



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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July 23, 2014

To: Escambia County Board of County Commissioners
221 Palafox Place, Suite 400
Pensacola, Florida 32502

Attn: Commissioner Lumon May, Chairman

Transmitted via email

Re: Community Cat Management Ordinance

Dear Chairman May and Commissioners:

The U.S. Fish and Wildlife Service (Service) would like to express our concerns to the Escambia County Board of County Commissioner's regarding the proposed Community Cat Management Ordinance as noted in the July 12, 2014, Pensacola News Journal article. The Service strongly opposes free roaming, domestic or feral cats within the U.S. due to the adverse impacts of these non-native predators on federally listed threatened and endangered (T&E) species, migratory birds, and other vulnerable native wildlife. Therefore, the Service opposes trap-neuter-release (TNR) programs that allow domestic or feral cats to return to free-ranging conditions. As with any other domestic animal, we encourage County Officials to take appropriate action to ensure that cat owners act responsibly to restrain or confine their animals and hold owners accountable for any damages to wildlife that occur from allowing animals to roam at large. To this effect, we recommend that County Officials continue to take action to eliminate free-ranging feral cats throughout Escambia County.

Feral and free-ranging domestic casts are a non-native, invasive predator species to North America. Cats were recognized in a widely publicized article in Nature last year as likely the single greatest source one of anthropogenic mortality of birds and mammals in the United States,

killing 1-5 million birds, and 6-22 million mammals annually. Additionally, when TNR cats receive food from humans, they can reach population levels that may create areas of abnormally high predation rates on wildlife, and unfortunately, the act of feeding TNR cats does not deter them from killing wildlife. Studies show that even if food is available, free-ranging house cats hunt natural prey during all seasons and seem to prefer natural prey when it is easily accessible. Therefore, even well-fed, feral or free-ranging cats pose a threat to nesting shorebirds, migratory birds, and other native wildlife. In another recently published 2007 study looking specifically at the effect on mammals by Knowlton and others, it was acknowledged that when the prey is a threatened or endangered species, the result may be extirpation or extinction.

The following comments are provided pursuant to the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C 1531 *et seq.*) (ESA) and the Migratory Birds Treaty Act (40 Stat. 755; 16 U.S.C. 703-712) (MBTA). We preface our comments by providing the regulatory context for our recommendations.

Endangered Species Act

Unauthorized take of listed species can occur through a variety of means, including but not limited to wounding, killing, harm, and harassment. Failure of an agency or municipality to take action to reduce the likelihood of death or injury to threatened and endangered species from feral cats could result in a violation of the ESA for which the agency or municipality may be held responsible for unauthorized “take” if free-ranging cats kill, injure, or harass T&E species.

The ESA not only prohibits any person from directly taking wildlife, but it also prohibits any person from causing an ESA violation to be committed (16 U.S.C § 1538(g)). Equally as important, under the ESA, the term “person” includes “any officer, employee, agent, department, or instrumentality of any State, municipality, or political subdivision of a state [or] any State, municipality, or political subdivision of a State ” (16 U.S.C § 1532(13)). The ESA “not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking.” (Strahan v. Coxe, 127 F.3d 155, 163 (1st Cir. 1997)).

If take under the ESA occurs, the violators may be held responsible and be subject to civil and criminal penalties. Under a civil penalty, fines can reach up to \$25,000 per take, while a criminal penalty may reach up to \$50,000 per take and up to one year in prison. The potential liability of the State or a municipality, its agents, contractors, as well as individual TNR caregivers is of concern not only due to the Service’s enforcement responsibilities, but because the ESA contains a citizen suit provision allowing the general public to initiate litigation to address alleged violations of the Act.

Migratory Bird Treaty Act (MBTA)

Migratory birds are Federal trust resources and are afforded protection under the MBTA, which prohibits the take of a migratory bird's parts, nest, or eggs. Many species of migratory birds, wading birds, and songbirds nest or migrate within Escambia County. Migratory birds would likely be subject to predation from State, municipality, or land manager-authorized cat colonies and free-ranging feral or pet cats. Predation on migratory birds by cats is likely to cause destruction of nests or eggs, or death or injury to migratory birds or their young, thereby resulting in a violation of the MBTA. Criminal penalties under the MBTA can reach up to \$15,000 and up to 6 months in prison.

RECOMMENDATIONS FOR CONTROL/MANAGEMENT OF FREE-RANGING AND FERAL CATS

The Service recommends that the Escambia County Commissioners consider implementation of the following actions to control and manage free-ranging and feral cats:

- Ban and eliminate free-ranging TNR colonies, feral, and domestic cats through humane capture by authorized or licensed animal care and control personnel.
- Prioritize removal of cat colonies in close proximity to shorelines, natural wetlands, undeveloped forested areas, areas managed by wildlife, parks and other open space, and other sensitive areas supporting concentrations of threatened and endangered species, migratory birds, or other native wildlife.
- Support efforts of volunteers or organizations that trap and neuter free-ranging cats, but require that animals be adopted and kept indoors or be released into managed areas that are appropriately fenced or otherwise enclosed to prevent animals from roaming outside of a contained space. Such managed areas should be situated only within landscapes where adverse impacts to threatened and endangered species, migratory birds, and native wildlife will be unlikely to occur.
- Require the municipal licensing of all cats and prohibit free-ranging cats with leash laws similar to those in existence for dogs.
- Support educational programs to promote the American Bird Conservancy's "Cats Indoors" program for Escambia County residents and seasonal visitors.
- Encourage microchipping of all cats currently held as pets. Require microchipping of all cats sold commercially, adopted through animal welfare or control facilities, or released into managed fenced or enclosed colonies. This will facilitate cat registration, assist in identifying owners of lost cats, and aid in identifying cat owners or facilities not in compliance with regulations and or accountable for death or injury to T&E species, migratory birds, or other native wildlife.

- Work with animal welfare and conservation groups to provide a low-cost solution for pet-owners who are no longer willing or able to care for their pets.

CONCLUSION

The Service strongly opposes the passing of TNR as a part of Escambia County's Community Cat Management Ordinance. The Service encourages Escambia County Commissioners to use its authorities to take appropriate action to control all domestic and feral cats (a non-native and invasive predator). We would like to work cooperatively with the Escambia County Commission on matters that ensure the protection of federally listed species, migratory birds, and wildlife native to Florida.

Please contact Patty Kelly at extension 228, if you have any questions regarding the above comments or require additional assistance regarding Federal trust resources.

Sincerely,

A handwritten signature in blue ink that reads "Cath T. Phillips". The signature is written in a cursive style and includes a long horizontal flourish extending to the right.

Catherine T. Phillips, PhD.
Acting Project Leader