

Will Feral Cats Silence Spring in Your Town?

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“It was a spring without voices . . . On the mornings that had once throbbed with the dawn chorus of robins, catbirds, doves, jays, wrens, and scores of other bird voices there was now no sound; only silence lay over the fields and woods and marsh.” Rachel Carson, Silent Spring 1, 2 (Houghton Mifflin NY 1962). Rachel Carson in her revolutionary book, Silent Spring, described a town where the birds and wildlife had been killed off by pesticide overuse. After her book was published, Carson endured well-financed efforts aimed at discrediting her and the ominous warnings advanced in her book. Eventually, Carson was vindicated and her book helped launch a nation-wide environmental movement.

The political fallout of the public debate launched by Silent Spring resulted in the establishment of the Environmental Protection Agency and adoption of environmental regulations designed to protect against the destruction of our environment by toxic chemicals and pesticides. But an environmental peril very different to that of toxic chemicals now threatens to silence the dawn chorus of spring as effectively as any pesticide. This new threat comes in the form of an exploding population of America’s favorite pet, the domestic cat. Feral and free-roaming cats threaten native wildlife, especially endangered and threatened species, through direct predation, competition, and disease. Cats are efficient predators and kill as many as one billion small mammals and birds in the United States every year. 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>. Well-funded cat interest groups like Alley Cat Allies and Feral Cat Coalition advocate Trap-Neuter-Release (TNR) programs and maintenance of large numbers of cats in colonies in the wild. See <http://www.alleycat.org>; and <http://www.feralcat.com>. Despite the overwhelming majority of scientific literature that establishes otherwise, these groups seek to convince citizens and policy-makers that TNR is a humane and successful method of controlling the overpopulation of homeless cats.

Local governments throughout the United States are under pressure from cat interest groups to adopt ordinances authorizing the practice TNR and the maintenance of large numbers of cats in colonies in the wild. In Florida, the governing boards of several counties, including Brevard, Gilchrist, and Palm Beach, have bowed to the pressure. Some of these counties have enacted ordinances that provide for public funds to be earmarked to help support the maintenance of cat colonies.

Many citizens and public officials have voiced concerns about the public health issues and wildlife issues involved in hoarding large numbers of cats in the wild. Some who have resisted the extreme efforts by proponents of TNR and cat colonies have been

subjected to verbal abuse and threats. Alley Cat Allies, a national non-profit organization located in Washington, D.C., has posted on its website a link specifically devoted to its “Florida campaign,” which attacks the Fish & Wildlife Conservation Commission (FWCC), and the U. S. Fish & Wildlife Service (FWS). See <http://action.alleycat.org/action/index.asp>. The “Feline Resistance,” a group expressly formed “to protect free-roaming cats,” has published on its website attacks against the FWS, the United States Department of Agriculture, the Town of Surfside, FL, the City of Ormond Beach, FL, the Pennsylvania Game Commission, the city of Atlantic City, NJ, the New Jersey Audubon Society, the City of Akron, the Harbor-UCLA Medical Center in Torrance, CA, and the U.S. Navy. See <http://www.felineresistance.org/battlefields.htm>.

Trap-neuter-release (TNR) programs work in theory but not in practice.

Caregivers who are involved with strictly managed cat colonies claim their efforts have resulted in the successful reduction of the number of cats in their colonies. They argue their experience proves TNR is the only humane way to successfully reduce the homeless cat population. They argue that “trap and kill” has not worked to reduce the homeless cat population, but that TNR and cat colonies somehow will.

But few cat colonies are strictly managed and maintained. A study of two feral cat colonies in Miami, Florida, conducted by then-student Daniel Castillo, who is now a biologist with FWCC, showed that the number of cats in the study colonies did not reduce over time because people continued to dump their unwanted cats in the area. The dumped cats were not neutered, and thus kittens were born. Castillo concluded, “My results do not support the assertion that managed cat colonies will decline over time. Instead, my findings demonstrate that the establishment of colonies on public lands encourages dumping of unwanted cats and creates an attractive nuisance.” See <http://www.fiu.edu/~clarkea/students/castillo> for information on Castillo’s study. Castillo’s study also revealed some cats are trap-shy and cannot be captured for sterilization and vaccination.

Castillo’s was not a study of strictly managed colonies: his was a study of what really happens in cat colonies. In contrast, ORCat, a very strictly managed colony in Key Largo, boasts that TNR has reduced its cat population from about 2,000 to about 500. Most cat colonies are not managed like ORCat, which maintains records on every cat, operates on a large budget, and employs full-time staff. And while ORCat has achieved some success in reducing the size of its colony, ORCat has not solved all the problems associated with its free-roaming cats. Ironically, the ORCat colony is located next to the Key Largo Hammocks State Botanical Site, which serves as habitat for the endangered Key Largo woodrat and the Key Largo cotton mouse. The FWS established a captive breeding program to try to save the Key Largo woodrat from extinction, meanwhile 500 domestic cats, highly efficient non-native instinctive predators, roam free near the woodrat’s natural habitat.

In theory perhaps, TNR should work to reduce the homeless cat population. But in real life it will not work. The homeless cat population continues to swell and become increasingly unmanageable despite efforts involving either TNR or euthanasia. Cats are homeless because people fail to spay/neuter their pets; people abandon their pets or allow them to roam free; and kittens are born to abandoned or free-roaming cats. The practice of TNR and maintenance of cat colonies in the wild does not work because the practice fosters the abandonment of unwanted pets. As Castillo's study shows, cats are frequently dumped at colony sites by pet owners desiring to rid themselves of the responsibility to care for their unwanted pets. These persons likely reason that it is more humane to abandon their cat at a colony site where someone else will feed it than to take it to a shelter where it might be subjected to euthanasia.

But cats do not fair well in the wild. The Humane Society of the U.S. (HSUS) has stated that free-roaming cats often are hit by vehicles or fall victim to disease, starvation, poisons, attacks by other animals, and mistreatment by humans. HSUS Statement on Free-Roaming Cats, 1 (2003) at <http://www.hsus.org/ace/11857>. Free-roaming cats are subject to contracting and spreading disease among themselves, wildlife, and people. TNR is not humane for the cats: it is worse than euthanasia.

Free-roaming cats negatively impact native wildlife populations, including threatened and endangered species.

TNR and cat colony proponents have a valid argument that at least the cats they care for are well fed and are spayed/neutered so they cannot reproduce. This argument ignores the fact that cats are being released and maintained in ecosystems that support native wildlife, including many species which are threatened and endangered. Many native species of birds and wildlife are susceptible to the negative impacts of free-roaming cats through predation, disease, and competition. Studies have shown Cats are instinctive predators and will continue to hunt and kill prey even if well fed by humans. Professor Joe Schaefer, Director of the Center for Natural Resources, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, has written regarding the impacts of cats on wildlife:

The instinctive hunting and killing behavior of cats is extensively documented. Unlike wild predators that kill to eat, cats kill impulsively even when they are not hungry. Animals that nest or feed on or close to the ground, such as cardinals, bobwhites, towhees, wrens, rabbits and lizards are most susceptible. At least part of the population declines experienced by Florida's endangered beach mice are due to domestic cat predation Cats also facilitate the spread of disease. Castillo's study found that raccoons and other wildlife routinely ate leftover cat food. Rabies can be spread between cats and wildlife. Humans are susceptible to toxoplasmosis and rabies from cats.

Joe Schaefer, *Impacts of Free-ranging Pets on Wildlife*, document WEC-136, Dept. of Wildlife Ecology and Conservation, Fla. Cooperative Ext. Svc., Institute of Food and Ag. Sciences, University of Fla. (1991) *available at* http://edis.ifas.ufl.edu/BODY_UW090.

Florida is home to over 100 species listed as endangered and threatened. Cats have been recognized as a serious threat to the following endangered and threatened species in Florida: the Key Largo woodrat and cotton mouse; rice rat; Lower Keys marsh rabbit; Choctowhatchee beach mouse; Perdido Key beach mouse; Anastasia Island beach mouse; Southeastern beach mouse; green sea turtle; roseate tern; least tern; and Florida scrub-jay. See Castillo, *supra*; Glen E. Woolfenden and John W. Fitzpatrick, Florida Scrub-jay, in Vol. V, Birds, Rare and Endangered Biota of Florida 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.*, 236 at 241; James L. Wolfe, Lower Keys Marsh Rabbit, in Vol. 1, Mammals, Rare and Endangered Biota of Florida 71, 74 (Stephen R. Humphrey, Ed., University Press of Florida, 1992); Stephen R. Humphrey and Philip A. Frank, Anastasia Island Beach Mouse, in *Id.*, 91 at 98; see also Beth Forsys and 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; Elizabeth A. Forsys and Stephen R. Humphrey, Use of Population Viability Analysis to Evaluate Management Options For the Endangered Lower Keys Marsh Rabbit, 63 *Journal of Wildlife Management* 251, 256-258 (1999).

Legal issues.

The Endangered Species Act (ESA) is a federal law with regulations that prohibit “take” of endangered and threatened species. The ESA defines the term “take” to mean, “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 USC §1532(19) (2004). Federal ESA regulations define “harm” in the definition of “take” 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.” 50 CFR 17.3 (2004).

State and local governments may be held liable for authorizing activity that results in “take” of Endangered and threatened species, or for failing to act to prevent activity that results in “take.” Loggerhead Turtle v. Volusia County, Florida, 896 F. Supp. 1170, 1172 (M.D. Fla. 1995). In Loggerhead Turtle v. Volusia County, the plaintiffs sued Volusia County under the citizen suit provision of the ESA, asserting the county’s beach-related ordinances regulating lighting and vehicular access posed an immediate danger to Loggerhead and Green sea turtles, and seeking a preliminary injunction to prevent future “takes.” *Id.*

The court in Loggerhead Turtle found that Volusia County, through its Beach Code, regulated the “time and circumstances under which vehicles were permitted” to drive on Volusia County beaches, and established the driving lanes and parking areas on

the beaches. Id. at 1174. The court further found that since Volusia County had the “authority to regulate vehicular access to its beaches,” and since Volusia County permitted others to drive on its beaches, then Volusia County “assumed the responsibility for ensuring that those vehicles did not ‘take’ federally protected species.” Id. at 1181. The court concluded that Volusia County permitted vehicles on its beaches at night “at the cost of ‘taking’ federally protected sea turtles.” Id. at 1182. Thus, the court enjoined Volusia County from “permitting any vehicles on its beaches from one hour before sundown until one hour after sunrise.” Id.

On appeal, the 11th Circuit Court of Appeals considered the question whether a “causal connection” existed between Volusia County’s beach lighting ordinance and harm to the sea turtles within certain non-party municipalities. Loggerhead Turtle v. Volusia County, 148 F. 3d 1231,1247 (11th Cir. 1998). The court found that, since Volusia County had the authority to regulate artificial beachfront lighting countywide, there was a sufficient causal connection between Volusia County’s regulation and the harm to the sea turtles. Id. at 1249. Thus, the court held that the plaintiffs had standing to seek to hold Volusia County liable for harmfully inadequate regulation of artificial beachfront lighting in the non-party municipalities. Id.

In United States v. Town of Plymouth, FWS sought a preliminary injunction pursuant to the ESA to prohibit the Town of Plymouth from allowing off-road vehicles (ORV) to drive on Plymouth Long Beach unless appropriate precautions were taken to protect piping plovers, a species listed as “threatened” under the ESA. United States v. Town of Plymouth, 6 F. Supp. 2d 81, 82 (D. Mass. 1998). The court granted the injunction after finding that FWS was likely to succeed on the merits of its claim that ORVs had “in the past caused the illegal take of piping plovers on Long Beach,” and that future takes would likely occur unless an injunction was issued. Id.

Both the First Circuit and the Eighth Circuit have held that governmental entities can be held liable under the ESA if the governmental entities enact regulations that allow activity that results in take of Endangered and threatened species. In Strahan v. Coxe, the use of lobster pots and gillnets by licensed commercial fishermen in a manner permitted by the Massachusetts Division of Marine Fisheries (DMF) had resulted in harm to right whales that became entangled in the fishing gear. Strahan v. Coxe, 127 F. 3d 155, 159 (1st Cir. 1997). The First Circuit Court of Appeals found that 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.” Id. at 163. The court stated, “We believe that ... the district court properly found 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.” Id.

In Defenders of Wildlife v. EPA, the plaintiffs, environmental interest groups, sued EPA to prohibit aboveground use of pesticides containing strychnine. Defenders of Wildlife v. EPA, 882 F. 2d 1294, 1296 (8th Cir. 1989). The Eighth Circuit Court of Appeals found that (1) Endangered and threatened species had eaten strychnine bait and died as a result; (2) strychnine could be distributed only if it was registered; (3) EPA’s

decision to register and continue to renew the registration of pesticides containing strychnine was critical to the poisonings of the Endangered and threatened species. Id. at 1301. Thus the court found there was a clear relationship between the EPA's registration decisions and the deaths of the Endangered and threatened species. Id. The court concluded that the EPA's registration of pesticides containing strychnine constituted takes of Endangered and threatened species in violation of the ESA. Id.

A causal connection exists between regulations that encourage the maintenance of large numbers of cats in the wild and the harm done to endangered and threatened species by those cats. Regulations that promote and support the maintenance of cat colonies accelerate the homeless cat population by fostering the abandonment of cats into the wild. These regulations add to the problem by authorizing persons to release cats into the wild after the cats have been captured, neutered and vaccinated. Such regulations authorize the release of cats and the maintenance of cat colonies in the wild despite an abundance of scientific evidence proving the devastating effects cats have on wildlife.

Local governments should work to prevent, not promote, release of cats into the wild.

Biodiversity is essential to a healthy environment. Progress has been made, but the number of birds and wildlife species that remain listed as endangered and threatened reveals that we still have a long way to go toward preserving biodiversity in the longterm. As Rachel Carson said of the fabled town that woke to a silent spring, "No witchcraft, no enemy action had silenced the rebirth of new life in this stricken world. The people had done it themselves." Carson, supra at 3.

State and local government officials should resist the efforts of TNR and cat colony proponents to force regulation allowing the release and maintenance of large numbers of cats in the wild. The practice of releasing and hoarding large numbers of cats in the wild imperils the cats and harms native wildlife. Regulations that promote TNR and cat colonies exacerbate the cat overpopulation problem and result in takes of endangered and threatened species. The only answer is to stem the flow of cats into the wild. To this end, state and local governments could take the following steps:

1. Embark on a pervasive, vocal, continuing campaign to educate the public about (a) the risks free-roaming cats pose to human health, (b) the impacts free-roaming cats have on wildlife, and (c) the perils free-roaming cats face in the wild. The education campaign should include public service announcements in the media and should extend to public schools.
2. Enact and strictly enforce regulations against abandoning pets and feeding free-roaming cats.
3. Fund free or low-cost spay/neuter services.
4. Require all pet owners to spay or neuter pets in order to register and license them.

For more information, please see the American Bird Conservancy's Cats Indoors! campaign at <http://www.abcbirds.org/cats/>; FWCC "Impacts of Feral and Free-ranging Domestic Cats on Wildlife in Florida," available at: <http://www.floridaconservation.org/viewing/articles/cat.pdf>; Pamela Jo Hatley, "Feral Cat Colonies in Florida: The Fur and Feathers Are Flying," 18 Journal of Land Use and Environmental Law, 441 (Spring 2003).