

March 7, 2024

The Honorable Ron DeSantis
Plaza Level, The Capitol
400 S. Monroe St.
Tallahassee, FL 32399



Re. CS/HB 87, “Taking of Bears” Veto Request.

Governor DeSantis:

Sierra Club, the oldest, largest environmental advocacy organization in the nation with more than 240,000 members and supporters in Florida, urges you to veto CS/HB 87, “Taking of Bears.”

In recent years, the legislature has played fast and loose with the facts, and often created solutions for imaginary or manufactured problems. The argument for this bill was built upon the falsehood that Florida faces an epidemic of “crack bears” (there are no documented cases) and the belief that Floridians lack the right of self-defense in such a scenario.¹ We would applaud the legislature’s ingenuity, but the idea is not original.² In reality, this bill is unnecessary, stymies conservation, and unconstitutionally infringes on the Florida Fish and Wildlife Conservation Commission’s (FWC) sole constitutional authority to regulate wildlife.

While CS/HB 87 raises serious conservation and safety concerns, it is impossible to ignore that this bill appears to be unconstitutional on its face. Specifically, the language in CS/HB 87 usurps FWC’s exclusive constitutional authority to regulate wild animal life. The Florida Constitution states that the FWC “shall exercise the regulatory authority and executive powers of the state with respect to wild animal life and freshwater aquatic life.”³ The Florida Supreme Court and other state courts have consistently found that this language vests FWC with the exclusive legislative authority to adopt reasonable rules to regulate wild animal life.⁴ The Legislature is, therefore, constitutionally prohibited from adopting statutes that are

¹Richard Luscombe, “Florida lawmaker says bill to loosen rules on killing bears is aimed at ‘the ones that are on crack,’” *The Guardian*, Published February 5, 2024.

<https://www.theguardian.com/us-news/2024/feb/05/florida-bears-crack-jason-shoaf>

²“Cocaine Bear (2023),” *International Movie Database*, Accessed March 5, 2024.

<https://www.imdb.com/title/tt14209916/>

³Art. IV, § 9, Fla Const.

⁴ *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Coalition*, 838 So. 2d 492 (Fla. 2003) (holding that “[i]n respect to ‘wild animal life and fresh water aquatic life,’ the [FWC] is given ‘the regulatory and executive powers of the state.’ (emphasis in original)); *Wakulla Commercial Fishermen’s Ass’n v. Fla. Fish & Wildlife Conservation Comm’n*, 951 So. 2d 8, 9 (Fla. 1st DCA 2007) (same); *City of Miramar v. Bain*, 429 So. 2d 40, 42 (Fla. 4th DCA 1983) (same); *Price v. St. Petersburg*, 158 Fla. 705, 708 (1947) (same); Op. Att’y Gen. 80-04 (1980) (“Section 9, Art. IV, State Const., vests in the Game and Fresh Water Fish Commission the exclusive authority to exercise all of the state’s regulatory power over all wild animal life . . .”).

inconsistent with or conflict with FWC's regulations.⁵

In fact, FWC has exercised its exclusive regulatory authority to adopt comprehensive regulations regarding Florida black bears via the Florida Black Bear Conservation Rule⁶ and this bill is generally inconsistent with FWC's goals and objectives, and at times directly conflicts with specific parts of FWC's regulations. While FWC regulations do consider issuing permits for taking "bears that are causing property damage when no non-lethal options can provide practical resolution to the damage, and the Commission is unable to capture the bear,"⁷ this provision hardly serves as wholesale authorization for any person to take a bear by lethal force without a permit. FWC's Florida Black Bear Conservation Rule further explains that "[T]he Commission will provide technical assistance to land owners... in order to minimize and avoid potential negative human-bear interactions or impacts of land modifications on the conservation and management of black bears."

FWC's Bear Management Program and recommendations to secure pets and property represent not only solutions consistent with FWC's sole Constitutional authority, but which are also effective at reducing human-bear interactions. These practices, which include solutions as simple as the use of bear-proof trash cans, have successfully reduced human-bear conflicts in at least 19 communities in North America.⁸ However, these practices have not been adopted in critical areas in Florida, particularly where development is pushing rapidly into regions with resident bear populations. Floridians will be safe from the imaginary scourge of crack bears because they are imaginary. Less facetiously, the public is unlikely to worry about bears they never encounter. These practices should be the first step in addressing any possible incidents.

To reiterate, in the unusual event that a bear attacks, Floridians are already permitted to fight back aggressively in self defense or defense of others.⁹ It is absurd to attempt to remedy an imaginary problem with a solution that encourages the use of lethal force, when the ability to

⁵ Wakulla, 951 So. 2d at 9; Art. IV, § 9, Fla Const (providing that the "Legislature may enact laws in aid of the commission, not inconsistent with this section . . ."); *State ex rel. Griffin v. Sullivan*, 30 So. 2d 919, 920 (Fla. 1947) ("Acts of the legislature are limited to those that aid but are not inconsistent with the regulations of the Commission."); *Bell v. Vaughn*, 21 So. 2d 31,32 (Fla. 1945) ("The power to pass acts 'in aid of' the amendment does not contemplate the power to prescribe a method of taking [fish] different from that prescribed by the Commission."). This long-standing interpretation of the Florida Constitution was most recently reaffirmed in *U.S. Association of Reptile Keepers v. Florida Fish and Wildlife Conservation Commission*, in which the Second Judicial Circuit held that section 379.372, Florida Statutes, as amended by Senate Bill 1414 (2020), was unconstitutional because it regulated the manner and purpose for which certain non-native reptile species could be possessed in a way that contradicted FWC's regulations. No. 2020 CA 001277 (Fla. Cir. Ct. 2d, Sept. 11, 2020).

⁶ Fla. Admin. Code R. 68A-4.009.

⁷ *Ibid.* 68A-4.009(2)(b).

⁸ "Bear Wise—Survey Results of 21 Communities," *BearWise*, <https://myfwc.com/media/1870/19-communities.pdf>

⁹ "Encounter," *Florida Fish and Wildlife Conservation Commission*, Accessed March 5, 2024, <https://myfwc.com/wildlifehabitats/wildlife/bear/living/encounter/>

defend oneself is already clearly available to Floridians. Allowing unpermitted take of black bears, rather than taking simple steps endorsed by experts to reduce human-bear interactions, undermines the state's key conservation work on behalf of our namesake black bear.

Governor, this bill is yet another fruitless exercise in addressing a flagrantly farcical problem with an inane and dangerous solution. While the Legislature wrestles with B-movie villains, like bears on schedule 1 stimulants, Floridians' quality of life continues to worsen as the state becomes increasingly unaffordable and their personal and local freedom are attacked. *Enough.*

We urge you to veto CS/HB 87.

Sincerely,

A handwritten signature in black ink, appearing to read "James C. Scott". The signature is fluid and cursive, with a long horizontal stroke at the end.

James Scott
Executive Committee Chair, Sierra Club Florida