

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

BEAR WARRIORS UNITED,
INC., a Florida Not for Profit Corporation,

Plaintiff,

v.

CASE NO.:

SHAWN HAMILTON, in his Official Capacity
as Secretary of the FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Defendant.

**COMPLAINT AND DEMAND FOR INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT**

Plaintiff, BEAR WARRIORS UNITED, INC., by and through its undersigned counsel hereby files this action against Defendant, SHAWN HAMILTON, in his Official Capacity as Secretary of the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, and alleges as follows:

NATURE OF THE ACTION

1. This Complaint by Bear Warriors United, Inc. (“Bear Warriors”) seeks to compel the Defendant, in his official capacity as Secretary of the Florida

Department of Environmental Protection (“DEP”), to cease violating the Endangered Species Act, 16 U.S.C. §§1531-1544, (“ESA”) with respect to the manatees that occupy the portion of the northern Indian River Lagoon (“north IRL”) which stretches from the Turnbull Creek to the Melbourne Causeway. This section of the IRL was designated by the DEP as the North Indian River Lagoon in its February 2021 North Indian River Lagoon Basin Action Management Plan. Manatees are protected as a “threatened” species under the ESA. 50 C.F.R. § 17.11. DEP regulates, permits, and authorizes sewage disposal via septic tanks and wastewater treatment plant infrastructure, which includes the thousands of miles of pipes, lift stations, and the plant itself (this entire sewage treatment infrastructure is hereinafter “wastewater plant”) within the north IRL watershed. These actions by DEP have caused and continue to cause the lagoon’s eutrophication and hyper-eutrophication, which in turn causes the obliteration of seagrass and other macroalgae food sources that manatees require for survival. Manatee starvation and death from lack of food is a direct result of DEP’s regulatory regime which violates the ESA.

2. This action is a citizen suit seeking declaratory and injunctive relief to protect manatees that occupy and migrate through the north IRL. DEP has known for decades that the septic tanks and wastewater plants it authorizes release human waste laden with nitrogen into the north IRL, thereby causing the lagoon’s

eutrophication and present hyper-eutrophication. Nonetheless, DEP has not banned such septic tanks and wastewater plants that release nitrogen into the north IRL. Instead, DEP continues to authorize the installation of nitrogen releasing septic tanks and wastewater plant hookups in connection with new construction within the north IRL watershed. DEP thus authorizes the destruction of the lagoon's water quality and its ability to sustain seagrass and other macroalgae which are essential food sources for the manatees' survival.

3. DEP's regulation of septic tanks and wastewater plants pursuant to Florida Statutes Chapter 403 directly results in the ongoing unlawful "take" of manatees, in violation of section 9 of the ESA, and is subject to injunction by this Court. 16 U.S.C. §1538(a)(1)(B); 16 U.S.C. §1540(g).

JURISDICTION AND VENUE

4. This Court has jurisdiction over the claims set forth in this Complaint under 16 U.S.C. § 1540(c), (g), the Federal Declaratory Judgment Act, 28 U.S.C §2201, et seq., and 28 U.S.C. § 2202. More specifically, Congress, through the ESA, expressly provides "any person may commence a civil suit on his own behalf" to "enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the

Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof...” 16 U.S.C. §1540(g)(1).

5. Venue in this District is proper under 28 U.S.C. § 1391(b)(2) and 16 U.S.C. § 1540(g)(3)(A) because DEP’s actions giving rise to this suit occurred and continue to occur in this federal judicial district. Furthermore, the ESA specifically states that the “district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation...” 16 U.S.C. § 1504(g)(1)(C).

6. Section 11(g) of the ESA, 16 U.S.C. §1540(g), requires that anyone contemplating a suit to enforce the Act provide the prospective defendant with a Notice of Intent to sue at least 60 days before a complaint may be filed. Plaintiffs gave DEP their notice on November 17, 2021. A true and correct copy of such Notice is attached hereto as Exhibit "A." Proof of Notice to DEP and the Secretary of Interior was sent by USPS certified mail and is attached hereto as Exhibit "B."

PARTIES

7. Bear Warriors is a Florida not for profit corporation established in 2016. Bear Warriors advocates for respect and protection of Florida wildlife, including the iconic manatee. One of Bear Warriors’ signature campaigns is the promotion of peaceful coexistence of humans and wildlife. Manatees are very important to Bear

Warriors and its membership. As the three attached exhibits demonstrate, Bear Warriors' members have decades-long relationships of appreciation, awe and compassion with respect to manatees in the north IRL and indeed, throughout Florida. Bear Warriors and its members are specifically interested in the conservation, recreation opportunities, aesthetic value, observation, enjoyment, preservation, protection, and recovery of the manatee population in the north IRL. Some members of Bear Warriors operate eco-tourism businesses and therefore have a direct economic interest in the wellbeing of manatees in the north IRL. These interests have been, and will continue to be, directly injured by the violations of law alleged herein.

8. Bear Warriors Executive Director Katrina Shadix's affidavit is attached hereto as Exhibit "C." Manatees are a special focus for Ms. Shadix and many Bear Warriors' supporters because manatees are a beloved iconic Florida native species. Ms. Shadix is a lifelong Floridian who has been in love with manatees since childhood. She has specifically and repeatedly traveled to many waterways of Florida to see manatees. Growing up in central Florida, Ms. Shadix has been on the IRL countless times over the decades and has always found special joy in watching manatees in the lagoon. The ecological collapse of the north IRL has hurt her deeply—she remembers the fields of seagrass that carpeted the lagoon in prior decades and the marvelous marine life that called it home. She is horrified by the

painful starvation and deaths of manatees in the lagoon and has campaigned the Florida Fish and Wildlife Conservation Commission (“FWC”) and other relevant actors to implement a feeding program supplemented with natural forage in order to prevent the deaths of manatees from starvation. Ms. Shadix’s affidavit sets forth her efforts to protect manatees from starvation.

9. Bear Warriors supporter and member Laurilee Thompson has lived her entire life in Titusville, enjoying the IRL and, for many years, making her living fishing on the lagoon. Ms. Thompson remembers a pristine lagoon from her childhood in the fifties and sixties that was carpeted with seagrass. During her childhood, the north IRL was a wonderland of all manner of marine life, including fat, contented manatees, which she has always loved. The lagoon began declining in the 1970s and its decline continued during the ensuing decades, in large part because of sewage pollution. Over the past decade or so the north IRL has ecologically collapsed and become a dead zone. Ms. Thompson feels an intimate connection with manatees that has been with her through her entire lifetime and she is horrified and absolutely heartbroken over their starvation, death, and suffering due to this collapse. Ms. Thompson’s affidavit is attached hereto as Exhibit "D."

10. Bear Warriors' supporter and member Gregory Lee Roy Pflug has owned and operated Adventures in Florida, a kayaking tour company, since 1995. Mr. Pflug’s affidavit, attached hereto as Exhibit "E", documents the thousands of

encounters he has had with manatees in the IRL and other Florida waters over the decades. He notes the fact that the most popular kayaking tour he offers is to see manatees. He is depressed and devastated over the lagoon's collapse, together with the extirpation of manatees and other marine life in the northern lagoon.

11. Plaintiff's members derive scientific, recreational, and aesthetic benefit from the existence of manatees. DEP's actions adversely affect Plaintiff's members' opportunities to observe, study, contemplate, and enjoy manatees that migrate through and reside full time in the north IRL. Bear Warriors brings this suit under § 11 of the ESA, the citizen suit provision. 16 U.S.C. § 1540(g).

12. Shawn Hamilton is the Secretary of DEP, which regulates and controls septic tanks and wastewater plants in the State of Florida, pursuant to Florida Statutes Chapter 403. Section 9 of the ESA prohibits any "person" from "taking" any member of an endangered or threatened species. 16 U.S.C. §1538(a)(1); *see also* 50 C.F.R. §§ 17.21, 17.31. The term "person" includes any "officer, employee, agent, department, or instrumentality of ... any officer, employee, agent, department, or instrumentality of... any State." 16 U.S.C. § 1532(13). Accordingly, Shawn Hamilton, in his official capacity as Secretary of DEP, is a "person" covered by the ESA. Plaintiff sues Shawn Hamilton in his official capacity only and he shall hereinafter be referred to as "DEP."

STATEMENT OF THE CASE

13. Congress enacted the ESA to ensure that “the ecosystems upon which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531. The ESA defines “conservation” to mean the use of “all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided [by the ESA] are no longer necessary.” *See id.* § 1532(3). The ESA reflects “an explicit congressional decision to afford first priority to the declared national policy of saving endangered species.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 185 (1978).

14. In enacting the ESA, Congress declared that the purpose of the Act is to provide a means to conserve the ecosystems upon which endangered and threatened species rely, and to provide a program for the conservation of such endangered and threatened species. 16 U.S.C. § 1531(b).

15. The term “take” includes “every conceivable way” in which anyone could harm or kill species listed under the ESA. S. Rep. No. 307, 93rd Cong., 1st Sess., reprinted in 1973 U.S.C.C.A.N. 2989, 2995. Accordingly, the ESA defines “take” broadly to mean any actions that “harass, harm, pursue, hunt, shoot, wound,

kill, trap, capture, or collect, or attempt to engage in any such conduct.” 16 U.S.C § 1532(19).

16. The term “harm” refers to an act which kills or injures wildlife, including an act which causes significant habitat modification or degradation which kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. 50 C.F.R. § 17.3.

The Manatee

17. The manatee is a federally listed threatened species, and therefore subject to full protection under the ESA. 16 U.S.C §1538(a); 50 C.F.R. § 17.11. Some manatees occupy the entire north IRL year-round, while others migrate to the north IRL during the winter, drawn by the warm water refuge created by a power plant operated by Florida Power and Light (“FPL”) on the lagoon.

18. For the past several years, manatees have been suffering, starving, and dying in the north IRL as a direct result of the lagoon’s eutrophication which substantially results from DEP’s regulation, permitting, and authorization of sewage disposal via septic tanks and wastewater plants in the north IRL watershed. This harm and death suffered by manatees in the north IRL as a result of DEP’s regulatory actions have been, are, and will continue to constitute unlawful violations of the ESA.

19. Manatees “are herbivores that feed opportunistically on a wide variety of submerged, floating, and emergent vegetation.” U.S. FISH AND WILDLIFE SERVICE, FLORIDA MANATEE RECOVERY PLAN 21 (2001) (“Recovery Plan”). The Recovery Plan is attached hereto as Exhibit “F.” The average adult manatee weighs about 2,200 pounds, but can weigh as much as nearly 4,000 pounds, and consumes between 4% and 15% of its weight in aquatic plants daily. *Id.* at 2; *See also* Allen Aarin Conrad, et al., *Evidence of a Dietary Shift by the Florida Manatee (Trichechus manatus latirostris) in the Indian River Lagoon Inferred from Stomach Content Analysis*, 268 ESTUARINE, COASTAL AND SHELF SCIENCE 107788 (May 5, 2022), attached hereto as Exhibit "G."

20. According to DEP, the IRL was once “one of the most biodiverse estuaries in North America.” FL. ST. PARKS, ECOLOGY OF THE INDIAN RIVER LAGOON, <https://www.floridastateparks.org/learn/ecology-indian-river-lagoon> (last visited Nov. 2, 2022). The entire lagoon is designated as an “Outstanding Florida Water” and an “Estuary of National Significance.” Historically, the north IRL was blanketed with seagrass meadows. The entire IRL is designated as manatee “critical habitat” under the ESA. 50 C.F.R § 17.95. The Recovery Plan recognizes the north IRL as “the most important spring habitat on the East Coast of Florida[.]” Exhibit "F" at 18.

21. Until 2010, seagrass has been the manatees' primary food in the IRL. Exhibit "F" at 21, 96; *See also* Exhibit "G". As eutrophication of the IRL has intensified, seagrass has disappeared from the north IRL, and the manatees' diet has shifted to macroalgae. *See id.* ("The results of our study confirm that IRL manatees experienced a dietary shift from primarily consuming seagrasses to mainly feeding on algae...").

22. Over the past decade, the north IRL has reached an ecological tipping point and is now classified as hyper-eutrophic. This "new normal" of hyper-eutrophication is recognized by federal, state, and local regulators tasked with conserving and protecting the IRL.

RESPONDING TO A TIPPING POINT: The IRL experienced a dramatic shift from a system where benthic aquatic vegetation was expanding to one dominated by planktonic microalgae following an unprecedented algal bloom in 2011 (now referred to as the "2011 super bloom"). The post-2011 IRL is characterized by intense, recurring, and long-lasting algal blooms; widespread loss of seagrasses; and episodic wildlife mortality events. Ongoing blooms of picocyanobacteria, nonplanktonic chlorophyte, and the brown tide species that plagued Texas, *Aureoumbra lagunensis*, now appear to be the "new normal" for the central and northern IRL. This shift emphasizes the need for improved scientific understanding of nutrient loads, nutrient cycling, and tipping points for the IRL.

INDIAN RIVER LAGOON NATIONAL ESTUARY PROGRAM, INDIAN RIVER LAGOON COMPREHENSIVE CONSERVATION AND MANAGEMENT PLAN – LOOKING AHEAD TO 2030 9 (2019).

23. This “new normal” means that not only is there no seagrass to sustain manatees, but even macroalgae is frequently absent for the manatees to eat. This leads to manatee starvation in the north IRL. *Id.*

24. Manatee starvation in the north IRL is a direct result of the IRL’s present hyper-eutrophication. Manatee deaths in the IRL reached a catastrophic level during the winter of 2020-2021, leading to a federal declaration of an “Unusual Mortality Event” (“UME”) pursuant to the Marine Mammal Protection Act, 16 U.S.C. § 1421(b), in March 2021. The National Oceanic and Atmospheric Administration (“NOAA”) states that the cause of this UME is: “Malnutrition secondary to ecological factors (e.g. change in forage).” NOAA FISHERIES, ACTIVE AND CLOSED UNUSUAL MORTALITY EVENTS (Last updated July 26, 2022). <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events#active-umes>. The Florida Fish and Wildlife Conservation Commission (“FWC”), the Florida agency charged with state protection of the manatee, agrees that a lack of seagrass in the IRL is the principal cause of manatee starvation:

Environmental conditions in portions of the Indian River Lagoon remain a concern. Researchers have attributed this UME to starvation

due to the lack of seagrasses in the Indian River Lagoon. In recent years, poor water quality in the Lagoon has led to harmful algal blooms and widespread seagrass loss.

FL. FISH AND WILDLIFE CONSERVATION COMM'N, MANATEE MORTALITY EVENT ALONG THE EAST COAST: 2020-2022. <https://myfwc.com/research/manatee/rescue-mortality-response/ume/>. A USFWS Biological Opinion dated July 23, 2021 states that many Manatees in the north IRL have died from starvation "likely associated with loss of a foraging habitat." *See* Exhibit "H."

25. FWC annually publishes "Manatee Mortalities Statistics" documenting dead manatees by county. FL. FISH AND WILDLIFE CONSERVATION COMM'N, MARINE MAMMAL PATHOBIOLOGY LABORATORY, PRELIMINARY 2022 MANATEE MORTALITY TABLE BY COUNTY (last updated Oct. 28, 2022). This report is based on FWC staff encounters with dead manatees and likely underreports the actual number of dead manatees in any given year, particularly when there are large numbers of dead manatees. FWC does not provide a classification for death by starvation. Nonetheless, a review of this government report sets forth that, in 2020, there were approximately 173 documented manatee mortalities in Brevard County out of a total statewide mortality count of 637. In 2021, there were 358 documented manatee mortalities in Brevard County out of statewide mortality total of 1,101. This report sets forth that through September 16, 2022, the manatee mortality count for Brevard County accounted for 338 out of the statewide mortality total of 717. The manatee mortalities in Brevard County occurred in the Indian River Lagoon system.

26. FWC maintains records in connection with individual dead manatees. FWC officers compile a Report of a Dead Manatee (“report”) when responding to a call reporting a dead manatee. Bear Warriors has obtained a sample of these reports. Between March and July 2021, at least 26 reports for dead manatees in the north IRL detail specific indicators of emaciation and starvation, including “chronic emaciation,” “empty GI tract,” “peanut shaped head,” “depleted fat,” “markedly thin,” “scant fat,” “no reproductive fat,” “emaciated,” “visible rib outlines,” and “findings consistent with UME.” These 26 reports are attached as Exhibit "I." These reports likely understate the absolute number of manatees harmed and killed during these months due to an absence of food in the north IRL. First, because the reports are complaint driven, it is very unlikely that FWC located every dead manatee. Moreover, there are many reports from that period in which the manatee carcass was too decomposed to allow for a determination of the manatee’s condition at the time of death and/or “probable cause of death.” Further, the attached reports do not include dead manatees who did not die in the north IRL, but were nonetheless severely impacted by an absence of forage during their winter stay at the warm water refuge at the FPL power plant or during their migration through the lagoon to other waters.

**A Primary Cause of Seagrass Destruction in the North IRL is Nitrogen
Enrichment from Human Sewage.**

27. The IRL is a shallow estuary where salt water from the Atlantic Ocean mixes with freshwater. Like all estuaries, the IRL is highly sensitive to inputs of nitrogen, which is frequently introduced into the IRL through fertilizer and sewage runoff. Nitrogen enrichment of the lagoon leads to harmful algae blooms which prevents sunlight from penetrating the lagoon bed, destroying seagrass beds. Numerous peer reviewed academic studies detail how wastewater induced eutrophication has destroyed the IRL's water quality and seagrass: 1) nitrogen in human wastewater leaches, and in some cases, is directly introduced as raw sewage, into the north IRL from septic tanks and wastewater plants, 2) thereby causing nitrogen enrichment of the lagoon, 3) which in turn causes harmful algae blooms, 4) which in turn destroy water quality and block sunlight from reaching seagrass, thereby destroying seagrass. Such studies include, but are not limited to:

The most significant ecosystem shifts in the IRL over the past three decades of rapid urbanization include increased occurrence of HABs [harmful algae blooms], both macroalgal and phytoplankton, and catastrophic losses in seagrass cover, which were all supported by elevated nutrient concentrations. Historically, macroalgae were a small component of IRL seagrass communities; however, since the early 2000s, their abundance has increased to surpass seagrass biomass. In 2009, IRL, seagrass abundance temporarily peaked, but beginning in 2011 unprecedented phytoplankton blooms reduced light availability and increased hypoxia, resulting in a 95% loss of seagrass cover by 2017 within the northern and central segments of the IRL (Volusia, Brevard, and Indian River counties).

Beginning in late 2020, record setting mass mortalities of the threatened Florida manatee (*Trichechus manatus*) occurred in the IRL and were attributed to starvation following the loss of their primary food source, seagrasses. (Citations omitted.)

L.W. Herren et al., *Septic Systems Drive Nutrient Enrichment of Groundwaters and Eutrophication in the Urbanized Indian River Lagoon, Florida*, 172 MARINE POLLUTION BULLETIN 112928 (November 2021), attached hereto as Exhibit "J".

Another study found that between 2011 and 2017, catastrophic seagrass collapse exceeding 95% occurred as a result of wastewater driven harmful algae blooms. Brian Lapointe et al., *Nutrient Over-Enrichment and Light Limitation of Seagrass Communities in the Indian River Lagoon, an Urbanized Subtropical Estuary*, 699 SCIENCE OF THE TOTAL ENVIRONMENT 134068 (January 10, 2020) attached hereto as Exhibit "K". Lastly, scientific studies have concluded that there is a direct connection between the introduction of excess nitrogen through wastewater discharge and the urbanization of the IRL which has caused the eutrophication of the IRL and resulting loss of seagrasses and biodiversity in the IR. Peter J. Barile, *Widespread Sewage Pollution of the Indian River Lagoon System, Florida (USA) Resolved by Spatial Analysis of Macroalgal Biochemistry*, 128 MARINE POLLUTION BULLETIN 128 (2018) (attached hereto as Exhibit "L"); Lori J. Morris et al., *Diversity and Distribution of Seagrasses as Related to Salinity, Temperature, and Availability of Light in the Indian River Lagoon, Florida*, 84 FLORIDA SCIENTIST 2 (2021) (attached hereto as Exhibit "M"); Brian E. Lapointe et al., *Evidence of Sewage-*

Driven Eutrophication and Harmful Algal Blooms in Florida's Indian River Lagoon, 42 HARMFUL ALGAE 82 (2015) (attached hereto as Exhibit "N").

28. A primary source of nitrogen enrichment in the north IRL is human sewage, delivered via septic tanks and wastewater treatment plants. Human sewage includes urine and feces, both of which contain nitrogen. Urine contains 90% of the human body's expelled nitrogen, totaling about 12.5 pounds of nitrogen annually per capita. Thus, a typical household of 2.5 persons annually generates approximately 31 pounds of nitrogen. Helvi Heinonen-Tanski & Christine Sijbesma, *Human Excreta for Plant Production*, BIORESOURCE TECHNOLOGY (2003), attached herein as Exhibit "O."

29. Septic systems work by allowing wastewater to flow into a septic tank where feces sink to the bottom of the tank and materials that float form a "sludge" layer on top of the tank. These two layers are separated by water. The "treated" wastewater is then allowed to flow to a drain field where the wastewater percolates into the groundwater. Septic systems are not designed for nitrogen removal. Estimates of nitrogen removal within the drain field soil system range from 0% to 40%. Nitrogen is released from the septic tank into the ground, where it enters groundwater, and some portion is subsequently transported into the lagoon.

30. Over thirty years ago, the Florida Legislature enacted the Indian River Lagoon System and Basin Act of 1990 ("IRL Act"), in recognition that sewage

discharges into the IRL from *both* septic tanks and wastewater treatment plants are destroying the lagoon's water quality. Ch. 90-262, at 1890, Laws of Fla. The preamble to the IRL Act provides, in relevant part:

WHEREAS, studies related to developing the Indian River Lagoon SWIM Plan have established that the physical and ecological characteristics of the system, in combination with threats posed by stormwater discharges and urbanization within the drainage basin, make the Indian River Lagoon System unsuitable for future disposal of sewage effluent even if advanced waste treatment is provided, and

WHEREAS, restoration of the Indian River Lagoon System cannot be accomplished without achieving reductions in nutrient loadings from existing sewage treatment facilities, and

....

WHEREAS, package sewage treatment plants and improper use of septic tanks in certain areas pose a continuing threat to the water quality of the Indian River Lagoon System ... *Id.*

31. The IRL Act required the St. Johns River Water Management District and the South Florida Water Management District to “identify areas where improper septic tank use poses a threat to the Indian River Lagoon System.” *Id.* §4 at 1891. While the Act required the creation of maps, it did not prohibit installation of septic tanks in the IRL watershed. According to DEP’s February 2021 Indian River Lagoon Basin North Indian River Lagoon Basin Management Action Plan, there are 16,171 septic tanks operating in the north IRL watershed. FLA. DEP’T OF ENVTL. PROT., DIV. OF ENVTL. ASSESSMENT AND RESTORATION, INDIAN RIVER LAGOON

BASIN NORTH INDIAN RIVER LAGOON BASIN MANAGEMENT ACTION PLAN (2021).

Septic tanks continue to be permitted in the north IRL watershed to this day. Upon information and belief, approximately 1,400 septic tanks were permitted in this watershed in 2021.

32. Further, the IRL Act banned direct sewage discharges into the IRL after July 1, 1995, apart from the following authorizations:

1. The permit applicant conclusively demonstrates that no other practical alternative exists and that the discharge will be treated to advanced treatment levels or higher;
2. The applicant conclusively demonstrates that the discharge will not cause or contribute to water quality violations and will not hinder efforts to restore water quality in the Indian River Lagoon System; or
3. The discharge is an intermittent surface water discharge occurring during wet weather conditions, subject to the requirements of applicable DEP rules. Ch. 90-262, §2 at 1891, Laws of Fla.

33. Direct discharges of sewage into the north IRL continues. Upon information and belief, in excess of 20,000,000 gallons of sewage have been discharged from wastewater plants into the north IRL between 2020 and the present time. An admitted minimum of 7,200,000 gallons of untreated wastewater was released into the north IRL in October 2022 as a result of Hurricane Ian.

34. Despite adoption of the IRL Act in 1990, the north IRL is now hyper-eutrophic and largely devoid of aquatic vegetation, particularly seagrass. The State of Florida acknowledges the destructive impact septic tank effluent has on water quality, as demonstrated by the March 22, 2017 Florida Senate Bill 982 Analysis and Fiscal Impact Statement (“Fiscal Impact Statement”) (attached hereto as Exhibit “P”), prepared in connection with a fiscal appropriation for IRL cleanup, which states “studies have indicated that nitrogen inputs from septic systems in the IRL basin are a major source of nutrients that drive harmful algae blooms.” *See* Exhibit “P” at p. 2. Similarly, the Blue-Green Algae Task Force, appointed by Governor DeSantis, issued a Consensus Document on October 11, 2019, which acknowledges the destructive impact of septic tank effluent and sewage plant overflows on water quality, providing, in relevant part:

Human Waste-Onsite Sewage and Disposal Systems

The task force recognizes that conventional onsite sewage treatment and disposal systems, i.e., septic systems, were designed to manage human health risks associated with the introduction of pathogens to the environment.... However, septic systems are also a well-known and substantial source of nutrients to groundwater and surface waters across the state. There are, in fact, more than 2.5 million septic systems in Florida that treat approximately one-third of the wastewater generated in the state. The nutrients in the effluent from these systems contributes to the development and maintenance of harmful blue-green algae blooms.

Human Waste—Sanitary Sewer Overflows

Sanitary sewer overflows (SSOs) are both a direct human health concern and a source of localized nutrient pollution. SSOs can, in fact, result in significant downstream environmental impacts including harmful algal blooms.

BLUE-GREEN ALGAE TASK FORCE, BLUE-GREEN ALGAE TASK FORCE CONSENSUS DOCUMENT #1 (October 11, 2019) (attached hereto as Exhibit "Q").

COUNT I

THE ENDANGERED SPECIES ACT

35. Plaintiff hereby re-alleges, as if fully set forth herein, each and every allegation contained in paragraphs 1 through 34 above.

36. DEP's continuing authorization of septic tank and wastewater treatment plant discharge that allows nitrogen to enter the north IRL despite the resulting harm to manatees constitutes irreparable harm to manatees in the north IRL, in violation of the ESA.

37. The starvation, impaired health, and deaths of manatees caused by the north IRL's human waste driven hyper-eutrophication continues. DEP's regulatory regime has created an ongoing emergency that creates a catastrophic harm for manatees in the north IRL. DEP's ongoing authorizing of septic tanks and wastewater treatment plants that leach and load nitrogen into the north IRL will:

- a) Adversely impact manatee feeding.

- b) Adversely impact manatee health.
- c) Cause manatee starvation, suffering and death.
- d) Cause the extirpation of manatees in the north IRL.
- e) Cause the degradation of manatee habitat.
- f) Hinder the recovery of manatees.

The wastewater treatment plant and septic tank authorizations by DEP constitute an unlawful “taking” of manatees pursuant to 16 U.S.C. §1538(a)(1)(B).

38. The actions of DEP do not fall within the exemptions to 16 U.S.C. §1538, in that DEP does not have an “incidental take” permit issued pursuant to 16 U.S.C. §1539.

39. Plaintiffs’ interests are being irreparably injured and Plaintiffs have no remedy at law.

WHEREFORE, based on the foregoing and pursuant to 16 U.S.C. §§1531-1544, Bear Warriors demands judgment against DEP for violating the ESA.

COUNT II

DECLARATORY JUDGMENT ACT

40. Plaintiff Bear Warriors hereby re-alleges, as if fully set forth herein, each and every allegation contained in paragraphs 1 through 34 above.

41. 28 U.S.C. §2201 provides:

- i. In a case of actual controversy within its jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

42. Bear Warriors, on behalf of its Members, and DEP have a present actual controversy within the jurisdiction of this Court. A declaratory judgment will be effective in settling this controversy.

43. The present dispute between Bear Warriors and DEP as to the DEP's continuing authorization of septic tank and wastewater treatment plant nitrogen discharge into the north IRL despite the resulting harm to manatees constitutes irreparable harm to manatees in the north IRL, and is in violation of provisions §§1531-1544 of the Endangered Species Act, as alleged in this Complaint, thus constitutes an unlawful "taking" of manatees pursuant to 16 U.S.C. §1538(a)(1)(B).

WHEREFORE, based on the foregoing and pursuant to 28 U.S.C. § 2201, Bear Warriors demands judgment declaring DEP violated the ESA.

Prayer for Relief

WHEREFORE, Plaintiff requests that the Court:

1. Enter Judgment that manatee starvation, death, suffering, and ill health are a consequence of the destruction of manatee habitat and food sources directly resulting from DEP's continuing authorization of septic tanks and wastewater plants

that release nitrogen into the north IRL. Such regulatory conduct by DEP constitutes an unlawful “taking” of a threatened species in violation of 16 U.S.C. § 1538(a)(1)(B);

2. Issue an Order that DEP has violated and is continuing to violate the ESA in connection with its authorization and permitting of septic tanks and wastewater plants that discharge nitrogen and sewage into the north IRL;

3. Issue an injunction requiring DEP to permanently cease its authorization and permitting of the discharge of nitrogen from septic tanks and wastewater plants into the north IRL;

4. Issue an order requiring DEP to provide medical monitoring and veterinarian care together with proper nutritional forage to all manatees in the north IRL until such time as sufficient seagrass that will permanently sustain manatees returns to the north IRL;

5. Issue an order enjoining DEP from issuing approvals for septic tanks for new construction within the north IRL watershed;

6. Issue an order enjoining DEP from authorizing wastewater plant hookups for new construction within the north IRL watershed;

7. Declare that DEP has “incidentally taken” manatees in the north IRL within the meaning of the ESA;

8. Award Plaintiffs their reasonable attorneys' fees and costs, including expert witness fees, incurred in pursuing this case; and
9. Grant such other relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED,

/s/ Lesley Blackner

Lesley Blackner • FBN 065043
lesleyblackner@gmail.com
300 S. Duval Street #505
Tallahassee, FL 32301
Telephone: (561)-818-6621
Counsel for Plaintiff

And

/s/ Ralph A. DeMeo

RALPH A. DEMEO
FBN 0471763
ralph@guildaylaw.com
Elizabeth M. van den Berg
FBN 087744
elizabeth@guildaylaw.com
Macie J.H. Codina
FBN 1039207
macie@guildaylaw.com
Secondary Email Address:
christineb@guildaylaw.com
GUILDAY LAW, P.A.
1983 Centre Pointe Blvd. S-200
Tallahassee, Florida 32308
Telephone: (850) 224-7091
Counsel for Plaintiff