

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

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SAVE THE MANATEE CLUB, )  
CENTER FOR BIOLOGICAL )  
DIVERSITY, and DEFENDERS OF )  
WILDLIFE, )  
Plaintiffs, )  
v. )  
UNITED STATES )  
ENVIRONMENTAL PROTECTION )  
AGENCY, )  
Defendant. )  
\_\_\_\_\_  
)

Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1. This case challenges the failure of the U.S. Environmental Protection Agency (“EPA”) to reinitiate Endangered Species Act (“ESA”) section 7 consultation with the U.S. Fish and Wildlife Service (“FWS”) and the National Marine Fisheries Service (“NMFS”) (together, the “Services”) on water quality standards for Florida’s Indian River Lagoon, where poor water quality has caused catastrophic mortality of Florida manatees.

2. The Indian River Lagoon (the “Lagoon”) is one of the most biologically diverse estuaries in North America. Its seagrass ecosystem is home to thousands of plant and animal species. Sometimes called the “cradle of the ocean,” the Lagoon features brackish waters that some predators avoid, leading young sea turtles, fish, crab, and shrimp to spend their juvenile stages there before they mature and move into the Atlantic Ocean. The iconic Florida manatee inhabits the Lagoon, alongside green sea turtles, loggerhead sea turtles, and smalltooth sawfish. The manatee and sea turtles are protected as “threatened” species under the ESA. The smalltooth sawfish is protected as an “endangered” species under the ESA.

3. The Indian River Lagoon is currently suffering ecologic collapse. More than a thousand manatees died in Florida in 2021, more than any other year on record, with more than half of the deaths occurring in the Lagoon. Manatee deaths in the Lagoon have continued into 2022 at a record pace.

4. The root of the problem is deteriorating water quality. Excess nitrogen and phosphorus pollution from human activities fuels harmful algal outbreaks that block sunlight from reaching seagrass, the manatee's main food source. As a result, tens of thousands of acres of seagrass have died, and hundreds of manatees have starved to death. Other ESA-listed species in the Lagoon are also harmed by the same pollution. Sea turtles develop deadly tumors in the dirty water, and smalltooth sawfish lose their mangrove habitat.

5. Congress passed the Clean Water Act ("CWA") and the ESA to prevent such harms.

6. The CWA charges the Florida Department of Environmental Protection ("FDEP") and EPA with the protection of Florida's waterbodies, including the beleaguered Indian River Lagoon. Pursuant to its CWA duty, FDEP has set pollution budgets known as "total maximum daily loads" ("TMDLs") for each pollutant impairing a waterbody. FDEP set TMDLs for nitrogen and phosphorus in the Indian River Lagoon in 2009 with a goal of preserving the natural balance of flora and fauna in the Lagoon, including maintaining seagrass. EPA approved FDEP's 2009 TMDLs as water quality standards for the Lagoon in 2013.

7. At the time EPA approved these TMDLs as water quality standards, it consulted with FWS and NMFS under section 7 of the ESA. The ESA consultation

process exists to ensure that EPA's actions—including its approval of a state's water quality standards—are not likely to jeopardize the survival and recovery of listed species or destroy or adversely modify designated critical habitat. Following consultation, FWS concurred in EPA's determination that the water quality standards would not likely adversely affect manatees. NMFS determined that the water quality standards would not jeopardize green sea turtles, loggerhead sea turtles, or smalltooth sawfish.

8. The ESA also requires that consultation be reinitiated in certain circumstances when new information reveals effects of an action on listed species or critical habitat that were not previously considered.

9. On August 10, 2021, FWS asked EPA to reinitiate consultation based on new information that harmful algal outbreaks have killed tens of thousands of acres of seagrass, leading manatees to starve to death in record numbers.

10. EPA refused to reinitiate consultation in response to FWS's request.

11. Plaintiffs Save the Manatee Club, Center for Biological Diversity, and Defenders of Wildlife notified the EPA, FWS, and NMFS of their intent to sue over EPA's failure to reinitiate consultation in violation of ESA section 7. Like FWS, Plaintiffs explained that new information shows that the mass die-off of manatees and harm to other protected species in the Indian River Lagoon is caused by nitrogen and phosphorus pollution subject to the 2009 TMDLs. Plaintiffs also

explained that new information shows that the TMDLs are not adequately followed or enforced, nor are there reasonable assurances that the state will meet the TMDLs in the absence of additional enforcement measures. Finally, Plaintiffs explained that new information demonstrates that the TMDLs fail to account for contributions from historic pollution sources, underestimate contributions from septic systems, and do not account for the impacts of climate change.

12. EPA did not reinitiate consultation in response to Plaintiffs' notice.

13. Manatees and other ESA-protected species in the Indian River Lagoon are suffering and will continue to suffer until water quality in the Lagoon improves. Plaintiffs therefore ask this Court to compel EPA to reinitiate consultation with the Services to protect ESA-listed species that depend on the Lagoon's fragile habitat, as the Endangered Species Act requires.

### **JURISDICTION AND VENUE**

14. Plaintiffs bring this action pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g), which waives EPA's sovereign immunity. Pursuant to this provision, Plaintiffs sent EPA and the Services two 60-day notice letters of their intent to sue for all ESA violations listed herein. *See id.* § 1540(g)(2)(A)(i). Plaintiffs sent the first notice letter—regarding consultation with FWS on impacts to manatees—on December 20, 2021, and the second letter—regarding consultation with NMFS on impacts to green sea turtles, loggerhead sea turtles,

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