high-risk species, and changes to the Pet Amnesty rule. A summary of the proposed rule changes are outlined in Table 2.

Because small businesses may be affected by a change in the classification of these species, FWC developed a Statement of Estimated Regulatory Costs (SERC).

Table 2. Current and proposed regulatory status of species in draft rule. Changes in *italics*.

Common Name	Current Rule Summary	Proposed Rule Summary
Burmese Python Reticulated Python Scrub Python Amethystine Python Northern African Python Southern African Python Green Anaconda Nile Monitor	<ul style="list-style-type: none"> - FWC Authorization is required to possess these species for commercial import/export businesses, public exhibition, or research. - No possession is allowed for personal pets (after 2008). - All license holders are required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species. 	<ul style="list-style-type: none"> - FWC Authorization is required to possess these species for public exhibition, research, and <i>control or management</i>. - <i>Breeding and importation are not allowed unless authorized to possess the species for specific uses.</i> - No possession is allowed for personal pets (after 2008). - All license holders are required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species.
Green Iguana Tegus (all species)	<ul style="list-style-type: none"> - No permit is required to possess green iguanas or tegus as personal pets. - Businesses that commercially use green iguanas or tegus for sale or exhibition must be licensed. - Applications for license and renewals require a list of all species of Class III wildlife that a business plans to have or has in current inventory. 	<ul style="list-style-type: none"> - <i>FWC Authorization is required to possess these species for public exhibition, research, and control or management.</i> - <i>Breeding and importation are not allowed unless authorized to possess the species for specific uses.</i> - <i>Limited exceptions for businesses that had documented inventory in their 2019 applications for commercial use to continue breeding and selling those documented species. All those authorized to possess these species will be required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species.</i> - <i>No possession is allowed for personal pets after July 1, 2020.</i> - <i>People who had these species as pets may apply for no-cost permit for the life of that animal.</i>

Results

The suite of changes to Chapter 68-5, F.A.C. must be considered together to assess actual economic impacts. Most of these revisions are interrelated because they involve changing species from one regulatory status to another and provide additional provisions to offer regulatory certainty on how the change in regulatory status will be implemented. The proposed changes to Rule 68-5.008, F.A.C. Amnesty for Persons Relinquishing Non-native Pets is estimated to have no regulatory cost and is not included in this analysis.

Required Components

Section 120.541(2), F.S. (2007) identifies seven components that must be included in a SERC. Each of these components is addressed below.

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

Commercial Sales

Licenses are currently required to possess species included in the proposed rule change. The proposed revisions to Chapter 68-5 would likely impact up to 232 FWC License holders that currently hold conditional snakes and lizards. The 121 license holders who had verified business activity in tegus and green iguanas in 2019 will be able to continue some commercial use; however, the sale of tegus and green iguanas in Florida will be prohibited.

Public Exhibitors

The definition of “public exhibition” is the same for both Conditional and Prohibited species License holders are held to the same minimum requirements and standards. Moving Conditional snakes and lizards to the Prohibited list as proposed in draft rule should not impact those parties who are currently legally possessing these species as public exhibitors, except for meeting any additional biosecurity and caging requirements for prohibited species. Some exhibitors of tegus and green iguanas may be impacted and may need to remove these regulated animals from the exhibition if they do not meet the definition of “public exhibition” as listed in Rule 68-5.001 F.A.C. Those that do meet the definition of “public exhibition” may have additional costs if their housing and caging do not meet standards in rule to ensure animals do not escape.

Control and Eradication Specialists/Trappers

Currently there is a robust nuisance wildlife trapping business model in Florida. This is not an activity that is licensed in Florida, however many of the nuisance control businesses in South Florida will remove iguanas, and tegus to a lesser extent. Entities that work in this trade will need to comply with no-cost permitting requirements for transportation and ensure they contain tegus and iguanas to prevent escape during removal activities.

Pet Owners

Owner of pet tegus or green iguanas have not previously been required to have a permit from FWC for personal possession of their animals, but may incur costs to uniquely tag their animals as part of permitting requirements. It is uncertain the number of people who will be impacted by this change, although likely in the thousands. Impacts are expected to be minimal and with little economic costs because individuals will be allowed to keep their pets with a no-cost pet permit.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

Costs to the FWC will include additional staff resources to review permit applications, issue permits, and rehome additional pets through the Pet Amnesty program and additional law enforcement staff time to enforce the rule changes. Additional OPS Staff costs are over \$55,000/year. The proposed rule changes will have no effect on local or state revenues. The cost of control of these species is high as described earlier so over time the proposed changes should reduce state and local government expenditures to remove and manage these species.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

All costs and revenues reported in this report and the documents used to prepare this report are good faith estimates of these transactional costs.

For the regulated public, there are no costs associated with permit applications or licenses. However, additional costs may be incurred to comply with the increased marking, housing and other biosecurity required to contain these invasive high-risk reptiles. Per animal costs could range from \$30-300 per animal for marking, and an unknown cost per license holder to appropriately house or transport these animals. Nuisance wildlife trappers and others will need to apply for no-cost permits so there may be a time-related cost to apply.

Cities and counties currently are paying for many of these species to be removed from their properties because of the impacts they have on water control structures, sea walls, etc. These costs can be in the millions of dollars every year. Cities and Counties will not incur costs because of the proposed changes, but over time may see a decrease in costs because these species are no longer allowed in trade in Florida.

(d) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined by s. 120.52.

Many of the businesses currently selling conditional species or green iguanas and tegus employ fewer than 200 employees or earn under \$5 million in sales and therefore qualify as small businesses. The proposed limitations on the breeding and sale will have a negative impact on these businesses. However, many reptile species that do not pose an ecological risk are traded within and from Florida, allowing for a shift in the business model to species that are legally traded. Most of these businesses do not deal exclusively in the animals covered in the proposed rule changes and will be able to absorb the difference in inventory by selling other species. Exhibitors that may not meet qualifications as a public exhibitor as defined in current Chapter 68-5.001, F.A.C. or that will not meet housing requirements for these high-risk invasive reptiles have many alternative species of reptiles to use in exhibits.

Factors considered were:

- Commercial sales
 - The commercial breeding and sale of conditional lizards and snakes was estimated by assessing the volume of trade in calendar year 2019. Active licenses during that time period were examined for information provided by the license holders on births, deaths, acquisitions and transfers as required in the 6-month inventory report. The reporting requirements are a requirement of the license. Draft rule language would cease the commercial breeding and sale of Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, green anacondas, amethystine pythons, scrub pythons and Nile monitor lizards.
 - The number of Class III licenses that authorized the breeding and sales of all species of tegus or green iguanas were examined that were active in calendar year 2019. Inventory reporting is only required at the time of license application or renewal, and unlike the conditional reptiles, there is no required submission of information on births, deaths, acquisitions or transfers. Estimates were only made based on the information available provided by licensees at the time of initial application or renewal. Limited exceptions for commercial use have been provided in draft rule language to allow for those verified, legal businesses that have documented the sale or possession of these species to allow the continued trade of these species. This exception is limited to out of state sales and species cannot be sold in the state as personal pets.
- Exhibition
 - The definition of “public exhibition” is the same for both Conditional and Prohibited species. License holders are held to the same minimum requirements and standards. Moving conditional snakes and lizards to the Prohibited list as proposed in draft rule should not impact those parties who are currently legally possessing these species as public exhibitors, outside of any additional factors listed below in housing and biosecurity.

- Parties that currently use tegus or iguanas for public exhibition may not qualify under the draft criteria, which requires that a facility provides educational exhibits as defined in Chapter 68-5 F.A.C. It is uncertain how many of the Class III license holders currently authorized for this activity for these species may no longer be authorized to exhibit these animals under proposed changes.
- Increased housing requirements and biosecurity
 - Permits will not be issued for public exhibition in private residences.
 - Indoor enclosures are constructed to meet specifications outlined in the draft rule to prevent escape.
 - Double-doored safety entrances or as otherwise outlined with locking devices are used to prevent unauthorized intrusion.
 - Transportation of animals will need to adhere to containment and security measures to ensure that no escape occurs.
- Marking of animals
 - Conditional reptiles are currently required to be permanently PIT tagged so there are no increased costs for marking conditional lizards and snakes.
 - Under draft rules, entities provided limited exception licenses to continue in the business of commercial use of tegus or green iguanas would need to permanently mark all animals in trade, whether breeding at their facility or taken from the wild. This could increase the total cost to the business through marking additional animals; however, it is likely that this increased cost would be passed onto the consumer.
 - Private owners of tegus and green iguanas that held these animals prior to rule changes are required to apply for a no-cost pet permit for the life of the animal. Permit requirements require that any animal kept through this exception will be permanently and uniquely marked for identification purposes.

Results:

Commercial Sales:

In 2019, 232 licenses were active with one or more of the “conditional reptiles” on their inventory report forms. These reports forms are required to be submitted every six months: 6-month point after issuance, and at 12 months upon reapplication for a license. Information provided by the license holders includes births, deaths, acquisitions (in and out of state) and sales or transfers (in and out of state). This required data was used to determine volume of trade in one year. Based on an internet search conducted on August 4-6, 2020, average costs and a range of costs for each of the animals along is included in Table 3.

A Class III license allows for the sale or exhibition of reptiles that are otherwise not regulated. A November 2019 review of all Class III license holders and their required inventory report forms found 382 license holders listed that may sell iguanas, with 5,307 in reported inventory. Tegus were listed on 106 Class III licenses with 1,245 individuals in reported inventory. Of both groups of license holders (both iguanas and tegus), 121 license holders had a verified inventory for sale of one of these two species. These entities will have an opportunity to apply for limited

exception permits to continue that activity, however, will not be able to sell these animals as pets within Florida. An additional 76 license holders stated on their 2019 inventory that they planned to potentially possess either green iguanas or a species of tegu. Because the license holders for tegus or green iguanas are not required to provide information on acquisitions or sales, the economic loss for those license holders that sell these species currently listed as Class III reptiles was not estimated.

The proposed revisions to Chapter 68-5 F.A.C. may impact some businesses that sell or trade these species. For many of these entities the impact will be minimal. The volume of trade in conditional constrictor reptiles is currently low, and those businesses that have verified commercial use in tegus or green iguanas have an opportunity to apply for limited exception permits that will allowed some continued commercial use.

Exhibition

As mentioned above, most of the exhibitors that exhibit species currently listed as “conditional” will be able to continue that activity. The increase in costs may include additional materials for caging and biosecurity. For tegus and green iguanas, an unknown number of exhibitors may no longer qualify to exhibit these species if they do not meet the definition of “public exhibition” in Rule 68-5.001 F.A.C. or exhibit in private residences. For those that will continue to qualify as public exhibitors of green iguanas or tegus, additional costs may be incurred to conform with additional caging and biosecurity measures required to contain these high-risk species.

Table 3: Estimated economic impact to businesses in Florida that commercially sell Conditional Snakes and Lizards (based on 2019 required reporting on volume and species)

Species	*Total number of licenses with Authorization for this reptile	Total number of license holders selling or transferring species	**Total Sales or transfers (in and out of state)	Total Sales Low Cost Based on Web Search (\$/animal)	Total Sales High costs based on Web Search (\$/animal)
Burmese python***	89	17	55	\$9,625 (\$175)	\$33,000 (\$600)
Reticulated python***	161	27	309	\$54,075 (\$175)	\$200,850 (\$650)
African pythons***	94	1	1	\$175 (\$175)	\$650 (\$650)
Amethystine/Scrub pythons***	45	4	44	\$12,100 (\$275)	\$28,600 (\$650)
Green anaconda***	116	3	21	\$4,200 (\$200)	\$31,500 (\$1500)
Nile monitor	98	6	1445	\$26,010 (\$18)	\$289,000 (\$200)
Total Number of Licenses for any Conditional Reptile 2019	232		Total Sales Revenue	\$106,185	\$583,600

* Many licenses have more than one authorization

** Costs per animal based on a web search conducted in August 2020 of entities that sell these species. High costs were the highest price of an individual animal. Low cost was the lowest normal cost per animal found online. When possible, prices were taken from current licensed individuals in Florida.

***Species listed by USFWS as "Injurious" could not be traded across state lines until a court hearing changed the interpretation of the Lacey Act in April 2017.

(e) Any additional information that the agency determines may be useful.

Although there are documented costs to some businesses, other factors that the agency considered are the ecological impacts, human health and safety risks and economic impacts to the state and its constituents in controlling impacts of non-natives. Ecological impacts of the species addressed in the draft rule are outlined in the Introduction of this document. Non-native reptiles currently established in Florida have known ecological impacts to native wildlife, including endangered and threatened species. Many of the species of large constrictor snakes proposed for further regulation have had limited trade because of prohibitions to trade these species across state lines under a former interpretation of the Lacey Act. These species include Burmese pythons, Northern African pythons, Southern African pythons, green anaconda, reticulated pythons, scrub pythons and amethystine pythons. Under the Lacey Act, species on the Injurious Wildlife Species List (Injurious Wildlife) are considered a risk to the United States and cannot be imported without a permit from the United States Fish and Wildlife Service (USFWS). Until recently, certain provisions of the Lacey Act were also interpreted to prohibit interstate transport of Injurious wildlife. In April 2017, the D.C. Circuit Court held the plain language of the statute does *not* prohibit transport of Injurious Wildlife between states within the continental United States. Other prohibitions and regulatory measures of the Act, including disallowing importation, still apply. The changes in the Lacey Act interpretation created additional markets for these animals. Regulating these species now before captive populations are increased in Florida in response to new markets elsewhere minimizes the impact to industry and reduces the threats of potential releases in Florida. Through our examination of the required data from those with commercial use licenses, the breeding and sale of these species is currently low in volume with few license holders breeding or selling these animals.

Managing invasive species is costly for multiple groups from the federal, state, and local levels. For example, tegu management costs in Florida for the FWC and seven of its partners totaled \$2,182,726 across those three fiscal years. The ecological and economic costs to manage and control invasive fish and wildlife is greater than the potential economic impact to the few entities that currently have businesses that utilize these species in commercial trade and may be impacted from these proposed rule changes.

(f) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternatives or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

To be completed after the 21-day period that alternatives may be submitted.

Summary

Some small businesses may be impacted by the proposed changes to Chapter 68-5 F.A.C.; however, the environmental, social and economic impacts to Florida and its citizens outweighs the limited impacts to small businesses. Few businesses trade in what are currently listed as conditional snakes and lizards as noted above. The proposed rule language provides an opportunity for those entities documented to commercially sell tegus and green iguanas to continue that activity.

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October 5, 2020

Via Email

Commissioners
Florida Fish and Wildlife Conservation
Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600
(850) 487-3796
Commissioners@MyFWC.com

Re: Notice of Proposed Rule Changes to Florida Administrative Code Chapter 68-5 and
Associated Statement of Estimated Regulatory Costs

Dear Commissioners:

We represent the United States Association of Reptile Keepers Florida, Inc. (“USARK Florida”), a not-for-profit 501(c)(6) trade organization based in Florida. On behalf of USARK Florida, we submit this letter in order to: (1) provide written comments on the proposed amendments to Florida Administrative Code Rules 68-5.002, 68-5.004, 68-5.005, 68-5.006, 68-5.007, and 68-5.008 (collectively, the “Proposed Rules”); (2) provide written comments on the statement of estimated regulatory costs (“SERC”) for the Proposed Rules; (3) propose lower cost regulatory alternatives (“LCRAs”) to the Proposed Rules; (4) request the appointment of a technical advisory group—as was used in the establishment of the Conditional Species regulations—and to authorize negotiated rulemaking; (5) request a draw out proceeding; and (6) request a public hearing.

USARK Florida represents and promotes the reptile industry. Its goals and objectives are to facilitate cooperation between government agencies, the scientific community, and the private sector in order to produce policies that will effectively address live animal husbandry and conservation issues. Hundreds of USARK Florida members keep, possess, import into the state, sell, barter, trade, and breed reptiles, including Burmese pythons, reticulated pythons, green iguanas, and tegu lizards, subject to proper licensure and permitting by the Commission under its existing regulations. As a consequence, USARK Florida and its members will be substantially affected by the adoption of the Proposed Rules.

I. WRITTEN COMMENTS REGARDING THE PROPOSED RULES

The Proposed Rules would prohibit the commercial trade of certain reptile species. The Florida Fish and Wildlife Conservation Commission's (the "Commission") stated purpose for the Proposed Rules is to "improve clarity and conciseness and aid in addressing emerging invasive species issues." But the Proposed Rules will not accomplish these goals. Moreover, it is clear that the adoption of the Proposed Rules will have significant industry impacts.

For more than a decade, the Commission has regulated Florida's commercial reptile industry in part through the Conditional Species program (formerly called Reptiles of Concern), under which many USARK Florida members have possessed, sold, imported, exported, and bred certain reptile species—including but not limited to the Burmese python, reticulated python, and Nile monitor—for commercial use, subject to permitting and stringent regulation by the Commission. The Conditional Species regulations were the product of a technical advisory group that brought together the Commission and various stakeholders, including industry representatives, to craft comprehensive regulations designed to foster a responsible commercial reptile trade. Under these regulations, Conditional Species permitholders are subject to regular inspection and must ensure they maintain escape-proof enclosures and facilities, meet other structural facility minimums, microchip their animals, and report each and every birth, death, acquisition, sale, and transfer, among other requirements. These species are also prohibited from being kept as pets. As the Commission's architect of the Reptiles of Concern regulations reasoned, the Commission's "risk-based regulations . . . (1) prohibit the unauthorized release of any non-native species; (2) restrict possession of species that pose substantial environmental or economic risks, or harm to human health; and (3) permit possession of species not deemed to present significant consequences to native fish and wildlife"; the Commission's stated position at the time was that a regulated reptile industry was preferable to underground traffic.¹

The Commission has also long authorized the ownership and possession of green iguanas and tegu lizards for commercial use. Although not subject to the Conditional Species regulations, the Commission has required those engaged in the commercial sale of iguanas and tegus to maintain Class III licensure and meet certain minimum requirements.

Many USARK Florida members have built entire businesses around breeding and selling Conditional Species, green iguanas, and tegu lizards, as well as the services and products that go along with those species. Under the Commission's Conditional Species regulations in particular, building such businesses has required substantial financial investments in order to meet the caging, facility, and related requirements of those regulations. Further, although the Commission continually describes this industry as "small"—something USARK Florida disputes—what the Commission fails to recognize is that many of those impacted are small family businesses for whom the breeding and sale of these reptiles are everything.

As just examples, Renee and Anthony Caporale have a small family business breeding and

¹ Scott Hardin, *Managing Non-native Wildlife in Florida: State Perspective, Policy and Practice*, Managing Vertebrate Invasive Species, USDA National Wildlife Research Center Symposia at 43 (2007).

selling pythons, including reticulated pythons, dwarf reticulated pythons, and Burmese pythons. The species impacted by the Proposed Rules greatly vary in price, often based on the rarity of the snake or lizard. The Caporales have a specific type of dwarf reticulated python of which there are probably less than 20 found within the United States. The Caporales have plans to breed a one-of-a-kind dwarf reticulated python that may garner up to \$200,000 each. In reliance on the Commission's existing regulations, the Caporales moved to Florida in 2019 and have invested hundreds of thousands of dollars to start their business. Chris Cannarozzi is another USARK Florida member whose business it almost entirely focused on breeding and selling reticulated pythons. The Proposed Rules would ruin his business.

Rian Gittman is a USARK Florida member whose business depends in part on the sale of green iguanas and tegu lizards. Mr. Gittman has a breeding farm where he specially breeds tegu lizards with non-natural colors; these tegus are unique and highly sought after. Mr. Gittman has invested close to \$1 million over the past three to four years in improving his property and the facilities used for his breeding farm. If the changes in the Proposed Rules are made, Mr. Gittman will lose that investment and be forced to lay off more than a dozen employees at his breeding farm and retail business.

In addition to the investment of dollars, the breeding of the species affected by the Proposed Rules also represents a significant investment of time and effort by individuals and families in raising and nurturing these animals.

By all accounts, the existing regulations are working, and the Commission did not seek to change these regulations until after the Florida Legislature passed 2020 SB 1414. Indeed, the Proposed Rules are virtually identical to Section 3 of 2020 SB 1414, which recently has been declared unconstitutional.²

The animating force behind the Proposed Rules appears to be the idea that outright prohibition of commercial use of the affected species (with limited exception) may alleviate harms caused by invasive nonnative species in Florida. In the SERC, the Commission claims that the "species included in [the] proposed changes . . . either have a history of impacts"—which USARK Florida disputes—"in the State of Florida or are likely to have an impact should they be released and become established in Florida." (SERC at 1.) But it is difficult to see—and the SERC does not show—how the Proposed Rules would actually reduce the invasive species populations already established in Florida.

As the Commission must concede, the horse has already left the barn, so to speak, with respect to some of the species at issue. Indeed, as shown in the following chart, several of the species were introduced and established in Florida long before the Commission enacted the

² Order Granting Plaintiffs' Amended Motion for Partial Summary Judgment, *U.S. Ass'n of Reptile Keepers v. Fla. Fish & Wildlife Conservation Comm'n*, No. 2020 CA 001277 (Fla. 2d Cir. Ct. Sept. 24, 2020).

regulations concerning Conditional Species.³

Species Common Name	Year Introduced in Florida	Year Established in Florida
Burmese python	1979	1980s
Reticulated python	1989	not established
Northern African python	2002	2000s
Green anaconda	2004	not established
Nile monitor	1981	1990s
Green iguana	1964	1960s
Argentine black & white tegu	2002	2000s
Red tegu	2007	not established
Gold tegu	1990	2000s

As Krysko and his co-authors acknowledge at the beginning of their study, “[i]n most instances, once introductions have been allowed to establish, ***no amount of money or effort can change the situation.***”⁴ The creation of the Conditional Species program in 2007 did not result in the establishment of any of the above-listed species in Florida. In fact, no species has become established in Florida after placement on the Conditional Species list. By the same token, the elimination of that program with respect to reptiles will not change the fact that some of the listed species are already established in Florida.⁵

For those species affected by the Proposed Rules that are not established in Florida, there are good reasons to doubt they would or could become established. The reticulated python and green anaconda, for instance, even if previously found in the wild in Florida, are physiologically and geographically unable to reproduce and establish wild populations. As the Commission’s staff recognized in their July report to the Commission on the Proposed Rules, while reticulated pythons and green anacondas may have been observed in the wild in Florida, they are “not breeding.”⁶ No not-yet-established reptile species designated as a Conditional Species has become established in Florida in the 13 years the program has been in effect. This shows that the existing Conditional

³ The information provided in this chart is sourced from Kenneth L. Krysko, et al., *New Verified Nonindigenous Amphibians and Reptiles in Florida through 2015, with a Summary of over 152 Years of Introductions*, IRCF Reptiles & Amphibians 23(2):110-143 (Aug. 2016).

⁴ Krysko, et al., *supra*, at 111 (emphasis added) (quoting Fred Kraus).

⁵ It is also questionable whether commercial dealers were ever the culprit. As Mr. Hardin recognized in his 2007 study, “[a]lthough anecdotal evidence suggests dealers have released inventories to establish source populations, ***the majority of introductions have resulted from release of pets by owners.***” Hardin, *supra*, at 43 (emphasis added).

⁶ Florida Fish and Wildlife Conservation Commission, Presentation, Enhancing Regulations of Invasive Reptiles, Slide 11 (July 23, 2020), <https://myfwc.com/media/24090/8a-presentation-reptileregulations.pdf>; see Krysko, et al., *supra*, at 2 (equating establishment with reproduction).

Species program has worked.

The Commission's staff has speculated that the lack of establishment in Florida by certain of these species during this time is a consequence of federal rules adopted under the Lacey Act in 2012 and 2015, which barred the *inter*state transport of certain species until 2017. In the SERC, the Commission suggests that making these changes under the Proposed Rules "now before captive populations are increased in Florida . . . minimizes the impact to industry and reduces the threats of potential releases in Florida." (SERC at 12.) This ignores, however, that each of the species impacted by these federal rules adopted in 2012 and 2015, including the Burmese python and reticulated python, were introduced in Florida long before then, so the suggestion that the Proposed Rules now will minimize impacts is unsupported by the evidence. Moreover, these federal rules did not apply to all of the reptile species on the Conditional Species list and did not affect *intra*state sales and breeding, and the federal rules were in effect for only part of the time in which the Conditional Species program has been in effect. As such, the changes to the Lacey Act have nothing to do with the fact that no reptile species listed as a Conditional Species has become established in Florida since the program was put in place in 2007.

Notably too, the specific ecological and economic concerns the Commission expresses in the SERC appear limited to Burmese pythons, green iguanas, Nile monitors, and tegu lizards. (SERC at 2-3.) Nowhere does the Commission cite any specific concerns regarding the reticulated python, the North African python, the South African python, the amethystine python, the scrub python, or the green anaconda. Moreover, that the Commission proposes to create an exception for the continued use and possession for commercial use of iguanas and tegus by certain "grandfathered" permit holders—notwithstanding the Commission's purportedly grave concerns with the ecological impacts of these species—further underscores the arbitrariness of the Commission's distinctions.⁷

In short, stopping the commercial trade in Florida for any of the impacted species will not actually result in any less iguanas, Burmese pythons, or other reptiles in the wild in Florida. Many of these species are already established and breeding and will be the subject of the Commission's management and control efforts for years to come. For those species not yet established, the Commission acknowledges that these species like the reticulated python and green anaconda are unlikely to reproduce and establish in the wild, so it makes little sense to prohibit their ownership and possession for commercial use.

⁷ The Proposed Rules also exempt the regulation of red-eared sliders from any changes, despite the fact that they are identified as constituting a "Stage 5" invasive species, meaning that they are "both widespread and dominant" in Florida. Krysko, et al., *supra*, at 111, 114.

II. WRITTEN COMMENTS REGARDING THE SERC

The Commission's SERC offered in support of the Proposed Rules is heavily flawed and incomplete and fails to comport with section 120.541, Florida Statutes (2007).⁸

Pursuant to section 120.541, a SERC must include a number of things: "[a] good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule"; "[a] good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local governmental entities, required to comply with the requirements of this rule";⁹ and an analysis of the rules' impact on small businesses,¹⁰ defined to mean a business employing 200 or fewer employees with a net worth of not more than \$5 million.¹¹ As the Commission concedes, many of the permitholders impacted by the Proposed Rules are small businesses.

USARK Florida has engaged Capital Trade, Inc., an economic consulting firm with experience analyzing the scope, size, and economic impact of the national and Florida reptile industries, to review and comment on the SERC. A copy of Capital Trade's report is attached. In summary, it identifies the following issues that should be addressed in a revised SERC:

- The SERC fails to provide a good faith estimate of those impacted, the transactional costs to be felt by the industry, or the true impact to small businesses because it considers only the loss of final sales of eight of the ten impacted reptiles and no other industry impacts, including significant negative impacts for those businesses that provide products and services used in the care of the impacted reptile species;
- The SERC fails to provide a good faith estimate of the transactional costs to be felt by the industry, including the impact to small businesses, because it ignores or fails to investigate the true market prices of the impacted reptiles, many of which are much more valuable than the SERC states due to their rare and distinct coloration;
- The SERC fails to provide a good faith estimate of the transactional costs to be felt by the industry, including the impact to small businesses, because it entirely omits any analysis of the impacts to those dealing in iguanas and tegu lizards—both dealers that are exempt (who are still barred from in-state sales and importing under the Proposed Rules) and those not exempt;
- The SERC fails to provide a good faith estimate of those impacted, and correspondingly, it cannot provide a good faith estimate of industry impacts including to small businesses, because it appears to have understated the true number of permitholders that would be

⁸ The Commission's Due Process Rule provides that the Commission "shall prepare statements of estimated regulatory cost and statements of lower cost regulatory alternative in accordance with the APA." Fla. Admin. Code R. 68-1.008(5)(b)4. Counsel for the Commission takes the position that this rule refers to the 2007 version of the APA.

⁹ § 120.541(2)(c), Fla. Stat. (2007).

¹⁰ § 120.541(2)(d), Fla. Stat. (2007).

¹¹ § 288.703(1), Fla. Stat. (2007).

affected by the Proposed Rules;

- The SERC fails to provide a good faith estimate of the transactional costs to be felt by the industry, including the impact to small businesses, because it fails to account for the time costs imposed to comply with the new requirements;¹²
- More generally, the SERC fails to give any appreciable consideration to the Proposed Rules' impact on small businesses, providing only a vague, cursory, and unsupported statement that any impact to small businesses is outweighed by environmental impacts; and
- Perhaps of greatest concern, the SERC fails to establish any connection between the Proposed Rules and the Commission's regulatory costs—now or in the future.

In addition to the reasons outlined in Capital Trade's report, this last point bears further emphasis. The SERC both grossly understates the Proposed Rules' impact to the reptile industry and overstates governmental entities' regulatory costs that the Commission suggests would be reduced under the Proposed Rules. The SERC often cites more global invasive species management and control costs, with figures that do not specify the species included or that expressly include species not affected by the Proposed Rules. For instance, the Commission claims it has spent more than \$3,000,000 annually on management efforts, including on "tegus, green iguanas, pythons, lionfish, and Nile monitor lizards." (SERC at 2.) Even if the Proposed Rules would reduce some of these costs, based on what the Commission has included in its SERC, it is impossible to determine whether most of these costs are associated with lionfish—which are not addressed in the Proposed Rules—or the impacted species. To the extent the Commission does identify costs associated with the specific species at issue, these costs appear limited to efforts to manage and control Burmese pythons and tegu lizards—only two of the ten species that the Commission seeks to now outright prohibit.

To the extent there are identified costs to control or manage the impacted species, the SERC fails to explain how the Proposed Rules would at all reduce those impacts or costs. The SERC says broadly and without citation that the Commission's invasive nonnative species management and control costs are "the result of previous releases and escapes of animals in trade," and that these costs "are expected to increase over time if more releases and escapes of these species occur." (SERC at 3.) What the SERC fails to logically address is that *established species are breeding*—the "releases and escapes" which were perhaps the first event leading to the Commission's current management and control costs occurred decades ago, prior to the establishment of the Conditional Species program and the strict regulations associated with it, and now the Commission is primarily

¹² The Capital Trade report highlights the time costs imposed on exempt permit holders with respect to iguanas and tegu lizards, but USARK Florida would also point out that there are significant time (and money) costs imposed on any permit holder impacted by the Proposed Rules who desires to replace their to-be-defunct Conditional Species permit with a Prohibited Species one. As the Commission knows, the Prohibited Species regulations essentially require a permit holder to have facilities that meet the facility requirements applicable to a zoo or aquarium—by no means an insignificant cost. The SERC ignores these significant transactional costs imposed under the Proposed Rules.

combatting established, *breeding* populations of Burmese pythons and green iguanas, among others.

As noted above, when the Commission adopted the Conditional Species regulations, it did so based at least in part on the rationale that a regulated reptile industry, allowing environmentally benign species and restricting problematic ones, is preferable to indiscriminate underground traffic that would result from legal bans on the majority of non-native species.¹³ The Commission's SERC fails to consider the significant costs of "deregulation," i.e., repealing the current regulatory program for Conditional Species. As explained above, the Conditional Species program allows the Commission to closely monitor and control the import and export of Conditional Species, as these species used in the commercial trade must be kept in escape-proof enclosures and permitholders must comply with detailed reporting requirements. The Proposed Rules would repeal this regulatory program and instead prohibit possession of and trade in these species. This no doubt will encourage the creation of an unregulated "underground" market for these species, where accidental releases of species are much more likely to occur than under the current program. The Commission may also see its own control and management costs increase under the Proposed Rules because private trappers will no longer be incentivized to assist the Commission in eradication efforts, as they can sell what they catch under the current program.

The SERC should be revised to properly address these matters, and the consideration of the Proposed Rules should be deferred until the revised SERC is published.

III. USARK FLORIDA'S PROPOSED LCRAS

In short, the Proposed Rules are fatally flawed, and USARK Florida urges the Commission to investigate alternatives that would better accomplish the Commission's stated goal of addressing emerging invasive species issues while not destroying the reptile industry and the livelihoods of the many families it supports. In accordance with section 120.541, Florida Statutes (2007),¹⁴ USARK Florida proposes the following three LCRAs for the Commission's consideration:

1. No Change to Chapter 68-5, Florida Administrative Code

One LCRA would be to make no changes to Chapter 68-5, Florida Administrative Code, and to maintain the existing regulations of Conditional Species, green iguanas, and tegu lizards. This would avoid the significant industry costs that would result from the Proposed Rules. The Commission would also avoid additional management and control costs that it would incur should the commercial trapping industry lose the commercial incentive to aid the Commission in control and eradication efforts. The existing regulations—which already provide for careful control and monitoring of the species at issue—substantially accomplish the goals of limiting the impacts of

¹³ Hardin, *supra*, at 44.

¹⁴ The Commission's Due Process Rule provides that the Commission "shall prepare statements of estimated regulatory cost and statements of lower cost regulatory alternative in accordance with the APA." Fla. Admin. Code R. 68-1.008(5)(b)4. Counsel for the Commission takes the position that this rule refers to the 2007 version of the APA.

invasive nonnative species in Florida without crippling the industry.

2. Alternatively, Add Tegu Lizards to the Conditional Species List

As an alternative LCRA, USARK Florida invites the Commission to consider maintaining the regulations as they currently are but adding tegu lizards to the Conditional Species list. Doing so would ensure that tegu lizards are no longer sold or maintained as pets in Florida, and that commercial dealers are subject to the same stringent requirements applicable to other Conditional Species, including caging, biosecurity, and reporting requirements. This alternative would impose less significant regulatory costs on the industry while substantially accomplishing the Commission's stated goal of limiting the impacts felt in Florida from invasive nonnative species. USARK Florida would note that when the Reptiles of Concern regulations were first discussed and put in place, it actually lobbied for the inclusion of tegu lizards on the regulated list but the Commission rejected the suggestion.

Under this LCRA, the Commission would simply add "Tegus (genera *Salvator* and *Tupinambis*, all species)" as new subsection (i) under Rule 68.5004(4), and make no other changes to Chapter 68-5.

3. Alternatively, Add Tegu Lizards and Green Iguanas to the Conditional Species List

As an additional, alternative LCRA, USARK Florida asks the Commission to consider maintaining the regulations as they currently are but adding both green iguanas and tegu lizards to the Conditional Species list. Doing so would accomplish the same things as described above with LCRA #2, but it would also provide the Commission with greater control over the commercial industry regarding iguanas and prohibit iguanas being held as pets.

Under this LCRA, the Commission would simply add "Tegus (genera *Salvator* and *Tupinambis*, all species)" as new subsection (i) and "Green iguana (*Iguana iguana*)" as new subsection (j) under Rule 68.5004(4), and make no other changes to Chapter 68-5.

IV. THE COMMISSION SHOULD APPOINT A TECHNICAL ADVISORY GROUP AND AUTHORIZE THE USE OF NEGOTIATED RULEMAKING

While USARK Florida certainly appreciates the Commission's setting of multiple workshops to receive public comment on the Proposed Rules, these workshops do not lend themselves to the careful consideration and drafting of well-reasoned rules in this highly scientific area. Nor have these workshops provided interested persons with a meaningful opportunity to ask questions about and comment on the scientific basis for the Proposed Rules. The SERC summarily addresses many of the issues outlined in this letter without serious scientific consideration or evaluation, and these deficiencies demand a more meaningful forum in which to debate and consider them. That is why the APA strongly encourages the use of negotiated rulemaking "when complex rules are being drafted" which would benefit from the work of a "balanced committee of

interested persons” who can work together on the drafting of sensible rules.¹⁵ USARK Florida urges the Commission to consider the establishment or re-establishment of a technical advisory group (“TAG”) like the one that was previously used in the development of the Reptiles of Concern regulations (now known as the Conditional Species rules), and to authorize the use of negotiated rulemaking based on the work of the TAG. USARK Florida has in the past enjoyed a good working relationship with the Commission and was very pleased to help draft the rules that led to the Reptiles of Concern and later Conditional Species program. In fact, this collaborative rulemaking effort provided many people in the reptile trade with the trust and confidence to invest large sums of money into their businesses to meet the stringent requirements for possessing Conditional Species. Now the Proposed Rules would pull the rug from under the Florida reptile industry without any tangible evidence of a need to do so.

For these reasons, USARK Florida respectfully requests that the Commission appoint a TAG to address the key technical issues and authorize the use of negotiated rulemaking based on the work of the TAG.

V. ALTERNATIVELY, USARK FLORIDA REQUESTS A DRAW-OUT HEARING

The Proposed Rules are predicated on the disputed notion that the existing Conditional Species program is ineffective and that instead a ban will be effective in addressing the principal adverse impacts of these species. This dispute involves complex technical and other factual issues that cannot be fairly resolved, and should not be resolved, by the Commission based on three-minute presentations by interested parties. As recognized by the Commission in its Due Process Rule, determining whether a species classification should change is a decision that must be based upon credible biological data, and therefore an evidentiary hearing, such as a draw-out hearing, can be useful. As such, if the Commission is unwilling to appoint (or re-appoint) a TAG as requested above, USARK Florida respectfully requests the additional due process procedures afforded by the draw-out procedure in section 120.54(3)(c), Florida Statutes.

VI. REQUEST FOR A PUBLIC HEARING

Finally, USARK Florida formally requests a public hearing on the Proposed Rules. While USARK Florida is aware that the Commission has scheduled a meeting on the Proposed Rules in December 2020, USARK Florida wants to confirm that it will have the opportunity to present testimony at the hearing and that it will be given sufficient time to explain its comments and objections to the Proposed Rules, as the three minutes typically afforded to each speaker is unlikely to be adequate given the controverted technical issues and the substantial impacts on those affected.

* * *

Thank you for the opportunity to comment on the Proposed Rules and associated SERC.

¹⁵ See § 120.54(2)(d)1., Fla. Stat. (2007).

Should you have any questions, please do not hesitate to contact us.

Sincerely yours,

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Enclosure

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October 2, 2020

Public Comment on Behalf of the U.S. Association of Reptile Keepers on the Florida Fish and Wildlife Conservation Commission's Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C.

My name is Ariel Collis. I am a Project Manager with Capital Trade, Incorporated, an economic consulting firm located in Washington D.C. I am the co-author of the first, and to date the most comprehensive report on the scope, size, and economic impact of the U.S reptile industry, The Modern U.S. Reptile Industry¹. This report contains estimates of the economic impact of a proposed listing of nine constrictor snakes as injurious wildlife under the Lacey Act. I am also the author of the only report detailing the scope, size, and economic impact of Florida's reptile and amphibian industry, An Economic Impact Report on Florida's Reptile and Amphibian Industry². In conducting research for these reports, I surveyed thousands of U.S. reptile businesses and hundreds of Florida reptile businesses, some of whom sold the snakes and lizards listed under the Proposed Changes to Chapter 68-5, F.A.C. As part of the Florida Reptile and Amphibian Industry Report I also surveyed Florida businesses that sold products for these snakes and lizards.

¹ See Robert Fenili and Ariel Collis. The Modern U.S. Reptile Industry. A report prepared for the United States Association of Reptile Keepers. March 12, 2011.

² See Ariel Collis. An Economic Impact Report on Florida's Reptile and Amphibian Industry. A report prepared for the United States Association of Reptile Keepers. December 5, 2019.

I was asked by the United States Association of Reptile Keepers, Florida Chapter (USARK) to review and evaluate the Florida Fish and Wildlife Conservation Commission's (FWC) Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C. (Proposed Changes), issued in September 2020. My review of the Statement of Estimated Regulatory Costs found that FWC's analysis of the economic impacts of the Proposed Changes on reptile businesses was insufficient to conclude that the benefits of the Proposed Changes outweighed the costs. The FWC's impact calculation does not include an analysis of the effects of the Proposed Changes on two affected species, iguanas and tegus. FWC's impact analysis ignores the impacts from the Proposed Changes on Florida businesses that sell products used in the care of the ten listed species. The report also ignores the additional time costs to affected businesses of complying with the new licensing and keeping requirements imposed by the Proposed Changes. Ignoring these additional impacts, FWC greatly underestimates the cost of these proposed regulations on reptile businesses. The Statement of Estimated Regulatory Costs also fails to include an estimation of the costs from the Proposed Changes as required by Florida statute. In addition, the Statement of Estimated Regulatory Costs does not clearly establish a connection between the Proposed Changes and the estimated decrease in regulatory costs. That is, FWC does not give any evidence that there will likely be any benefit to Florida due to the Proposed Changes. The FWC has the data to do such an analysis for eight of the ten listed species. In sum, the FWC in its Statement of Estimated Regulatory Costs did not make a good faith effort to estimate the costs to the affected businesses and does not provide enough evidence to show that the costs of the Proposed Changes to reptile businesses in Florida and within the United States are outweighed by the benefits of more strictly regulating the ten species.

FWC's Impact Analysis Ignores Costs to Affected Business

The FWC presents only one table, “Table 3: Estimated economic impact to businesses in Florida that commercially sell Conditional Snakes and Lizards”³ that provides an estimate of the costs to reptile businesses from the proposed changes. However, this table only shows the estimated costs of the Proposed Changes for businesses that sell eight of the ten listed snakes and lizards. Costs presented in Table 3 underestimate the impact of the Proposed Changes because they a) do not include the impacts to businesses that sell products and services used in the care of the listed snakes and lizards, b) do not incorporate how differences in coloration of some of these animals can significantly increase their sale price, c) do not include an estimate of the cost to businesses that sell iguanas and tegus, d) may not accurately use FWC data on Class III license holders of affected snakes and lizards, and e) ignore and or fail to quantify the time costs for reptile businesses to learn about and comply with the additional administrative burdens and the increased housing and biosecurity requirements imposed on the relevant reptile businesses by the Proposed Changes.

FWC's Impact Analysis Ignores the Reptile Industry Ecosystem

Florida's reptile industry encompasses a network of pet owners, hobbyists, breeders, store proprietors, show promoters, veterinarians, educators, importers, exporters, wholesalers, customs brokers, zoos, display organizations, producers of herp food, and manufacturers of herp products. FWC's impact analysis ignores every part of this ecosystem except the final sale of the listed reptiles. When the sale of a reptile is restricted or prevented, many if not all of these facets of the

³ Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C.. Florida Fish and Wildlife Conservation Commission. Issued September 2020, p. 11.

industry are affected. For example, after the sale of a reptile, most owners buy caging, lighting, as well as temperature and humidity regulation devices. In addition, owners regularly purchase food, supplements, and bedding for their reptiles throughout the reptile's lifetime. According to survey data from pet retailers in Florida, annual ancillary purchases can amount to significantly more than the purchase price of the reptile.⁴ Thus, by ignoring the impact to sellers of food, products, and services for reptiles, FWC is significantly undervaluing the impact to entities affected by the proposed changes. If FWC were to make a good faith effort to estimate the impact of the Proposed Changes, FWC would need to perform a study and quantify the impact to sellers of food, products, and services for reptiles.

FWC's Impact Analysis Ignores The Price Effects of Rare and Distinct Coloration

Table 3 of the Statement of Estimated Regulatory Costs does not provide the methodology for how FWC determined the range of pricing for the snakes and lizards listed. However, it appears FWC did not determine if some of the snakes and lizards being sold in Florida could have been bred to exhibit unique patterns and colors that would greatly increase the price that these reptiles could fetch.⁵ Rarity and distinctiveness of coloration are traits that are sought after by reptile purchasers. Particularly rare patterns can significantly increase the price a consumer will pay to own a snake or reptile. For example, on the reptile sales website Morphmarket.com, a reticulated python bred to exhibit an orange and white color pattern called a "White Phase Albino Pied Poss

⁴ A survey of Florida's reptile retailers shows that these retailers bring in 2-3 times more revenue from reptile food and reptile products than from the sale of live reptiles. 2019 Online Herp Business Survey and the Major Herp Business Survey of Florida businesses. Conducted by the author.

⁵ Unique or unusual variations in reptile coloration and pattern types are known in the reptile community as "morphs."

Tiger, Motley”, is listed for sale for \$2100.⁶ This price is significantly higher than the “high” price for a reticulated python given in Table 3 of the Statement of Estimated Regulatory Costs.⁷ In Table 3 it appears that FWC did not factor in the higher prices that distinctive coloration can bring to the affected reptile sellers. Thus Table 3 significantly underestimates the high cost estimate of the economic impact of the Proposed Changes. FWC should revise its methodology so that it includes in its high impact estimate the higher prices that sellers of reptiles with distinct color patterns charge for the listed reptiles.

FWC’s Impact Analysis Leaves Out Iguanas and Tegus

FWC’s estimate of the economic impact of the Proposed Changes does not include the impact on Florida businesses that sell two of the listed species, iguanas and tegus. The omission of the effects of the Proposed Changes on sellers of iguanas and ancillary products for iguana could lead to a significant undervaluation of the estimated impact of the Proposed Changes. Iguanas are one of the most popular pets among the reptiles listed. For example, a recent article published in the South Florida Sun Sentinel, quoted the Florida reptile seller Strictly Reptile as stating that the company “sells thousands of iguanas...”⁸ In addition, public records from the Office of Law Enforcement (OLE) of the US Fish and Wildlife service (USFWS) record that 40,651 iguanas were imported into the country through Florida from overseas in 2018, the fifth most popular reptile import into Florida in 2018.⁹ The popularity of iguanas as pets is public

⁶ “White Phase Albino Pied Poss Tiger, Motley”. Morphmarket.com.

<https://www.morphmarket.com/us/c/reptiles/pythons/reticulated-pythons/437364> (Accessed September 30, 2020)

⁷ Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C.. Florida Fish and Wildlife Conservation Commission. Issued September 2020, p. 11.

⁸ David Fleshler. “Even though iguanas are on Florida’s hit list, you can still buy them”. South Florida Sun Sentinel. July 12, 2019 at 6: 00 am. <https://www.sun-sentinel.com/news/florida/fl-ne-florida-iguana-sales-20190712-goncw6ptmba27exuyplzfeyw6e-story.html>. (Accessed September 30, 2020)

⁹ Reptile Import and Export data was obtained by the author from USFWS through a 2018 Freedom of Information Act request.

knowledge that FWC should have used in estimating the impact of placing restrictions on the sale of iguanas. Without a study of the impact of the Proposed Changes on iguana sales on Florida businesses, FWC's estimate is unrealistically low and incomplete.

FWC's Impact Analysis Does Not Provides Sources or a Methodology for its Estimation of The Number of License Holders for Listed Reptiles

FWC's estimate of the economic impact of the Proposed Changes is based, in large part, on data recorded about Class III license holders. However, without the underlying data for Class III licenses and the calculation methodology, none of the numbers in the Table 3 of the Statement of Regulatory Costs can be independently verified. As part of my research into the Florida reptile industry, I was able to obtain data on all permit holders that were licensed to possess class III reptiles in the state of Florida between the years 2014 and 2020. Using this data, I am able to calculate the number of license holders in Florida for eight of the ten snakes and lizards listed under the Proposed Changes.¹⁰ Table 1, below, summarizes the count of businesses and individuals that held licenses for eight of the ten reptile species listed in the Proposed Changes from 2014 to 2019.

¹⁰ FWC Class III License Data Obtained March 22, 2019. Class codes were given as a field in the data, which allowed for identification of Class III licenses for particular reptiles. The Class Codes used to find licenses for the listed reptile species were the following: Burmese/Indian Python, *III *V1*, Amethystine Python, *III *V2*, Reticulated Python, *III *V3*, Northern African Python, *III *V4N*, Southern African Python, *III *V4S*, Green Anaconda, *III *V5*, Nile Monitor, *III *V6*, Scrub Python, *III *V8*.

Table 1: Count of License Holders of Listed Snakes and Lizards, 2014-2019

Year	Burmese/ Indian Python	Amethystine Python	Reticulated Python	Northern African Python	Southern African Python	Green Aniconda	Nile Monitor	Scrub Python	License Holders 8 Species, Total
2014	221	86	155	96	90	110	100	73	238
2015	246	101	177	106	101	123	111	95	261
2016	256	113	200	121	114	146	126	108	281
2017	256	116	199	127	119	151	131	110	280
2018	260	116	195	121	117	150	124	109	274
2019	263	99	203	108	107	142	118	100	273
5 yr. Avg.	250	105	188	113	108	137	118	99	268

Notes:

/1 Source: FWC OLE Class II License Data. Obtained March 22, 2019.

/2 Many licenses have more than one authorization

Table 1 shows that there were significantly more 2019 license holders in the license data obtained by the author for each of the listed species than are listed in Table 3 of the Statement of Estimated Regulatory Costs. If the number of license holders has been miscounted or undercounted, this would decrease FWC's estimation of impact to affected reptile sellers. FWC must revise its impact estimation to fully explain the methodology behind its count of license holders of the listed Class III reptiles so that the numbers given in Table 3 can be independently verified as accurate.

The FWC Impact Analysis Ignores Time Costs

The Proposed Changes impose additional licensing requirements on businesses that sell iguanas and tegus by requiring that a) businesses that had documented inventory in these species in 2019 must apply to FWC for an exception in order to continue breeding and selling these species, and b) "all those authorized to possess these species will be required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers

in and out of state for tegu and iguana species.”¹¹ It takes time to learn how to correctly comply with these new requirements and it will take time to fill out the additional required paperwork.¹² This time spent fulfilling the additional requirements is a cost that must be accounted for in the impact analysis. Without the inclusion of time costs, FWC’s impact analysis underestimates the total cost imposed on reptile businesses by the Proposed Changes.

FWC’s Impact Analysis Fails To Analyze the Impacts of the Proposed Changes on Small Businesses

Based on the results of surveys conducted by the author,¹³ the vast majority of companies engaged in herp breeding and sales in Florida are small businesses by Florida statutory definition¹⁴ as well as in a generally understood sense that nearly all of them have less than ten employees and are family-owned and operated.¹⁵ These businesses are particularly vulnerable to even the small changes in paper work and administrative requirements that the Proposed Changes would add. While Statements of Estimated Regulatory Costs are required by statute to consider the impacts on small businesses,¹⁶ the FWC’s Statement of Estimated Regulatory Costs gave only a vague,

¹¹ See Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C.. Florida Fish and Wildlife Conservation Commission. Issued September 2020, p. 5.

¹² At several reptile shows attended by the author, one attraction was a seminar on compliance with local and federal regulations relating to their pets.

¹³ Based on online and in-person surveys conducted by the author as part of the Florida Reptile and Amphibian Industry Report.

¹⁴ Reptile breeders are classified under the North American Industry Classification System (NAICS) code 112990, “All Other Animal Production” 2017 NAICS Manual, *NAICS Association*. https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf (Accessed July 3, 2019). The Small Business Administration defines a business of this category as small if they have annual sales of less than \$750,000. “Small Business Size Standards by NAICS Industry,” *U.S. Small Business Administration*. https://www.ecfr.gov/cgi-bin/text-idx?SID=b919ec8f32159d9edaaa36a7caf6b695&mc=true&node=pt13.1.121&rgn=div5#se13.1.121_1201 (Accessed July 3, 2019). § 288.703(1), Fla. Stat. (2007) defines small business to mean a business employing 200 or fewer employees with a net worth of not more than \$5 million.

¹⁵ Taken from responses by Florida reptile business owners to surveys conducted by the author.

¹⁶ See 120.541(2)(d), Florida Statutes (2007) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined by s. 120.52.”).

cursory, and unsupported statement about the impact on small businesses that:

“Some small businesses may be impacted by the proposed changes to Chapter 68-5 F.A.C; however, the environmental, social and economic impacts to Florida and its citizens outweighs the limited impacts to small businesses. Few businesses trade in what are currently listed as conditional snakes and lizards as noted above.”¹⁷

The impact analysis does not provide any quantitative or qualitative data on the affected small businesses. Therefore, FWS cannot have been said to have conducted any analysis of the impact of the Proposed changes on small businesses. To complete their analysis FWS must conduct research into this topic and add this analysis of the impact of the Proposed changes on small businesses to any revision of FWC’s Statement of Estimated Regulatory Costs.

The FWC Fails to Establish A Connection between the Proposed Changes and the Estimated Regulatory Costs

At the core of the FWC’s estimate of the economic benefits to Florida and its citizens of the Proposed Changes is the proposition that banning Florida businesses from breeding and importing the listed snakes and lizards will reduce the environmental damage done by these species. However, FWC’s Statement of Estimated Regulatory Costs never provides any facts or research that shows that such a ban will reduce or slow the growth of the current wild population of the listed snakes and lizards in Florida. FWC has the data to do such an analysis for eight of the ten listed snakes and lizards but chose not to do so.

¹⁷ See Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C.. Florida Fish and Wildlife Conservation Commission. Issued September 2020, p. 12.

Table 2 of FWC's Statement of Estimated Regulatory Costs states, "All license holders [of 8 of the 10 regulated species] are required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species."¹⁸ That is, FWC has data on all license holders for these eight reptile species with which they can analyze if increases or decreases in the population of these species among businesses in Florida correlate to increases or decreases in environmental damage in Florida. If such a correlation does not exist, the Proposed Changes will be ineffective, and the estimate of the environmental benefit of the proposed rule change should be set to \$0.

Conclusion

The FWC's impact analysis of the Proposed Changes is incomplete and deeply flawed. Not only does the impact analysis fail to show a link between the Proposed Changes and an economic benefit to the state of Florida and its citizens, but FWC has not performed a good faith estimate of the costs to Florida reptile businesses. One unexpected consequence, if the rule changes are passed, may be an increase in the number of these reptiles released in the wild. Abiding by these Proposed Changes would force business owners who had previously complied with the strict biosecurity requirements under the current licensing requirements to either abandon a source of income or operate illegally but in an unregulated environment. Several reptile business owners that I surveyed indicate a willingness to take their business underground if regulation prevented them from selling their reptiles legally. Less regulation would increase the chances of accidental or intentional release of these listed reptiles.

¹⁸ *Id.*, at 5.

In its current form, the FWC's estimate of the costs to Florida reptile businesses of the Proposed Changes does not include many of the significant costs that are likely to be incurred by Florida businesses and, thus, likely underestimates these costs. FWC's impact analysis needs to be significantly revised before it can be used to adequately weigh the costs and the benefits of the Proposed Changes.

Florida Fish and Wildlife Conservation Commission
Statement of Estimated Regulatory Costs of Proposed Changes to
Chapter 68-5, F.A.C.
Updated December 2020

Executive Summary

During the July 2020 Florida Fish and Wildlife Conservation Commission (FWC) meeting, Commissioners directed staff to publish draft rules in Chapter 68-5 F.A.C. that address high-risk nonnative snake and lizard species. The purpose of the proposed rules is to limit possession and prohibit commercial breeding of high-risk nonnative species in Florida. The proposed rules address possession, containment and reporting requirements of these species, along with providing limited exceptions to those members of the public that may currently possess green iguanas or tegus as personal pets or for license holders with verified commercial sales business activities in these species. After consideration of the factors outlined in 120.541 Florida Statutes (2007) in a Statement of Estimated Regulatory Costs (SERC), the FWC concluded that there will be costs to small businesses with the adoption of the proposed changes. However, these estimated costs are outweighed by the impact that these high-risk species pose in Florida.

On October 5, 2020, the FWC received comments regarding the SERC from Holland & Knight, LLP, representing the United States Association of Reptile Keepers (USARK), Florida, Inc. This updated SERC takes into account the additional information provided to the FWC and considers the proposed lower cost regulatory alternatives to the proposed rules.

Introduction

Invasive nonnative species are those that are not native to an area, whose introduction would likely result in establishment of a reproducing population and cause harm to the economy, environment and/or human health. Invasive nonnative species are considered the second most significant threat to biodiversity in the United States, after habitat loss (Wilcox et al. 1998). Unlike other regions of the United States, Florida's subtropical climate and extensive natural habitats create an environment where many nonnative species survive and often thrive (Meshaka 2011). Florida has gained notoriety for becoming home to a variety of unwanted and damaging species including pythons; large lizards, such as tegus, monitors and iguanas; many freshwater fish species; and marine species, such as lionfish. "Our data suggest that one of every three introduced herpetofaunal¹ species becomes established in Florida. This is greater than the one of every four for most introduced vertebrates worldwide (Wilson 2016). Furthermore, we see no evidence that the increase in numbers of herpetofaunal introductions is slowing down (2016 Krysko et al. New Verified Nonindigenous Amphibians and Reptiles in Florida through 2015, with a Summary of over 152 Years of Introductions)."

The species included in proposed changes to Chapter 68-5, F.A.C. either have a history of impacts in the State of Florida or are likely to have an impact should they be released and become established in Florida.

¹ Herpetofauna defined as the reptiles and amphibians of a particular region, habitat, or geological period.

Most invasive fish and wildlife in Florida were established through the escape or intentional release from the pet trade (Hardin 2007, Krysko et al. 2016). “The most common introduction pathway for nonnative species in Florida is through escapes or releases of captive animals. Of the 180 non-native reptiles and amphibians that have been introduced into Florida, at least 85% arrived via the pet trade with at least 25% of the source of the introduction coming from likely one animal importer during the time period of 1995-2015 (2016 Krysko et al. New Verified Nonindigenous Amphibians and Reptiles in Florida through 2015, with a Summary of over 152 Years of Introductions).”

Wildlife trade is one of the largest and most complex commercial exchanges in the world, and the Port of Miami is one of the top three areas in the U.S. that receives wildlife imports. Over 224 million individual animals are imported into the United States each year. The trade in wild animals has also been increasing; the number of declared animal shipments has doubled since 2000. Between 1999-2010 over 12 million wild caught reptiles from elsewhere in the world were imported into the U.S. and of these over 9 million reptiles were imported through Florida ports alone. In addition to Florida’s role in importing wildlife, there is a significant and economically robust trade in Florida revolving around breeding and selling many species of animals, to customers in the state and across the U.S. and international markets.

Despite current regulations, FWC’s Captive Wildlife program and an expanding Nonnative Fish and Wildlife Program, Florida continues to experience impacts from nonnative fish and wildlife that escape captivity. Prevention tools such as alternatives to releasing pets into the wild are helpful. However, it is not enough when facing potential impacts from the volume and diversity of species that are coming into Florida annually.

Impacts:

Burmese pythons, reticulated pythons, amethystine pythons, scrub pythons, Northern African pythons, Southern African pythons, green anacondas, Nile monitor lizards, tegus (all species) and green iguanas are a threat to Florida’s ecology, economy or human health and safety. The large constrictor snakes identified in the draft rule are known to have or are likely to have ecological impacts in Florida (Reed and Rodda 2009). For example, Burmese pythons are currently established in South Florida where they have adverse impacts on Florida’s ecology. Burmese pythons’ broad diet of mammals, birds, reptiles and other items (Snow et al. 2007, Dove 2011) poses significant adverse impacts to Florida’s native wildlife, including some threatened and endangered species. Due to their large size and reports of captive pythons injuring or killing humans, many members of the public also perceive these animals as a human health and safety threat that may equate to decreased recreational activity in Florida and ultimately a loss of tourism (Eason et al. 2018). Green iguanas are known to have ecological impacts such as disturbing burrowing owls (McKie et al. 2005) and may impact gopher tortoises and egret nesting sites (Arendt 1986). Green iguanas are known to adversely impact native plant communities. In addition to ecological impacts, iguanas damage seawalls, water control structures, dams, levees, and canals creating a potential threat of flooding that may ultimately lead to significant costs to repair the damage (Sementelli et al. 2008). Nile monitors are known to be aggressive and injurious, and impact native fish and wildlife (Mazotti et al 2020). Similarly, tegus are causing ecological harm to the Florida ecosystem by preying upon plants, eggs and insects (Mecolli and Yanokey 1994, Kiefer and Sazima 2002, Barraco 2015) and consume

alligator and turtle eggs in Florida (Mazzotti et al. 2015). Tegus have been documented occupying gopher tortoise burrows and consuming juvenile gopher tortoises, a threatened species in Florida (FWC data).

Costs of Control and Management:

The costs of controlling and reducing the impact of invasive fish and wildlife is substantial. In 2005, the costs of invasive species were documented to be over \$120 billion per year in the US (Pimental et al. 2005) and have likely risen in the last 15 years. Florida land managing partners documented over \$8 million in expenditures on invasive fish and wildlife in the area of Everglades restoration in 2013. The FWC alone spends more than \$3,000,000 annually on direct efforts related to regulation, prevention, control, and removal of invasive species statewide and most of these resources are focused on tegus, green iguanas, pythons, lionfish, and Nile monitor lizards. “Managing invasive species is costly for multiple groups from the federal, state, and local levels. For example, tegu management costs in Florida for the FWC and seven of its partners totaled \$576,317, \$778,317, and \$828,092 in fiscal years 2014–2015, 2015–2016, and 2016–2017, respectively. That represents a total investment of \$2,182,726 across those three fiscal years (Eason et al. 2018).” Costs to address Burmese pythons across three agencies (USFWS, FWC and the South Florida Water Management District) were estimated at over \$2M in FY 2019/20. Python management control costs for FWC are summarized in Table 1.

Many of the costs to control for the presence of these invasive reptiles are not paid for by the FWC but rather by other government agencies or members of the public. State and Federal agencies spend millions of dollars to repair water control structures damaged or undermined by burrowing iguanas or Nile monitors (e.g.

see <https://www.palmbeachpost.com/news/20200120/iguanas-not-just-nuisance-these-lizards-contributed-to-18m-repair-bill-in-west-palm>, over \$1.8 M repairs in West Palm Beach, FL). U.S. Army Corps of Engineers and the South Florida Water Management District spend federal and state dollars to repair water control structures. Homeowners or businesses frequently contact nuisance control operators to remove iguanas that are impacting landscape plants or undermining seawalls, potentially costing the homeowner or businesses thousands of dollars, particularly if substantial damage has been sustained. The removal of iguanas from an area tends to be temporary as new iguanas move back in, making consistent and ongoing removal efforts necessary, at repeated costs to homeowners and businesses. Overall, the costs for managing, removing, controlling and addressing the impacts of the species proposed in the draft regulation is millions of tax dollars a year that are shared by local, state and federal agencies, along with additional direct costs to private individuals and businesses.

The above management costs are the result of previous releases and escapes of animals in trade. These management costs are expected to increase over time if more releases and escapes of these high-risk species occur. Additional regulation of these species that are part of live animal trade may reduce future expenditures to address management of these species should additional releases occur. The most common introduction pathway for nonnative species in Florida is through escapes or releases of captive animals.

Table 1. FWC Python Management and Control Expenditures for Fiscal Year 15/16- 19/20.

<u>Fiscal Year</u>	Research	Management	Dedicated FWC OPS personnel	Dedicated FWC FTE personnel	Total budget spent on pythons per FY
15/16	\$78,000.00	\$48,375.00	\$88,000.00		\$214,375.00
16-17	\$436,640.06	\$72,984.47	\$62,693.36		\$572,317.89
17-18	\$47,647.52	\$84,292.00	\$77,326.39		\$209,265.91
18-19	\$4,000.00	\$158,075.79	\$107,737.00		\$269,812.79
19-20	\$203,143.00	\$330,872.00	\$194,438.00	\$44,507.00	\$772,960.00
Total	\$769,430.58	\$694,599.26	\$530,194.75	\$44,507.00	\$2,038,731.59
<u>Note:</u> these expenditures are only for the Wildlife Impact Management Section's portion of the agency budget allocated to python control and management and do not include other Sections' budget (e.g. law enforcement) or full-time employees that are not 100% dedicated to Python Management and Control					

Draft Rule Summary

Enhanced regulations are necessary because of the threats that the Burmese pythons, reticulated pythons, amethystine pythons, scrub pythons, Northern African pythons, Southern African pythons, green anacondas, Nile monitor lizards, tegus (all species) and green iguanas pose to Florida's ecology, economy or human health and safety. The Florida Fish and Wildlife Conservation Commission (FWC) determined that the specific changes proposed to the rules in Chapter 68-5 F.A.C. regarding invasive nonnative reptiles are warranted based on assessment of current impacts and potential risk of future impacts. FWC staff have proposed changes to six rules to reduce the risk that some species of invasive lizards and snakes pose to the state of Florida. Draft rules address importation of these high-risk reptile species to limit species imported into the State, and limits possession to permitted facilities engaged in public exhibition, research, or eradication or control activities. Draft rule language provides limited exception to commercial sale entities that have documented commercial sale business with green iguanas or tegus; the draft rule also provides existing pet owners of these newly listed species free permitting options to keep their pets for the life of the animal. Draft rules outline additional provisions, reporting requirements for permittees, biosecurity requirements to limit escape of these high-risk species, and changes to the Pet Amnesty rule. A summary of the proposed rule changes is outlined in Table 2.

Because small businesses may be affected by a change in the classification of these species, FWC developed a Statement of Estimated Regulatory Costs (SERC).

Table 2. Current and proposed regulatory status of species in draft rule. Changes in *italics*.

Common Name	Current Rule Summary	Proposed Rule Summary as published
Burmese Python Reticulated Python Scrub Python Amethystine Python Northern African Python Southern African Python Green Anaconda Nile Monitor	<ul style="list-style-type: none"> - FWC Authorization is required to possess these species for commercial import/export businesses, public exhibition, or research. - No possession is allowed for personal pets (after 2008). - All license holders are required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species. 	<ul style="list-style-type: none"> - FWC Authorization is required to possess these species for public exhibition, research, and <i>control or management</i>. - <i>Breeding and importation are not allowed unless authorized to possess the species for specific uses.</i> - No possession is allowed for personal pets (after 2008). - All license holders will still be required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species.
Green Iguana Tegus (all species)	<ul style="list-style-type: none"> - No permit is required to possess green iguanas or tegus as personal pets. - Businesses that commercially use green iguanas or tegus for sale or exhibition must be licensed under Captive Wildlife regulations. - Applications for license and renewals require a list of all species of Class III wildlife that a business plans to have or has in current inventory. 	<ul style="list-style-type: none"> - <i>FWC Authorization is required to possess these species for public exhibition, research, and control or management.</i> - <i>Breeding and importation are not allowed unless authorized to possess the species for specific uses.</i> - <i>Limited exceptions for businesses that had documented inventory in their 2019 applications for commercial use to continue breeding and selling those documented species. All those authorized to possess these species will be required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species.</i> - <i>No possession is allowed for personal pets acquired after July 1, 2020.</i> - <i>People who had these species as pets prior to July 1, 2020 may apply for no-cost permit to possess for the life of that animal.</i>

Results

The suite of changes to Chapter 68-5, F.A.C. must be considered together to assess actual economic impacts. Most of these revisions are interrelated because they involve changing species from one regulatory status to another and provide additional provisions to offer regulatory certainty on how the change in regulatory status will be implemented. The proposed changes to Rule 68-5.008, F.A.C. Amnesty for Persons Relinquishing Non-native Pets are estimated to have no regulatory cost and are not included in this analysis.

Required Components

Section 120.541(2), F.S. (2007) identifies seven components that must be included in a SERC. Each of these components is addressed below.

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

Commercial Sales

Licenses are currently required to possess species included in the proposed rule change. The proposed revisions to Chapter 68-5 would likely impact up to 266 FWC License holders that currently hold conditional snakes and lizards. Many of the 266 license holders may only be publicly exhibiting conditional snakes and lizards and not in commercial breeding business and not affected by the change in regulatory status outside of what is outlined for “Public Exhibitors” below. The 121 license holders who had verified business activity in tegus and green iguanas in 2019 will be able to continue some commercial use; however, the sale of tegus and green iguanas in Florida will be prohibited.

Public Exhibitors

The definition of “public exhibition” is the same for both Conditional and Prohibited species License holders, therefore they are held to the same minimum requirements and standards. Moving Conditional snakes and lizards to the Prohibited list as proposed in draft rule should not impact those parties who are currently legally possessing these species as public exhibitors, except for meeting any additional biosecurity and caging requirements for prohibited species. Some exhibitors of tegus and green iguanas may be impacted and may need to remove these regulated animals from their exhibition if they do not meet the definition of “public exhibition” as listed in Rule 68-5.001 F.A.C. Those that do meet the definition of “public exhibition” may have additional costs if their housing and caging do not meet standards in rule to ensure animals do not escape.

Control and Eradication Specialists/Trappers

Currently there is a robust nuisance wildlife trapping business model in Florida. This is not an activity that is licensed in Florida, however many of the nuisance control businesses in South Florida will remove iguanas, and tegus to a lesser extent. Entities that work in this trade will

need to comply with no-cost permitting requirements for transportation and ensure they contain tegus and iguanas to prevent escape during removal activities.

Pet Owners

Owners of pet tegus or green iguanas have not previously been required to have a permit from FWC for personal possession of their animals but may incur costs to uniquely tag their animals as part of permitting requirements. It is uncertain the number of people who will be impacted by this change, although it is likely in the thousands. Impacts are expected to be minimal and with little economic costs because individuals will be allowed to keep their pets with a no-cost pet permit.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

Costs to the FWC will include additional OPS staff resources to review permit applications, issue permits, and re-home pets through the Pet Amnesty program and additional law enforcement staff time to enforce the rule changes. Additional OPS staff will cost approximately \$55,000/year. The proposed rule changes will have no effect on local or state revenues. The cost of control of these species is high, as described earlier, so over time the proposed changes should reduce state and local government expenditures to remove and manage these species.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

All costs and revenues reported in this report and the documents used to prepare this report are good faith estimates of these transactional costs.

For the regulated public, there are no costs associated with permit applications or licenses. However, additional costs may be incurred to comply with the increased marking, housing and other biosecurity required to contain these invasive high-risk reptiles. Conditional reptile license holders compliant with current regulations may require minor upgrades to their housing and caging, which should require minimal investment and time. Those in possession of tegus or green iguanas may also need to upgrade their housing and caging. Costs in time and money may vary widely depending on the current level of biosecurity at the facility for those animals. Per animal costs could range from \$30-300 per animal for PIT tagging, and an unknown cost per license holder to appropriately house or transport these animals. Nuisance wildlife trappers and others will need to apply for no-cost permits so there may be a time-related cost to apply.

Cities and counties currently are paying for many of these species to be removed from their properties because of the impacts they have on water control structures, sea walls, etc. These costs can be in the millions of dollars every year. Cities and Counties will not incur costs because of the proposed changes, but over time may see a decrease in costs because these species are no longer allowed in trade in Florida.

(d) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined by s. 120.52.

Many of the businesses currently selling conditional species or green iguanas and tegus employ fewer than 200 employees or earn under \$5 million in sales and therefore qualify as small businesses. The proposed limitations on the breeding and sale will have a negative impact on these businesses. However, many reptile species that do not pose an ecological risk are traded within and from Florida, allowing for a shift in the business model to species that are legally traded. Most of these businesses do not deal exclusively in the animals covered in the proposed rule changes and will be able to absorb the difference in inventory by selling other species. Exhibitors that may not meet qualifications as a public exhibitor as defined in current Chapter 68-5.001, F.A.C. or that will not meet housing requirements for these high-risk invasive reptiles have many alternative species of reptiles to use in exhibits.

Factors considered were:

- Commercial sales
 - The commercial breeding and sale of conditional lizards and snakes was estimated by assessing the volume of trade in calendar year 2019. Active licenses during that time period were examined for information provided by the license holders on births, deaths, acquisitions and transfers as required in the 6-month inventory report. Reporting this information is a requirement of the license. Draft rule language would cease the commercial breeding and sale of Burmese pythons, reticulated pythons, Northern African pythons, Southern African pythons, green anacondas, amethystine pythons, scrub pythons and Nile monitor lizards.
 - The number of Class III licenses active in calendar year 2019 authorizing the breeding and sales of all species of tegus or green iguanas were examined. Inventory reporting is only required at the time of license application or renewal, and unlike the conditional reptiles, there is no required submission of information on births, deaths, acquisitions or transfers. Estimates were only made based on the information available provided by licensees at the time of initial application or renewal. Limited exceptions for commercial use have been provided in draft rule language to allow for those verified, legal businesses that have documented the sale or possession of these species to allow the continued trade of these species. This exception is limited to out of state sales; species cannot be sold in the state as personal pets.
- Exhibition
 - The definition of “public exhibition” is the same for both Conditional and Prohibited species. License holders are held to the same minimum requirements

and standards. Moving conditional snakes and lizards to the Prohibited list as proposed in draft rule should not impact those parties who are currently legally possessing these species as public exhibitors, outside of any additional factors listed below in housing and biosecurity.

- Parties that currently use tegus or green iguanas for public exhibition may not qualify for continued exhibition under the draft criteria, which requires that a facility provides educational exhibits as defined in Chapter 68-5 F.A.C. It is uncertain how many of the Class III license holders currently authorized for this activity for these species may no longer be authorized to exhibit these animals under proposed changes.
- Increased housing requirements and biosecurity
 - Permits will not be issued for public exhibition in private residences.
 - Indoor enclosures are constructed to meet specifications outlined in the draft rule to prevent escape.
 - Double-doored safety entrances or as otherwise outlined with locking devices are used to prevent unauthorized intrusion.
 - Transportation of animals will need to adhere to containment and security measures to ensure that no escape occurs.
- Marking of animals
 - Conditional reptiles are currently required to be permanently PIT tagged so there are no increased costs for marking conditional lizards and snakes.
 - Under draft rules, entities provided limited exception licenses to continue the commercial use of tegus or green iguanas would need to permanently mark all animals in trade with a PIT tag, whether bred at their facility or taken from the wild. This could increase the total cost to the business through marking additional animals; however, it is likely that this increased cost would be passed onto the consumer. General costs of PIT tagging an animal are between \$30-\$300 if conducted by a veterinarian. Most veterinarians charge around \$30. Many people tag animals themselves. Tags alone cost between \$3-\$7 dollars and are available to the public, including found on Amazon.com. We are using a baseline of 1,500 tegus and 6,000 green iguanas to estimate inventory value which is more than what was reported by license holders on their 2019 inventories. The total costs for tagging animals could range from \$225,000-\$2,250,000, spread across all license holders if they are using a veterinarian for tagging, to only \$22,500-\$52,500 spread across all license holders if they tag the animals themselves.
 - Private owners of tegus and green iguanas that held these animals prior to rule changes are required to apply for a no-cost pet permit for the life of the animal. Permit conditions require that any animal kept through this exception will be permanently and uniquely marked for identification purposes. Most private owners of these animals will likely use a veterinarian to tag their animals which could cost the private owner between \$30-300 per animal.

Results:

Commercial Sales:

A total of 266 ESC licenses were issued in 2019 with Conditional reptile authorizations. This number excludes licenses where red-eared sliders were the only authorized Conditional reptile (Table 4). An additional 63 ESC licenses with a conditional reptile authorization were issued in 2019 where red-eared sliders were the only Conditional reptile authorized. Those 63 licenses have been excluded from this SERC because the proposed rule does not affect their regulatory status.

Of the 266 total licenses issued with Conditional reptile authorizations affected by this proposed rule, 26 were travel licenses issued in addition to the main facility license or they were renewal licenses where one license was issued at the start of the year and a renewal was issued at the end of the year. As a result of multiple license issuance, only 240 unique license holders/entities were permitted in 2019.

Each ESC licensee is required to submit an inventory report form every six months. Some licensees only submitted a single inventory report form at the time of their renewal, despite the six-month requirement. Of those 266 ESC licenses with Conditional reptile authorizations, 81 did not submit any Reptile Inventory Report Forms in 2019. This includes new licenses where it may not have been required at the time of application and travel licenses where the form was submitted with the main facility license. However, the 81 licensees also include some renewal applications where forms were not submitted and the failure to submit a 6-month update form. Based on current reporting requirements, the number of reptile inventory report forms that FWC should have received in 2019 was over 400, whereas only 232 were received by FWC.

In 2019 a total of 232 Reptile Inventory Report Forms were submitted for the species listed in Table 3. As the reporting rule requires an inventory report every six months, these 232 reports include some multiple reports from the same licensees. These report forms are required to be submitted twice a year: at the 6-month point after license issuance, and at 12 months upon reapplication for a license. Information provided by the license holders includes births, deaths, acquisitions (in and out of state) and sales or transfers (in and out of state). This required data was used to determine the volume of trade for 2019.

Based on an internet search conducted for reptiles for sale between August 4-6, 2020, a low and high price for each species and a range of costs for each of the species is provided in Table 3. An additional internet search was conducted between November 9-12, 2020 and added to Table 3. The figures in Table 3 include unique color morphs, which are typically sold for more than standard color morphs. The primary difference in data from August and November is reflective of changes in inventory, market values and demand. Information used was primarily from Florida license holders where costs were available on their websites. A range of prices was not available from Florida sellers for African pythons or green anacondas because only one seller of each species was available in Florida. Therefore, sellers outside of Florida were used to determine a price range since both species are rarely sold by Florida license holders. Nile monitors are typically sold as juveniles nationwide and most sell for well under \$100; in

November one Florida seller listed one available adult unique morph Nile monitor for \$2,000 (Strictly Reptiles, website November 12, 2020). It is unlikely that many of the Nile monitors being sold over the course of a year would sell at this much higher price of \$2,000 when most are selling for under \$100. Although this one animal is not representative of the general price of the species, it is used in the November update to the SERC as the most inclusive approach to potential costs and has therefore increased the overall high cost estimate for sales.

Based on required reporting to FWC related to sales, transfers, births, and deaths, the values presented in Table 3 and 4 do not match because not all license holders submit the required reports. Also, many of the license holders are authorized for species that they do not currently have or have never had in their inventories. The numbers are not additive between license authorizations and how many individuals either have them in inventory (to exhibit or sell) or have had them in their inventory in the past. These authorizations allow someone who does not have the species in their inventory at the time of applying for a license to obtain that species should the possibility arise during that license period.

A Class III license allows for the sale or exhibition of reptiles that are otherwise not regulated. A November 2019 review of all Class III license holders and their required inventory report forms found the following:

- 382 license holders listed some species of iguanas on their inventory or as an animal they may obtain in the future. 5,307 individual iguanas were reported in inventory for 2019. Some of the 382 license holders only wrote “iguana”, not specifically “green iguana”, in their inventory at the time of application. The common name “iguana” may be used for many species that are not green iguanas, none of which are regulated as conditional or prohibited species at this time.
- 106 license holders listed Tegus on their inventory or as an animal they may obtain in the future. 1,245 individual tegus were reported in inventory for 2019.

Of both groups of license holders (both tegus and specifically green iguanas), 121 license holders had a verified inventory for sale of tegus or green iguanas at their time of application. These entities will have an opportunity to apply for limited exception permits to continue that activity, however, they will not be able to sell these animals as pets within Florida. An additional 76 license holders stated on their 2019 inventory that they planned to potentially possess either green iguanas or a species of tegu. Because the license holders for tegus or green iguanas are not required to provide information on acquisitions or sales, the economic loss related to these species was not estimated based on sales. The only information available is what was in inventory at time of license application or submittal of an inventory report form. The market value of most tegus is less than \$400/animal. Many sell for between \$200-\$250, with a few uniquely colored morphs selling for over \$2,000. If there were currently 1,500 tegus held by Florida license holders (a number used as an example but one higher than what was reported in the November 2019 inventory) the value of this inventory using a high value of \$400 each, would be over \$500,000. However, the license holders will still be able to sell these animals out of state. Similarly, green iguanas generally sell for between \$10-\$20. Unusual color morphs, such as albino specimens, may sell for between \$400-800 each. Based on an inventory in the state of 6,000 specimens (higher than what was reported in November 2019) the value of the

Florida inventory based using a high value of \$20 each, is likely over \$120,000. However, like tegus, these license holders will still be able to sell these out of state.

The proposed revisions to Chapter 68-5 F.A.C. may impact some businesses that sell or trade these species. For many of these entities the impact will be minimal. The volume of trade in conditional constrictor reptiles is currently low, and those businesses that have verified commercial use in tegus or green iguanas have an opportunity to apply for limited exception permits that will allowed some continued commercial use.

Exhibition

As mentioned above, most of the exhibitors that exhibit species currently listed as “conditional” will be able to continue that activity. The increase in costs may include additional materials for caging and biosecurity. For tegus and green iguanas, an unknown number of exhibitors may no longer qualify to exhibit these species if they do not meet the definition of “public exhibition” in Rule 68-5.001 F.A.C. or exhibit in private residences. For those that will continue to qualify as public exhibitors of green iguanas or tegus, additional costs may be incurred to conform with additional caging and biosecurity measures required to contain these high-risk species.

Table 3: Estimated economic impact to businesses in Florida that commercially sell Conditional Snakes and Lizards (based on 2019 required reporting on volume and species). UPDATED November 2020

Species	Total number of inventory report forms submitted that includes the specified species below ^a	Total number of license holders selling or transferring species	Total sales or transfers (in and out of state) ^b	Total Sales ^{b,e} Lowest Cost based on August 2020 internet search (\$/animal)	Total Sales ^{b,e} Highest cost based on August 2020 internet search (\$/animal)	Total Sales ^{b,e} Lowest cost based on November 2020 internet search (\$/animal)	Total Sales ^{b,e} Highest cost based on November 2020 internet search (\$/animal)
Burmese python ^c	89	17	55	\$9,625 (\$175)	\$33,000 (\$600) ^d	\$11,000 (\$200)	\$44,000 (\$800) ^d
Reticulated python ^c	161	27	309	\$54,075 (\$175)	\$200,850 (\$650) ^d	\$38,625 (\$125)	\$293,550 (\$950) ^d
African pythons ^c	94	1	1	\$175 (\$175)	\$650 ^d	\$300 (\$300)	\$1,200 (\$1,200) ^d
Amethystine ^c /Scrub pythons ^c	45	4	44	\$12,100 (\$275)	\$28,600 (\$650)	\$12,100 (\$275)	\$17,600 (\$400)
Green anaconda ^c	116	3	21	\$4,200 (\$200)	\$31,500 (\$1,500)	\$4,200 (\$200)	\$58,800 (\$2,800)
Nile monitor	98	6	1445	\$26,010 (\$18)	\$289,000 (\$200)	\$28,900 (\$20)	\$101,150/\$2,890,000 ^f (\$70/\$2,000) ^d
Total number of inventory report forms submitted for any Conditional Reptile, other than red-eared sliders 2019	232		Potential Total Sales Revenue	\$106,185	\$583,600^f	\$95,125	\$516,300/\$3,305,150^f

^a Many license holders have more than one authorization.

^b Costs per animal based on a web search conducted in August 2020 and November 2020 of entities that sell these species. High costs were the highest price of an individual animal found on the internet by businesses selling these species, typically unique color morphs of these animals. Low cost was the lowest price per animal found online. When possible, prices were taken from current license holders in Florida. No African pythons were found to be sold currently by any of the Florida license holders during either web search, however one license holder "Got Reptiles" licensed under RC Plus has one African python listed at \$300/animal but with a "sold out" status. This license holder has not reported any sales on the Reptile Inventory Report Forms in the last 5 years. All other prices for African pythons are based on sellers outside of Florida. The only price for green anacondas from a Florida license holder was Snakes at Sunset, for \$200 juveniles, listed during web searches in both August and November 2020. All other prices for green anacondas were from breeders outside the state of Florida.

^c Species listed by USFWS as "injurious" could not be traded across state lines until a court hearing changed the interpretation of the Lacey Act in April 2017.

^d Cost was for a single animal of a rare color morph, most color morphs found online were less expensive.

^e Each "Total sales" dollar amount assumes that every animal sold or transferred for the year sold for the same "lowest" or "highest" price.

^f The high estimate for Potential Total Sales Revenue generated assumes that all animals were sold at the highest price available. The November reassessment is skewed based on one Nile Monitor listed by one entity for an unusually high price of \$2,000/animal. The other four prices of Nile monitors were \$20 \$60, \$25, and \$70, per animal from 4 different sellers. Eliminating this one outlier and using the next highest price found in the November reassessment (\$70/animal) would reduce the Potential Sales Revenue for Nile Monitors to \$101,150 and the high end potential total sales revenue for all the species to \$516,300, significantly less than if all Nile monitors were sold at \$2,000/monitor. Even using the high price for a Nile Monitor of \$200 as listed and identified in the August assessment (instead of the \$2,000 found for the November reassessment) the Potential Total Sales Revenue would still be significantly lower at \$704,150.

Table 4. The number of licenses with authorization for each Conditional reptile species in 2019.

Burmese Python	249
Reticulated Python	192
Green Anaconda	132
Nile Monitor	119
Northern African Python	103
Southern African Python	100
Amethystine Python	103
Scrub Python	101
Red-eared slider	189

(e) Any additional information that the agency determines may be useful.

Although there are documented costs to some businesses, other factors that the agency considered are the ecological impacts, human health and safety risks and economic impacts to the state and its constituents in controlling the impacts of non-natives species. Ecological impacts of the species addressed in the draft rule are outlined in the Introduction section of this document. Non-native reptiles currently established in Florida have known ecological impacts to native wildlife, including endangered and threatened species. Many of the species of large constrictor snakes proposed for further regulation in these rules have had limited trade prior to 2017 because of a former interpretation of the Lacey Act that prohibited trade of such species across state lines. These species include Burmese pythons, Northern African pythons, Southern African pythons, green anaconda, reticulated pythons, scrub pythons and amethystine pythons. Under the Lacey Act, species on the Injurious Wildlife Species List (Injurious Wildlife) are considered a risk to the United States and cannot be imported without a permit from the United States Fish and Wildlife Service (USFWS). Until recently, certain provisions of the Lacey Act were also interpreted to prohibit interstate transport of Injurious wildlife. In April 2017, the D.C. Circuit Court held that the plain language of the statute does *not* prohibit transport of Injurious Wildlife between states within the continental United States. Other prohibitions and regulatory measures of the Act, including disallowing importation, still apply. However, the federal court's ruling indicating that the Lacey Act did not prohibit interstate transport of injurious wildlife created additional markets for these animals. Regulating these species now, before captive populations continue to increase in Florida in response to new markets elsewhere, minimizes the impact to industry and reduces the threats of potential releases in Florida. Through our examination of the required data from those with commercial use licenses, the breeding and sale of these species is currently low in volume with few license holders breeding or selling these animals.

Managing invasive species is costly for multiple groups from the federal, state, and local levels. For example, tegu management costs in Florida for the FWC and seven of its partners totaled \$2,182,726 across three fiscal years (2014/15- 2016/2017) (Eason et al. 2018). The ecological and economic costs to manage and control invasive fish and wildlife is greater than the potential

economic impact to the few entities that currently have businesses that utilize these species in commercial trade and may be impacted from these proposed rule changes.

(f) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternatives or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

The FWC has received and taken into consideration the information provided by Holland and Knight on behalf of USARK Florida. That correspondence is attached as Appendix A and in addition to comments about the SERC it also included the submittal of three “lower cost regulatory alternatives” each of which will be addressed below.

I. Three lower cost regulatory alternatives (LCRAs) were provided to the FWC:

1. No Change to Chapter 68-5, Florida Administrative Code.
2. Alternatively, reject proposed rule changes, keep rules status quo with one exception, add Tegus Lizards to the Conditional Species List.
3. Alternatively, reject proposed rule changes, keep rules status quo with one exception add tegu lizards and green iguanas to the Conditional Species list.

FWC considered all the alternatives submitted. None of the LCRAs submitted indicate how the provided alternative would substantially accomplish the objectives of FWC’s proposed rules, namely, to eliminate commercial breeding in order to reduce risks to Florida’s native species. Moving species to the prohibited species list, as outlined in our proposed rule, will reduce the number of people in possession of the animals as well as reduce, and ultimately eliminate, commercial breeding and sales of these high -risk species as a potential source of release into the wild. Although containment requirements can reduce the potential for animal escapes, facilities that house large numbers of breeding animals create additional risk. FWC’s proposed rules seek to protect Florida’s native wildlife, habitat, and property by preventing the additional release and establishment of invasive species by reducing the opportunities for possession of these species and eliminating commercial breeding. As further explained below each of the proposed alternatives is rejected in favor of the FWC’s proposed rules.

1. The first alternative proposed was status quo under the assumption by USARK Florida that existing rules already limit the impacts of invasive nonnative species in Florida. This alternative does not accomplish the objectives of FWC’s proposed rules. Staff proposed these rules because the existing regulations are inadequate to address the current and potential impacts of invasive species on Florida’s native habitat and wildlife. As explained above, the breeding for commercial sales of these species increases the total volume of these high-risk species in possession, and that in and of itself creates an increased risk. This proposed alternative further suggested that the proposed rules will increase costs, specifically management costs to the FWC, because the commercial trapping industry will lose the incentive to trap invasive species. However, the proposed rules specifically allow for the sale of commercially trapped tegus and iguanas out of state, so the commercial incentive to trap will remain. This alternative is rejected as it does not substantially accomplish the Commission’s objectives.

2. The second alternative proposed was to make one change to the status quo, to add tegu lizards to the conditional species list. The proposal makes the statement that this alternative would impose “less significant regulatory costs” to the industry and substantially accomplish the Commission’s goal of “limiting the impacts felt in Florida from invasive nonnative species” but it does not provide any further explanation of either of those positions. This second alternative does not substantially accomplish the Commission’s objectives as it does not eliminate the risks associated with commercial breeding for any of the species we propose to regulate and it only addresses a single reptile group, the tegus (all species of the genera *Salvator* and *Tupinambis*), whereas the Commission’s proposed rules address the regulation of 16 reptile species. This LCRA does not address how moving tegus to the conditional list would substantially accomplish the management goals of the agency regarding the tegu, or regarding the other 15 species in the proposed rulemaking.

Additionally, listing the tegus as Conditional instead of Prohibited, as proposed by the alternative, would allow not just current licensees to breed and sell these high-risk species but it would allow new licensees to enter the business of commercial breeding and sale. Moving one reptile group to the Conditional list, which still allows commercial breeding, does not substantially meet the goal of reducing the risk of escape or establishment of this high-risk species to the same level that the Prohibited listing status provides. This alternative is rejected as it does not substantially accomplish the Commission’s objectives.

3. The third alternative proposed was to add tegu lizards and green iguanas to the conditional species list. This proposal does not substantially accomplish the Commission’s objectives, it does not eliminate commercial breeding for any of the species we propose to regulate, and it only addresses tegu lizards and green iguanas, whereas the Commission’s proposed rules address 16 reptile species. This LCRA does not address how moving tegus and green iguanas to the conditional list would substantially accomplish the Commission’s objectives related to the remaining reptile species the Commission has proposed to regulate as Prohibited.

Additionally, listing the tegus and the green iguana as Conditional instead of Prohibited, as proposed by this alternative, would allow new licensees to enter the business of commercial breeding and sale of these high-risk species as well as allow for the continuation of such practice by current license holders. Moving tegus and green iguanas to the Conditional list does not substantially accomplish the goal of reducing the risk of escape or establishment of this high-risk species to the same level that the Prohibited listing status provides. This alternative is rejected as it does not substantially accomplish the Commission’s objectives.

II. Each of the seven “written comments regarding the SERC” submitted by USARK Florida are addressed below:

1. Comment: *The SERC fails to provide a good faith estimate of those impacted, the transactional costs to be felt by the industry, or the true impact to small businesses because it*

considers only the loss of final sales of eight of the ten impacted reptiles and no other industry impacts, including significant negative impacts for those businesses that provide products and services used in the care of the impacted reptile species;

Response: The FWC provided a good faith estimate based on the license information available. Tegus and green iguanas were not included in the original SERC, because, as explained, license holders for tegus or green iguanas are not required to provide information on acquisitions or sales. The SERC has been revised to include an estimate for tegus and green iguanas based on the inventory information that is available for those that reported the species on their license applications. However, due to the exceptions in the proposed rule allowing the continuation of these activities for businesses licensed for these activities in 2019, including sale to out of state buyers, minimal impacts are expected for existing businesses. Impacts to businesses indirectly affected are not addressed in this SERC. However, any impacts to businesses indirectly affected should be minimal as the licensee may still use those support businesses as they transition their focus to new reptile species.

2. Comment: *The SERC fails to provide a good faith estimate of the transactional costs to be felt by the industry, including the impact to small businesses, because it ignores or fails to investigate the true market prices of the impacted reptiles, many of which are much more valuable than the SERC states due to their rare and distinct coloration;*

Response: FWC agrees that some of the costs per animal may be higher for some morphs or unique colorations and the SERC has been modified to address this; however, there is not a requirement that a licensee report the number of morphs sold versus standard type nor the cost per animal. When morphs were found in the internet search, it is now noted in Table 3. Table 3 and the associated discussion has been updated to add costs of animals that were available for sale in November 2020 in addition to the August 2020 values reported. Data collected to determine these costs are available upon request. Prices per animal are market-driven and change dramatically based on consumer demand. Estimates of costs were made and researched in good faith based on high and low values of internet retail prices for each species. Despite the potential outliers in cost per animal, based on required reporting for conditional species, a limited number of animals were sold, and by only a few businesses. Only 232 of approximately 400 required inventory report forms were submitted during 2019, and even at a high cost per animal, the conclusion of the SERC is supported. Few businesses trade in conditional reptiles and the volumes of trade are low.

3. Comment: *The SERC fails to provide a good faith estimate of the transactional costs to be felt by the industry, including the impact to small businesses, because it entirely omits any analysis of the impacts to those dealing in iguanas and tegu lizards—both dealers that are exempt (who are still barred from in-state sales and importing under the Proposed Rules) and those not exempt;*

Response: The revised SERC provides a good faith estimate regarding sales of animals and the costs associated with pit tagging animals. The estimates are based on the inventory numbers provided by the industry within the inventory report forms required pursuant to licensing rules.

However, since only inventory numbers are required for tegu and iguana, not sales and acquisition numbers, we based our estimate on the six month and 12 month inventory reports and had to assume that all of a business' inventory would be sold in a single year. FWC's SERC acknowledged that other businesses that did not submit inventory forms may be affected, identifying that an additional 76 license holders stated on their 2019 inventory that they planned to potentially possess either green iguanas or a species of tegu. Because the license holders for tegus or green iguanas are not required to provide information on acquisitions or sales, the economic loss for those license holders that sell these species currently listed as Class III reptiles was not estimated. Estimates were conducted in good faith based on the information available.

4. Comment: *The SERC fails to provide a good faith estimate of those impacted, and correspondingly, it cannot provide a good faith estimate of industry impacts including to small businesses, because it appears to have understated the true number of permit holders that would be affected by the Proposed Rules;*

Response: See Response 3 above. FWC has identified the correct number of permit/license holders and has based its good faith estimate on the required information provided by such license holders in 2019. In order to legally sell tegus or iguana under a Class III license, a licensee was required to list them on their current inventory or state they were planning to have them in stock. All the license holders legally selling these animals have been addressed in the SERC. For the currently listed conditional snakes and lizards, the number of reptile inventory report forms submitted to the agency in 2019 are less than what is required by rule; we agree that there may be more conditional reptiles being sold than were reported. However, our SERC is based on the information provided by the license holders themselves. If license holders do not provide the sales and acquisition information they are required legally to submit, then we cannot determine an exact accounting of animals sold and acquired. We have however provided a good faith estimate based on the best information available.

5. Comment: *The SERC fails to provide a good faith estimate of the transactional costs to be felt by the industry, including the impact to small businesses, because it fails to account for the time costs imposed to comply with the new requirements;*

Response: Costs to the industry estimated in the SERC and expanded upon in this revised SERC include costs of PIT tagging animals and acknowledge that there may be additional costs to increase caging and housing for some facilities. Time costs to PIT tag animals is minimal, particularly for those license holders that are tagging the animals themselves and takes generally less than 5-10 minutes of time per animal for someone experienced in injecting these tags. Costs of PIT tags are anywhere from \$3-7 each. As explained in the SERC, costs for a professional veterinarian to animals varies from \$30-300 per animal. Based on contacts with veterinarians across the state, the costs generally tend towards the \$30 end of the range. Time costs for complying with updated biosecurity requirements should also be minimal for those already in compliance for conditional reptiles.

6. Comment: *More generally, the SERC fails to give any appreciable consideration to the Proposed Rules' impact on small businesses, providing only a vague, cursory, and unsupported statement that any impact to small businesses is outweighed by environmental impacts;*

Response: FWC's proposed rules have an underlying goal of preventing the additional release and propagation of invasive species in order to protect Florida's native wildlife, habitat, and property. Listing high-risk animals on the Prohibited species list limits possession of these animals in Florida and eliminates the use for commercial breeding. These measures reduce the likelihood of future release of these species. There are fewer than 500 licensed businesses that would be impacted by the proposed rules out of 22 million Floridians. The high cost of eradication and control is recurring annually in the millions of dollars as outlined in the introduction to the SERC. The costs of microchipping and containment are negligible compared to the threat of potential release of additional and/or new invasive species and the eradication and management costs associated with release. Reducing the number of animals in possession and reducing commercial breeding supports the goal of the proposed rule language. Additional or future releases of these animals would cost the citizens of Florida more money than what is currently being made by the small businesses that trade in these animals.

7. Comment: *Perhaps of greatest concern, the SERC fails to establish any connection between the Proposed Rules and the Commission's regulatory costs—now or in the future.*

Response: FWC's proposed rules have an underlying goal of preventing the additional future release and propagation of invasive species in order to protect Florida's native wildlife, habitat, and property. Listing high-risk animals on the Prohibited species list limits possession of these animals in Florida and eliminates the use for commercial breeding. These measures reduce the likelihood of future release of these species. The FWC does not believe that further restricting these high-risk species will measurably lower current management costs, therefore the SERC does not assert that. Instead, restricting the possession and breeding of these high-risk species will lower the probability that future introduction and establishment of these species may occur. Future releases would increase management costs and ecological and other social impacts to the citizens of Florida.

Summary

Some small businesses may be impacted by the proposed changes to Chapter 68-5 F.A.C.; however, the environmental, social and economic impacts to Florida and its citizens outweighs the limited impacts to small businesses. As noted above, few businesses trade in what are currently listed as conditional snakes and lizards. The proposed rule language provides an opportunity for those entities documented to commercially sell tegus and green iguanas to continue that activity while they shift their business model to species that are less risky to the ecology and welfare of the state of Florida.

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November 30, 2020

Via Electronic Mail

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Re: Notice of Proposed Rule Changes to Florida Administrative Code Chapter 68-5
and Associated Statement of Estimated Regulatory Costs (Letter dated 10-5-2020)

Dear Mr. Sellers:

We received your letter dated October 5, 2020, regarding the Proposed Rules in Chapter 68-5 related to prohibited non-native species. The Proposed rules are intended to prevent the spread or introduction of high-risk nonnative species by adding new species to the Prohibited species list which will, in summary, eliminate commercial breeding, establish permitting criteria, provide biosecurity and caging requirements and create some limited exceptions. We have been in communication in a number of ways since the receipt of your letter but please consider this the agency's official response.

Written and verbal comments:

We understand that USARK Florida and members of the reptile community are not in agreement with the proposed rules. We welcome your continued written comments and acknowledge the comments and participation already received by many of your clients in our ten virtual workshops. Over 200 different people participated in those workshops and many individuals participated in multiple workshops. Each of our public workshops were scheduled for three hours, included key FWC staff, and were designed to solicit input on our proposed rules. To ensure enough time was spent on various topics of interest, six of our workshops focused on Possession and Eligibility requirements and four of the workshops were specific to Biosecurity, Containment and Reporting requirements.

After considering the feedback received from those workshops, we also held three focus groups to delve into many potential rule modifications that staff are considering presenting to the Commission. One focus group was held with the reptile Industry, one was held for reptile Exhibitors, and another was held for those with environmental concerns. To date, we have received over 5,500 survey responses and over 1,000 emails and comments through the webform that we utilize for public comment. We are evaluating and considering those items that can be incorporated into the proposed rules without changing the underlying goal of

protecting Florida's native wildlife, habitat, and property by eliminating commercial breeding of high-risk invasive species to prevent the additional release and establishment of such species.

We certainly welcome additional written comments on our proposed rulemaking. Comments can be directed to me, or to the staff handling the rule, specifically Kristin.Sommers@myfwc.com and Melissa.Tucker@myfwc.com or if you prefer, to the Commissioners themselves, individually, or by sending one email to commissioners@myfwc.com which will be redirected to each of them.

SERC and LCRA's:

Based on the comments you provided in your letter regarding the statement of estimated regulatory costs (SERC) and the three proposed lower cost regulatory alternatives (LCRAs), we are revising the SERC and addressing those alternatives and will provide you with the revisions upon completion. Therefore, we will not address those comments or the LCRAs in this response.

TAG / Negotiated Rulemaking:

We do not believe that a TAG or negotiated rulemaking process is appropriate in this situation. This is not a scenario where "complex rules are being drafted" as you referenced in your letter. These rules are fairly straightforward. We are adding additional species to a regulatory scheme that exists in current rule, with a few additions from other existing regulatory schemes in Captive Wildlife rules, including biosecurity, and the addition of some exceptions for verified permittees. The measures your letter suggested are not necessary in order for FWC to consider and understand the comments of the industry and other stakeholders. This is not a proposed rule in which the staff is uncertain as to their scientific or management objectives. Additionally, the public has been given substantial opportunities to provide feedback on the rules as proposed. For these reasons we do not believe a TAG or negotiated rulemaking is warranted.

Draw-out Hearing:

FWC is denying your request for a draw-out hearing. Nothing in your letter provides adequate reason to believe that the members of USARK Florida's due process rights are not protected in this rule development process. All members of the public, including USARK Florida, have had and will continue to have ample opportunity to present their case to the FWC, including Commissioners. The letter does not state articulated reasons as to why due process is not met by our procedure for the members of USARK Florida. It seems to focus on a statement about individuals only being provided three minutes to present their arguments at the Commission meeting. The Commission's process has included numerous rule development workshops and focus group meetings and written statements and arguments are accepted at any time leading up to the meeting. Additionally, individual Commissioners have made themselves available, or offered to make themselves available, for individual meetings with members of USARK Florida on the proposed rules. Individuals will also be provided an opportunity to speak during the public Commission meeting/hearing.

No evidence has been presented to indicate that the current rulemaking process prevents USARK Florida, on behalf of its members, from being able to submit its position, information, and suggested rule changes to FWC. Quite the contrary, since the proposed rules were approved for advertisement by the Commission in July 2020, FWC staff have personally reached out to the president and other board members of USARK Florida multiple times to discuss concepts and possible rule revisions. Every public workshop was well attended, including participation by many USARK Florida members. After holding ten public workshops, FWC staff held three focus group meetings with key stakeholders. USARK Florida members were included in two of those focus groups. Prior to this response, we began working on setting up a meeting with a USARK board member and our Executive Director. FWC has received thousands of comments and suggestions from the reptile community and some of those suggestions may be recommended by staff as changes to the proposed rules and, as further explained below, additional materials and comments on our changes may be submitted to help inform staff and our Commissioners of your position.


Request for Public Hearing:

Each of the five annual Commission meetings held by FWC are, in fact, public hearings therefore this request will be fulfilled. Interested parties are offered an opportunity to speak on each item on the agenda, as well as an opportunity to address items not on the agenda. Additionally, members of the public may detail their position on any matter being heard by the Commission by sending written comments, or even a video, for review and inclusion in the rulemaking record. In addition, they may advise the Commission during the hearing that they submitted a prior response. These public hearings allow any member of the public to participate, including members or representatives of USARK Florida.

As discussed, FWC initially planned on bringing proposed Chapter 68-5 rule changes for final consideration at the December 16-17, 2020 Commission meeting. However, in order to allow for even more time to engage with interested parties, the FWC has decided to bring the rules for final consideration at the February 2021 Commission meeting.

Please advise if you have any questions.

Sincerely,


Emily Norton, General Counsel
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February 19, 2021

Via Email and Public Comment Portal

Commissioners
Florida Fish and Wildlife Conservation
Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600
Commissioners@MyFWC.com

Re: Commission Meeting Agenda Item 5.A “Final Rule – Invasive Reptiles” and
Proposed Rule Changes to Chapter 68-5, Florida Administrative Code

Dear Commissioners:

We represent the United States Association of Reptile Keepers, Florida Chapter (“USARK Florida”), a not-for-profit 501(c)(6) trade organization based in Florida which represents and promotes the reptile industry. Its goals and objectives are to facilitate cooperation between government agencies, the scientific community, and the private sector in order to produce policies that will effectively address live animal husbandry and conservation issues. Hundreds of USARK Florida members keep, possess, import into the state, sell, barter, trade, and breed reptiles, including Burmese pythons, reticulated pythons, green iguanas, and tegu lizards, subject to proper licensure and permitting by the Commission under its existing regulations.

On behalf of USARK Florida, we submit these supplemental written comments in opposition to the proposed amendments to Florida Administrative Code Rules 68-5.002, 68-5.004, 68-5.005, 68-5.006, 68-5.007, and 68-5.008 (collectively, the “Proposed Rules”) that will be considered at the Commission’s meeting on February 25, 2021. Unfortunately, it appears that the Proposed Rules are designed to end the reptile pet trade in Florida without a sound basis in science or good policy. In short, USARK Florida asks that the Commission adopt one of the lower cost regulatory alternatives (“LCRAs”) USARK Florida offered in its October 5, 2020 letter to the Commission, each of which better meets the Commission’s overarching objective of addressing emerging invasive species issues while not destroying the reptile industry and the livelihoods of the many families this industry supports. At the very least, the Commission should table the Proposed Rules and appoint a technical assistance group (“TAG”) to more carefully consider an appropriate regulatory scheme for commercial use of these species.

I. THE PROPOSED RULES AND INITIAL STATEMENT OF ESTIMATED REGULATORY COSTS

The Commission published the initial version of the Proposed Rules in July 2020. In September 2020, Commission staff prepared a statement of estimated regulatory costs (“SERC”) for the Proposed Rules. *See* Fla. Admin. Code R. 68-1.008(5)(b)4. According to this SERC, the overarching goal of the Commission was to reduce the impacts created by the reptiles at issue given the threat they pose to “Florida’s ecology, economy or human health and safety.” (Sept. 2020 SERC at 2, 4.) According to the SERC, “[t]he species included in proposed changes to Chapter 68-5, F.A.C. either have a history of impacts in the State of Florida or are likely to have an impact should they be released and become established in Florida.” (Sept. 2020 SERC at 1.)

Florida law mandates that a SERC include certain elements, including a good faith estimate of the individuals and entities likely to be required to comply with the rule, a good faith estimate of the transactional costs likely to be incurred by individuals and entities required to comply with the rule, and an analysis of the impact on small businesses. *See* § 120.541(2), Fla. Stat. (2007).¹ While the SERC included subheadings corresponding to those requirements, the SERC’s analysis of each was cursory. Notably, as explained in our October 5, 2020 letter (a copy of which is attached), the SERC both grossly understated the Proposed Rules’ impact to the reptile industry yet overstated governmental entities’ regulatory costs that the Commission staff suggested would be reduced under the Proposed Rules. For example, in support of the changes, the Commission’s staff cited the costs incurred in controlling and reducing the impacts of invasive fish and other wildlife—not just reptiles—in the wild. (Sept. 2020 SERC at 2-4.)

II. USARK FLORIDA’S COMMENTS AND PROPOSED LCRAS

USARK Florida offered extensive comments on the Proposed Rules in its letter dated October 5, 2020. All of these will not be repeated here, as this letter is attached. But its key points remain: the Commission’s Conditional Species Program is working, and the Commission has not demonstrated—and cannot demonstrate—that banning the commercial trade in Florida for any of the impacted species will actually result in any less iguanas, Burmese pythons, or other reptiles in the wild in Florida. Many of these species are already established and breeding and will be the subject of the Commission’s management and control efforts for years to come. For those species not yet established, like the reticulated python and green anaconda, the Commission acknowledges that these species are unlikely to reproduce and establish in the wild, so it makes little sense to prohibit their ownership and possession for commercial use. Accordingly, USARK Florida urged the Commission not to adopt the Proposed Rules.

As part of its October 5, 2020 letter and as authorized by law, USARK Florida also offered three LCRAs that would better accomplish the goal of addressing invasive species while allowing

¹ The Commission’s Due Process Rule provides that the Commission “shall prepare statements of estimated regulatory cost and statements of lower cost regulatory alternative in accordance with the APA.” Fla. Admin. Code R. 68-1.008(5)(b)4. Counsel for the Commission takes the position that this rule refers to the 2007 version of the APA.

a highly regulated commercial industry to continue. *See* § 120.541, Fla. Stat. (2007). Specifically, USARK Florida proposed the following: (1) make no change to Chapter 68-5, Florida Administrative Code, as the current regulatory scheme has worked well in Florida; (2) add tegu lizards to the Conditional Species list, subjecting them to the same stringent requirements applicable to other Conditional Species, including caging, biosecurity, and reporting requirements—something that USARK Florida advocated for at the inception of the Conditional Species regulations; or (3) add tegu lizards and green iguanas to the Conditional Species list, subjecting both to the stringent requirements of the existing Conditional Species permitting program. USARK Florida also provided an analysis by economic consulting firm Capital Trade, Inc., which more specifically identified the various shortcomings found within the SERC’s purported economic analysis of the Proposed Rules.

III. THE UPDATED SERC

In December 2020, the Commission responded with an “updated” SERC that rejected the LCRAs offered by USARK Florida and, of even greater concern, changed the objectives of the Proposed Rules. Instead of addressing USARK Florida’s proposed LCRAs within the Commission’s original goal of reducing the impacts associated with the reptile species at issue, the Commission rejected each LCRA for the stated reason that such LCRA would not “*eliminate commercial breeding in order to reduce risks to Florida’s native species.*” (Dec. 2020 SERC at 15.) The Commission’s response to each of the concerns presented by USARK Florida also amounted to simply a concession that the Commission did not do, and was unwilling to do, any further research into the reptile industry that the Commission desires to end by way of the Proposed Rules. (*See* Dec. 2020 SERC at 16-19.)

Economist Ariel Collis of Capital Trade, Inc., who has researched the reptile industry for decades, reviewed the updated SERC. In the attached comment, he explains that the updated SERC: (1) fails to substantiate the purported relationship between ending the reptile pet trade and the claimed reduced environmental harms; (2) illustrates that the Commission lacks a full and accurate picture of the reptile pet industry; (3) fails to appropriately estimate the Proposed Rules’ impact on iguana and tegu businesses in Florida; and (4) fails to provide an adequate economic justification for the rejection of the proposed LCRAs to the Proposed Rules. Based on these deficiencies, he concludes that the revised SERC is “incomplete and deeply flawed.”

The SERC is just one example of how the Commission’s rulemaking efforts, while perhaps well-intentioned, were more form than substance. Although the Commission’s staff did solicit public comments and held ten virtual workshops regarding the Proposed Rules, there was little if any dialogue between the Commission and stakeholders regarding how best to regulate these reptile species, as the Commission staff and the assigned facilitators insisted that the purpose of the workshops was simply to listen to comments.² Ultimately, the Proposed Rules largely match

² This is contrary to law, which expressly requires that when a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency’s proposal and to respond to questions or comments regarding the rule being developed. *See* § 120.54(2)(c), Fla. Stat. (2007).

what the Florida Legislature passed in 2020 Senate Bill 1414—legislation that was declared unconstitutional.³

IV. THE LAST-MINUTE CHANGE TO THE PROPOSED RULES

Although the Commission staff did not adopt any of the changes suggested by USARK Florida or by those who will be adversely affected by the Proposed Rules, the Commission staff recently posted a significant change to the Proposed Rules that is not explained in the staff memorandum to the Commission or supported by the record.

Under the Proposed Rules published in July 2020, certain businesses with tegu lizards and green iguanas would be allowed to continue commercial use subject to specific requirements. But under the version of the Proposed Rules posted on February 4, 2021, a new provision was added that appears designed to completely end commercial breeding of all the impacted reptile species, including tegus and iguanas. Specifically, under the Proposed Rules now before the Commission, proposed paragraph (4)(a) of rule 68-5.007 is revised to read:

(4) Commercial Sales Use of Green Iguanas (*Iguana iguana*) and Tegus (genera *Salvator* and *Tupinambis*, all species):

(a) If a person, firm, or corporation held a valid captive wildlife class III exhibition or sale license on June 30, 2020, and documented an inventory of green iguanas or tegus on his or her or its 2018 or 2019 license application or indicated planned possession of green iguanas or tegus on his or her or its 2018 or 2019 license application, the Commission, upon receipt of a completed permit application, shall authorize that person, firm, or corporation to continue to sell green iguanas or tegu lizards for as long as the person, firm, or corporation maintains an active permit.

1. Such status is void upon any permit transfer or lapse.

2. The person, firm, or corporation may not import green iguanas or tegus into this state.

3. ***Such entities may only continue to breed green iguanas or tegus until June 30, 2024.*** After that date, no additional breeding of green iguanas or tegus will be authorized. Males and females shall be caged separately after that date. Proof of sex for each individual shall be made available upon request by Commission personnel. ***Any eggs produced after June 30, 2024 shall be destroyed immediately.***

This change, of course, will drastically and adversely impact numerous small businesses that were under the impression before February 4 that they would be able to continue their

³ See Order Granting Plaintiffs' Amended Motion for Partial Summary Judgment, *U.S. Ass'n of Reptile Keepers v. Fla. Fish & Wildlife Conservation Comm'n*, No. 2020 CA 001277 (Fla. 2d Cir. Ct. Sept. 24, 2020).

businesses by at least selling green iguanas and tegus out of state for as long as they held a valid license. Notwithstanding this substantial change, the staff memorandum to the Commission does not mention it and instead incorrectly states only that the “[f]inal rule language includes provisions to *lessen* the impact to regulated entities.”⁴ Likewise, no reason is given for this major change.

This significant change was also not addressed in the Commission’s initial or “updated” SERC. Indeed, the SERC’s analysis on small business impacts expressly states that certain license holders with a verified inventory of tegus or green iguanas “will have an opportunity to apply for limited exception permits to continue that activity,” and that such license holders “will still be able to sell these animals out of state.” (Dec. 2020 SERC at 11-12.) These statements are incorrect under the latest version of the Proposed Rules, and the SERC wholly fails to provide the required good faith estimate of the costs incurred by individuals and entities as a result of this significant rule change, or an actual analysis of the impact on small businesses as a result of this significant rule change. *See* § 120.541(2)(c), (d), Fla. Stat. (2007).

V. THE COMMISSION SHOULD ADOPT ONE OF THE PROPOSED LCRAS OR DEFER RULEMAKING AND APPOINT A TAG

For all these reasons, USARK Florida asks the Commission to adopt one of the proposed LCRAs or, at the very least, table the Proposed Rules in favor of a more rigorous, science-based rulemaking process using a TAG.

In further support of its requests, USARK Florida provides the attached comments by Richard Engeman, Ph.D., a renowned scientist in the area of invasive species. Dr. Engeman offers comments on the success of the Conditional Species program to date and explains why the Proposed Rules would not have any real impact on Florida’s environment as the reptile species at issue are either already established—and the Proposed Rules cannot and would not change that—or are unlikely to establish themselves in the wild in Florida. Rather, to remove or even generally reduce already established populations, like those of the Burmese python or green iguana, it would require intensive, consistent, and integrated pest management systems over a long period of time—it would have nothing to do with whether those species are otherwise permitted in captivity within the state.

* * *

Thank you for the opportunity to comment on the Proposed Rules ahead of the Commission’s February 25, 2021 meeting. Should you have any questions, please do not hesitate to contact us.

⁴ *See* Memorandum on Invasive Reptiles – Final Rules from Melissa Tucker, Director, Habitat and Species Conservation, to Fla. Fish & Wildlife Conservation Comm’rs, Feb. 25, 2021 (emphasis added), *available* at <https://myfwc.com/media/25785/5a-sm-reptilerules.pdf>.

Sincerely yours,

HOLLAND & KNIGHT LLP

Larry Sellers

Lawrence E. Sellers, Jr.

Tiffany Roddenberry

Attachments

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February 19, 2021

Public Comment on Behalf of the U.S. Association of Reptile Keepers on the Florida Fish and Wildlife Conservation Commission's Revised Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C.

My name is Ariel Collis. I am an economist with Capital Trade, Incorporated, an economic consulting firm located in Washington D.C. I have researched the economics of the U.S. reptile industry for over a decade. I am the author of the several papers on the U.S. reptile industry, including a 2019 report, An Economic Impact Report on Florida's Reptile and Amphibian Industry, detailing the scope, size, and economic impact of Florida's reptile and amphibian industry.¹ In conducting research for the Florida report, I interviewed and surveyed hundreds of Florida reptile business owners, some of whom sold the snakes and lizards listed under the Proposed Changes to Chapter 68-5, F.A.C. As part of the Florida Reptile and Amphibian Industry Report, I also interviewed and surveyed the owners of Florida businesses that sold products and provided medical services for the listed snakes and lizards.

I was asked by the United States Association of Reptile Keepers, Florida Chapter (USARK) to review and evaluate the Florida Fish and Wildlife Conservation Commission's

¹ See Ariel Collis. An Economic Impact Report on Florida's Reptile and Amphibian Industry. A report prepared for the United States Association of Reptile Keepers. December 5, 2019. See also Robert Fenili and Ariel Collis. The Modern U.S. Reptile Industry. A report prepared for the United States Association of Reptile Keepers. March 12, 2011.

(FWC) revised Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C. (revised SERC), updated December 2020. My review of the revised SERC showed that its economic impact analysis is deficient because it:

1. Does not provide evidence to show that ownership, breeding, and sales of the listed species have increased environmental damage to the state of Florida, or that banning the listed species will decrease environmental damage done within the state of Florida by the listed species. However, the revised SERC shows that the FWC has the data necessary to test the connection between ownership, breeding, and sales of the listed species and environmental damage to the state of Florida, but the FWC has chosen not to use that data.
2. Does not provide evidence that there was outreach to the reptile community in Florida, the people most knowledgeable about the listed species, to help determine:
 - a. The prices for which the listed species were sold in Florida,
 - b. The number of iguanas and tegus that are sold in Florida,
 - c. The economic burden of the increased caging and paper work requirements for iguana and tegu owners, and
 - d. The costs of shifting from breeding and selling the listed species to breeding and selling other, unlisted species.
3. Proposes an incomplete and inconsistent method for estimating the economic impact of the proposed changes on iguana and tegu owners in Florida, which ignores recent changes to the proposed regulations banning all tegu and iguana breeding after June 30, 2024.

4. Does not provide an adequate economic justification for the rejection of the proposed lower cost regulatory alternatives to the proposed rules.

Given these deficiencies in the economic analysis, it is my opinion that the FWC has not made a good faith effort to estimate the number of individuals and businesses impacted by the proposed revisions to Chapter 68-5, F.A.C. or the magnitude of the impact to those individuals and businesses, as is required by law.² A more detailed description is given below of the deficiencies in the economic impact estimations provided in the revised SERC.

Background

During the July 2020 Florida Fish and Wildlife Conservation Commission (FWC) meeting, Commissioners directed staff to publish draft rules in Chapter 68-5 F.A.C. that address high-risk nonnative snake and lizard species. The stated purpose of the proposed rules is to limit possession and prohibit commercial breeding of reptile species that the FWC has deemed “high-risk nonnative species” in Florida.³ The species listed for inclusion under the proposed rules include: Burmese pythons, reticulated pythons, amethystine pythons, scrub pythons, Northern African pythons, Southern African pythons, green anacondas, Nile monitor lizards, tegus (all species) and green iguanas (collectively, listed species).⁴

On September 2020 the FWC issued a Statement of Estimated Regulatory Costs (original SERC) that concluded that there will be costs to small businesses with the adoption of the

² See Florida Statutes 120.541(2)(a) (2007).

³ Florida Fish and Wildlife Conservation Commission, Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C. Updated December 2020 (Revised SERC), p. 1.

⁴ Florida Fish and Wildlife Conservation Commission, Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C. Updated December 2020 (Revised SERC), p. 5.

proposed changes, but these estimated costs are outweighed by the impact that these high-risk species pose in Florida.⁵

In response to the original SERC, on October 5, 2020, Holland & Knight, LLP, representing USARK, submitted written comments that included three lower cost regulatory alternatives (LCRAs) to the proposed regulations. On December 2020, the FWC issued a revised SERC which FWC states “takes into account the additional information provided to the FWC and considers the proposed lower cost regulatory alternatives to the proposed rules.”⁶

The FWC Does Not Provide Evidence that Ownership of the Listed Species Leads To Environmental Damage.

The revised SERC does not establish a connection between the proposed additional regulations for the listed species and a decrease in environmental damage within Florida caused by the listed species. Without evidence of this connection, evidence that a SERC is supposed to provide, the justification for the proposed regulation is based on speculation. In contrast, many members of the Florida reptile community have provided evidence of the negative impact that the proposed regulations will have on reptile breeders, sellers, food providers, and product manufactures. The negative impact to Florida reptile businesses is also acknowledged in the revised SERC.⁷ Without a firm link between the regulated reptile trade in Florida for all of the listed species and the environmental damage caused by these species, the proven costs of the proposed regulations to Florida businesses outweigh their speculative benefits.

⁵ Florida Fish and Wildlife Conservation Commission, Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C. Updated December 2020 (Revised SERC), p. 1.

⁶ Florida Fish and Wildlife Conservation Commission, Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C. Updated December 2020 (Revised SERC), p. 1.

⁷ Florida Fish and Wildlife Conservation Commission, Statement of Estimated Regulatory Costs of Proposed Changes to Chapter 68-5, F.A.C. Updated December 2020 (Revised SERC), p. 1 (“the FWC concluded that there will be costs to small businesses with the adoption of the proposed changes.”)

The FWC gives a three part justification for the need for the additional regulations, including a ban, for the listed species: i) “[d]espite current regulations, FWC’s Captive Wildlife program and an expanding Nonnative Fish and Wildlife Program, Florida continues to experience impacts from nonnative fish and wildlife that escape captivity”⁸; ii) “The large constrictor snakes identified in the draft rule are known to have or are likely to have ecological impacts in Florida.”⁹, and ; iii) “[a]dditional regulation of these species that are part of live animal trade may reduce future expenditures to address management of these species should additional releases occur.”¹⁰

The first two statements can be thought of as the assumptions underlying the regulations. The third statement can be thought of as the conclusion that FWC uses to justify the regulations. The revised SERC, however, provides no evidence that conclusion flows from the given assumptions. Several plausible alternative hypotheses need to first be disproven before the proposed regulations can be said to be justified.

For example, Dr. Richard Engeman, biostatistician, in his comments on the proposed regulations, states that the Burmese python likely became established in Florida in the 1990s.¹¹ Given this, the SERC needs to show if the Burmese pythons that “are known to have or are likely to have ecological impacts in Florida” are the pythons that were regulated under the Conditional Species program or are pythons that were established in Florida before the Conditional Species program existed. If the damage comes only, or even mostly from the previously established

⁸ Revised SERC, p. 2.

⁹ Revised SERC, p. 2.

¹⁰ Revised SERC, p. 3.

¹¹ Written Comments Regarding the Proposed Rules. Letter from Richard Engeman, Ph.D. to the Commissioners, Florida Fish and Wildlife Conservation Commission. February 19, 2021, p. 3.

pythons, then banning Burmese python ownership by owners regulated under the Conditional Species program will not lead to significantly fewer ecological impacts in Florida.

The revised SERC has provided no evidence that the FWC has used quantitative analysis to show that the additional regulations are needed. First, the SERC states that the FWC has data, required under the Conditional Species program, on the births, deaths, acquisitions, sales and transfers in and out of state for each species.¹² Therefore, trends in these numbers can be compared against incidents of ecological damage to establish a) whether there is a connection between the number of listed species owned in the state of Florida and the number of incidents of ecological damage, b) whether there is a connection between the number of in-state sales of the listed species and the number of incidents of ecological damage, or c) if any of the listed reptiles regulated under the Conditional Species program actually escaped and made it into the wild.

Second, the revised SERC states that, under the Conditional Species program, the listed reptiles and lizards are required to be PIT tagged.¹³ Such PIT tag data could be used to check if any of the listed snakes and lizards have escaped or have been released, because inspectors can scan the reptiles in a facility and cross check the scans against the tags registered to a particular owner. In addition, a study could be done of the number of incidences when a PIT tag has been found on a reptile that has been captured after inflicting ecological damage. If a number of captured reptiles were found to have PIT tags and could be connected to owners under the Conditional Species program, this would give verifiable evidence of the need for additional enforcement of the current regulations or the need for additional regulations.¹⁴

¹² Revised SERC, p. 5. (“All license holders are required to submit a Reptile Inventory Report Form every 6 months that lists births, deaths, acquisitions, sales and transfers in and out of state for each species.”)

¹³ Revised SERC, p. 9. (“Conditional reptiles are currently required to be permanently PIT tagged”)

¹⁴ See, Written Comments Regarding the Proposed Rules. Letter from Richard Engeman, Ph.D. to the Commissioners, Florida Fish and Wildlife Conservation Commission. February 19, 2021, p. 5. (“To my knowledge,

The SERC gives is no indication that any such analysis has been done nor has the FWC provided evidence to show that possession of the listed species under the current regulatory program has caused environmental damage.

Outreach to the Florida Reptile Industry is Needed to Accurately Estimate the Impact of the Proposed Regulations

It is impossible to make an accurate estimation of the impact of the proposed regulations without reaching out to the Florida reptile community. It is my understanding that the FWC did little outreach to Florida reptile owners, breeders, or sellers, either to ask them about the impact of the proposed regulations on their businesses or about sources on which to base the economic impact estimation.¹⁵ The reptile industry, particularly the Florida reptile industry, is understudied and has few public documents from which someone unfamiliar with the industry can learn about it. Thus, such outreach is critical to understanding industry dynamics and economics.

The members of the Florida reptile business community are a valuable source of information about the scope, size, and dynamics of the Florida and U.S. reptile industries. In my research on the Florida reptile industry, I found that a review of websites, newspaper articles, and journal articles was inadequate to understand what and how many animals were being sold, by whom, and to whom within the industry. Speaking with business owners changed my outsider's perception of the industry from thinking that it was made up of a few pet stores to understanding that the reptile industry is a network of pet owners, hobbyists, breeders, stores, store proprietors, e-tailers, show promoters, veterinarians, educators, venom collectors, importers, exporters, wholesalers, customs brokers, zoos, display organizations, food producers, and product

there have been no mentions in the media or from FWC of finding a PIT tag associated with Conditional Species license holders being found in any of the many wild-caught pythons captured in south Florida.”)

¹⁵ February 2, 2021 conversations with Phil Goss, President of USARK.

manufacturers.¹⁶ If the FWC did not and does not reach out extensively to USARK or the reptile community, the FWC will have an incomplete picture of the consequences of the proposed regulations on Florida reptile businesses. The aspects of the economic impact estimate that cannot be understood without industry input include: pricing, affected businesses, iguana and tegu sales, the difficulties in shifting sales to other species, and the cost burdens of additional caging and paperwork requirements on iguana and tegu owners.

The FWC underestimates the value of lost sales that will result from the proposed regulations because of the FWC's lack of knowledge of reptile pricing. Without outreach to the reptile community, it is difficult to understand how prices are set for the listed species. For example, from my interviews with members of the reptile community, I learned that one of the most popular on-line marketplaces for reptiles is MorphMarket.com (MorphMarket). The revised SERC does not indicate that the FWC utilized MorphMarket to research pricing for the listed species. Table 1, below, provides a comparison of high-cost estimates, using the FWC's estimation methodology, of lost sales under the proposed regulations, comparing estimates calculated using MorphMarket prices, accessed February 11, 2021, to the estimated calculated using prices found by the FWC based on a "November 2020 internet search".¹⁷ Table 1 shows

¹⁶ Collis, Ariel. An Economic Impact Report on Florida's Reptile and Amphibian Industry. December 5, 2019, p. 4. ("In addition to pet stores, Florida's herp industry encompasses a network of pet owners, hobbyists, breeders, store proprietors, show promoters, veterinarians, educators, venom collectors, importers, exporters, wholesalers, customs brokers, zoos, display organizations, producers of herp food, and manufacturers of herp products. Florida is the center of commercial reptile and amphibian breeding in the United States as evidenced by Florida breeders serving as the primary herp suppliers for most national and regional pet store chains across the U.S. The Port of Miami handles more herp imports, by dollar value, than any other port in the United States. Five hundred thousand herps, with a declared value of \$6.4 million, were imported into the United States through the Port of Miami in 2018.")

¹⁷ See revised SERC, Table 3: Estimated economic impact to businesses in Florida that commercially sell Conditional Snakes and Lizards (based on 2019 required reporting on volume and species). UPDATED November 2020 p. 13.

that without knowledge of the prices that can be earned for unique colorations of the listed species, the high range of lost sales was underestimated by the FWC by a factor of 4 to 5.

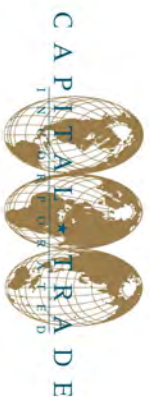


Table 1: Estimated Lost Sales of Listed Species (High): MorphMarket v. Revised SERC

Species	Total sales or transfers (in and out of state)	MorphMarket Price (high) (\$/animal)	Total Sales (Based on MorphMarket High Price)	FWC Price: Highest price based on November 2020 internet search (\$/animal)	Total Sales (Based on FWC High Price)	Notes
Burmese python	55	\$6,000	\$330,000	\$800	\$44,000	MorphMarket Breeder based in Plantation, Florida
Reticulated python	309	\$6,000	\$1,854,000	\$950	\$293,550	(Reticulated/Burmese cross) MorphMarket Breeder based in Plantation, Florida
African pythons	1	\$450	\$450	\$1,200	\$1,200	(Reticulated/Burmese cross) MorphMarket Breeder based in Oklahoma (Only one offered on site)
Amethystine /Scrub pythons	44	\$800	\$35,200	\$400	\$17,600	MorphMarket Breeder based in Texas
Green anaconda	21	\$3,000	\$63,000	\$2,800	\$58,800	MorphMarket Breeder based in California
Nile monitor	1,445	\$200/\$1,750	\$289,000/\$2,528,750	\$70/\$2,000	\$101,150/\$2,890,000	MorphMarket Breeders based in Deerfield Beach, Florida and New Hampshire
Green Iguana	6,000	\$1,400	\$8,400,000	\$800	\$4,800,000	MorphMarket Breeders based in Stuart, FL (Albino)
Tegu	1,500	\$10,000	\$15,000,000	\$400	\$600,000	MorphMarket Breeders based in Miami, FL (Ruby Red)
Total			\$25,682,939/\$28,211,400		\$5,316,300/\$8,105,150	

Sources:

- /1 Prices for MorphMarket taken from <https://www.morphmarket.com/us>. (Accessed February 11, 2021)
- /2 Total Sales and FWC prices taken from Revised SERC, p. 13, with the exception of estimated total sales for green iguanas. The reason for this exception is discussed below.



In addition to pricing, knowledgeable breeders can provide FWC information on the businesses that supply caging, bedding, lighting, and food as well as veterinary services for the listed reptiles. In this way, the FWC can be aware of and quantify the impacts on all businesses affected by the proposed regulations, not just breeders and sellers.

Lack of outreach to green iguana and tegu breeders and sellers also leaves a significant gap in the estimate of the economic impact to these businesses. Currently the FWC states that, because of the limited information that breeders and owners of green iguanas and tegus are required to share, the FWC knows few details about the number of sales, transfers, births, and deaths of these animals.¹⁸ FWC does not indicate that they were able to find any useful information about sales of green iguanas and tegus online. In other words, currently, the best and only source of information available to accurately estimate the impact on breeders and owners of green iguanas and tegus are the breeders and owners themselves. However, the FWC has not indicated that it has contacted green iguana and tegu owners and breeders. As indicated in Table 1 above, this lack of outreach led to a significant undervaluation of the pricing for unique coloration for tegus and green iguanas. This lack of outreach also prevents the FWC from fully understanding the costs of the additional caging requirements for green iguana and tegu breeders and sellers under the proposed regulations.

The FWC undervalues the cost of shifting sales from the listed species to other unlisted species. The FWC states, “many reptile species that do not pose an ecological risk are traded within and from Florida, allowing for a shift in the business model to species that are legally

¹⁸ See for example, revised SERC, p. 7 (“It is uncertain the number of people who will be impacted by this change...”). See also revised SERC, p. 8 (“Inventory reporting is only required at the time of license application or renewal, and unlike the conditional reptiles, there is no required submission of information on births, deaths, acquisitions or transfers.”)

traded. Most of these businesses do not deal exclusively in the animals covered in the proposed rule changes and will be able to absorb the difference in inventory by selling other species.”¹⁹ From conversations with USARK and reptile breeders, it is my understanding that for many of the listed species it takes three years for them to mature enough to start breeding. Therefore, the proposed regulations not only cost these businesses sales, but prevent these businesses from recouping the costs incurred during the years in which the breeders were feeding and housing these species but could not earn any income from sales. For early-stage breeding businesses the loss of unrecouped costs can be significant.²⁰

In addition, a switch from breeding the listed species to breeding other species that FWC does not currently describe as posing an ecological risk would likely also have a negative economic impact for Florida reptile businesses. It is my understanding based on discussions with reptile breeders, that becoming a successful breeder involves both becoming knowledgeable about husbandry and care for the animals being bred as well as establishing a reputation as a reliable breeder of healthy reptiles. Switching to breeding another species would require breeders of the listed species to acquire new husbandry and care knowledge. Learning new skills takes time as does establishing a positive reputation as a breeder of a new species. The time cost of switching species should have been factored in to the SERC’s economic impact analysis.

In addition, the SERC ignores the time needed for breeders to bring a new reptile to breeding age. It takes years for many FWC approved species to reach breeding size. For example, one of the most popular reptiles currently sold is the ball python, which often takes three years or more to reach breeding size.²¹ Thus, the proposed regulations would not only

¹⁹ Revised SERC, p. 8.

²⁰ Interviews with owners of the listed reptile.

²¹ Conversation with USARK.

result in lost sales of the listed species sales, but may force these businesses to forego sales for several years in order to bring their new stock to breeding size. It is also important to note that a switch to a breeding different species may also require different caging and heating equipment. These additional costs should have been considered in the SERC. The FWC has not considered this triple penalty for the businesses currently selling the listed species, thus undervalues the losses to affected businesses.

The Revised SERC Inconsistently and Incorrectly Estimated the Economic Impact of the Proposed Regulations on Iguana and Tegu Owners

The revised SERC does not address the economic impact of recent changes to the proposed regulations, which states that all tegu and iguana breeding must cease after June 30, 2024.²² This change contradicts the revised SERC, which states, “[l]imited exceptions for commercial use have been provided in draft rule language to allow for those verified, legal businesses that have documented the sale or possession of these species to allow the continued trade of these species ...”²³ The revised SERC states that the fact that “license holders will still be able to sell these animals [tegus and green iguana] out of state” will mitigate the economic impact of the proposed regulation.²⁴ This mitigating factor has been effectively removed from the proposed regulations. Therefore, the SERC should be revised to reflect these changes.

²² Enhancing Regulations of Invasive Reptiles Agenda Item 5A February 25, 2021., 4(a)3 (“Such entities may only continue to breed green iguanas or tegus until June 30, 2024. After that date, no additional breeding of green iguanas or tegus will be authorized. Males and females shall be caged separately after that date. Proof of sex for each individual shall be made available upon request by Commission personnel. Any eggs produced after June 30, 2024 shall be destroyed immediately.”)

²³ Revised SERC, p. 8.

²⁴ See, for example, revised SERC, p. 11 (“If there were currently 1,500 tegus held by Florida license holders (a number used as an example but one higher than what was reported in the November 2019 inventory) the value of this inventory using a high value of \$400 each, would be over \$500,000. However, the license holders will still be able to sell these animals out of state.”)

Aside from the incomplete information given about the proposed rule change in the revised SERC, the revised SERC calculates the impact of the proposed regulations on green iguana and tegu owners inconsistently and incorrectly. First, the FWC appears not to trust the accuracy of the inventory of green iguanas and tegus listed by Florida Class III license holders.²⁵ This distrust is also shown by the refusal of the FWC to use the listed inventory of these species to estimate economic impact. Instead, the FWC rounds the inventory numbers up when discussing lost sales.²⁶ Second, the FWC does not provide an estimate of lost sales for these two lizards, but provides “example calculations”.²⁷ Third, even in these example calculations, the revised SERC does not provide a consistent methodology for selecting a price to use to calculate lost sales. For tegus, the price used to calculate lost sales is “the market value [that] most tegus [is] less than”.²⁸ For green iguanas the price used to calculate lost sales is the highest of the values for which green iguanas “generally sell”.²⁹ Thus, the revised SERC still does not provide a credible methodology for estimating the economic impact of the proposed regulation on green iguana and tegu owners.

²⁵ See for example revised SERC, p. 11 (“5,307 individual iguanas were reported in inventory for 2019. Some of the 382 license holders only wrote “iguana”, not specifically “green iguana”, in their inventory at the time of application. The common name “iguana” may be used for many species that are not green iguanas, none of which are regulated as conditional or prohibited species at this time.”)

²⁶ See, for example, revised SERC, p. 11 (“106 license holders listed Tegus on their inventory or as an animal they may obtain in the future. **1,245 individual tegus** were reported in inventory for 2019.... If there were currently **1,500 tegus held by Florida license holders** (a number used as an example but one higher than what was reported in the November 2019 inventory) the value of this inventory using a high value of \$400 each, would be over \$500,000.”) [Emphasis added]

²⁷ See, for example, revised SERC, p. 11 (“If there were currently 1,500 tegus held by Florida license holders (**a number used as an example** but one higher than what was reported in the November 2019 inventory) the value of this inventory using a high value of \$400 each, would be over \$500,000.”) [Emphasis added]

²⁸ Revised SERC, p. 11 (“The market value of most tegus is less than \$400/animal. Many sell for between \$200-\$250... If there were currently 1,500 tegus held by Florida license holders... the value of this inventory using a high value of \$400 each, would be over \$500,000.”)

²⁹ Revised SERC, p. 11 (“Similarly, green iguanas generally sell for between \$10-\$20. Unusual color morphs, such as albino specimens, may sell for between \$400-800 each. Based on an inventory in the state of 6,000 specimens (higher than what was reported in November 2019) the value of the Florida inventory based using a high value of \$20 each, is likely over \$120,000.”)

Had the SERC used a consistent methodology along with prices that reflect true market value for these animals, such as prices found on MorphMarket, the revised SERC would have shown that the proposed regulations have the potential to have a significant negative economic impact tegu and iguana businesses (see Table 1 above).

The Revised SERC Does Not Provide an Adequate Economic Justification for Rejecting the Proposed LCRAs

The Revised SERC rejects three lower cost regulatory alternatives proposed by Holland & Knight, counsel to USARK, without any given economic justification. As discussed above, the costs to the businesses selling the listed species are certain, they will lose the ability to breed and sell the listed species,³⁰ while the benefits in terms of reduced environmental damage are speculative. Therefore, it is not clear what economic justification revised SERC could have given for rejecting the LCRAs. The proposed LCRAs accomplish some of the goals of the proposed regulations while likely significantly limiting their cost to reptile businesses.

Instead, the proposed LCRAs are rejected because the revised SERC states that they do not “accomplish the objectives of FWC’s proposed rules, namely, to eliminate commercial breeding in order to reduce risks to Florida’s native species.”³¹ This appears to change the objective of the of FWC’s proposed rules from the objectives stated in the original SERC, namely, to reduce the “environmental, social and economic impacts to Florida and its citizens”³² of the listed species. Given that the revised SERC, with the revised objectives of the proposed regulations, was issued after Holland & Knight’s comments, they did not have a chance to tailor their LCRA’s to address these new objectives.

³⁰ Associated sellers of reptile food, caging, lighting, and veterinary services will also lose a portion of their sales to breeders and sellers of the listed species.

³¹ Revised SERC, p. 15. (“FWC considered all the alternatives submitted. None of the LCRAs submitted indicate how the provided alternative would substantially accomplish the objectives of FWC’s proposed rules, namely, to eliminate commercial breeding in order to reduce risks to Florida’s native species.”)

³² Original SERC, p. 12 (“Some small businesses may be impacted by the proposed changes to Chapter 68-5 F.A.C; however, the environmental, social and economic impacts to Florida and its citizens outweighs the limited impacts to small businesses.”)

The SERC itself is supposed to provide evidence to justify the outcome of the proposed rules to ban all of the listed species. As discussed above, the FWC has not provided evidence that connects ownership and breeding of the listed species under the Conditional Species program with environmental damage in the state of Florida.

Conclusion

The FWC's revised SERC is incomplete and deeply flawed. The impact analysis in the revised SERC fails to show a connection between the proposed regulations and the claimed economic benefit to the state of Florida and its citizens, even though the FWC has the data to prove or disprove this connection. The estimation of economic impact to affected businesses lacks many of the critical elements needed to perform an accurate estimation, including accurate and reliable information about reptile pricing, the types of businesses beyond breeders and retailers that will be impacted, and the number of impacted sales of iguana and tegus. Because of the flaws in the revised SERC, it is my opinion that FWC has not performed a good faith estimate of the number of reptile businesses affected and the economic impacts of the proposed regulation on those reptile businesses.

Comments on Proposed Amendments to Chapter 68-5, F.A.C., Rules Relating to Non-native Species:

Florida's Conditional Species List approach is a safe, secure means to tightly control ownership and trade in listed reptiles, including commercial breeders, while averting releases to the wild

Richard Engeman, Ph.D.

Summary

Conclusion:

The existing Conditional Species List approach should be maintained with the addition of green iguanas and Argentine giant tegus as a means to securely protect Florida's environment from escapes or releases while permitting commerce in the listed species, including commercial breeding.

Facts supporting this conclusion:

- The Conditional Species List tightly controls 1) housing security for the animals, 2) rigorous documentation for all aspects of trade, ownership, and breeding, 3) microchip identification for the animals, and 4) stringent inspections and enforcement of the regulations
- All wild populations in Florida for species under consideration are in far south Florida and had those populations established well before the Conditional Species List approach was developed and implemented.
- Regulatory compliance among Conditional Species List license holders has been extraordinary.
- No species on the Conditional Species List has established a wild population since implementing this tightly controlled regulatory approach.
- No escapes or releases from Conditional Species List license holders have been documented.
- Prohibition of the species under consideration would be economically harmful, especially at a time when businesses are already struggling.
- One of the substantial concerns leading to the Conditional Species List approach was that prohibition would likely drive trade and breeding in the animals underground, where there would be no regulatory control and no knowledge of who possessed the animals or where they would be kept.

My credentials

After completing my PhD in biometrics from University of Colorado Medical School (as it was called then), I worked for the same federal entity for 40 years as a biostatistician and biologist (I know animals and numbers), with the most recent name for the organization being the National Wildlife Research Center, the research arm of United States Department of Agriculture (USDA)/Animal and Plant Health Inspection Services (APHIS)/Wildlife Services. It was my responsibility to conduct, lead, and publish wildlife research studies, which were primarily directed at human-wildlife conflicts, especially invasive species throughout the U.S. and the world.

Among my 400+ scientific publications, 200 or so concern invasive species from various places in the world. Of these, over 100 publications involve invasive species in the southeastern US. I have considerable knowledge of reptiles/amphibians with close to 150 publications on them, of which nearly 90 concern invasive reptiles and over 50 of those concern exotic reptiles in Florida including the species under consideration here (e.g., Engeman et al. 2011). In the early 2000s I was in regular contact, including invasive species research collaboration, with Florida's Invasive Species Coordinator during the time when the Conditional Species List approach was being formulated.

To let you know where I sit before I explain where I stand based on established science (a considerable portion of which I have contributed), I must state that I do not own, breed, or trade in any reptile species. I am a former federal scientist being asked to share my extensive scientific expertise relevant to invasive reptile issues in Florida. I bring this background forward to examine invasive reptile establishment in Florida, the existing Conditional Species approach, and the proposed prohibitions. I believe valid scientific data and knowledge can lead to sound actions and avoid costly mistakes.

Highlights of the existing Conditional Species List approach

Motivated by the existence of wild populations of large invasive reptiles like Burmese pythons and Nile monitor lizards, FWC embarked on an approach to avert accidental and intentional introductions of select reptile species while also allowing the safe and secure commerce in these animals (including commercial breeding) through tight controls. Among the FWC-published premises for their approach were 1) encouraging responsible pet ownership and 2) a regulated industry is preferable to underground traffic (see Hardin 2007; citation at the end). This rulemaking resulted in the existing Conditional Species List approach, with enforcement beginning by 2010.

The Conditional Species List approach mandates stringent safeguards for the Florida environment through 1) strict, rugged physical security for housing of animals on the list, 2) rigorous documentation of all aspects of maintenance, commerce, breeding, and movement of the animals on the list, 3) physical internal identification for individual animals with passive integrated transponders (PIT tags), and 4) stringent enforcement measures. Regulatory highlights of this strict program include:

Strict physical security for housing animals:

1. Escape-proof caging
2. Strict locking/latching cage and room requirements
3. Buildings housing the animals must have concrete floors and be anchored
4. Signage requirements like “Danger – Dangerous Reptiles” on entry doors

Rigorous documentation:

1. Annual permit is required
2. Cages must be labeled with common and scientific names
3. A critical incident disaster plan must be in place
4. Records of acquisitions must be kept
5. Transfers must be accompanied by FWC forms/submissions
6. Identification records including PIT Tag number must be reported to FWC within 72 hours of acquisition and also maintained in the possessor’s records

Passive integrated transponder (PIT tag) identification for individual animals:

1. Animals must be microchipped with a unique PIT tag
2. PIT tags are required in rear 1/3 of the body for animals an inch or more in diameter

Stringent enforcement:

1. Captive Conditional Reptile species are subject to FWC inspection at any time
2. Violations must be corrected within 30 days or permit can be revoked
3. Inventory, birth, death, sales records/reports accessible by FWC at any time
4. Tight regulations on transportation

Invasive reptile establishment and the Conditional Species List

To have an informed and rational discussion concerning establishment threats from species on the current Conditional Species List plus green iguanas and Argentine giant tegus (aka Argentine black and white tegu), a full understanding is needed of: 1) what defines an exotic species as having become an established invasive species, 2) the establishment histories in Florida of the species under consideration here, and 3) the temporal relationship of these species relative to the timeline for developing and implementing the regulations associated with the Conditional Species List.

Well before development of the Conditional Species approach, several species on the current Conditional Species List (Burmese pythons, North African pythons, and Nile monitor lizards) had become established in the wild in extreme south Florida. Two additional species currently under discussion, green iguanas and Argentine giant tegus, also had become established in the wild in south Florida.

The first step in evaluating whether an exotic species has become established in an area is for the species to be observed and confirmed in the new area. The next step

is to confirm successful breeding through evidence such as mixed size- and age-classes being present. Lastly, invasive establishment is confirmed when an invasive colony's presence exceeds one presumed generation. If this criterion is missing, then that does not mean a species is not established, just that there is not sufficient proof to say that it is established. For example, this is the situation where tegus have been observed and speculated to have bred further north in Florida than their documented invasive range in south Florida. Despite the lack of confirmation of breeding and multigeneration presence in an area, tegu lizards should be treated prudently, such as being subjected to the regulatory requirements like currently applied to the reptiles on the Conditional Species List.

It is revealing to examine the introduction and population establishment timelines and histories for the species on the Conditional Species List, plus those for green iguanas and Argentine giant tegus which also have established populations in south Florida.

Burmese python: Burmese pythons were first documented as established in Everglades National Park in 2000, although individuals had been reported since the 1980s. The body size-distributions and population increase of the pythons indicate that the colony was likely established by the 1990s. Considerable research evidence has documented Burmese pythons to be physiologically and behaviorally range restricted by climate to extreme south Florida. It is important to note here the confusion caused by a now widely discredited and debunked report authored by the United States Geological Survey (USGS) which FWC has cited and utilized to support their draft rules. This study contains flawed claims that are not supported by authorities and experts outside of USGS. One example of the faults within the USGS study is the claim that Burmese pythons could establish through most of the southern third of the U.S. Reports rebutting the study show the northern range to be Lake Okeechobee, and not Maryland as the USGS study argued. As an invasive species authority who has authored several of the many papers debunking this USGS report (e.g., Avery et al. 2010; Engeman et al. 2014; Jacobson et al. 2012), I find it concerning that FWC has cited USGS here and feel questions should be asked as to the credibility of the science and reasoning behind these draft rules.

North African python: This species was formally documented in 2010 from a relatively small area known as the Bird Drive Basin in Miami-Dade County where individuals had been seen since 2002. This small population now appears to have been eradicated. This species would likely have similar range limitations due to climate as documented for Burmese pythons.

Nile monitor: A colony that had been in existence since at least the early 1990s was formally documented from Cape Coral in 2004. The Nile Monitor also occurs in southern Florida in areas of Miami-Dade and Palm Beach counties. Nile monitors are only established in south Florida and it is unclear whether their climate and habitat requirements would preclude range expansion further north.

Argentine giant tegu: An established population from Hillsborough and Polk counties that was introduced in the early 2000s was formally documented in 2007. A

second colony from Florida City was documented in 2007 and similarly was derived from animals released from a single source (in 2001). Tegus have only been documented with established populations in south Florida but may have the potential to survive and become established further north.

Green iguana: Green iguanas are found throughout much of southern Florida after first having been reported in Miami-Dade County in 1966. Green iguanas are highly range-limited by climate to their present range in south Florida.

In examining the introduction histories of the above species in Florida a clear pattern emerges. The introductions to the wild and subsequent population establishment for each of these species occurred well before the Conditional Species List and its associated regulations were developed and enforced. Those regulations with enforcement beginning by 2010 in no way could have averted the establishment of these species unless they had been implemented over a half century ago (in the case of green iguanas). In other words, the horse had already left the barn for the species already established that later appeared on the Conditional Species List. The next issue, addressed in the next section, is whether the Conditional Species List approach is meeting its objective of averting establishment by the species on the list (given that several of the species already had well-established populations before the approach was developed).

Another commonality among the above species is that they only were documented as established in the far south of the Florida peninsula, although tegus may have potential for range expansion further north. Certainly, the pythons discussed above, plus the other constrictor snakes on the Conditional Species List (pythons and anacondas), as well as iguanas are severely range limited by climate to south Florida. Thus, only a fraction of the Florida peninsula is vulnerable to population establishment by those species.

How well has the Conditional Species List approach been working?

For over a decade FWC has maintained the Conditional Species List approach that permitted a commerce and breeding to coexist with sound environmental policy. Because the newly proposed rules would have significant negative ramifications towards pet ownership and commerce, it is essential to consider and document whether there is any indication that the existing Conditional Species List approach has not been well-functioning for that decade plus. This is assessed by addressing the questions below, aided in some cases by documentation provided by FWC.

Since implementation of the Conditional Species List approach, have any species on the list not already established become established in Florida?

No. No new species from the list has become established since its implementation. Moreover, to the contrary, one of the species, the North African

python, that had been established appears to have had its geographically restricted population eradicated from the wild in Florida.

How well have license holders under the Conditional Species List program been in regulatory compliance?

Examination of 11 years of FWC citation data revealed that over 7700 in-person inspections of Conditional Species List license holders for reptile species under consideration for prohibition produced only 6 citations (0.08%) with none being for escapes. This represents extraordinary compliance. Such inspections are assured by the existence of the licenses required by the Conditional Species List approach.

Have there been any escapes or releases into the wild documented for Conditional Species List license holders?

Again, no. There have been no reported escapes or releases into the wild from Conditional Species List license holders.

Have PIT tags as required for the reptiles on the Conditional Species List been found in any of the many wild-caught pythons?

To my knowledge, there have been no mentions in the media or from FWC of finding a PIT tag associated with Conditional Species license holders in any of the many wild-caught pythons captured in south Florida. The only two explanations for the absence of Conditional Species List PIT tags in wild-caught pythons are: 1) none of those pythons came from Conditional Species license holders, or 2) there is not a protocol requiring wild-caught pythons to be scanned for PIT tags. This latter case would presumably reflect a recognition in advance that the wild-caught pythons would not be escapees or releases from Conditional Species List license holders.

The obvious conclusion from answering the above questions is that there is considerable evidence that the Conditional Species List approach as currently implemented has been working admirably.

What would be the ramifications to Florida's environment and economy if the reptiles under consideration are added to the prohibited list?

The Conditional Species List approach has provided safe, secure, stormproof housing for the reptiles on the list, required PIT tag identification for individual animals, thorough documentation of inventory and procedures, and tight regulatory control through inspections. What would be the unintended consequences of moving the reptiles under consideration from the Conditional Species List to the Prohibited List?

An important consideration in the original development of the Conditional Species List approach was the recognition that complete bans pose the risk of driving ownership and commerce (including breeding) underground, making them less likely to comply with important regulatory safeguards. All of the Conditional Species List safeguards and tight controls would be lost for those individuals choosing to operate outside the law rather than give up their businesses. There would be no records for ownership, breeding, and commerce, and facilities for maintaining and breeding the animals would not be voluntarily open for inspection and thereby less likely to be stormproof or secure from escapes. An outstanding paper given at the international conference Managing Vertebrate Invasive Species strongly endorsed responsible pet ownership and believed that a well-regulated pet industry is preferable to driving the traffic underground where there would be greater vulnerabilities for both intentional and accidental releases into the wild (Hardin 2007).

An additional negative consequence of moving the species under consideration to the Prohibited List would be the negative economic impacts to the reptile trade in Florida involving these popular animals. Economic analyses have estimated that the reptile-based economy in Florida is in the hundreds of millions of dollars per year with thousands of employees (Collis 2019). This economy was also estimated to provide an additional \$20-40 million of economic activity and hundreds of additional jobs. The reptile trade economy would be diminished through prohibitions against these popular animals under consideration.

Would prohibition of the Conditional Species under consideration affect the already well-established populations in south Florida?

As discussed above, there are four species under consideration (Burmese pythons, Nile monitor lizards, green iguanas, and Argentine giant tegus) that are and have been firmly entrenched in the south Florida landscape for years. Will moving the species to the prohibited list cause their entrenched populations to diminish? The answer is no.

To remove or even generally reduce populations would require intensive, consistently ongoing integrated pest management programs over the course of many years. These are prolific reptile species that can readily repopulate an area if control would be halted. This has been readily demonstrated for green iguanas in Florida. Even though green iguanas were already abundant, raccoon removals to protect sea turtle nests or the public produced further iguana population explosions just due to reduced raccoon predation on iguana nests.

Control and eradication of invasive species is an area in which I have extensive expertise nationally and internationally. This experience not only includes invasive species control and eradication in Florida, but I also was integral to the most intensive reptile control program in the world, the brown tree snake control efforts on Guam.

Carrying out such programs in Florida would be more expensive and difficult due to issues with protecting nontarget species (especially endangered species), the need

for effective and target-specific control tools, the vast areas over which the species are found, the considerable amount of difficult landscapes in which control would be needed. To possibly eradicate any of these four species from Florida would require large sums of money over many years to carry out the field work and to develop and improve effective control tools and strategies. Thus, complete eradication for any of these four species would be extraordinarily challenging and expensive whether or not there were any in captivity in the state.

Further to the point, it would seem preferable to know through the tight permitting process who possesses animals (i.e., the Conditional Species List species) and where they are. There will always be people who operate outside the law, but it should not be forgotten that one of the strong arguments for implementation of the Conditional Species List approach was to deter driving ownership, breeding, and commerce of these species underground, implying a greater threat would exist from people operating outside the law if the species were prohibited.

A final thought based on the times in which we are currently living

In looking at the current pandemic situation where many businesses are failing due to the pandemic, I cannot help but believe that the state of Florida would benefit from maintaining the existence of a successful, well-regulated, secure means for commerce and ownership of the reptiles on the Conditional Species List.

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