

Exploring a Habitat-Based Approach to Imperiled Species Management

July 2014



Scott Sanders, Director

Office of Conservation Planning Services

Florida Fish and Wildlife Conservation Commission

FWC's Responsibilities

The FWC is responsible for managing Florida's fish and wildlife resources for their long-term well-being and the benefit of people.

Areas of Public Responsibilities:

- **Management** - FWC manages the state's fish and wildlife resources based on the latest scientific data
- **Law Enforcement** - We enforce rules to protect fish and wildlife, keep waterways safe and cooperate with other law enforcement agencies providing homeland security.
- **Research** - Our scientists work to provide information for the FWC and others to make management decisions based on the best science available involving fish and wildlife populations, habitat issues and the human-dimensions aspects of conservation.
- **Outreach** - We communicate with a variety of audiences to encourage participation, responsible citizenship and stewardship of the state's natural resources.



FWC's Responsibilities

Florida has...

- 53,927 square miles of land and 12,133 square miles of water
- More than 34 million acres of public and private land
 - Including 5.8 million acres of wildlife management areas (one of the largest public-hunting systems in the country)
- 2,276 miles of tidal shoreline (8,426 "[detailed](#)" miles)*
- Approximately 12,000 miles of fishable rivers, streams and canals
- About 7,700 lakes (of 10+ acres), covering 3 million total acres

The FWC protects and manages...

- More than 575 species of wildlife
- More than 200 native species of freshwater fish
- More than 500 native species of saltwater fish

...balancing these species' needs with the needs of nearly 19 million residents and the millions of visitors who share the land and water with Florida's wildlife.



FWC and the Environmental Resource Permitting Program

FWC is also a state agency that participates in the review of other state agency regulatory programs.

Example:

Environmental Resource Permitting Program implemented by FDEP and the 5 WMDs under Part IV of Chapter 373, F.S.

FWC staff review ERP applications submitted to FDEP and the 5 WMDs to:

- Assess the potential project impacts to fish and wildlife resources
- Assess impacts to state imperiled species and imperiled species **habitat**
- Identify impacts in accordance with Chapter 379, Florida Statutes (F.S.) and Chapter 68A-27, Florida Administrative Code (F.A.C).



FWC and the Environmental Resource Permitting Program

DEP provides applications to FWC for review.

The applicants handbook Volume 1 Part 2 (Section 10.3):

*As part of the assessment of the impacts of regulated activities upon fish and wildlife, the Agency will provide a copy of all notices of applications for individual (including conceptual approval) permits that propose regulated **activities in, on, or over wetlands or other surface waters to the Florida Fish and Wildlife Conservation Commission (FWC) for review and comment**, in accordance with Section 20.331(10), F.S. In addition, Agency staff may solicit comments from the FWC regarding other applications to **assist in the assessment of potential impacts to fish and wildlife and their habitats, particularly with regard to listed species.***



FWC and the Environmental Resource Permitting Program

Additionally, pursuant to **section 10.1.1(a), of the Applicant's Handbook**, *“an applicant must provide reasonable assurances that a regulated activity will not impact the values of wetland and other surface water functions so as to cause adverse impacts to:*

- (a) The abundance and diversity of fish, wildlife, listed species, and the bald eagle (*Haliaeetus leucocephalus*), which is protected under the Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d (April 30, 2004); a copy of the Act is in Appendix F; and*
- (b) The habitat of fish, wildlife, and listed species.”*



Everglades Mitigation Bank



FWC and the Environmental Resource Permitting Program

FWC is responsible for administering Chapter 68A-27 F.A.C.

This rule was recently modified to include a definition of “take” and “harm” that include impacts to habitat essential for species survival.

The current definitions within Ch. 68A-27 are as follows:

“Take” is to harass, **harm**, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct.

“Harm” is an act which actually kills or injures fish or wildlife, which **may include significant habitat modification or degradation**, that impairs essential behavior patterns, including breeding, feeding or sheltering.



FWC and the Environmental Resource Permitting Program

Applications for impacts to wetlands are reviewed for state imperiled species that are dependent upon those wetlands for essential behaviors such as **breeding, feeding, or sheltering**.

FWC staff provide FDEP and the applicant with recommendations for state imperiled species including:

- measures for avoiding impacts
- measures for minimizing potential impacts
- permitting alternatives for unavoidable impacts
- mitigation alternatives for impacts to listed species (including essential habitat)

The ERP authorizes impacts to wetlands that may be used by state imperiled species, and impacts to these wetlands may include **significant habitat modification or degradation** that impairs essential behavior patterns (breeding, feeding, or sheltering).



FWC and the Environmental Resource Permitting Program

Section 1.3 of the Applicants Handbook:

Issuance of the ERP does not :

“Relieve persons from obtaining all other required licenses, permits, and authorizations under applicable state, federal, or local statute, rule, or ordinance.

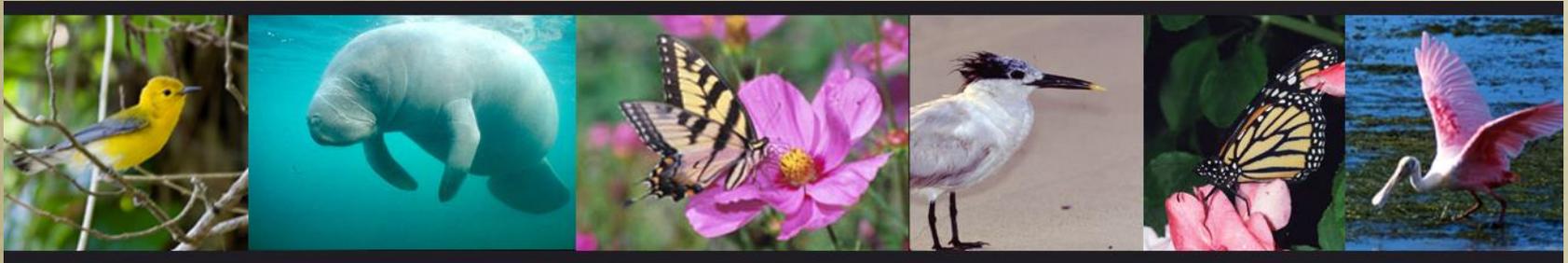
Persons are advised to obtain all required authorizations prior to constructing, altering, operating, maintaining, removing, or abandoning projects regulated under the ERP program.”

The applicant is legally responsible for avoiding “take” of state imperiled species relying on these wetlands for essential behaviors.



FWC's Incidental Take Permit

- Ch. 68A-27.007, Permits and Authorizations for the “take” of Florida Endangered and Threatened Species:
 - Incidental Take: taking otherwise prohibited, if such taking is incidental to, and not the purpose of the carrying out of an otherwise lawful activity. [Ch. 68A-27.007(2)(b)]
 - Could the take be avoided or minimized
 - Activity won't have a negative impact on survival of the species
 - **Requires mitigation to offset the impact, provide net scientific or conservation benefit to species**



FWC's Incidental Take Permitting and the ERP Program

If an ERP authorizes impacts to wetland habitat that results in the **modification or degradation of habitat supporting essential behavior patterns for state imperiled species**, then the permittee may be liable for “take” as defined in Ch 68A-27 and would need to obtain an ITP.

The “net conservation benefit” required to obtain the ITP may include replacement of the functional loss of habitat impacted by the lawfully permitted activity.

This “net conservation benefit” may already be occurring through the existing ERP program.



FWC's Incidental Take Permitting and the ERP Program

Currently, the approval process for Individual and Conceptual ERPs includes certain “Environmental Considerations”, specifically:

- 1) the degree of impact to wetland function,
- 2) whether those impacts can be mitigated, and
- 3) design modifications for the site that could eliminate or reduce impacts to these functions.

Adverse impacts remaining after design modifications have been made may be offset by mitigation;

An activity cannot cause a net adverse impact on wetland functions and other surface water functions that is not offset by mitigation.



Wetland Mitigation as part of the ERP Program

Mitigation is required only to offset the adverse impacts caused by regulated activities.

Mitigation might consist of restoration, enhancement, creation, or preservation of wetlands, other surface waters, or uplands.

Mitigation can be conducted on-site, off-site, or through the purchase of credits from a mitigation bank, or through a combination of approaches.

The mitigation must offset the adverse impacts to wetlands and other surface waters.



Copyright © 2009 Florida Panther Conservation Bank



Colbert-Cameron Mitigation Bank



FWC's Incidental Take Permitting and the ERP Program

Chapter 62-345, F.A.C., identifies the Uniform Mitigation Assessment Method to be used to assess functions provided by wetlands and other surface waters, the amount those functions are reduced by proposed impact, and the amount of mitigation needed to offset that impact.

Chapter 62-345, F.A.C. also establishes criteria for mitigation bank and regional offsite mitigation credits

FWC is participating in the current UMAM Rule Revision regarding assessment of fish and wildlife resources

FWC regularly participates in review of mitigation bank applications regarding value to fish and wildlife resources, **including habitat necessary for essential behaviors of imperiled species**



FWC's Incidental Take Permitting and the ERP Program

Mitigation as determined through UMAM and the use of mitigation banks both offset the functional loss of wetlands and other surface waters

Therefore, existing requirements for mitigation may offset the loss of habitat used for essential behavior patterns for state listed species.

Use of wetland mitigation through the ERP program may effectively serve as the “net conservation benefit” necessary to receive an ITP.

This *does not* preclude the need for avoidance and minimization measures to avoid “take” of state imperiled species



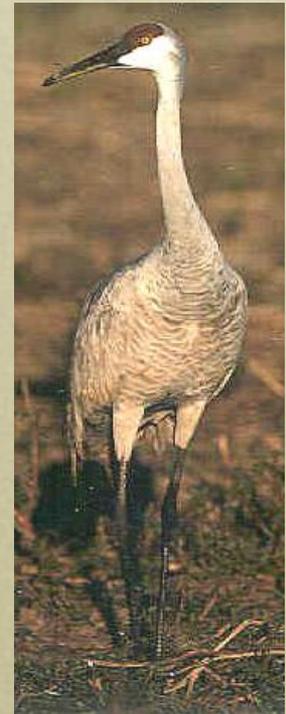
FWC's Incidental Take Permitting and the ERP Program

If conditions included as part of the ERP contain measures to avoid and minimize impacts to state imperiled species and

If wetland mitigation offsets the functional loss of the wetland habitat through a mechanism that provides:

- Long-term conservation of habitats
- Perpetual management of habitats
- Perpetual funding source

Then the conditions of the ITP could possibly be met through the ERP program.



Summary Points

FWC staff are considering a habitat-based approach to state imperiled species management

Chapter 68A-27 defines “take” to include “harm” which may include significant habitat modification or degradation, that impairs essential behavior patterns, including breeding, feeding or sheltering.

An Incidental Take Permit (ITP) may be required for unavoidable impacts to state imperiled species

Showing a “net conservation benefit” is required to receive an ITP

Mitigation occurring through the existing ERP program may constitute the “net conservation benefit” necessary to receive an ITP



Questions?

