

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CHARLES RIVER LABORATORIES, INC.,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 96-2017
)	
FLORIDA GAME AND FRESH WATER)	
FISH COMMISSION,)	
)	
Respondent.)	
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CURTIS KRUER,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 96-2305
)	
CHARLES RIVER LABORATORIES, INC.,)	
and FLORIDA GAME AND FRESH)	
WATER FISH COMMISSION,)	
)	
Respondents.)	
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RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, Claude B. Arrington, held a formal hearing in the above-styled case on August 29 and 30, 1996, in Tallahassee, Florida.

APPEARANCES

For Petitioner	Robert A. Routa, Esquire
Charles River	Robert A. Routa, P.A.
Laboratories, Inc.:	Post Office Box 6506
	Tallahassee, Florida 32314
For Respondent	James V. Antista, Esquire
Florida Game and	620 South Meridian Street

Fresh Water Fish Commission: Tallahassee, Florida 32399

For Petitioner Curtis Krueer: Richard Grosso, Esquire
Environmental and Land Use Clinic
Civil Law Clinic
Shepard Broad Law Center
Nova Southeastern University
3305 College Avenue
Fort Lauderdale, Florida 33314

STATEMENT OF THE ISSUES

Whether Charles River Laboratories, Inc.'s (CRL) applications for permits for its primate facilities on Raccoon Key, Key Lois, and Summerland Key should be granted and, the conditions, if any, that should be attached to the permits.

PRELIMINARY STATEMENT

Charles River Laboratories (CRL) breeds rhesus monkeys on two offshore islands in the Florida Keys (Key Lois and Raccoon Key) and has a land base on Summerland Key. CRL sells most of the monkeys bred on these two islands for medical research. The monkeys that are not sold are kept for breeding purposes. Since 1973, CRL has held annual permits from the Florida Game and Fresh Water Fish Commission (Commission) pursuant to the provisions of Section 372.921, Florida Statutes, to possess wildlife (rhesus monkeys) in connection with its breeding operation. On July 24, 1995, CRL applied for the renewal of three separate permits, one for its operations on Key Lois, one for its operations on Raccoon Key, and one for its operations on Summerland Key. The Commission, by letter dated March 29, 1996,

issued its "Notice of Intent to Issue Renewal of a Permit (sic) to Possess Wildlife for Exhibition or Public Sale with Addendum" pertaining to CRL's applications. The Addendum contains certain conditions to the permit to which CRL objects. CRL timely requested a formal administrative hearing to challenge those conditions, the dispute was referred to the Division of Administrative Hearings and assigned DOAH Case Number 96-2017.

Thereafter, Curtis Krueer filed a separate petition asserting that the applications are for new permits and that the applications should be denied because CRL's monkey breeding operation on Raccoon Key and Key Lois do not meet permitting criteria. The Commission and CRL view the application as being for the renewal of existing permits, not for new permits. The petition filed by Mr. Krueer was referred to the Division of Administrative Hearings and assigned DOAH Case Number 96-2305.

DOAH Cases 96-2017 and 96-2305 were thereafter consolidated. Mr. Krueer attempted to intervene in DOAH Case 96-2017. As reflected by the order denying intervention, the undersigned concluded that Mr. Krueer's petition failed to allege his standing to intervene. Mr. Krueer thereafter filed an amended petition to intervene in DOAH Case 96-2017, but that pleading was denied because it was not timely.

At the formal hearing, CRL presented the testimony of Dr. Paul Schilling, Dr. Ellen Kapsalis, Dr. Rodney Johnson, and Dr.

Charles Southwick. All of these witnesses were accepted as experts in the field of primatology. Dr. Schilling is the director of CRL's operations in the Florida Keys. CRL introduced 15 exhibits, each of which was admitted into evidence. At the timely request of CRL, official recognition was taken of Section 9.5-345(m), Monroe County Code, Chapter 39-6, Florida Administrative Code, Sections 120.52, 120.54, 372.921, and 372.922, Florida Statutes, and Article III, Section 6 of the Florida Constitution.

The Commission presented the testimony Inspector Kyle Hill, Philip Frank, and Lieutenant Patrick J. Reynolds. Inspector Hill is employed by the Commission as a bureau chief of Support Services in the Division of Law Enforcement. Mr. Frank is employed as a biologist at the Commission's Marathon office and was accepted as an expert in the field of wildlife biology. Lt. Reynolds is employed by the Commission as a wildlife inspector. The Commission's exhibits 1 - 12 were admitted into evidence.

Mr. Kruer testified on his own behalf and presented the additional testimony of Dennis Henize. Mr. Henize was accepted as an expert in the field of meteorology. Mr. Kruer offered 11 exhibits, four of which were admitted into evidence.

A transcript of the proceedings has been filed. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing

of the transcript. Consequently, the parties waived the requirement that a recommended order be rendered within thirty days after the transcript is filed. Rule 60Q-2.031, Florida Administrative Code.

FINDINGS OF FACT

THE PARTIES

1. Charles River Laboratories (CRL) is a corporation that breeds rhesus monkeys on two offshore islands in the Florida Keys (Key Lois and Raccoon Key) and has a land base on Summerland Key.¹

2. The Florida Game and Fresh Water Fish Commission is the agency of the State of Florida authorized to exercise the executive and regulatory powers of the State with respect to wildlife and fresh water aquatic species. Article IV, Section 9 of the Florida Constitution provides that authority as follows:

There shall be a game and fresh water fish commission, composed of five members appointed by the governor subject to confirmation by the senate for staggered terms of five years.

[REDACTED]

[REDACTED], except that all license fees for taking wild animal life and fresh water aquatic life and penalties for violating regulations of the commission shall be prescribed by specific statute. The legislature may enact laws in aid of the commission, not inconsistent with this section. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law.

Revenue derived from such license fees shall be appropriated to the commission by the legislature for the purpose of management, protection and conservation of wild animal life and fresh water aquatic life.

3. Curtis Kruer resides on Big Pine Key and maintains an office on Summerland Key. Mr. Kruer lives within a thirty minute boat ride of Raccoon Key and Key Lois. Mr. Kruer is a recreational fisherman and a licensed fishing guide and boat captain. He earns a portion of his livelihood as a fishing guide and has, in the past, chartered trips to the shallow waters surrounding Key Lois and Raccoon Key. In recent years, he has stopped fishing these areas because of what he perceives to be diminished fish population caused by degraded water quality and less seagrass extent and quality. Mr. Kruer considers his ability to use the waters in the vicinity of Raccoon Key and Key Lois to have been diminished as a result of what he perceives to be a threat to his safety and the safety of his clients posed by the free ranging monkeys on these two islands. Mr. Kruer has standing to challenge whether the subject permits protect the public safety.

CRL'S POSSESSION OF WILDLIFE

4. CRL established its monkey colony on Key Lois in 1973. It thereafter established its colony on Raccoon Key in 1976.

5. CRL obtained its first license to possess wildlife from the Florida Game and Fresh Water Fish Commission (Commission) in

1973, and has received annual licenses ever since. These annual permits have been issued pursuant to the provisions of Section 372.921, Florida Statutes.

6. Raccoon Key, Key Lois, and Summerland Key are within the Florida Keys Area of Critical State Concern.

7. Key Lois, formerly known as Loggerhead Key, is located within the Florida Keys Marine Sanctuary approximately two miles south of Cudjoe Key in Hawk's Channel, which is in the Atlantic Ocean.

8. Raccoon Key is located in the Great White Heron National Wildlife Refuge approximately three miles north of Cudjoe Key in the Gulf of Mexico.

9. The waters surrounding Raccoon Key and Key Lois are relatively shallow. There is a great deal of boating activity in the vicinity of both islands.

10. CRL does not have an accurate count of the number of monkeys on either Key Lois or Raccoon Key and it does not maintain an accurate inventory of its monkeys. CRL's best estimate at the time of the formal hearing was that there were approximately 200 free ranging monkeys on Key Lois and approximately 1,000 free ranging monkeys on Raccoon Key. The facility on Summerland Key is utilized for shipping and receiving, and no monkeys are permanently housed at that facility.

11. CRL tattoos its adult monkeys, but it does not tattoo or otherwise mark its subadult monkeys. It is difficult to establish ownership of a monkey that has escaped and has been recaptured if the monkey has not been tattooed or otherwise marked. The Commission has reasonably determined that CRL should be required to keep an accurate inventory of the monkeys it possesses and that it should be required to mark for identification by tattoo, computer chip, or otherwise its monkeys that are one year old or older. An accurate inventory will assist CRL in knowing when a monkey is missing. Marking its monkeys will enable CRL to identify an escaped monkey after it has been caught.

12. The free range monkeys on Raccoon Key and Key Lois are primarily used for breeding and are generally older monkeys that have lived in a free range society all of their lives. These free range monkeys have formed active social groups.

13. CRL sells monkeys for use in medical research for numerous diseases and conditions affecting humans, such as osteoporosis, diabetes, Alzheimer's disease, and AIDS. CRL's monkeys have been isolated from human contact and are free from disease, including the Herpes B Virus. CRL's monkeys are a valuable resource for medical research.

14. CRL located its monkey colonies on Key Lois and Raccoon Key with the expectation that the location of the

monkeys on these offshore islands would help keep the monkeys free from disease.

15. CRL is licensed by the United States Department of Agriculture (USDA) as a dealer under the Animal Welfare Act, 7 U.S.C. 2131, et seq. CRL is prohibited by its registration under the Animal Welfare Act to sell its animals as pets or to any entity that has not been licensed either as a dealer or as a research facility pursuant to the Animal Welfare Act by the USDA.²

PRIOR CONSENT AGREEMENTS

16. To settle a dispute with the Florida Department of Environmental Protection's predecessor agency (the Florida Department of Environmental Regulation) CRL committed to eliminate free-ranging animals from Key Lois by the year 2003 and from Raccoon Key by the year 2008. CRL has begun to eliminate free range animals from both islands pursuant to that agreement.

17. To settle a dispute with the Trustees of the Internal Improvement Fund filed in the Circuit Court of the Sixteenth Judicial Circuit in and For Monroe County (Case 86-190-CA-13), CRL agreed to cease its operations on Key Lois and convey title to the State of Florida no later than December 31, 2012. It also agreed to cease its operations on Raccoon Key and quitclaim its ownership of Raccoon Key no later than December 31, 2024, to

the United States for inclusion in the National Wildlife System.

THE APPLICATION

18. CRL is the applicant for the permit that is the subject of these proceedings. Paul Schilling, D.V.M., has been the director of CRL's monkey breeding activities in the Florida Keys since 1983.

19. The permit that immediately preceded the permits at issue in this proceeding was issued by the Commission with an effective date of issuance as June 29, 1994. The date of expiration was July 4, 1995.

20. On June 8, 1995, the Commission mailed to CRL a written renewal notice. The Commission's policy is to accept as timely renewal applications for up to thirty days following the stated expiration date of the former permit. Under that policy, CRL timely filed the applications for the subject permits (one for Key Lois, one for Raccoon Key, and one for Summerland Key). The initial renewal application was filed after July 4, 1995, but within the thirty day grace period. Because the applications were submitted without the signature of a representative of CRL, the applications were returned to CRL for Dr. Schilling's signature. Consistent with its practice, the Commission accepted the applications after they were signed and resubmitted as applications for renewal of the existing permits even though the completed applications were not received until

July 24, 1995. The Commission's action in treating the applications as renewals is not explicitly authorized by rule, but it is consistent with the Commission's established policy.

21. Under Commission policy, while a license renewal is being processed, the facility is still under license and the renewed permit is issued retroactive to the expiration date of the previous permit so that there is no gap in licensure.

22. Under Commission policy, CRL remains a licensed facility pending the outcome of this administrative proceeding.

23. CRL's application states on its face that the "Company breeds Rhesus monkeys, *Macaca mullata* for sale to commercial laboratories." This activity is described as being "COMMERCIAL ACTIVITY." CRL captures most of the younger animals for sale or placement in [REDACTED].

24. The application for Raccoon Key required the applicant to provide the "exact number by species" of wildlife to be possessed". In response thereto, CRL provided the following: "Approximately 2,000 Rhesus Monkeys (*Macaca mullata*) animals are free range and group housed on an island off the Florida Keys (Raccoon Key)." The amount of the application fee was \$25.00, the amount charged for eleven or more animals.

25. The application for Key Lois also required the applicant to provide the "exact number by species" of wildlife to be possessed." In response thereto, CRL provided the

following: "Approximately 1,500 Rhesus Monkeys (Macaca mullata) animals are free range and group housed on an island off the Florida Keys (Key Lois)." The amount of the application fee was also \$25.00, the amount charged for eleven or more animals.

26. The application for Summerland Key was for "Holding of 0 - 8 Rhesus under clinical care."

27. The Commission accepted and processed CRL's application consistent with its established policies.

THE APPLICABLE STATUTES

28. Section 372.021, Florida Statutes, provides as follows:

The Game and Fresh Water Fish Commission may exercise the powers, duties and authority granted by s. 9, Art. IV of the Constitution of Florida by the adoption of rules, regulations, and orders in accordance with chapter 120.

29. Section 372.921, Florida Statutes, provides, in pertinent part, as follows:

(1) In order to provide humane treatment and sanitary surroundings for wild animals kept in captivity, no person, firm, corporation, or association shall have or be in possession or, in captivity for the purpose of public display with or without charge of for public sale any wildlife, specifically birds, mammals, and reptiles, whether indigenous to Florida or not, without having first secured a permit from the Game and Fresh Water Fish Commission authorizing such person, firm, or corporation to have in its possession in captivity the species and number of wildlife specified within such permit; however, this

section does not apply to any wildlife not protected by law and the regulations of the Game and Fresh Water Fish Commission.

30. Section 372.922, Florida Statutes, provides, in pertinent part, as follows:

(1) It is unlawful for any person or persons to possess any wildlife as defined in this act, whether indigenous to Florida or not, until she or he has obtained a permit as provided by this section from the Game and Fresh Water Fish Commission.

* * *

(4) Any person, firm, corporation or association exhibiting or selling wildlife and being duly permitted as provided by s. 372.921 shall be exempt from the requirement to obtain a permit under the provisions of this section.

31. CRL's sale of monkeys to commercial laboratories is a "public sale" within the meaning of Section 372.921, Florida Statutes. CRL's monkey breeding operation in the Florida Keys requires a permit from the Commission pursuant to Section 372.921, Florida Statutes.

THE APPLICABLE RULES

32. Chapter 39-6, Florida Administrative Code, has been duly adopted by the Commission and is intended to implement Sections 372.921 and 372.922, Florida Statutes. The title to this chapter, "Wildlife as Personal Pets." While this title is misleading, CRL knew that its operations were regulated by these rules of the Commission.

33. Rule 39.6.0011, Florida Administrative Code, pertains to the possession of wildlife in captivity and provides, in pertinent part, as follows:

(1) Except as otherwise provided by this Title, no person shall possess any native or non-native wildlife in captivity except as authorized by permit issued in accordance with ss. 372.921 or 372.922, F.S., and as provided in this chapter.

(2) The provisions of this chapter shall not apply to entities operating solely as research facilities which are registered and regulated as such in accordance with Animal Welfare Act (7 U.S.C. 2131 et seq.) and regulations promulgated thereunder.

34. Rule 39-6.002(1)(b)9, Florida Administrative Code, classifies macaques (genus *Macaca*) as Class II wildlife, which are wildlife "considered to present a real or potential threat to human safety." See, Section 372.922(2)(b), Florida Statutes. Under Rule 39-6.0023, Florida Administrative Code, Class II wildlife are required to be caged or, if unconfined, are required to be maintained under rigid supervision and control, so as to prevent injuries to members of the public.

35. Rule 39-5.004(5), Florida Administrative Code, provides the following criteria pertinent to this proceeding::

- (a) The severity of the conduct;
- (b) The danger to the public created or occasioned by the conduct;
- (c) The existence of prior violations of ch. 372, F.S., or the rules of the commission;
- (d) The length of time a licensee or permittee has been licensed or permitted;

(e) The effect of denial, suspension, revocation or non-renewal upon the applicant, licensee, or permittee's existing livelihood;

(f) Attempts by the applicant, licensee or permittee to correct or prevent violations, or the refusal or failure of the applicant, licensee, or permittee to take reasonable measures to correct or prevent violations;

(g) Related violations by an applicant, licensee or permittee in another jurisdiction;

(h) The deterrent effect of denial, suspension, revocation or non-renewal;

(i) Any other mitigating or aggravating factors.

36. The provisions of Rule 39-5.004(5), Florida Administrative, are the duly adopted rules of the Commission providing permitting criteria and those provisions were applied by the Commission in processing the subject permits.

THE CHALLENGED PERMITS AND ADDENDUM

37. On March 29, 1996, the Commission issued its "Notice of Intent to Issue Renewal of a Permit to Possess Wildlife for Exhibition or Public Sale with Addendum" that provided, in pertinent part, as follows:

This is a notice of intent to renew the permit to authorize Charles River Laboratories, Inc. (CRL), to possess for breeding and sale, sub-human primates on Key Lois and Raccoon Key in Monroe County, Florida, in accordance with Section 372.921, Florida Statutes, and Rule 39-6, Florida Administrative Code, consistent with the following Addendum to enhance public security and prevent escapes of primates:

GENERAL FINDINGS

1. The water surrounding Key Lois and Key Raccoon (sic) and the remote location of the islands were once believed to constitute an adequate barrier to prevent escape of primates from the islands and to prevent interference with the primate population by unauthorized persons. However, primates have escaped (or have been removed without CRL's authorization) from the islands, and the islands are not secure from those who may seek to trespass or enter upon them. Accordingly, the Commission finds that water alone is no longer an adequate barrier to prevent escape of the resident primates and to prevent entrance upon the islands by unauthorized persons. Therefore, affirmative security measures are required for public safety.

2. CRL is subject to a Petition for Appeal of Development Order in the case of The Department of Community Affairs v. Charles River Laboratories, Inc., et al., Case No. 96-1405DRI, FLAWAC APP-96-003 (Florida Land and Water Adjudicatory Authority Commission), which asserts that

the continued use of Raccoon Key and Key Lois as a primate facility will adversely impact the quality of nearshore waters, mangroves, seagrass beds and other marine resources; and therefore, the facility is inconsistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern.

3. The Board of Trustees of the Internal Improvement Trust Fund of the State of Florida has filed a Motion to Enforce a Consent Final Judgment in the case of Charles River Laboratories, Inc. v. Trustees for the Internal Improvement Trust Fund. Case No. 86-190-CA-13.

4. The Commission shall fully coordinate and cooperate with the Department of Community Affairs and the Department of Environmental Protection in their efforts to resolve the above-cited actions.

ADDENDUM

1. Special Permit Conditions as to Key Lois only:

a. CRL shall eliminate all free-ranging primates from Key Lois no later than December 31, 1996.

2. Special Permit Conditions as to Raccoon Key only:

a. CRL shall eliminate not less than thirty-three percent (33%) of free-ranging primates from Raccoon Key by December 31, 1996, shall eliminate not less than sixty-six percent (66%) of the total free-ranging primates from Raccoon Key by December 31, 1997, and eliminate all remaining free-ranging primates from Raccoon Key by December 31, 1998.

3. Special Permit conditions as to security on Key Lois and Raccoon Key:

a. CRL shall institute random water security patrols of the islands during non-work hours;

b. CRL shall provide cellular telephones to all personnel working the islands to

insure more rapid reporting and responses to escapes or thefts;

c. CRL shall install chains and locks to all temporary and permanent caging;

d. CRL shall provide remote sensing alarms, or in the alternative, provide day-time security personnel on site on both Keys during periods when CRL personnel are not present;

e. CRL shall immediately tattoo or permanently mark all adult and subadult primates as they are captured and caged, so that ownership can be positively identified in the case of escape or theft.

4. CRL shall comply with all sanitation, water disposal and waste disposal requirements provided by local, state or federal law.

5. CRL shall reimburse the Commission in the amount of \$1000 per primate, payable to the Florida Game and Fresh Water Fish Commission, as reimbursement for the Commission's costs associated with the investigation or recapture of primates which have escaped or which have been removed without CRL's authorization from the CRL facility. All primate escapes or thefts from the CRL facility must be reported to the Tallahassee Office, (904)488-6253, of the Commission immediately.

6. CRL shall at all times maintain a complete and accurate inventory of all primates on Key Lois and Raccoon Key and shall submit such inventory records to the Commission (a) within thirty (30) days of the date of issuance of this permit, (b) at the Commission's request, upon an escape or unauthorized removal of a primate from the facility, and (c) no later than thirty (30) days prior to the expiration of this permit. The inventory shall include the total number of primates held in field cages on each island, the total number of free-ranging primates on each island and numbers of

primates brought to the CRL facility as of January 1, 1996.

7. This permit may be subject to revocation, suspension, or non-renewal in accordance with Rule 39-5.004, F.A.C.

8. Nothing herein shall authorize CRL to construct or maintain any structure or facility that would be in violation of the Monroe County Comprehensive Land Use Plan, the Monroe County Code and the Principles for Guiding Development in the Florida Keys Area of Critical State Concern or in violation of any final order, judgment, or settlement agreement thereto in the case of Department of Community Affairs vs. Charles River Laboratories, et al., DOAH Case No. 96-1405DRI, FLAWAC APP-96-003 (Florida Land and Water Adjudicatory Commission).

9. This permit will be effective twenty-one (21) days from the date of receipt of this notice by the applicant or within twenty-one (21) days from the date of publication of this notice, whichever is later.

This addendum to permit will expire concurrent with the expiration of the Permit to Possess Wildlife for Exhibition or Public Sale, unless otherwise authorized by the Executive Director.

THE 1990 CORRESPONDENCE

38. On September 21, 1990, Robert M. Brantly, the Commission's Executive Director, wrote to Dr. Schilling a letter that contained the following discussion on the issue of safety:

F.A.C. 39-6.003(1)(a), requires, "A fence sufficient to deter entry by the public shall be present around the premises wherein Class I or Class II animals are housed or exercise outdoors.: There are no perimeter fences around Key Lois or Raccoon Key, and

Rhesus macaques are classified as Class II animals.

In the past, we have considered the water surrounding your facilities as a barrier to escape and public access. During the August 24th inspection, we found that water alone does not meet the intent of the regulation requiring a security fence. Past security breeches documented on that inspection included:

1. The holding compound was broken into on Raccoon Key. The intruders released numerous primates. It is also possible that a theft of some primates occurred. This incident occurred four years ago.

2. The holding compound was broken into again about two or three years ago.

3. A macaque escaped twice (same animal) about five years ago. Employees recaptured the animal on Little Crane Key.

4. A generator was stolen from one of the islands.

You did not report the escapes to us as required in your agreement with the Commission, nor were we made aware of the security problems. To prevent future security breeches, you must construct a fence capable of deterring entry by the public and preventing the escape of the macaques from the islands. As an alternative to a monkey-proof fence, you may confine the primates in enclosures that meet minimum pen specifications; however, you must still construct a fence that will deter entry by the public.

39. In October 1990, there was a meeting between Col. Brantly and Dr. Schilling and Mr. Routa, the attorney for CRL. On November 5, 1990, Col. Brantly wrote to Dr. Schilling a letter that contained the following:

Having met with you and Mr. Routa on October 23, 1990, we now determine that the Laboratory [CRL] may continue to operate

under its current captive animal permit without the perimeter fence required by Rule 39-6.0023, Florida Administrative Code. This rule requirement was not applied to the Laboratory because the water barrier around the keys was believed to provide adequate security to prevent monkeys from escaping and unauthorized persons from entering the facility. However, if a primate escapes or if unauthorized entry by the public were to occur, the water barrier would no longer be considered adequate security and appropriate action under Rule 39-6.002, F.A.C., would be taken.

We ask that the Charles River Laboratory report, immediately and in writing, all incidents of escape of any monkeys from the islands or unauthorized public entry of the facilities. We further require, in accordance with Rule 39-9.002, F.A.C., that the Laboratory apply for a permit to capture any monkey which has escaped the islands. (Emphasis added.)

40. The facts reflected by Col. Brantly's two letters were accurate.

ESCAPES SUBSEQUENT TO 1990

41. There have been several escapes of monkeys from Key Lois or Raccoon Key since the Commission's 1990 letters. In addition, there have been unauthorized intrusions on these islands since 1990.

42. On or about August 4, 1993, a CRL monkey (tattoo #81-688) escaped from Raccoon Key to Little Crane Island which is approximately one-half mile from Raccoon Key. Little Crane Island is part of the Great White Heron Wildlife Refuge. The staff of the wildlife refuge shot and killed the monkey after

attempts to tranquilize it failed. In 1994, a monkey was sighted on Big Torch Key and a monkey was also sighted on Little Torch Key. Both of these keys are approximately one-half mile from Raccoon Key. The monkey on Little Torch Key was a CRL monkey (tattoo #F-513), and was recaptured by CRL staff. The ownership of the monkey sighted on Big Torch Key was not established.

43. In 1995, a CRL monkey escaped to Cudjoe Key, which is approximately two miles from Raccoon Key. This one-year old male was captured and returned to CRL. A second CRL monkey was sighted on Cudjoe Key in 1995. The Commission's investigation revealed that this monkey had been taken from Key Lois by intruders and subsequently released. Another CRL monkey was stranded on a channel marker off Big Torch Key and recaptured by CRL.

44. Rhesus monkeys are capable of wading or swimming from Raccoon Key and Key Lois to nearby islands. Most of the islands in the vicinity of Raccoon Key and Key Lois are capable of sustaining monkeys. Several of these nearby islands are residential areas.

45. There is a lack of security for the CRL facilities on Raccoon Key and on Key Lois. There is no security personnel on either Raccoon Key or Key Lois after normal working hours. The additional security measures required by special permit

condition 3 and its subparts are reasonable whether the CRL animals remain free range or are caged.

POTENTIAL DANGER TO THE PUBLIC

46. Rhesus monkeys have been known to attack humans if cornered or sufficiently provoked. Free range monkeys grow to approximately 30 pounds and are capable of inflicting serious injury on a human. Because they present a potential to humans, rhesus monkeys are appropriately classified as Class II wildlife by the Commission.

47. There has not been an injury to a member of the public since CRL began its operations in 1973. This absence of injury is primarily attributed to the fact that the CRL monkeys are shy of humans because of the environment in which they were raised. Instead of attacking humans, it is more likely that an escaped monkey would run from humans.

48. Although there is no perimeter fencing around either Raccoon Key or Key Lois, it is not appropriate to recommend such fencing as a means of preventing escapes because Rhesus monkeys can escape from fencing.

49. The potential danger to the public posed by these free ranging animals can be eliminated only by removing all free ranging animals from both islands. The Commission has appropriately determined that CRL should be required to eliminate the free range populations from both islands.

50. With adequate time, CRL can safely and humanely remove all free-ranging monkeys from Key Lois and Raccoon Key and continue its breeding operations with its monkeys being caged.

51. If CRL elects to continue its operations by using cages on Key Lois and Raccoon Key, it would have to obtain all pertinent permits, including building permits from Monroe County, in order to construct the necessary cages to house the former free ranging monkeys.

ENDANGERED SPECIES

52. Silver rice rats are listed by the U.S. Fish and Wildlife Service and by the Commission as an endangered species. Raccoon Key provides a valuable habitat for this endangered species. The free-ranging monkey population has enhanced Raccoon Key as a habitat for silver rice rats because of the monkey chow and the fresh water that are made available. The additional caging that will be necessary for CRL to construct to eliminate the free-range population should be located in areas that will not destroy the silver rice rat habitat.

53. Although Raccoon Key is within the National Key Deer Refuge, there was no evidence that Key Deer have historically used Raccoon Key. Key Deer would be more likely to use Raccoon Key if the monkeys were not present.

54. Monkeys have destroyed habitat used by nesting birds and the mangrove terrapin.

55. In determining that the free range monkeys should be eliminated, the Commission has considered the impacts of the free ranging monkeys on Raccoon Key and Key Lois on these species. Since the Commission's responsibilities extend to these species, it was appropriate for the Commission to consider these impacts.

HURRICANE VULNERABILITY

56. Key Lois and Raccoon Key are vulnerable to hurricanes. These islands and all structures thereon would likely be inundated if a major hurricane were to strike them. While free-ranging monkeys would have a good chance of surviving a hurricane, any caged monkeys on Key Lois and Raccoon Key would likely drown when the storm surge inundates the cages.

CONCLUSIONS OF LAW

57. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding. Section 120,57(1), Florida Statutes.

58. CRL's possession of wildlife on Raccoon Key, Key Lois, and Summerland Key requires a permit from the Commission pursuant to Section 372.921, Florida Statutes.

59. The Commission established that it acted within its discretion and consistent with its established policy in accepting CRL's applications as being for renewal of existing permits as opposed to being for new permits.

60. Because the subject applications are properly viewed as being for the renewal of permits that were initially issued prior to 1990, [REDACTED]. This action by the Commission was consistent with Rule 39-6.0022(6), Florida Administrative Code.

61. The Commission has properly applied all factors contained in Rule 39-5.004(5), Florida Administrative Code, in determining to renew CRL's permit with conditions. With the exceptions discussed below, [REDACTED]. It is recommended that the permit be renewed and that the special permit conditions in paragraphs 3, 4, 6, 7, 8, 9, and 10 of the addendum be incorporated as special conditions of the permit.

62. Special permit condition 5 should be modified to require that CRL reimburse the Commission its actual expenses, up to \$1,000, for the costs incurred in investigating or recapturing an escaped animal. There is no justification to require CRL to pay \$1,000 to the Commission if the Commission has not incurred costs to recover an escaped animal.

63. In making the recommendation that follows pertaining to the special conditions contained in paragraphs 1 and 2 of the

addendum, the undersigned has considered the permitting criteria contained in Rule 39-5.004(5), Florida Administrative Code, and has attempted to balance that criteria. It is concluded that the Commission has correctly determined that CRL should be required to eliminate the free range populations from Raccoon Key and Key Lois, but that the deadlines contained in paragraphs 1 and 2 of the addendum do not provide adequate time for CRL to do so. Instead of the deadlines proposed by the Commission, it is recommended that the Commission impose as [REDACTED] of the permits that CRL develop a plan to eliminate all free range monkeys from Raccoon Key and all free range monkeys from Key Lois. The final order should require this plan to be reduced to writing and submitted to the Commission for its review within sixty days of the entry of the Commission's final order. Once the plan has been established and approved, the Commission should set appropriate deadlines for compliance. If CRL's plan contemplates that the monkeys will remain on either Raccoon Key or Key Lois in cages, the Commission should require CRL to provide reasonable assurances that it will be able to obtain the necessary permits to construct cages and that it will be able to protect the monkeys in the event of a hurricane. The final order should also provide that these permits would be subject to revocation or non-renewal if CRL fails or refuses to

develop this plan or if CRL fails to timely comply with the plan.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is **RECOMMENDED** that the Commission enter a final order that renews the subject permits with the special conditions recommended herein.

DONE AND ENTERED this 23rd day of January, 1997, in
Tallahassee, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative

Hearings

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Filed with the Clerk of the
Division of Administrative

Hearings

this 23rd day of January, 1997.

ENDNOTES

1/ Key Lois and Raccoon Key are referred to as offshore islands because they are islands unconnected to U.S. 1. Summerland Key is also an island, but is referred to as land-based because it is connected to U.S. 1.

2/ The USDA requires its licensees to safely and humanely treat the animals possessed by the licensee. The most recent USDA inspection of the CRL facilities was on July 18, 1996. The inspector noted no areas of non-compliance by CRL with USDA rules.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.

of the transcript. Consequently, the parties waived the requirement that a recommended order be rendered within thirty days after the transcript is filed. Rule 60Q-2.031, Florida Administrative Code.

FINDINGS OF FACT

THE PARTIES

1. Charles River Laboratories (CRL) is a corporation that breeds rhesus monkeys on two offshore islands in the Florida Keys (Key Lois and Raccoon Key) and has a land base on Summerland Key.¹

2. [REDACTED]

There shall be a game and fresh water fish commission, composed of five members appointed by the governor subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, except that all license fees for taking wild animal life and fresh water aquatic life and penalties for violating regulations of the commission shall be prescribed by specific statute. The legislature may enact laws in aid of the commission, not inconsistent with this section. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law.

July 24, 1995. The Commission's action in treating the applications as renewals is not explicitly authorized by rule, but it is consistent with the Commission's established policy.

21. Under Commission policy, while a license renewal is being processed, the facility is still under license and the renewed permit is issued retroactive to the expiration date of the previous permit so that there is no gap in licensure.

22. Under Commission policy, CRL remains a licensed facility pending the outcome of this administrative proceeding.

23. CRL's application states on its face that the "Company breeds Rhesus monkeys, *Macaca mullata* for sale to commercial laboratories." This activity is described as being "COMMERCIAL ACTIVITY." CRL captures most of the younger animals for sale or placement in captive breeding facilities.

24. The application for Raccoon Key required the applicant to provide the "exact number by species" of wildlife to be possessed". In response thereto, CRL provided the following: "Approximately 2,000 Rhesus Monkeys (*Macaca mullata*) animals are free range and group housed on an island off the Florida Keys (Raccoon Key)." The amount of the application fee was \$25.00, the amount charged for eleven or more animals.

25. The application for Key Lois also required the applicant to provide the "exact number by species" of wildlife to be possessed." In response thereto, CRL provided the

60. Because the subject applications are properly viewed as being for the renewal of permits that were initially issued prior to 1990, the Commission did not require CRL to establish that its facilities comply with local zoning requirements. This action by the Commission was consistent with Rule 39-6.0022(6), Florida Administrative Code.

61. The Commission has properly applied all factors contained in Rule 39-5.004(5), Florida Administrative Code, in determining to renew CRL's permit with conditions. With the exceptions discussed below, the special conditions reflected by the addendum are found to be reasonably necessary for the protection of the public and to ensure the humane treatment of the monkeys. It is recommended that the permit be renewed and that the special permit conditions in paragraphs 3, 4, 6, 7, 8, 9, and 10 of the addendum be incorporated as special conditions of the permit.

62. Special permit condition 5 should be modified to require that CRL reimburse the Commission its actual expenses, up to \$1,000, for the costs incurred in investigating or recapturing an escaped animal. There is no justification to require CRL to pay \$1,000 to the Commission if the Commission has not incurred costs to recover an escaped animal.

63. In making the recommendation that follows pertaining to the special conditions contained in paragraphs 1 and 2 of the

addendum, the undersigned has considered the permitting criteria contained in Rule 39-5.004(5), Florida Administrative Code, and has attempted to balance that criteria. It is concluded that the Commission has correctly determined that CRL should be required to eliminate the free range populations from Raccoon Key and Key Lois, but that the deadlines contained in paragraphs 1 and 2 of the addendum do not provide adequate time for CRL to do so. Instead of the deadlines proposed by the Commission, it is recommended that the Commission impose as a special condition of the permits that CRL develop a plan to eliminate all free range monkeys from Raccoon Key and all free range monkeys from Key Lois. The final order should require this plan to be reduced to writing and submitted to the Commission for its review within sixty days of the entry of the Commission's final order. Once the plan has been established and approved, the Commission should set appropriate deadlines for compliance. If CRL's plan contemplates that the monkeys will remain on either Raccoon Key or Key Lois in cages, the Commission should require CRL to provide reasonable assurances that it will be able to obtain the necessary permits to construct cages and that it will be able to protect the monkeys in the event of a hurricane. The final order should also provide that these permits would be subject to revocation or non-renewal if CRL fails or refuses to