

Florida State University Journal of Land Use and Environmental Law

Volume 18
Number 2 *Spring 2003*

Article 11

April 2018

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FERAL CAT COLONIES IN FLORIDA: THE FUR AND FEATHERS ARE FLYING

PAMELA JO HATLEY*

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I. INTRODUCTION¹

An enormous and growing population of free-roaming cats exists in Florida, posing a threat to the state's native animal species, and creating a serious public health concern. Proponents of trap-neuter-release (TNR) and maintenance of cat colonies have been pressing local governments to enact ordinances to permit establishment and registration of cat colonies in local jurisdictions. But TNR and

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1. The University of Florida Conservation Clinic is an interdisciplinary legal clinic housed in the Center for Governmental Responsibility at the University of Florida Levin College of Law. Under the supervision of its Director, the clinic provides value-added, applied educational opportunities to graduate and law students at the University of Florida by offering its services to governmental and non-governmental organizations and individuals pursuing conservation objectives. This project represents an effort by the University of Florida Conservation Clinic to assist the U. S. Fish & Wildlife Service by researching the legal and policy considerations of feral cat colonies in Florida. See <http://conservation.law.ufl.edu>.

managing large numbers of cats in colonies does not effectively control cat overpopulation. Additionally, federal and state wildlife laws designed to protect endangered and threatened species conflict with the practice of releasing non-indigenous predators into the wild. An intense public education campaign, together with licensing incentives, animal control laws that enforce high penalties against violators, and other methods of reducing the flow of non-indigenous species into the wild, are essential components to a long-term solution to pet over-population in general, and particularly to cat over-population and the resulting predation on wildlife.

II. MAGNITUDE OF FREE-ROAMING CAT POPULATIONS

A. In the United States

Though considered a separate species, *Felis catus*, the domestic cat, originated from a wild ancestral species, *Felis silvestris*, the African wild cat. In many ways, the domestic cat is an intriguing replica of its wild ancestor. It is similar in appearance, but most interestingly, its hunting behavior and other activity patterns remain essentially unchanged from the ancestral wild cat.²

Domesticated in Egypt about 4,000 years ago, the *Felis catus* has become America's favorite pet. The Humane Society of the United States (HSUS) estimates there are approximately 73 million owned cats in the United States.³ Unfortunately, their popularity as a companion species to humans has led to many millions of this efficient mesopredator roaming free in the U.S., either because their owners allow them to or because they are homeless. A poll by the American Bird Conservancy (ABC) shows that only about 35 percent of owned cats are kept exclusively indoors, leaving some 47 million owned cats free to prey on wildlife all or part of the time.⁴ In addition, the number of free-roaming unowned, or feral⁵, cats probably falls in the range of 40 to 60 million.⁶ Thus the number of

2. John S. Coleman, Stanley A. Temple & Scott R. Craven, *Cats and Wildlife: A Conservation Dilemma* (1997), available at Cooperative Extension Publications, Room 170, 630 W. Mifflin Street, Madison, WI 53703 or <http://www.wisc.edu/wildlife/e-pubs.html>.

3. HSUS, *U.S. Pet Ownership Statistics*, (2002) at <http://www.hsus.org/ace/11831>.

4. ABC, Cats Indoors! Campaign, *Domestic Cat Predation on Birds and Other Wildlife* (undated), information sheet available at American Bird Conservancy 1834 Jefferson Place, N.W., Washington, DC 20036 or <http://www.abcbirds.org>.

5. As used in this paper, "Feral" refers to cats that are unowned, free-roaming, and not generally tame, either because they were born in the wild or have lived in the wild for such a length of time that they have become unaccustomed to being handled by humans.

6. FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION, *IMPACTS OF FERAL AND FREE-RANGING DOMESTIC CATS ON WILDLIFE IN FLORIDA* (2001), available at <http://www.floridaconservation.org/viewing/articles/cat.pdf>.

cats in the United States spending all or part of their time outdoors is likely well over 100 million.

B. In Florida

The Florida Fish and Wildlife Conservation Commission (FWCC) estimates that the population of owned cats in Florida is about 9.6 million, and the feral cat population may be 6.3 to 9.6 million.⁷ Based on ABC's poll showing an average of 35 percent of owned cats are kept exclusively indoors, the number of owned and feral cats, combined, that are outdoors and potentially preying on wildlife in Florida is in the neighborhood of 12.5 to 15.8 million.

III. ENVIRONMENTAL IMPACT OF FREE-ROAMING CATS

So what is the harm in allowing cats to roam free outdoors? First, allowing cats to roam free places the cats themselves in danger of harm. The HSUS explains that free-roaming cats often are hit by cars or fall victim to disease, starvation, poisons, attacks by other animals, and mistreatment by humans.⁸ Second, free-roaming cats take a tremendous toll on native wildlife populations by direct predation and by competition. Cats are instinctive predators that are able to hunt as effectively as their wild ancestors, and feeding does not suppress the cat's instinct to hunt and kill.⁹ It is estimated that nationwide, cats kill over a billion small mammals and hundreds of millions of birds each year.¹⁰ Third, free-roaming cats are vulnerable to contracting and spreading disease among themselves, other wildlife, and even people. The Centers for Disease Control and Prevention (CDC) reports that rabies cases in cats are more than twice as numerous as those in dogs or cattle.¹¹ Additionally, cat scratch fever,

7. *Id.*

8. HSUS, STATEMENT ON FREE-ROAMING CATS 1 (2003), available at <http://www.hsus.org/ace/11857>.

9. John S. Coleman & Stanley A. Temple, *On the Prowl*, WISCONSIN NATURAL RESOURCES MAG., Dec. 1996, Wisconsin Department of Natural Resources, at <http://www.wnrmag.com/stories/1996/dec96/cats.htm> (Coleman and Temple conducted a four-year study of cat predation in Wisconsin); see also Michele Ameri, *The Australian Cat Dilemma*, TED CASE STUDIES, CASE NUMBER: 396 (1997) available at <http://www.american.edu/ted/cats.htm>; B. M. Fitzgerald & D. C. Turner, *Hunting behavior of domestic cats and their impact on prey populations*, in THE DOMESTIC CAT: THE BIOLOGY OF ITS BEHAVIOUR 123-147 (D.C. Turner & P. Bateson, eds., Cambridge University Press 2000); O. Liberg, *Food habitat and prey impact by feral and house-based domestic cats in a rural area in southern Sweden*, JOURNAL OF MAMMALOGY 65:424-432 (1984); Robert E. Adamec, *The interaction of hunger and preying in the domestic cat (Felis catus)*, BEHAVIORAL BIOLOGY 18:263-272 (1976).

10. Coleman, Temple & Craven, *supra* note 2.

11. CDC, NATIONAL CENTER FOR INFECTIOUS DISEASES, RABIES: EPIDEMIOLOGY (2000),

hookworms, roundworms and toxoplasmosis may be transmitted to other animals and people through scratches, bites and fecal contamination by cats.¹²

IV. FREE-ROAMING CATS IN FLORIDA

For decades the accepted method of managing the exploding population of homeless and unwanted pets has been simply to trap and destroy them humanely. Pet shelters attempt to find homes for the animals they deem suitable as human companions, but a far greater number of animals taken to pet shelters end up with the death sentence than with a loving home. A paradox of this tragic state of affairs is that humans perpetuate it, and at the same time are distressed by it. Hence, a growing trend in the U.S., and particularly in the states of Florida and California, is to attempt to manage populations of feral cats by trapping, sterilizing and vaccinating them, and then releasing them back into the wild. In some cases these feral cats congregate in "colonies" that are looked after by volunteers who feed them and provide TNR to new strays that find their way to the group. Feral cat advocates see the TNR method as a more humane solution to the sad consequence of so many perfectly healthy animals being put to death just because they are, through no fault of their own, homeless.

There are known feral cat colonies in at least 17 Florida counties.¹³ The largest of these known colonies is the ORCat colony located at the Ocean Reef Club residential resort in Key Largo, which has an estimated 1,000 cats.¹⁴ The ORCat colony is well organized and operates on an annual \$100,000 budget supplied by donations from residents and the local community association.¹⁵ The operating budget is used to purchase cat food, retain a local veterinarian's services, and pay salaries for a full-time and a part-time employee.¹⁶ Ironically, the Ocean Reef Club ORCat colony is located next to the Key Largo Hammocks State Botanical Site,

available at <http://www.cdc.gov/ncidod/dvrd/rabies/Epidemiology/Epidemiology.htm>.

12. Christine M. Storts, DMV, *Feral Cats Harm Wildlife, Pose Health Threat*, FLORIDA TODAY, Feb. 13, 2002, at Editorial Page.

13. FWCC, *supra*, note 6.

14. *Id.*; But cf. Alice L. Clarke & Teresa Pacin, *Domestic Cat "Colonies" in Natural Areas: A Growing Exotic Species Threat*, NATURAL AREAS JOURNAL 22:155-159, 157 (2002) (stating that, while management of cats at the club began in 1995 with an estimated more than 1,000 cats, by June 1999 the colony had been reduced to about 500 individuals).

15. Alice L. Clarke & Teresa Pacin, *Domestic Cat "Colonies" in Natural Areas: A Growing Exotic Species Threat*, NATURAL AREAS JOURNAL 22:155-159, 157 (2002).

16. *Id.*

which contains habitat that supports the federal endangered Key Largo woodrat and the Key Largo cotton mouse.¹⁷

In Brevard County, volunteers associated with the Space Coast Feline Network, Inc. (SCFN), a Florida not-for-profit organization, feed feral cats and conduct TNR clinics countywide.¹⁸ The organization was formed in 1996 when workers at Kennedy Space Center began caring for feral cats in an abandoned building.¹⁹ Within the first three years, the group had rescued more than 100 cats by caring for the adults and adopting out the kittens.²⁰ In the past two and a half years, the group has treated nearly 4,000 cats through their TNR clinics.²¹ SCFN recently purchased 10 acres of land in Mims, Florida, on which the organization plans to place a colony of feral cats, and build an office, a veterinarian facility, and caretaker residence.²² SCFN plans to shelter cats at its Miss facility in four modules that will house up to 25 cats each, and that have indoor and outdoor areas which are fenced and screened to prevent the cats from roaming and keep other animals out.²³

In recent years, local governments have begun to sanction and regulate TNR and feral cat colonies. For example, a Brevard County ordinance allows feral cat colonies to be established and maintained by care givers as long as the colonies are registered with the county and meet certain requirements.²⁴ The ordinance requires care givers to assure the cats will be fed regularly, sterilized and vaccinated.²⁵ The county even provides funds and services to help offset the costs of TNR.²⁶ Some three years after Brevard County's feral cat colony ordinance was passed, the county had spent almost \$100,000 on the program, had 244 registered colonies, and had sanctioned the release of more than 2,300 cats into the wild.²⁷

But not all feral cat colonies are organized and maintained by volunteer associations of care givers. The number of feral cats in

17. *Id.*

18. Email communication from Kathleen Harer, President of SCFN, to author (Oct. 1, 2002) (on file with author).

19. SCFN, *HOW IT ALL BEGAN*, at <http://www.spacecoastfelinenetwork.com/SpaceCatsClub.html>.

20. *Id.*

21. Email communication from Kathleen Harer, President of SCFN, to author (Jan. 13, 2003) (on file with author).

22. *Id.*

23. SCFN, *We're Off and Running*, SCFN NEWSLETTER, Fall/Winter 2002-2003, at 2, available at <http://www.spacecoastfelinenetwork.com>; Harer, *supra* note 18.

24. BREVARD COUNTY, FLA. PART II CODE OF ORDINANCES, ch. 14, art. II, § 14-64 (1999).

25. *Id.* at § 14-64(a).

26. *Id.* at § 14-64(d)(2), (3), (4).

27. Christine M. Storts, DMV, *supra*, note 12.

Brevard County is estimated to be over 100,000.²⁸ Lee County is home to possibly more than 200,000 feral cats, some of which are fed by sympathetic residents.²⁹ Most colonies are simply a group of cats congregated around a food supply, such as a dumpster. New individuals regularly enter the colonies when irresponsible owners release their unwanted pets into the wild, or when kittens are born in the wild to intact females.³⁰ Because cats are not strictly territorial, new ones are freely allowed to join existing colonies.³¹ As new cats arrive, older ones disappear by falling victim to one of the many perils that feral cats face, or simply wandering away to a different food source. Thus, despite the policy intent to have feral cat colonies dwindle away through attrition, this result apparently rarely occurs.³²

V. IMPACT OF FREE-ROAMING CATS ON WILDLIFE IN FLORIDA

Cats are known to prey on small mammals, birds, and even sea-turtle hatchlings, frogs and toads, snakes, lizards, and insects. As stated above, there are some 15 million cats, both feral and owned, spending all or part of their time outdoors in Florida. This large number of free-roaming cats takes a devastating toll on native Florida wildlife. Based on extrapolated data from a Wisconsin study, the FWCC has estimated that free-roaming cats in Florida may kill as many as 271 million small mammals and 68 million birds each year.³³ However, the actual number may be much higher since FWCC also reports that a single free-roaming cat may kill as many as 100 or more birds and mammals per year.³⁴ To make matters worse, many of the animals preyed upon by cats are federal and state listed threatened and endangered species. In Florida,

28. Harer, *supra* note 18.

29. Pamela Smith Hayford, *Lee's Population Estimated near 200,000 Animals*, THE NEWS-PRESS (Ft. Myers, FL), July 28, 2002, at 1D.

30. Daniel Castillo, *Population Estimates and Behavioral Analyses of Managed Cat Colonies Located in Miami-Dade County, Florida Parks* (2001) (unpublished Master of Science thesis, Florida International University), available at <http://www.fiu.edu/%7Eclarkea/students/castillo>.

31. *Id.*

32. *Id.* (Castillo's study contradicts the assertion that managed cat colonies decline in size over time. He states, "Even though the number of original colony members decreased over time, illegal dumping of unwanted cats prevented the colonies at A.D. Barnes Park and Crandon Marina from decreasing over time." Castillo witnessed people abandoning unwanted cats, and observed that numerous kittens and females with litters were abandoned at the parks.)

33. FWCC, *supra* note 6.

34. FWCC, *Domestic Cat* (Jan. 19, 2003) at http://wld.fwc.state.fl.us/critters/domestic_cat.asp.

domestic cats have been recognized as predators and a serious threat to the Key Largo cotton mouse, rice rat, Key Largo woodrat, Lower Keys marsh rabbit, Choctawhatchee beach mouse, Perdido Key beach mouse, Anastasia Island beach mouse, Southeastern beach mouse, green sea turtle, roseate tern, least tern, and Florida scrub-jay, all federal listed species.³⁵

The Lower Keys marsh rabbit is a federal endangered species with a population estimated to be about 100 to 300 individuals.³⁶ The species could go extinct within 2 or 3 decades if current mortality rates continue, and the greatest threat to the Lower Keys marsh rabbit now appears to be predation.³⁷ A 1999 study of management options for the Lower Keys marsh rabbit reported that free-roaming cats were responsible for 53% of all marsh rabbit deaths, both juvenile and adult.³⁸ The researchers recommended that management efforts to save the species from extinction should be centered on developing a plan to reduce cat use of marsh rabbit habitat, and they suggested that intensive public education on the effects of cat predation would not only help save the marsh rabbit, but would also have a positive effect on other rare native species, such as the Key ringneck snake, silver rice rats, and white-crowned pigeon.³⁹

There are several subspecies of beach mice in Florida, six of which are federal listed as endangered or threatened. Beach mice are found only in the southeastern U.S., and are an important beacon of dune ecosystem health.⁴⁰ However, scientists believe that cat predation poses a major threat to the continued existence of beach mice in some areas.⁴¹ Dr. Michael Wooten, an associate professor in the Department of Biological Sciences at Auburn

35. *Id.*; Castillo, *supra* note 30; Glen E. Woolfenden & John W. Fitzpatrick, *Florida Scrub-jay*, in *BIRDS, RARE AND ENDANGERED BIOTA OF FLORIDA*, VOL. V, at 267, 276 (James A. Rodgers, Jr., Herbert W. Kale II & Henry T. Smith, eds, University Press of Florida 1996); Jeffrey A. Gore, *Least Tern*, in *id.*, at 236, 241; James L. Wolfe, *Lower Keys Marsh Rabbit*, in *MAMMALS, RARE AND ENDANGERED BIOTA OF FLORIDA*, VOL. 1, at 71, 74 (Stephen R. Humphrey, ed., University Press of Florida 1992); Stephen R. Humphrey & Philip A. Frank, *Anastasia Island Beach Mouse*, in *id.*, at 91, 98.

36. Beth Forys & Susan Jewell, *Effort Continues to Save Florida Keys Marsh Rabbit*, ENVIRONMENTAL NEWS NETWORK (May 30, 2002), available at http://www.enn.com/news/enn-stories/2002/05/05302002/s_47324.asp.

37. *Id.*

38. Elizabeth A. Forys & Stephen R. Humphrey, *Use of Population Viability Analysis to Evaluate Management Options For the Endangered Lower Keys Marsh Rabbit*, 63 J. WILDLIFE MGMT. 251, 256-58 (1999).

39. *Id.*

40. Michael C. Wooten, Ph.D., *The Beach Mouse FAQ, #4. Why so much fuss over a mouse?*, at <http://www.ag.auburn.edu/~mwooten/mouse.html>.

41. Michael C. Wooten, Ph.D., *The Beach Mouse FAQ, #14. Are house cats a problem?*, at <http://www.ag.auburn.edu/~mwooten/mouse.html>.

University, has conducted extensive research on beach mice, and concluded that domestic cats played a major role in the extinction of the Florida Point population of Perdido Key beach mice.⁴² Dr. Wooten advises that beach mice, while they appear to be able to escape native predators such as fox, raccoons, birds and snakes, do not survive well against non-native predators such as cats.⁴³

Coincidentally, a study conducted by a graduate student at Auburn University confirmed scientists' suspicions that domestic cats prey on beach mice. During fieldwork conducted in 1999 and 2000, researchers fitted radio transmitters on a number of Choctawhatchee beach mice at Grayton Beach State Recreation Area in Walton County, and tracked the mice for several days.⁴⁴ The researchers soon found themselves tracking a feral cat, which had killed and ingested one of the mice fitted with a radio transmitter. The cat was followed for several days as it roamed throughout the recreation area and a local village.⁴⁵

In addition to small mammals, free-roaming domestic cat predation detrimentally impacts the populations of many bird and possibly turtle species in Florida. For example, cats have preyed on piping plover, young and adult Florida scrub-jay, and least tern, all federal listed bird species, as well as black skimmer, painted bunting, and oystercatcher.⁴⁶ A report on the ecology and management of the Florida scrub-jay warns that "a population of domestic cats supported by human food offerings could eliminate a small, local population of Florida scrub-jays."⁴⁷ A graduate student conducting a study of feral cat colonies in two Miami-Dade County parks witnessed cats stalk and kill a juvenile common yellowthroat and a blue jay, and found the carcass of a gray catbird in the colony feeding area.⁴⁸ Outside of Florida, there are documented cases of

42. *Id.*

43. *Id.*

44. Jeffrey L. Van Zant & Michael C. Wooten, Ph.D., *Translocation of Choctawhatchee Beach Mice: Hard Lessons Learned*, 1 (undated) (unpublished article, Auburn University) (on file with author).

45. *Id.*

46. Glen E. Woolfenden & John W. Fitzpatrick, *Florida Scrub-jay*, in *BIRDS, RARE AND ENDANGERED BIOTA OF FLORIDA*, VOL. V, 267, 276 (James A. Rodgers, Jr., Herbert W. Kale II & Henry T. Smith, eds., University Press of Florida 1996); Jeffrey A. Gore, *Least Tern*, in *id.*, at 236, 241; James Cox, *Painted Bunting*, in *id.* at 644, 648; Theodore H. Below, *American Oystercatcher*, in *id.* at 232. See also ABC, Cats Indoors! campaign, *Domestic Cat Predation in Florida*, available at 1834 Jefferson Place, NW, Washington, DC 20036, or <http://www.abcbirds.org>.

47. John W. Fitzpatrick, Ph.D & Glen E. Woolfenden, Ph.D, *Ecology and Development-Related Habitat Requirements of the Florida Scrub Jay (Aphelocoma coerulescens coerulescens)*, in *FLORIDA GAME & FRESH WATER FISH COMM., NONGAME WILDLIFE PROGRAM TECHNICAL REPORT NO. 8*, 26 (1991).

48. Castillo, *supra* note 30.

cat predation on sea turtle hatchlings.⁴⁹ Although there are no studies revealing the extent to which cats prey on sea turtles in Florida, since free roaming cats are known to visit the state's beach areas, and since cats prey on turtles in other parts of the world, it is likely that turtle hatchlings in Florida are also taken by cats.

But predation is not the only negative impact free-roaming cats have on wildlife in Florida. Cats can also spread disease. The FWCC states that cats can spread rabies to wildlife such as raccoons, skunks, and foxes.⁵⁰ Castillo reported witnessing dogs, gray foxes, Eastern spotted skunks, raccoons, black vultures, blue jays, European starlings, and Eurasian collared doves feeding on left over cat food at feeding stations in Miami-Dade county parks.⁵¹ In addition, park visitors reportedly fed cats on top of the picnic tables, and cats were seen defecating in the picnic areas.⁵² Domestic cats are likely responsible for spreading feline panleukopenia (FPV) to the endangered Florida panther and feline leukemia virus (FeLV) to the mountain lion, a close relative of the Florida panther.⁵³ But potential for cats to transmit diseases presents a health hazard to humans as well as a threat to wildlife, because rabies, toxoplasmosis, cat scratch fever, encephalitis (from cat scratch fever), plague, hookworms and roundworms can be contracted by humans through contact with infected cats.⁵⁴

Not only do cats impact Florida wildlife through predation and spread of disease, but they can outnumber and compete with native predators, such as owls, hawks, and foxes.⁵⁵ Domestic cats hunt many of the same animals that native predators do, and when present in large numbers, cats can reduce the availability of prey for native predators.⁵⁶ Because cats benefit from human feeding and vaccination, they are protected from many of the perils that limit the populations of native predators. Therefore, cat populations in the wild reach artificially high numbers and present a serious threat to native predators' ability to feed themselves and their young.

49. Wendy Seabrook, *Feral cats as predators of hatchling green turtles*, 219 J. ZOOLOGY 83-88 (1989); April, M. L. *Visitation and predation of the Olive Ridley sea turtle at nest sites in Ostional, Costa Rica*, in PROCEEDINGS OF THE FOURTEENTH ANNUAL SYMPOSIUM ON SEA TURTLE BIOLOGY AND CONSERVATION (1994) available at http://www.nmfs.noaa.gov/prot_res/PR3/Turtles/symposia.html.

50. FWCC, *supra* note 6.

51. Castillo, *supra* note 30.

52. *Id.*

53. FWCC *supra* note 6; Coleman, Temple & Craven, *supra* note 2.

54. ABC, *Why Allowing Cats Outdoors is Hazardous to Cats, Wildlife, and Humans*, available at ABC, 1834 Jefferson Place, NW, Washington, DC 20036.

55. Coleman, Temple, and Craven, *supra* note 2.

56. *Id.*

VI. STRATEGIES FOR DEALING WITH FREE-ROAMING CATS

Because of the domestic cat's role in society as a companion animal, any strategy to deal with the problem of free-roaming cats will present challenges. A "round 'em up and kill 'em" approach would undoubtedly be met with intense public outcry. Further, efforts to remove from the wild all free-roaming cats would have to be constantly applied if no steps are taken to stop the introduction of more cats into the wild. But because humans domesticated this animal, and because we tend to love it so much, it is our responsibility to manage it properly. Cats are not indigenous to Florida, or to anywhere in North America. As a non-indigenous species, or "invasive" species, cats have spread throughout and threaten to destabilize native ecosystems.

A. Cat Colonies and TNR

The managed colony and TNR approach is highly controversial and strongly opposed by many conservationists, wildlife biologists, veterinarians, and animal welfare groups.⁵⁷ Proponents of this method argue that it is a more humane and effective way of controlling the exploding homeless pet population than is the "trap and kill" method. Advocates claim that, by reducing the number of unwanted litters being born, the TNR strategy will help stabilize the population of free-roaming cats over time.⁵⁸ Supporters also claim that well fed cats will not prey on wildlife, that the territorial behavior of cats living in established colonies will prevent new cats from joining, and thus the number of cats living in managed colonies will stabilize and decrease over time through natural attrition.⁵⁹

However, studies have proven that the instinctive hunting and killing behavior in cats is "de-coupled" from their hunger mechanism, so that cats kill impulsively even when they are not hungry.⁶⁰ Further, Castillo's study of two Miami-Dade County cat

57. Many organizations have adopted official position statements either against feral cat colonies or discouraging the practice under most circumstances. Some of these include: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197; Association of Avian Veterinarians, P. O. Box 811720, Boca Raton, FL 33481; American Veterinary Medical Association, 1931 N. Meacham Road, Suite 100, Schaumburg, IL 60173-4360; American Bird Conservancy, 1834 Jefferson Place, NW, Washington, DC 20036; People for the Ethical Treatment of Animals, 501 Front Street, Norfolk, VA 23510; American Society for the Prevention of Cruelty to Animals, <http://www.asPCA.org>.

58. Castillo *supra* note 30.

59. *Id.*

60. Joe Schaefer, *Impacts of Free-ranging Pets on Wildlife*, University of Florida

colonies found that the colonies did not decline in size over time, partly because people continued to illegally dump their unwanted cats, and also because not all the cats were sterilized, thus litters were born.⁶¹ Castillo's study also revealed that the cats were not strictly territorial, and would freely allow new individuals to join the colonies.⁶² It has also been observed, by Castillo and others, that food set out for cats attracts other wildlife, such as raccoons and skunks, which can facilitate the spread of disease.⁶³ Additionally, some cats become wary of traps and so cannot be caught for re-vaccination.⁶⁴

B. Eradication Campaign

As stated above, any effort at eradication would be met with public outcry. In fact, where steps have been taken in some cases to remove feral cats from public or even private lands, there has been strong protest and even sabotage attempts by feral cat advocates.⁶⁵ Further, eradication would have to be continually applied because of the steady introduction of new cats into the wild from abandonment and new litters. Thus eradication alone would be resource intensive and ineffective as a strategy for dealing with free-roaming cats.

C. Stemming the Flow

Before any efforts to control the free-roaming cat population can be successful, there will have to be an intensive and continuing public education campaign aimed at informing people about the problems associated with free-roaming cats. Some animal owners,

Cooperative Extension Service, document WEC-136 (1991), available at <http://edis.ifas.ufl.edu>. See also B.M. Fitzgerald & D.C. Turner, *Hunting behavior of domestic cats and their impact on prey populations*, in *THE DOMESTIC CAT: THE BIOLOGY OF ITS BEHAVIOUR* 123-147 (D.C. Turner & P. Bateson, eds., Cambridge University Press 2000); O. Liberg, *Food habitat and prey impact by feral and house-based domestic cats in a rural area in southern Sweden*, *JOURNAL OF MAMMALOGY* 65:424-432 (1984); Robert E. Adamec, *The interaction of hunger and preying in the domestic cat (Felis catus)*, *BEHAVIORAL BIOLOGY* 18:263-272 (1976).

61. Castillo, *supra* note 30.

62. *Id.*

63. *Id.*; ABC, *supra* note 54; FWCC, *supra* note 6.

64. ABC, *supra* note 54.

65. James P. Sterba, *Fur Flies in Critter Crowd Over Fate of Feral Felines*, *WALL STREET JOURNAL*, October 11, 2002 (reporting that a nuisance animal trapper with a pest management company in Old Bridge, NJ has been screamed at, threatened and jostled, his truck has been jumped on and pounded, his traps run over, and his trapped cats freed); J. Nealy-Brown, *Feline feedings infuriate Navy*, *ST. PETERSBURG TIMES*, June 25, 2001 (civilian employee at Jacksonville Naval Air Station in Florida was caught springing traps that had been set to capture some of the 800 feral cats on the property).

realizing that if they take their unwanted pet to a shelter it will be likely be euthanized, often choose the alternative of abandonment. Though unable or unwilling to properly care for the pet, they hate to see it put to death. However, these same people may not realize the potential harm and misery their pet faces once abandoned, or the potential harm their pet may inflict on native wildlife. Additionally, many people may not realize they are breaking the law by abandoning their pet. Furthermore, cat owners may not realize their pets are efficient predators that can be fatal to Florida's native wildlife. Perhaps if fully informed on these issues, fewer people would allow their cats to roam free or abandon them into the wild.

VII. LEGAL CONSIDERATIONS

Wildlife laws exist at the federal and state level that are designed to protect species such as migratory birds, and those listed as endangered or threatened. Properly applied, these existing laws could be effective in discouraging the use of TNR and cat colonies as a way to attempt to manage the free-roaming cat population in this country. In addition, local governments enact ordinances to control both domestic and wild animals in their jurisdictions. However, most local government ordinances in existence are not effectively treating the problem of free-roaming cats, and are, in some cases, even exacerbating the problem.

A. FEDERAL WILDLIFE LAWS

1. *Migratory Bird Treaty Act*

The Migratory Bird Treaty Act (MBTA) represents the incorporation of, and domestic implementation of, four treaties that are concerned with, among other things, preventing the extinction of migratory birds.⁶⁶ The MBTA makes it unlawful to, at any time and by any means or manner, "...take, capture, kill, attempt to take, capture, or kill...any migratory bird, ...nest, or egg of any such bird..."⁶⁷ Under the violations and penalties section of the MBTA, any person, association, partnership, or corporation who violates the provisions of the MBTA is guilty of a misdemeanor and, if convicted, can be fined up to \$15,000 or imprisoned up to six

66. Scott Finet, *Habitat Protection and the Migratory Bird Treaty Act*, 10 TUL. ENVTL. L. J. 1, 9 (1996).

67. 16 USCA § 703 (2002).

months, or both.⁶⁸ There is no requirement for an element of intent for a misdemeanor violation of the MBTA.

Corporations have been found guilty of violations of the MBTA for the accidental release of toxic chemicals which were subsequently ingested by and resulted in the death of migratory birds.⁶⁹ The court in *U.S. v. FMC Corporation* found that the corporation engaged in the manufacture of a highly toxic pesticide, and that it failed to prevent this dangerous chemical from escaping into a pond where the chemical was dangerous to birds.⁷⁰ Though the corporation asserted that it had no intention to kill birds, the court applied strict liability.⁷¹

In another case, a pesticide maker, sales representative, alfalfa field owner, and aerial sprayer were all charged with violating the MBTA when several migratory birds died after application of a pesticide to an alfalfa field.⁷² The court found that it was clear from the language of the MBTA that Congress intended to make the unlawful killing of even one bird an offense.⁷³ Further, the court declared that the MBTA can be applied to impose criminal penalties on those who did not intend to kill migratory birds, because the guilty act alone was sufficient to make out the crime.⁷⁴

In yet another case several protected birds were killed when roosting on an electric association's power lines on which the association had failed to install equipment that would have protected the birds from electrocution.⁷⁵ The court held that whether the defendant intended to cause the deaths of the protected birds was irrelevant to its prosecution under section 707(a) of the MBTA.⁷⁶ The court found that Congress, by prohibiting the act of "killing" in addition to the acts of hunting, capturing, shooting, and trapping, intended to prohibit conduct that went beyond that normally exhibited by hunters and poachers, and in fact did not seem overly concerned with how captivity, injury, or death occurred.⁷⁷

These cases raise the question of whether a person violates the MBTA when that person releases a cat into the wild, and that cat

68. 16 USCA § 707(a)(2002).

69. *U. S. v. FMC Corporation*, 572 F. 2d 902 (2d Cir. 1978).

70. *Id.* at 907.

71. *Id.*

72. *U.S. v. Corbin Farm Service*, 444 F. Supp. 510 (E. D. Calif. 1978), *aff'd*, 578 F. 2d 259 (9th Cir. 1978).

73. *Id.* at 529.

74. *Id.* at 536.

75. *U.S. v. Moon Lake Electric*, 45 F. Supp. 2d 1070 (Co. Dist. 1999).

76. *Id.* at 1074.

77. *Id.*

kills a migratory bird. If an accidental chemical leak, aerial application of a pesticide, or failure to install equipment to protect birds from power lines can result in a person being charged with violation of the MBTA, why not release of cats into the environment? It does not take a great stretch of the imagination to conclude that a cat's impact on birds can be as lethal as any poison.

And in answer to the argument some have made that a broad interpretation of the MBTA could lead to such absurd results as convictions for bird deaths caused by automobiles, airplanes, and plate glass windows, the *Moon Lake* court pointed out that to obtain a guilty verdict, the government must prove proximate causation.⁷⁸ In other words, the government must prove there was a natural and continuous sequence of events, without any intervening causes, which produced the death of a migratory bird, without which the death could not have happened, and the death of a bird must be an event which might have reasonably been foreseen.⁷⁹ It is quite obvious that cats can be lethal to birds, and if the death of a migratory bird can be traced to a cat, or a cat colony, which can be further traced to an individual or organization, there may be strict liability for that person under the MBTA.

2. *Endangered Species Act*

The Endangered Species Act (ESA) has been described as the "pit bull" of environmental laws. Its language has been interpreted strictly and literally. An early case involving the ESA concluded that Congress had made it clear that the "balance has been struck in favor of affording endangered species the highest of priorities."⁸⁰ Section 9 of the ESA prohibits any person from "taking" any endangered fish or wildlife within the United States, or from violating any regulation pertaining to any endangered or threatened species.⁸¹ The term "take" is defined as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."⁸² The ESA authorizes "any person" to "commence a civil suit to enjoin any person" from violation of the act or any regulation issued under the act.⁸³

78. *Id.* at 1085.

79. *Id.*

80. *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978).

81. 16 USCS § 1538(a)(1)(2002).

82. 16 USCS § 1532(19).

83. 16 USCS § 1540(g)(1)(A).; Pete Schenkkan, *Citizen Suits*, in *ENDANGERED SPECIES ACT: LAW, POLICY, AND PERSPECTIVES*, 415 (Donald C. Baur & Wm. Robert Irvin, eds., American Bar Association 2002).

The rules promulgated by the U. S. Fish & Wildlife Service (FWS) pursuant to the ESA define "harm" as an act which "actually kills or injures wildlife. Such act may include significant habitat modification or degradation, where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering."⁸⁴ Furthermore, the rules apply the "take" prohibition to listed threatened species as well as to listed endangered species.⁸⁵ As stated above, in application the language of the ESA has been interpreted quite strictly and literally. The ESA may also be applicable to the issue of free-roaming cats and maintenance of cat colonies.

Liability under section 9 of the ESA has been found in cases based on the issuance of permits or licenses by a governmental body to a private party in which the authorized activity causes a take of an endangered species.⁸⁶ In *Strahan v. Coxe*, the Massachusetts Executive Office of Environmental Affairs was found liable for a take after evidence showed that Northern Right whales were becoming entangled in fishing gear which was permitted by the state.⁸⁷ The court found that the State of Massachusetts allowed commercial fishing in a manner likely to cause a take under the ESA. Thus there was an indirect but proximate causal link between the permitting agency and the recipient of the license.⁸⁸ The court held that "a governmental third party, pursuant to whose authority an actor directly exacts a taking of an endangered species, may be deemed to have violated the provisions of the ESA."⁸⁹

In another example of governmental third party liability, a court found that Volusia County, Florida's practice of allowing vehicular driving on its beaches was causing a take of endangered turtles. The court partially enjoined Volusia County from allowing vehicles on its beaches during nighttime hours.⁹⁰ More recently, the same court was presented with the issue of whether Volusia County's beachfront lighting ordinance harmed the turtles.⁹¹ Finding that turtles were being taken in violation of the ESA, and that these takes resulted from artificial beachfront lighting, the court nevertheless held that, because the County's beachfront lighting

84. 50 CFR § 17.3 (2002).

85. 50 CFR § 17.31(a) (2002).

86. Luna Ergas, *Section 9 of the ESA: Prohibitions on Taking Listed Species*, in TREATISE ON FLORIDA ENVIRONMENTAL & LAND USE LAW, §§ 17.3-1, 17.3-5 (The Florida Bar 2001).

87. *Id.*; *Strahan v. Coxe*, 127 F.3d 155, 163 (1st Cir. 1997).

88. Ergas *supra* note 86 at 17.3-5; *Strahan*, 127 F.3d at 163.

89. *Strahan*, 127 F.3d at 163.

90. Ergas *supra* note 86, at § 17.3-5; *Loggerhead Turtle v. Volusia Cty.*, 896 F. Supp. 1170, 1180 (M.D. Fla. 1995).

91. *Loggerhead Turtle v. Volusia Cty.*, 92 F. Supp. 2d 1296 (M.D. Fla. 2000).

ordinance was designed to prohibit, restrict, and limit artificial beachfront lighting, the County could not be held liable for takes caused by the non-compliance of the County's citizens.⁹²

Counties and municipalities in Florida typically adopt animal control ordinances, sometimes called "leash-laws," that set forth the local government's requirements for rabies vaccinations, animal license tags, and pet leashes. Many of these local ordinances require that dogs be kept on the property of their owner, not be allowed to roam free, wear a license tag, and be kept on a leash if off their owner's property. These same requirements, however, are often not applied to cats. In addition, some local governments in Florida have adopted ordinances affirmatively authorizing programs of TNR and maintenance of cat colonies in their jurisdictions. Applying the third party governmental liability principles of the *Strahan* and *Loggerhead Turtle* cases, a local government could find itself liable under the ESA for authorizing cat colonies that result in the illegal take by feral cats of an endangered species.

In addition to cases which have found liability based on issuance of a permit or license by a governmental body, are those which concentrate on the definition of a take. In the cases of *Palila v. Hawaii Department of Land & Natural Resources*,⁹³ the state of Hawaii was maintaining on public land, for recreational hunting purposes, feral sheep and goats, that were eating and destroying the mamane tree which also furnished food and shelter to an endangered bird. The Ninth Circuit, in *Palila I* held that the destruction of critical habitat upon which an endangered species depended for food, shelter, and nesting harms the species within the FWS's definition of harm.⁹⁴ After the FWS amended its definition of harm by adding "an act which actually kills or injures wildlife," as it reads today, the Ninth Circuit held in *Palila II* that habitat destruction that could result in extinction is sufficient to conclude a taking.⁹⁵

In a series of cases subsequent to *Palila*,⁹⁶ plaintiffs with economic interests dependant on the forestry industry challenged

92. *Id.* at 1305-1306, 1308.

93. 471 F. Supp. 985 (D. Haw. 1979), *aff'd* 639 F.2d 495 (9th Cir. 1981) (*Palila I*); 649 F. Supp. 1070 (D. Haw. 1986), *aff'd* 852 F.2d 1106 (9th Cir. 1988) (*Palila II*); Gina Guy, *Take Prohibitions and Section 9*, in *ENDANGERED SPECIES ACT: LAW, POLICY, AND PERSPECTIVES* 191, 197 (Donald C. Baur & Wm. Robert Irvin, eds., American Bar Association 2002).

94. Ergas, *supra* note 86, at 17.3-3.

95. *Id.*

96. Sweet Home Chapter of Communities for a Great Oregon v. Babbitt, 1 F.3d 1 (D.C. Cir. 1993); *rev'd* 17 F.3d 1463 (D.C. Cir. 1994); Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995).

the FWS' definition of harm, primarily the inclusion of habitat modification and degradation.⁹⁷ The challenge found its way to the U.S. Supreme Court, which found that "Congress intended 'take' to apply broadly to cover indirect as well as purposeful actions."⁹⁸ Thus the Court held that the definition of "harm" within the definition of "take," to include habitat modification that kills or injures wildlife, was a reasonable construction of Congress' intent.⁹⁹ The current interpretation of the definition of "harm" in the ESA, remains that which was articulated in *Sweet Home*, to include habitat modification and not only direct application of force to a species.¹⁰⁰

Applying the ESA prohibition on the take of an endangered species, including habitat degradation, to the issue of free-roaming cats, it would appear that under the right circumstances, a court could find that cats degrade the habitat of endangered or threatened predator species by killing the prey upon which those species depend for food. As explained in a preceding section of this paper, free-roaming cats prey on many of the same small mammals and birds as do native predators. Additionally, because they are subsidized by human care givers, cats occur at higher densities and compete with native predators for food, thus making it more difficult for native predators to feed themselves and their young. Consequently, persons who release cats into the wild or who maintain feral cat colonies could be found liable for a take under section 9 of the ESA if maintenance of feral cats in the wild is found to kill or injure wildlife by degrading habitat.

B. State Statutes

1. Wildlife Protection Laws

The Florida Legislature has enacted laws designed to protect the state's fish and wildlife resources. In adopting the Florida Endangered and Threatened Species Act, (ETSA) the Legislature declared that the "State of Florida harbors a wide diversity of fish and wildlife and it is the policy of this state to conserve and wisely manage these resources, with particular attention to those species defined by the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the United States Department of Interior as being endangered or threatened."¹⁰¹

97. Ergas, *supra* note 86, at 17.3-4.

98. *Id.*; *Babbitt v. Sweet Home*, 515 U.S. at 704.

99. Ergas, *supra* note 86, at 17.3-4; *Babbitt v. Sweet Home*, 515 U.S. at 708.

100. Ergas, *supra* note 86, at 17.3-4.

101. FLA. STAT. § 372.072(2) (2002).

Furthermore, the Legislature stated its intent was to “conserve and protect these species.”¹⁰² The ETSA makes it unlawful to “intentionally kill or wound any fish or wildlife designated by FWCC as endangered, threatened, or of special concern.”¹⁰³ Thus, the Florida Legislature has expressly recognized the value of the state’s wildlife resources and the importance of protecting those resources through effective laws designed to do so.

Importantly, the Florida Legislature has enacted a statute that makes it unlawful to release within the state *any species* of the animal kingdom not indigenous to Florida without first obtaining a permit from the FWCC.¹⁰⁴ FWCC is a state agency authorized by the Florida Constitution, to “exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.”¹⁰⁵ The constitution also authorizes FWCC to promulgate rules to carry out its constitutional and statutory mandates.¹⁰⁶ Accordingly, FWCC has promulgated a rule implementing the above statute prohibiting the release of non-indigenous species without a permit.¹⁰⁷ However, FWCC’s rule makes it unlawful for any person to release *wildlife* that is not native to the state, without first securing a permit from the FWCC.¹⁰⁸ Because FWCC defines “wildlife” as “all wild or *non-domestic* birds, mammals, fur-bearing animals, reptiles and amphibians,” its rule does not apply to cats.¹⁰⁹

The FWCC considers *Felis catus*, feral or owned, to be a domestic species and therefore under the jurisdiction of county authorities.¹¹⁰ Thus, the Legislature, with the express intent to protect Florida’s wildlife resources, has enacted a statute that makes it unlawful to “release within the state any non-indigenous species of the animal kingdom.” But FWCC, charged with the duty to carry out that mandate, has adopted a rule that fails to regulate the release of cats, a non-indigenous species, into the wild. The rule therefore contravenes the specific provisions of the very statute it was intended to implement.¹¹¹

102. *Id.*

103. FLA. STAT. § 372.0725 (2002). (Florida maintains its own protected species lists and creates take liability, although the statute has not been applied as expansively as the federal ESA.)

104. FLA. STAT. § 372.265(1) (2002) (emphasis added).

105. FLA. CONST. art. IV, §9.

106. *Id.*

107. FLA. ADMIN. CODE r. 68A-4.005(1) (2002).

108. *Id.* (emphasis added).

109. FLA. ADMIN. CODE r. 68A-1.004(86) (2002) (emphasis added).

110. FWCC, *supra* note 6.

111. FLA. STAT. § 120.52(8)(c) (2001) (Chapter 120 is the Florida Administrative Procedures Act (APA). This section states that an existing rule is an invalid exercise of delegated

Furthermore, the Florida Constitution provides that revenue shall be appropriated to the FWCC for "purposes of management, protection, and conservation of wild animal life."¹¹² Thus, the constitution places on the FWCC an affirmative duty to protect and conserve Florida's native wild animal life.¹¹³ The FWCC therefore has a duty to protect native wildlife from being exterminated by free-roaming cats, whether owned or unowned, regardless whether feral cats are considered wildlife or domestic species.

Additionally, FWCC has adopted a rule that prohibits the release of any "wildlife or *other organism*" that might reasonably be expected to transmit any disease to wildlife in Florida.¹¹⁴ Logically, since the FWCC's own rule prohibits the release of "any organism" that might reasonably be expected to transmit disease to Florida wildlife, the FWCC has a duty to protect native wildlife from free-roaming cats which might be likely to spread disease. The FWCC itself acknowledges the following: cats are the most common carriers of rabies among domestic animals, and can transmit rabies to wildlife such as raccoons, skunks and foxes; feline leukemia virus, a leading cause of death due to infectious disease in cats, has been reported in a mountain lion, a close relative of the endangered Florida panther; domestic cats were identified as one possible reservoir host for feline panleukopenia, which has been discovered in the Florida panther.¹¹⁵ Therefore, under the Florida constitution, state statutes, and the FWCC's rules, the FWCC has a duty to take action to protect native animal life in Florida from disease spread by free-roaming cats.

The Florida Constitution requires the FWCC "to establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions."¹¹⁶ Accordingly, the FWCC adopted the Florida Uniform Rules of Procedure as its procedural rules.¹¹⁷ Furthermore, the FWCC is defined by the Florida Administrative Procedures Act (APA) as an agency when acting pursuant to statutory authority derived from the Legislature.¹¹⁸ Because all provisions of the APA are applicable when the FWCC

legislative authority if it enlarges, modifies, or contravenes the specific provisions of law implemented.)

112. FLA. CONST. art. IV, §9.

113. *Id.*

114. FLA. ADMIN. CODE r. 68A-4.005(3) (2002) (emphasis added).

115. FWCC, *supra* note 6.

116. FLA. CONST. art. IV, §9. *See also* FLA. STAT. § 20.331(6)(a) (FWCC "shall 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 FWCC in performance of its constitutional duties or responsibilities").

117. FLA. ADMIN. CODE r. 68A-2.009 (2002); Chapter 28, FLA. ADMIN. CODE (2002).

118. FLA. STAT. § 120.52(1)(b)4 (2002).

is acting pursuant to its statutory responsibilities, citizens can access the FWCC through the APA rule challenge and hearing procedures.¹¹⁹

A citizen or group concerned about the impacts of feral cats, that could establish standing as a substantially affected party, might successfully challenge the FWCC in at least two ways: (1) seek an administrative determination of the invalidity of the FWCC's rule prohibiting the release in the state of non-native wildlife—defined as non-domestic animals, and thus not including cats—on the ground that the rule is an invalid exercise of delegated legislative authority because it modifies or contravenes the specific provisions of the law implemented; or (2) seek an administrative determination that FWCC's statement that the agency does not regulate cats because they are a domestic species is an agency statement defined as a rule, in violation of §120.54(1)(a).¹²⁰ Under the second type of challenge, the FWCC might take steps to begin rulemaking to adopt the policy as a rule, in which case the challenging citizen or group could then challenge the proposed rule as an invalid exercise of delegated legislative authority which modifies or contravenes the specific provisions of law implemented. Additionally, a citizen has standing to intervene as a party in any ongoing administrative proceeding involving decisions which affect substantial interests, upon the filing of a verified pleading asserting that the activity will injure natural resources of the state.¹²¹ Thus, there are a number of ways in which citizens can take steps to force the FWCC to live up to its duty to protect and conserve Florida's native wildlife from the impacts of free-roaming cats.

2. *Animal Cruelty Laws*

In addition to wildlife protection laws, the Florida Legislature has enacted statutes prohibiting cruelty to animals. For example, it is a first degree misdemeanor, punishable by a fine of up to \$5,000 for a person to deprive an animal of necessary sustenance or shelter.¹²² It is also a first degree misdemeanor, punishable by a fine of up to \$5,000 or imprisonment, or both, for a person who "is the owner or possessor, or has charge or custody, of any animal" to abandon that animal "in a street, road, or public place without providing for the care, sustenance, protection, and shelter" of the

119. Clay Henderson, *The Conservation Amendment*, 52 FLA. L. REV. 285, 297-98 (2000).

120. FLA. STAT. § 120.56(1)(a), (4)(a) (2002); *id.* at §120.52(8)(c).

121. FLA. STAT. § 403.412(5) (2002).

122. FLA. STAT. § 828.12(1) (2002).

animal.¹²³ "Owner" is defined to include "any owner, custodian, or other person in charge of an animal."¹²⁴

Persons who trap cats for the purpose of TNR have possession, charge, or custody of those animals, and therefore are the owners under Florida law. When those persons subsequently release the cats back into the wild, they are abandoning them. Even cats living in established colonies which are cared for regularly by care givers do not receive the level of care considered humane for domestic animals. They do not have shelter, they do not all receive regular vaccinations, and if a cat does not show up to feed because it is injured or sick, it is likely that no one will take the time to try to find it. Most cats that are put through TNR are truly free-roaming, and no one controls where they go or when, or what subsequently may happen to them after they are released.

C. Local Government Ordinances

Most, if not all, counties and municipalities in Florida have enacted animal control ordinances, and thereby regulate domestic animals in their respective jurisdictions. Unfortunately, most fail in several ways to adequately protect the public or native wildlife from impacts by free-roaming cats. Like Volusia County in the *Loggerhead Turtle* cases, these local governments need to be aware that they could be found in violation of the ESA for allowing the take of endangered species by permitting cat colonies to be maintained, or if their animal control ordinance is deemed not to be specifically intended to protect endangered species from free-roaming cats in their jurisdiction. Furthermore, local governments should be aware of the tort liability they could face if a person contracts rabies or other disease from a cat that is a member of a cat colony registered in that county or municipality. Many local governments are grappling with these issues recently, as well-meaning citizens push for ordinances permitting TNR and cat colonies. Some Florida local governments that have enacted ordinances which permit establishment and maintenance of cat colonies include Brevard County¹²⁵, Gilchrist County¹²⁶, Okaloosa County¹²⁷, and Palm Beach County¹²⁸, although there may be others. An Alachua County ordinance implicitly sanctions feral cat colonies, though with no regulatory oversight, by explicitly

123. FLA. STAT. § 828.13(1)(a), (3) (2002).

124. FLA. STAT. § 828.13(1)(b) (2002).

125. BREVARD COUNTY, FLA., CODE OF ORDINANCES § 14-64 (1999).

126. GILCHRIST COUNTY, FLA., CODE OF ORDINANCES § 14-38 (2000).

127. OKALOOSA COUNTY, FLA., CODE OF ORDINANCES § 5-31 (2001).

128. PALM BEACH COUNTY, FLA., CODE OF ORDINANCES § 4-8 (1998).

reserving for the county the right to impound a feral cat colony if the animals create public health and safety concerns, or a public nuisance.¹²⁹

The Brevard County ordinance mentioned earlier in this paper allows feral cat colonies to be established and registered with the county, and contains a provision for the county to establish a fund or provide services to offset costs of TNR.¹³⁰ Each cat that is put through TNR must have its ear tipped or be given some other distinguishing mark to identify it as a colony cat.¹³¹ If a colony cat is picked up by the county animal services and enforcement agency, it is returned to the colony.¹³² Colony care givers must make arrangements for the colony to be fed regularly, for sterilizing all cats that can be captured, vaccinating all cats that can be captured, and must make every attempt to sterilize kittens over eight weeks of age, remove kittens from the colony for adoption, remove sick or injured cats for veterinary care, and maintain records.¹³³ The ordinance further provides that if a feral cat care giver fails to comply with the requirements of the ordinance, the county animal control agency will attempt to resolve the situation prior to removal of the animals.¹³⁴ Brevard County's ordinance does not require the cats be contained so they cannot roam free. Furthermore, the ordinance does not require that all cats be sterilized, vaccinated, or removed if they are sick, it just requires that care givers "make every attempt" to do this, or that they do this for all the cats that "can be captured."

Another local ordinance that affirmatively sanctions free-roaming cats is that of Orange County. In one section the county prohibits persons having charge, care, custody or control of an animal from allowing that animal to run at large upon any public property or off the premises of the owner.¹³⁵ However, in another section the county defines "at large" as (1) "a dog off the owner's premises, not under a person's control by means of leash, cord or chain..."; or (2) "a cat which does not exhibit identification by a collar and a current county rabies license tag."¹³⁶ Thus, while Orange County's ordinance would prohibit cats without a county rabies tag from roaming free, it fails to place the same restriction on free-roaming cats that are wearing a rabies tag.

129. ALACHUA COUNTY, FLA., CODE OF ORDINANCES § 72-24 (1999).

130. BREVARD COUNTY, FLA., CODE OF ORDINANCES § 14-64(a) & (b) (1999).

131. *Id.* at § 14-64(d)(8).

132. *Id.* at § 14-64(c).

133. *Id.* at § 14-64(d)(1)-(9).

134. *Id.* at § 14-64(f).

135. ORANGE COUNTY, FLA., CODE OF ORDINANCES § 5-33 (1995).

136. *Id.* at § 5-29.

Likewise a Monroe County ordinance makes it unlawful for “any owner or keeper of an animal *other than a domestic cat* willfully or negligently to allow the animal to run at large on public property or on any private property of another without permission of the property owner.”¹³⁷ This ordinance makes it permissible for owners of cats to allow their animals to roam free. An Alachua County ordinance defines “physical control” as “immediate and continuous control of a dog” but not a cat.¹³⁸ As mentioned earlier in this paper, some 65% of cat owners allow their cats to roam free at least part of the time. Though they may be owned and well-fed, all cats are predators by instinct, and owned cats impact Florida’s wildlife just as feral cats do.

In contrast to these ordinances which sanction free-roaming cats, is that of the City of Ormond Beach, which states that “it shall be the duty of the animal control officer to apprehend any dog or cat found running at large and to impound such dog or cat.”¹³⁹ The ordinance goes on to state that “the city shall establish and operate...a suitable place for the impounding, care and final disposal of all dogs and cats picked up.”¹⁴⁰ A Volusia County ordinance also applies to free-roaming cats. The ordinance defines “animal” to mean both dogs and cats, and requires animal owners to keep their animal leashed while the animal is off the real property limits of the owner.¹⁴¹ Additionally, the Volusia County ordinance defines “stray” as any “unlicensed and unattended animal off the premises of its owner,” and all strays are considered public nuisance animals.¹⁴² Consequently, an owner whose animal is determined to be a stray, and therefore a public nuisance, is subject to a civil penalty of up to \$500.¹⁴³

VIII. CONCLUSION

Florida is a state with many native endangered and threatened species. Some, like the Lower Keys marsh rabbit, Key Largo woodrat and some subspecies of beach mice, are teetering on the edge of extinction. Florida also has an enormous population of non-native, free-roaming cats. Ironically, the cats, rather than the native wildlife, seem to have the more vocal support. Proponents of TNR and feral cat colonies have exerted tremendous pressure on

137. MONROE COUNTY, FLA., CODE OF ORDINANCES § 3-7(1) (2001) (*emphasis added*).

138. ALACHUA COUNTY, FLA., CODE OF ORDINANCES § 72.02 (2000).

139. ORMOND BEACH, FLA., CODE OF ORDINANCES § 5-70 (1991).

140. *Id.*

141. VOLUSIA COUNTY, FLA., CODE OF ORDINANCES §§ 14-31, 14-46 (1994).

142. VOLUSIA COUNTY, FLA., CODE OF ORDINANCES § 14-31 (1994).

143. *Id.* at §§ 14-48, 14-32.

local officials to enact ordinances permitting the establishment and maintenance of cat colonies, and in some cases, even to spend taxpayer dollars subsidizing the programs. Unfortunately, many well-intended friends of felines are determined to ignore the evidence that proves such programs do not work, are inhumane to the cats, dangerous to the public, and lethal to Florida's native wildlife.

But the socio-political and practical implications of the cat issue cannot be solved by simply outlawing TNR and killing all the cats tomorrow. First of all, local politicians are sensitive to the desires of the citizens of their districts, and rightly so. Second, it is truly a tragedy that so many thousands of perfectly healthy companion animals are put to death each year for no reason other than that they happen to be homeless and unwanted. This is a human-caused, human perpetuated problem which requires a human solution. Third, if cat colony proponents were to immediately stop practicing TNR and maintaining colonies, the large population of cats would remain, except that no one would be trapping them for sterilization and vaccination, or feeding them or trying to find homes for them.

Cat colony proponents have argued for years that the traditional method of "trap and kill" does not work. The homeless pet population explosion of recent decades indicates that they are right. Cat lovers would love to see this problem solved. So would bird lovers and native wildlife lovers and recovery biologists working with dwindling populations of endangered species. One thing that all these groups agree on is that the problem begins with irresponsible humans who neglect to sterilize their pets, and who abandon unwanted cats and dogs, kittens and puppies. The problem as well as the solution lies with human behavior, and human behavior can be altered.

At the state and local levels, there must be a pervasive, loud, continuing campaign to educate the public about the impacts of free-roaming cats on Florida's wildlife and human health. The campaign must include public service announcements on television, radio and in newspapers, as well as education in public schools. New ideas, like the campaign to not litter, or to recycle, catch on if they are continually put before the public, and especially if they are taught to children in schools. But the feral cat issue has not been a popular one with either state or local public officials. Past efforts to inform people and encourage sterilization and discourage abandonment have been half-hearted at most. Incentives for sterilization should be so great, and penalties for abandonment should be so severe, that people would take notice and no longer ignore the law.

In addition to public education, the FWCC should take the lead in enforcing the existing statutes that prohibit release of non-indigenous species or organisms likely to spread disease. The FWCC must fulfill its duty to the people of Florida to protect native wildlife from the negative impacts of free-roaming cats. The FWCC should inform local governments that by permitting cat colonies to be established and TNR to be performed in their jurisdictions, they are violating state wildlife laws. In turn, local governments should enact ordinances that set strict control, license, and vaccination requirements for cats as well as dogs. Local governments should post signs in public parks warning that it is illegal to feed stray cats and dogs as well as to feed wildlife. Local governments should enforce mandatory sterilization of all cats and dogs placed for adoption at shelters. Finally, local governments should establish substantial economic disincentives, in the form of double or treble licensing fees, for owners who do not wish to sterilize their pets.

Concurrent with these efforts, the state should inform the public that it intends to take eradication action at some set future date. When that date arrives, the public will have been warned, and the state should make good on its promise, engaging the resources of local government animal control agencies and animal shelters. But efforts aimed at eradication can be successful only if the public is properly prepared first, and even then eradication will likely have to be continuously applied, while at the same time keeping up with the public education campaign and enforcement of state statutes and local government ordinances aimed at reducing the flow of new cats into the wild. The recommendations in this section may seem drastic, but the situation is critical and calls for serious and immediate action. If state and local governments continue to ignore this crisis and pass the buck, the feral cat population will continue to grow. It is up to the human population to decide how many native Florida species we will let become extinct, and how big a public health problem we will allow free-roaming cats to become.

