



April 1, 2013

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Re: The FWC and Feral Cats

Dear Mr. Trebatoski:

In response to your letter to Harold G. "Bud" Vielhauer, General Counsel, please see the attached legal opinion dated February 18, 2003. In your letter, you also asked if it is illegal to feed community cats according to state statute. There is nothing in the statutes or rules of the commission which prohibits the feeding of community cats.

Sincerely,

A handwritten signature in blue ink, appearing to be "COglo".

Carla Oglo
Assistant General Counsel


Encl:


FISH AND WILDLIFE CONSERVATION COMMISSION
Office of the General Counsel

MEMORANDUM

February 18, 2003

TO: Frank Montalbano, Director, Division of Wildlife

FROM: Charles J. Hardee, Assistant General Counsel 

THROUGH: Jim Antista, General Counsel 

SUBJECT: Whether section 372.265, F.S., pertains to cat species *felis catus*.

We have recently had a number of discussions, within the agency and with local government staff, in regard to control of cats of the domestic species (*felis catus*) which are feral. In several cases we have heard from local groups or individuals as to a suggested or desired interpretation of section 372.265, F.S. – some wanting to see that statute used to prohibit trap, neuter, release programs (TNR) at the local level, and some wanting the FWC to regulate feral cats statewide under the authority of the statute.

We understand the Executive Director has asked you to brief the Commission on feral cats and related issues in the near future. Leaving aside the policy implications, which are properly the subject of staff discussions with the Commission, we have concluded it is appropriate to provide our opinion on the narrow legal issue: whether section 372.265, F.S., by its terms includes, or was intended to include, this normally domesticated cat species.

The FWC has thus far not taken an official policy position with regard to feral cat control, and has generally deferred to local control ordinances and programs. The Commission does address specific issues as they arise on Commission-managed lands, as well as in several contexts involving listed (endangered, threatened, species of special concern) species. The agency has published an educational pamphlet entitled “Impacts of Feral and Free-Ranging Domestic Cats on Wildlife in Florida” which is generally critical of TNR as a control mechanism for feral cats, based upon the observation that even with TNR, feral cat colonies continue to thrive and attract more cats. We also currently have a contract with the American Bird Conservancy to develop and provide educational information under a program called “Cats Indoors!”

Section 372.265, F.S., states:

(1) It is unlawful to import for sale or use, or to release within this state, any species of the animal kingdom not indigenous to Florida without having obtained a permit to do so from the Fish and Wildlife Conservation Commission.

This portion of the statute has apparently not materially changed since its original adoption in 1970.¹ It has not to our knowledge been interpreted by any court or other authority in regard to the issue at hand.² According to the FWC ArrestNet there have been eight cases citing this statute, the earliest in 1987. The implication is that this statutory authority has not been significantly used or interpreted since its adoption 32 years ago.

Our opinion is that section 372.265, F.S., does not, and was not intended to, apply to this cat species. To apply this statute to a normally domesticated species could lead to absurd results (e.g., statewide domestic animal and livestock control) and require that we determine whether other domestic animals, livestock or commercially raised species are “not indigenous”. Because of the vagaries of the meaning of this term, we limit this opinion to cat species *felis catus*.³

Should the Commission decide to further define or expand regulation in this arena, we suggest such action should be taken under the agency’s Constitutional authority.⁴

If you have any questions as to this opinion, please let me know.

J:\LEGAL\Hardee\Feral cats\Opinion -372.265 does not include felis catus.doc

¹ Ch. 70-145, s. 1, Laws of Fla.

² A 1971 Opinion of the Attorney General addressed the question whether fish and reptiles are included in “any species of the animal kingdom,” concluding they are. Op. Att’y Gen. Fla. 71-12 (1971). The only apparent case to have cited section 372.265, F.S., is a property case dealing with hunting rights which does not address the substance of the statute. *Espenship v. Carter*, 514 So. 2d 1108 (Fla. 1st DCA 1987).

³ We specifically do not address other animal species members of which may be termed “feral”.

⁴ Art. IV, s. 9, Fla. Const. This opinion does not address the question whether feral cats are “wildlife” within the Constitutional language. Whether or not they are “wildlife” in this context, it is suggested the Commission has ample authority to regulate land management impacts, listed species conflicts and other issues pertaining to feral cats, based on their effects on wildlife.