

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: CS/SB 1360

INTRODUCER: Environment and Natural Resources Committee and Senator Rodriguez

SUBJECT: Florida Endangered and Threatened Species Act

DATE: February 17, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1360 revises the definitions of “endangered species” and “threatened species” in the Florida Endangered and Threatened Species Act to include the impact of climate change as a factor that may jeopardize the survival of certain species of fish and wildlife. The bill requires the Fish and Wildlife Conservation Commission (FWC) to continue to protect endangered or threatened fish and wildlife species as the FWC determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits the FWC from considering the economic cost of protecting a fish or wildlife species as a factor in designating it as endangered or threatened.

The bill requires the Department of Agriculture and Consumer Services (DACS) to consider the impacts of climate change on plant species as part of its four-year review of the Regulated Plant Index. The bill requires the DACS to continue to protect endangered or threatened plant species as the DACS determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits the DACS from considering the economic cost of protecting a plant species as a factor in designating it as endangered or threatened.

The bill has no fiscal impact on state funds and has an effective date of July 1, 2020.

II. Present Situation:

Endangered Species Act of 1973 (Federal)¹

The Endangered Species Act (ESA), enacted in 1973 and amended in 1996, designates that species of fish, (including marine mammals), wildlife, and plants, which are so depleted they are in danger of or threatened with extinction, must be conserved.² The ESA is overseen by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). The ESA provides for the conservation of threatened and endangered species of fish, wildlife, and plants by federal action and by encouraging state conservation programs.³ The objective of the ESA is to enable listed species not merely to survive, but to recover from their endangered or threatened status.⁴ The act authorizes the determination and listing of endangered and threatened species and their habitats.

Delisting/Declassification

When a species is able to survive on its own in the wild, the species is considered to be recovered and protection of the ESA is no longer necessary. At least once every five years, the USFWS conducts a review of all listed species to determine whether any species should be removed from the list, changed in status from endangered to threatened, or changed in status from threatened to endangered.⁵ When the USFWS removes a species from the federal list of Endangered and Threatened Wildlife and Plants, the species is “delisted.” To delist a species, the USFWS must determine that threats have been eliminated or controlled, based on several factors including population size and trends and the stability of habitat quality and quantity.⁶

The USFWS reviews five factors in its determination of whether a species still needs protection under the ESA:

- Is there a present or threatened destruction, modification, or curtailment of the species’ habitat or range;
- Is the species subject to over-utilization for commercial, recreational, scientific, or educational purposes;
- Is disease or predation a factor;
- Are there adequate existing regulatory mechanisms in place, taking into account the initiatives by states and other organizations, to protect the species or habitat; and
- Are other natural or manmade factors affecting the species’ continued existence?⁷

During this process, the USFWS works with species experts; federal, state, and local agencies; tribes; nongovernmental organizations; the academic community; and other stakeholders to achieve success in population assessments, recovery, and eliminating or reducing threats. Species are generally delisted for the following reasons: recovery, extinction, or evidence of additional

¹ 16 U.S.C. s. 1531-1544.

² 16 U.S.C. s. 1531.

³ *Id.*

⁴ *Id.*; *Sierra Club v. U.S. Fish and Wildlife Service*, 245 F. 3d 434 (2001).

⁵ 16 U.S.C. s. 1533.

⁶ USFWS, *Delisting a Species, Section 4 of the Endangered Species Act*, available at <https://www.fws.gov/endangered/esa-library/pdf/delisting.pdf>.

⁷ *Id.*

populations. After a species is delisted, it is monitored for at least five years according to a post-delisting monitoring plan.⁸

Economic Costs

Historically, economics has not been a factor in the decision of whether or not to list a species under the ESA. However, economic costs are considered in the designation of critical habitat,⁹ even when the impacts are attributable to other causes, including listing.¹⁰

The ESA states that listing decisions are to be made “solely on the basis of the best scientific and commercial data available.”¹¹ The 1978 regulations expanded on this prohibition by adding “without reference to possible economic or other impacts of such determination.”¹² The revised regulations, effective September 26, 2019 removed this language¹³ to clarify that it is not prohibited for the USFWS to compile economic information that is not used to influence a listing decision.¹⁴ When first proposing the rule, the USFWS and the NMFS indicated that there may be circumstances where referencing economic or other impacts may be informative to the public.¹⁵

State Programs

Section 6 of the ESA provides funding for the development of state programs for the management of threatened and endangered species by state wildlife agencies.¹⁶ Additionally, each state has state endangered species lists containing species that are endangered in the state but are not a federally-listed species. The Secretary of the Interior must enter into a cooperative agreement with a state, which establishes and maintains an adequate and active program for the conservation of endangered and threatened species if the program meets certain standards under the ESA.¹⁷ If a cooperative agreement exists, a state may receive federal funds under the ESA to implement the program, though normally states are expected to contribute a minimum matching amount.¹⁸

Fish and Wildlife Conservation Commission

Pursuant to s. 9, Art. IV of the State Constitution, the FWC exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.¹⁹ While the USFWS has primary responsibility for Florida species that are federally

⁸ 16 U.S.C. s. 1533.

⁹ 50 C.F.R. s. 424.12.

¹⁰ *New Mexico Cattle Growers Ass'n v. United States Fish & Wildlife Serv.*, 248 F.3d 1277, 1285 (10th Cir. 2001).

¹¹ 50 C.F.R. s. 424.11(b) (2019).

¹² 50 C.F.R. s. 424.11(b) (1984).

¹³ 50 C.F.R. s. 424.11(b) (2019).

¹⁴ Endangered and Threatened Wildlife and Plants, Revision of the Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45020, 45024 (Aug. 27, 2019) (to be codified at 50 C.F.R. s. 424.11).

¹⁵ Endangered and Threatened Wildlife and Plants, Revision of the Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 35194-35195 (Jul. 25, 2018) (to be codified at 50 C.F.R. s. 424.11).

¹⁶ 16 U.S.C. § 1535.

¹⁷ 16 U.S.C. § 1535(c).

¹⁸ 16 U.S.C. § 1535(d)(2).

¹⁹ Fla. Const. Art. IV, s. 9.

endangered or threatened, the FWC works in partnership with the USFWS to help conserve these species and maintains a list of state endangered and threatened species.

Florida Endangered and Threatened Species Act²⁰

The Florida Endangered and Threatened Species Act of 1977 provides for research and management to conserve and protect threatened and endangered species as a natural resource.²¹ Responsibility for the research and management of upland, freshwater, and marine species is given to the FWC.²² The act also encourages the FWC to develop a public education program dealing with endangered and threatened species. Annually, the FWC director submits a revised plan for management and conservation of endangered and threatened species to the Governor, the Cabinet, and the Legislature.²³

Endangered and threatened species can be listed as state-designated or federally-designated endangered or threatened species. State-designated threatened species are species that are native to Florida and are classified as threatened as determined by:

- A reduction in population size;
- Decline in geographic range;
- A population size estimated to be under 10,000 mature individuals with a continuing decline;
- A population size estimated to be under 1,000 mature individuals or with a very restricted area of occupancy; or
- A quantitative analysis showing the probability of extinction in the wild is at least 10 percent within 100 years.²⁴

Federally-designated endangered and threatened species are species of fish or wild animal life that are native to Florida and are classified as endangered or threatened by their federal designation as endangered or threatened under the ESA.²⁵

Pursuant to the FWC rule, if a species native to Florida is reclassified under the ESA and is a species within the FWC's constitutional authority, the species must also be reclassified under the Florida Endangered and Threatened Species list.²⁶ However, if a species is removed from the ESA protection, or delisted, the species must receive a biological status review to determine if it warrants listing as a state-listed species.²⁷ The FWC must consider the biological status report, independent scientific reviews received, and public comments regarding biological status when making a final determination regarding a change in listing status.²⁸

Before any species is removed from the state-endangered and threatened species lists, the FWC must develop a management plan that is intended to maintain or enhance the conservation of that

²⁰ Ch. 77-375, ss. 1-6, Laws of Fla. (creating s. 379.2291).

²¹ Section 379.2291(2), F.S.

²² Section 379.2291(4), F.S.

²³ Section 379.2291(5), F.S.; see FWC, *Endangered and Threatened Species Management and Conservation Plan, Progress Report, Fiscal Year 2018-2019* (Nov. 19, 2019), available at <https://myfwc.com/media/22264/2018-19-legislative-report.pdf>.

²⁴ Fla. Admin. Code R. 68A-27.001(3).

²⁵ Fla. Admin. Code R. 68A-27.001(2).

²⁶ Fla. Admin. Code R. 68A-27.0012(1).

²⁷ *Id.*

²⁸ Fla. Admin. Code R. 68A-27.0012(c)2.e.

species.²⁹ The FWC also developed the Imperiled Species Management Plan to address the needs of state-listed species that did not already have a management plan or specific program in place.³⁰

Climate Change Effects on Fish and Wildlife

The FWC is Florida's lead agency on addressing the impacts of climate change on fish and wildlife, including adaptation strategies for Florida's coastal ecosystems.³¹ Projections indicate that few other states will be impacted by climate change as severely as Florida.³² Some of the climatic changes that may affect Florida include: sea-level rise and changes in precipitation, air temperature, extreme events, and carbon dioxide.³³

Many species of fish and wildlife in Florida could be threatened by climatic shifts. Species with narrow tolerance ranges, those occupying habitats in areas where migration or relocation is challenging due to physical barriers or unsuitable habitat, those with limited ability to disperse, or those with specialized habitat requirements, small populations, or low genetic diversity are expected to be most at risk.³⁴

Regulated Plant Index

The Division of Plant Industry within the DACS protects plant species native to the state that are endangered, threatened, or commercially exploited.³⁵ The policy of the state is to provide recognition of these plant species; protect them from unlawful harvesting on both public and privately owned lands; and provide an orderly and controlled procedure for restricted harvesting from the wild.³⁶ The state also encourages the propagation of endangered species and provides information necessary to legally collect these species for propagation.³⁷

Florida's native plant species in need of conservation efforts are listed in the Regulated Plant Index and are classified as endangered, threatened, or commercially exploited.³⁸ The list includes 448 endangered, 118 threatened, and nine commercially exploited species. Fifty-four of these species are on the federal list of endangered plant species and 14 are on the federal list of threatened species.³⁹

²⁹ Fla. Admin. Code R. 68A-27.0012(1).

³⁰ FWC, *Imperiled Species Management Plan*, available at <https://myfwc.com/media/2030/imperiled-species-management-plan.pdf>.

³¹ FWC, *What FWC is Doing*, <https://myfwc.com/conservation/special-initiatives/climate-change/fwc/> (last visited Feb. 4, 2020); FWC, *A Guide to Climate Change Adaptation for Conservation*, 6-81-6-108, 9-35-9-51 (2016), available at <https://myfwc.com/media/5864/adaptation-guide.pdf>.

³² *Id.* at 4-1.

³³ *Id.* at 4-2.

³⁴ *Id.* at 5-1.

³⁵ Section 581.185(3), F.S.

³⁶ Section 581.185(1), F.S.

³⁷ *Id.*

³⁸ Fla. Admin. Code R. 5B-40.0055.

³⁹ DACS, *Florida's Endangered Plants*, <https://www.fdacs.gov/Divisions-Offices/Plant-Industry/Bureaus-and-Services/Entomology-Nematology-Plant-Pathology/Botany/Florida-s-Endangered-Plants> (last visited Feb. 4, 2020).

The DACS has adopted rules relating to the listing, delisting, and changing the listing of plants on the Regulated Plant Index.⁴⁰ Every four years, the DACS and the Endangered Plant Advisory Council review the Regulated Plant Index and consider any species of plant which is in danger of disappearing from its native habitat within the foreseeable future throughout all or a significant portion of the range of the species because of:

- Present or threatened destruction, modification, or curtailment of the range of the species;
- Overutilization of the species for commercial, scientific, or educational purposes;
- Disease or predation; or
- Any other natural or manmade factor affecting the continued existence of the species.⁴¹

Any changes to the Regulated Plant Index must consider the recommendation of the Endangered Plant Advisory Council and the best environmental and commercial data available.⁴² The DACS must also consider the recommendations of the general public.⁴³ The Endangered Plant Advisory Council meets at least once a year.⁴⁴

III. Effect of Proposed Changes:

Section 1 (Fish and Wildlife)

The bill revises the legislative policy of the Florida Endangered or Threatened Species Act to conserve and manage resources, with particular attention to species “designated,” rather than “defined” by the FWC or the United States Department of the Interior or its successor agencies, as being endangered or threatened.

The bill revises the definitions of “endangered species” and “threatened species” to include the impact of climate change as a factor that may jeopardize the survival of certain species of fish and wildlife.

The bill revises the requirement that the FWC, in consultation with several agencies, establish reduced speed zones along roads, streets, and highways to protect endangered and threatened species, rather than endangered or threatened species.

The bill requires the FWC to continue to protect endangered or threatened fish and wildlife species as the FWC determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits the FWC from considering the economic cost of protecting a fish or wildlife species as a factor in designating it as endangered or threatened.

Section 2 (Plants)

The bill requires the DACS and the Endangered Plant Advisory Council to consider the impacts of climate change on plant species as part of its four-year review of the Regulated Plant Index.

⁴⁰ Fla. Admin. Code Ch. 5B-40.

⁴¹ Section 581.185(5), F.S.

⁴² Section 581.185(4), F.S.

⁴³ *Id.*, Fla. Admin. Code R. 5B-40.0056(1).

⁴⁴ Fla. Admin. Code R. 5B-40.0056(2).

The bill requires the DACS to continue to protect endangered or threatened plant species as the DACS determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits the DACS from considering the economic cost of protecting a plant species as a factor in designating it as endangered or threatened.

Section 3

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 379.2291 and 581.185.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on February 10, 2020:

- Revises title of bill to “An act relating to endangered and threatened species” to include the section relating to endangered and threatened plant species which are not covered under the Florida Endangered and Threatened Species Act.
- Deletes incorrect reference to DEP.

- B. **Amendments:**

None.