

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 26-cv-62141-RS

MIAMI WATERKEEPER, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS, et al.,

Defendants.

PLAINTIFFS' EXPEDITED MOTION FOR PRELIMINARY INJUNCTION

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Pursuant to Fed. R. Civ. P. 65(a) and S.D. Fla. L.R. 7.1(d), Plaintiffs Miami Waterkeeper, Florida Wildlife Federation, Center for Biological Diversity, and the Diving Equipment and Marketing Association respectfully move for expedited relief, seeking entry of a preliminary injunction by September 20, 2026, against Defendants to address violations of the Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2), arising from two biological opinions issued by the National Marine Fisheries Service (“NMFS”) and relied upon by the Army Corps of Engineers (“Corps”) to authorize the Port Everglades Inlet Sand Bypass Project (“Project”). Expedited relief is required because dredging for the Project is set to resume as early as September 20, 2026, according to the terms of the biological opinions, and resumed dredging will cause irreparable harm to Plaintiffs’ interests in listed species and their critical habitat.

INTRODUCTION

Plaintiffs seek expedited relief to prevent Project-related dredging from threatening the continued existence of ESA-protected coral species and queen conch. The Project has already released large plumes of sediment onto the surrounding reef—an area that is home to some of the last known wild stands of staghorn coral and one of only two known shallow-water breeding herds of queen conch in the state. If allowed to continue without the protections the ESA requires, the Project could kill hundreds of corals and conch, destroy acres of critical habitat, and could eliminate these species’ last and best hope of recovery in the region.

The Project operates under the aegis of two biological opinions that NMFS issued in 2020 and 2025, which concluded the Project would not jeopardize listed coral species or conch, or adversely modify coral critical habitat. These opinions were flawed and arbitrary from the outset. They severely underestimated Project impacts by relying on overly optimistic assumptions that conflict with the information before the agency and using an unlawful regulatory framework to analyze impacts to critical habitat. Compounding these flaws, real-world impacts and changed circumstances have further undermined the opinions’ no jeopardy and no adverse modification conclusions. Evidence shows the Project’s actual impacts are far greater than NMFS anticipated, with sediment plumes traveling thousands of meters farther than NMFS predicted, while staghorn coral is now far less abundant than it was when NMFS initially concluded the Project would not jeopardize the species. Yet despite this new information and changed circumstances, the Corps failed to reinstitute consultation under the ESA. The Corps’ continued reliance on opinions that were patently flawed from the outset and that are now

undermined by real-world data and subsequent events violates the Corps' duty to ensure its actions do not jeopardize species or destroy critical habitat.

Absent preliminary relief, dredging will resume, again releasing excessive sediment into this extremely sensitive area and harming listed species and habitat before the agencies complete legally required consultation. Because Plaintiffs are likely to succeed on the merits, resumed dredging threatens irreparable harm to Plaintiffs' interests in listed species and habitat, and the balance of the equities and public interest favor halting the harmful dredging, the Court should enjoin Project construction until it reviews this case upon the merits.

STATUTORY FRAMEWORK

Congress enacted the ESA to conserve endangered and threatened species and the ecosystems upon which they depend. 16 U.S.C. § 1531(b). "The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978). Federal agencies accordingly are required "to afford first priority to the declared national policy of saving endangered species"—even when this goal conflicts with agencies' "primary missions." *id.* at 185.

ESA section 7(a)(2) requires every federal agency to ensure, in consultation with the relevant federal wildlife agency—here, NMFS—that "any action authorized, funded, or carried out" by the agency is not likely to jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. 16 U.S.C. § 1536(a)(2). To "jeopardize the continued existence" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02. "Destruction or adverse modification" is "direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features." 50 C.F.R. § 402.02 (2018); *see Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, No. 24-cv-04651-JST, 2026 WL 898264 (N.D. Cal. Mar. 30, 2026) (vacating 2019 regulatory definition of "destruction or adverse modification" and reinstating prior definition). "Formal" consultation with NMFS is required whenever an action "may affect" a listed species, unless NMFS concludes effects are "not likely to [be] adverse[]," 50 C.F.R. § 402.14(a), (b)(1).

To assess whether an action is likely to jeopardize listed species or destroy or adversely modify critical habitat, NMFS must “[a]dd the effects of the action and cumulative effects to the environmental baseline and in light of the status of the species and critical habitat, formulate [its] opinion as to whether the action is likely to jeopardize” species or adversely modify critical habitat. *Id.* § 402.14(g). “Effects of the action” include “direct and indirect effects of an action on the species or critical habitat . . . Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur.” *Id.* § 402.02 (2018); *Ctr. for Biological Diversity*, 2026 WL 898264, at *15, *25 (vacating 2019 definition of “effects of the action” and reinstating prior definition).

The duty to consult is ongoing. So long as an agency retains discretion or control over an action, it must reinitiate consultation if “new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered,” or “the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the” opinion. 50 C.F.R. § 402.16. The action agency also has an independent substantive duty to ensure its actions do not cause jeopardy or adverse modification. *Fla. Key Deer v. Brown*, 364 F. Supp. 2d 1345, 1358 (S.D. Fla. 2005), *aff’d sub nom. Fla. Key Deer v. Paulison*, 522 F.3d 1133 (11th Cir. 2008) (An “agency cannot abrogate its responsibility to ensure that its actions will not jeopardize . . . species; its decision to rely on the recommendations of the consulting agency must not . . . be[] arbitrary.”).

FACTUAL CONTEXT

I. Corals in the Project Area Are Vital to Species’ Recovery and a Healthy Reef

Florida’s Coral Reef stretches over 350 miles, extending from the Dry Tortugas Islands near the Florida Keys to the St. Lucie Inlet in Martin County. It is the only living nearshore barrier reef in the continental United States. Staghorn and elkhorn coral, the building blocks of this reef system, were “once the most abundant and most important species” in the reef. 71 Fed. Reg. 26852 (May 9, 2006).¹ Elkhorn and staghorn coral have a branching structure that forms complex habitat and provides important shelter for reef-dependent animals like lobsters, sea turtles, and fish. The reef also provides storm protection for Florida’s communities and offers recreational opportunities that generate billions of dollars each year. But the reef’s healthy coral

¹ “The contents of the Federal Register shall be judicially noticed and . . . may be cited by volume and page number.” 44 U.S.C. § 1507.

cover has declined by 90% since the 1970s. Decl. of Danika Desai, Ex. 1. And the threats corals face are intensifying. Last year, researchers declared elkhorn and staghorn functionally extinct in the state, meaning the corals are still present but no longer abundant enough to carry out their crucial function in the ecosystem. Desai Decl. Ex. 2 (Manzello et al. 2025). Marine heatwaves killed nearly all staghorn and elkhorn colonies in the Florida Keys and Dry Tortugas. *Id.* This event made the corals threatened by the Project all the more precious. Some of the last wild staghorn colonies continue to live and reproduce in the reef around Port Everglades. Desai Decl. Ex. 3 (Cunning et al. 2025). Researchers concluded the Port Everglades reefs “are a site of active recovery . . . and a potential last refuge for Florida’s wild” staghorn coral in Florida. *Id.*

II. The Project Threatens Listed Species and Their Habitat

In October 2025, Broward County commenced the construction of the Project. Among other things, the Project involves the creation of a 10.8-acre underwater sand trap just north of the Port Everglades Inlet, periodic maintenance dredging of the sand trap, and the transport of dredged material to a disposal site. Desai Decl. Ex. 4, at 8–15 (“2025 BiOp”); Desai Decl. Ex. 5, at 9–10 (“2020 BiOp”). These Project components involve dredging, 2020 BiOp 9–10, a process that pulverizes the seafloor and creates massive amounts of sediment—tiny fine-grained particles of sand that percolate out into the water column and settle on the surrounding reef.

Dredging damages corals in multiple ways. Dredging can kill coral directly by crushing or pulling it up. *Id.* at 50, 52. Dredged sediment can weaken or kill corals by smothering them and blocking light that corals need to live and grow. *Id.* at 47. While adult corals can rid themselves of small amounts of sediment, doing so requires large amounts of energy, leaving them more vulnerable to bleaching and disease. *Id.* at 56. Sedimentation levels that are too low to harm adult coral can still harm coral larvae and impede reproduction, preventing coral larvae from settling and growing into mature coral. *Id.* at 43, 64. Sediment can also exacerbate and spread coral disease. *Id.* at 56. In 2014, the worst coral disease outbreak in Florida’s history swept through the Caribbean. *Id.* at 39. The outbreak emerged during and nearby one of the largest dredging projects in Florida at Port Miami. Desai Decl. Ex. 6 (Dobbelaere et al. 2024). Scientists theorize this dredging instigated the outbreak and contributed to its rapid spread, with sediment potentially acting as a vector of disease. *Id.*; Desai Decl. Ex. 7 (Studivan et al. 2022).

Sediment pollution also harms the queen conch, which NMFS listed as threatened in 2024. 89 Fed. Reg. 11208 (Feb. 14, 2024). Sediment severely affects conch, interfering with

reproduction, destroying primary food sources, and killing conchs by impairing gill function and vision or burying them entirely. 2025 BiOp 47. Juvenile and larval conchs are especially vulnerable to sediment. *Id.* The species' recovery hinges on density-dependent reproduction, which requires a minimum number of sexually mature conchs to aggregate at a single site for mating. *Id.* at 38–41. The Port Everglades queen conch herd is one of only two breeding shallow-water aggregations identified in Florida and is essential to the species' recovery. *Id.* at 34–35, 37.

III. The 2020 and 2025 Biological Opinions

NMFS completed a biological opinion for the Project in 2020, which concludes the Project is not likely to jeopardize staghorn or lobed star coral or adversely modify critical habitat for staghorn and elkhorn corals. 2020 BiOp 1. NMFS completed a biological opinion in 2025 to assess Project impacts on the newly listed queen conch as well as impacts to newly designated critical habitat for pillar, lobed star, mountainous star, rough cactus, and boulder star coral. 2025 BiOp 2. The 2025 BiOp concludes the Project is not likely to jeopardize queen conch or adversely modify the newly designated coral critical habitat. *Id.* The 2025 BiOp did not amend the determinations NMFS made in the 2020 BiOp, leaving in place its analysis and conclusions about whether the Project jeopardizes listed coral or adversely modifies staghorn and elkhorn critical habitat. Critically, the 2020 BiOp was issued before the 2023 heatwaves and the 2025 study declaring the species functionally extinct in the state.

Dredging for the Project has occurred regularly from October 2025 into July 2026, when dredging paused to protect coral spawning, which occurs July through September. Desai Decl. Ex. 8; 2020 BiOp 9, 81. While dredging was ongoing, the Project's sedimentation impacts far exceeded what NMFS analyzed in its BiOps. Desai Decl. Ex. 9, at 2 ("Strelcheck Letter"); Desai Decl. Ex. 10 (satellite imagery). Specifically, NMFS assessed a "mixing zone" for the Project, an area where increased sediment is expected to occur due to dredging. 2020 BiOp 16, 20 fig. 9. But sediment from the Project has traveled beyond this predicted zone at least 17 times, sometimes by thousands of meters. Desai Decl. Ex. 10. Also, surveys documented sedimentation impacts in areas where the 2025 BiOp assumed no sediment impacts would occur and found coral in those locations showing signs of sediment-related stress. Desai Decl. Ex. 11, at 5, 11 ("FDEP Report").

One likely reason for these greater-than-anticipated impacts is that the Permittee did not adhere to a conservation commitment in the 2025 BiOp to prohibit overflow during dredging. Strelcheck Letter 3; 2025 BiOp 15. Overflow occurs when dredged material is loaded into the

top of the disposal scow (i.e. barge), and excess water containing sediments is drained through valves into the surrounding environment. Overflow increases the amount of sediment released into the environment as well as the distance sediment travels. NMFS and the Corps are aware of the damage overflow causes due to their experience with other dredging projects, like the PortMiami Deep Dredge Project, which killed more than 560,000 corals. Desai Decl. Ex. 12 (Cunning et al. 2019); *see also* Desai Decl. Ex. 13, at I-38 (App. I: Spillage Analysis) (Harbor Expansion Project modeling found “overflow is the largest culprit when it comes to potential sedimentation” impacts from dredging).

Based in part on these unanticipated changes to the Project and its more severe effects, NMFS determined in April 2026 that two triggers requiring reinitiation had been met. First, NMFS found “the project appears to have been subsequently modified in a manner that causes effects to listed species and critical habitat that was not considered in the previous Opinions” because the Permittee allowed overflow during dredging operations, contrary to the assumption in the 2025 BiOp. Strelcheck Letter 3. Second, NMFS found “sedimentation from the . . . project may be affecting acroporid corals in a manner or to an extent that was not previously considered by NMFS in either” BiOp. *Id.* at 2–3. The law requires reinitiation in these circumstances, 50 C.F.R. § 402.16, yet the Corps failed to reinitiate consultation for the Project.

STANDARD OF REVIEW

A plaintiff seeking a preliminary injunction must show four things: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

In determining whether a plaintiff is likely to succeed on the merits in the ESA context, courts use the familiar Administrative Procedure Act (“APA”) standard of review. *Miccosukee Tribe of Indians of Fla. v. United States*, 420 F. Supp. 2d 1324, 1335 (S.D. Fla. 2006). Under the APA, an agency action must be set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A). A reviewing court must “consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment,” and whether the agency articulated a rational connection between its findings and the evidence before it. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43 (1983) (citation omitted).

The second factor, irreparable harm, is easily established in the ESA context: “[i]n light of the stated purposes of the ESA in conserving endangered and threatened species and the ecosystems that support them, establishing irreparable injury should not be an onerous task for plaintiffs.” *Cottonwood Env’l. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1091 (9th Cir. 2015); *see also Loggerhead Turtle v. Cnty. Council of Volusia Cnty.*, 92 F. Supp. 2d 1296, 1301 (M.D. Fla. 2000) (stating under the ESA, “any threatened harm is *per se* irreparable harm.”).

Finally, the third and fourth factors—the equitable balancing of hardships and the public interest—always favor an injunction in the ESA context because the “plain intent of Congress in enacting th[e] statute was to halt and reverse the trend toward species extinction, whatever the cost,” and thus “the balance has been struck in favor of affording endangered species the highest of priorities.” *Tenn. Valley Auth.*, 437 U.S. at 184, 194; *see also Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 543 n.9 (1987) (explaining the ESA “foreclose[s] the traditional discretion possessed by an equity court”); *see also Fla. Key Deer v. Brown*, 386 F. Supp. 2d 1281, 1284 (S.D. Fla. 2005) (in ESA cases, “the third and fourth prongs of the injunction analysis have been foreclosed by Congress.”).

ARGUMENT

I. The Plaintiffs Are Likely to Succeed on the Merits

Plaintiffs are likely to succeed in their challenges to the Corps’ failure to reinitiate consultation, the BiOps themselves, and the Corps’ arbitrary reliance on them to satisfy its independent duties to avoid jeopardy and adverse modification. First, the Corps arbitrarily ignored significant new information and changed circumstances demonstrating the Project may be affecting species and habitat in a manner or to an extent not previously considered, and failed to comply with its duty to reinitiate consultation. Second, even absent new information or subsequent modification to the Project, NMFS’s 2020 and 2025 BiOps violate the ESA and APA because they are not based on the best available science, conflict with evidence before the agency, and rely on unlawful regulatory definitions of “destruction or adverse modification” and “effects of the action.” Third, the Corps’ reliance on these obviously invalid biological opinions, particularly after NMFS informed it that their determinations might no longer be valid, violates the Corps’ independent obligation under the ESA to ensure that the Project does not jeopardize listed species or destroy or adversely modify their critical habitat.

A. The Corps’ Failure to Reinitiate Section 7 Consultation Violates the ESA

Where, as here, an action agency retains discretion or control over a project,² the ESA requires agencies to reinitiate consultation “if . . . new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered” or “the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion.” 50 C.F.R. § 402.16(b)–(c). Here, both these regulatory triggers have been met.

1. New evidence shows the Project may be affecting species and critical habitat to an extent not previously considered.

The Corps must reinitiate consultation if “new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered.” 50 C.F.R. § 402.16(b). The “may affect” standard is a “very low” threshold for triggering consultation. *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, No. 19-cv-14199, 2020 WL 9073339, at *12 (S.D. Fla. Aug. 28, 2020). “[A]ctions that have any chance of affecting listed species or critical habitat—even if it is later determined that the actions are ‘not likely’ to do so—require at least some consultation under the ESA.” *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1027 (9th Cir. 2012). Plaintiffs need not show “new information demonstratively shows . . . a greater impact on [species] than previously considered” as this would “render[] meaningless the ESA’s use of the words ‘may affect.’” *Sea Turtle Conservancy v. Locke*, No. 09-cv-259-SPM-GRJ, 2011 WL 13227945, at *7 (N.D. Fla. July 5, 2011).

As an initial matter, NMFS already determined that new information shows the Project may be affecting species more than it considered previously. Strelcheck Letter 2. As the expert agency, NMFS is in the “best position to make discretionary factual determinations about whether a[n] . . . action will create a problem for a listed species.” *City of Tacoma v. FERC*, 460 F.3d 53, 75 (D.C. Cir. 2006). The Corps’ decision to ignore this expert advice is arbitrary. *See Sierra Club v. Marsh*, 816 F.2d 1376, 1388 (9th Cir. 1987).

Moreover, the law requires the Corps to reinitiate in this circumstance. 50 C.F.R. § 402.16. Multiple new sources of information show the Project “may” be affecting species and habitat to an extent not previously considered. First, satellite images and sediment monitoring show that actual impacts of the Project are far more severe than NMFS predicted in either BiOp,

² The Corps retains discretion and control over ongoing parts of the Project including overseeing mitigation, *See e.g.* Desai Decl. Ex. 14, at 17, 20 (Permit), and implementing the terms of the incidental take statement, 2020 BiOp 81–83.

undermining NMFS's effects determinations for listed coral, conch, and coral critical habitat. Second, new science on staghorn population and range shows staghorn is much less abundant and widespread than NMFS assumed in the 2020 BiOp, indicating the Project is likely having a larger impact on the more vulnerable remaining colonies than NMFS considered. This new information is sufficient to trigger the low "may affect" threshold for reinitiating consultation.

a. New evidence shows the Project impacts far exceed predicted impacts.

Satellite imagery shows sedimentation from the Project is greatly exceeding the predicted area of impact defined in the BiOps. NMFS assumed Project impacts would remain within an "area extending up to 500 m to the east, 300 m to the north, 150 m to the south, and 1,000 m to the west from the proposed activities." 2020 BiOp 16; 2025 BiOp 25. But satellite imagery shows sediment plumes extended beyond this area at least 17 times—sometimes by *thousands* of meters. Desai Decl. Ex. 10. It is likely that such widespread sedimentation occurred more often but went undetected because satellite imagery is not available for all days, and dredging also occurred on cloudy days and at night, when plumes are obscured. These images indicate that the reef, corals, and conch outside the impact area are being routinely exposed to sediment—an impact NMFS, by its own admission, never considered in its BiOps. Strelcheck Letter 2.

New survey data on sediment accumulation also shows Project impacts are more severe than NMFS considered. On March 24–25, 2026, the Florida Department of Environmental Protection ("FDEP") inspected ten monitoring stations within the Project area and found "likely dredging-related sedimentation in the form of very thin to thin layers of mud" at four stations. FDEP Report 5, 11, 20, 22. Three of these stations are within an area NMFS assumed would receive no sediment. *Comp.* 2025 BiOp 58, fig. 21 *with* Desai Decl. Ex. 15 (Minimization, Mitigation, and Monitoring Plan for Project), at 58, fig. 14. At two stations, FDEP observed coral showing signs of sediment related stress. FDEP Report 5, 11.

These unanticipated impacts undermine the basic assumptions underlying NMFS' no jeopardy and no adverse modification determinations for listed coral and coral critical habitat. Where, as here, "data is new and the new data may affect the jeopardy or critical habitat analysis, then the [agency] was obligated to reinitiate consultation." *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1077 (9th Cir. 2004), *amended*, 387 F.3d 968 (9th Cir. 2004). For example, the jeopardy analysis for staghorn assumes the only colonies that will be affected by the Project are those located within the area of predicted impact. 2020 BiOp 28, 46.

Based on this assumption, NMFS concluded the Project would take 785 colonies of staghorn, and that this take would not jeopardize the species. 2020 BiOp 62, 79. However, because sediment is exceeding the bounds of the anticipated impact area, it is likely that more staghorn are being exposed to sediment—and being taken—than NMFS considered. Indeed, NMFS made exactly this point, stating the “location[]” of staghorn thickets north of the Project area “overlap with observed sediment plumes during dredging.” Strelcheck Letter 3. NMFS was especially concerned about northward plumes because the corals in that area “bleached in late September and October” when dredging began “and sediments are known to exacerbate the impacts from . . . thermal stress.” *Id.* This new evidence suggests that not only do these impacts have a “chance” of affecting staghorn, but they are likely affecting and even harming them, far surpassing the “very low” may affect threshold necessary to trigger reinitiation. *Karuk Tribe of Cal.*, 681 F.3d at 1027; *Ctr. for Biological Diversity*, 2020 WL 9073339, at *9.

And both BiOps conclude there will be no adverse modification to coral critical habitat “[b]ased on the fact that impacts will [] remain within the area of the proposed mixing zone.” 2020 BiOp 78; 2025 BiOp 74. The 2025 BiOp’s conclusion for coral critical habitat also assumes large areas within the mixing zone would not accumulate any sediment at all, and that most other areas would receive only “insignificant” impacts. 2025 BiOp 66. But sediment monitoring shows sediment is accumulating on the seafloor in areas NMFS assumed it would not, with coral in those areas experiencing signs of sediment-related stress, indicating impacts are not insignificant. Because “there is discord between what the [agency] anticipated . . . and what is actually happening,” the Corps must reinitiate consultation. *All. for Wild Rockies v. Probert*, 412 F. Supp. 3d 1188, 1205 (D. Mont. 2019).

b. New scientific studies show the Project may affect staghorn coral to an extent not previously considered.

Recent information on the severe decline of staghorn and the importance of staghorn colonies near Port Everglades independently require reinitiation because it demonstrates the Project may be having a larger impact on the more vulnerable population of staghorn than NMFS previously considered. *See Pacificans for a Scenic Coast v. Cal. Dep’t of Transp.*, 204 F. Supp. 3d 1075, 1092 (N.D. Cal. 2016) (Reinitiation required where “the project’s net effect on listed species . . . will be greater than previously thought.”). Specifically, Manzello et al. (2025) concluded that the 2023 heatwaves decimated staghorn in Florida, and that staghorn may become regionally extinct unless survivors of the heatwaves are resilient enough to recover. Desai Decl.

Ex. 2, at 364, 365. Crucially, Cunnning et al. (2025) documented the very staghorn survivors that are critical to the species' recovery in the reef around Port Everglades. Desai Decl. Ex. 3.

NMFS did not consider this new information in its jeopardy analysis for staghorn. NMFS assumed there were tens of millions of staghorn corals range-wide, and staghorn is distributed "from Palm Beach County through Monroe County." 2020 BiOp 72. But Manzello et al. (2025) shows staghorn abundance and range are much smaller. Desai Decl. Ex. 2, at 364, 365. Thus, the Project may have greater impact on the fewer remaining staghorn than NMFS considered. *See Friends of the Clearwater v. U.S. Forest Serv.*, No. 20-cv-00322-BLW, 2021 WL 3408595, at *6 (D. Idaho Aug. 4, 2021) (reinitiation required when new data showed severe population decline in affected endangered fish). Moreover, NMFS justified its no jeopardy conclusion by assuming the Project's "impacts . . . will be limited to the immediate action area." 2020 BiOp 73. But that assumption no longer provides a valid basis for a no-jeopardy finding because the Project area encompasses one of the only known locations where staghorn persists and is actively reproducing. Likewise, NMFS justified permitting the lethal take of 224 staghorn colonies even though it "might . . . result in a loss of reproduction" because "a high number of colonies are believed to be still in existence through the species range." 2020 BiOp 72. But Manzello et al. (2025) demonstrates this is no longer true. Desai Decl. Ex. 2, at 361 (finding 97.8–100% mortality in parts of staghorn range). Because the BiOp "relies on presumptions that have proven incorrect," the Corps' failure to reinitiate is arbitrary and unlawful. *Hoopa Valley Tribe v. Nat'l Marine Fisheries Serv.*, 230 F. Supp. 3d 1106, 1134 (N.D. Cal. 2017).

2. Reinitiation is required because the Project was modified in a manner that causes an effect to species or habitat that was not previously considered.

Reinitiation of consultation is separately required because the Project was "subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion." 50 C.F.R. § 402.16(c). Specifically, overflow of sediment occurred during Project construction despite a commitment in the 2025 BiOp that "there will be no overflow of loading scows during dredging operations." 2025 BiOp 15; Strelcheck Letter 3. Overflow increases the amount of sediment impacts from dredging, Desai Decl. Ex. 13, at I-38, causing increased harm to coral, conch, and coral critical habitat. The failure to prevent overflow is likely contributing to the larger than expected sediment plumes emanating from the project. NMFS confirmed it did not consider these larger-than-anticipated impacts in its previous BiOps.

Strelcheck Letter 3. The law therefore requires the Corps to reinitiate consultation. *See Sw. Ctr. for Biological Diversity v. Klasse*, No. CIV S-97-1969 GEB JF, 1999 WL 34689321, at *6 (E.D. Cal. Apr. 1, 1999) (Corps’ failure to comply with mitigation measure in biological opinion constituted modified action sufficient to trigger the duty to reinitiate consultation).

B. The 2020 and 2025 BiOps Violate the ESA and APA

The 2020 and 2025 BiOps violate the ESA and APA by using invalid regulatory approaches to analyze impacts to habitat and species, relying on demonstrably ineffective mitigation to offset the Project’s damage to critical habitat, and failing to rationally explain how NMFS reached its no jeopardy conclusion for conch.

1. NMFS’s reliance on unlawful regulatory definitions renders its 2020 and 2025 Biological Opinions invalid.

NMFS relied on unlawful regulatory definitions for “effects of the action” and “destruction or adverse modification” to analyze whether the Project caused jeopardy and adverse modification. This caused NMFS to arbitrarily ignore effects to listed species and critical habitat, violating NMFS’s statutory duty to ensure against jeopardy and adverse modification. *See Ctr. for Biological Diversity*, 2026 WL 898264, at *24–25 (vacating 2019 definitions of “effects of the action” and “destruction or adverse modification” because they violated the ESA).

a. NMFS unlawfully dismissed the Project’s destruction of critical habitat by relying on an invalid regulatory definition.

In both the 2020 and 2025 BiOps, NMFS relied on an unlawful regulatory definition for “destruction or adverse modification” that conflicted with its duty to ensure against adverse modification. *See Ctr. for Biological Diversity*, 2026 WL 898264. Specifically, NMFS’s reliance on this illegal regulatory definition of “destruction or adverse modification” in the 2020 and 2025 BiOps unlawfully limited NMFS’s consideration to “a direct or indirect alteration that appreciably diminishes the value of critical habitat *as a whole*” 2025 BiOp 73 (emphasis added) (quoting 50 C.F.R. § 402.02); 2020 BiOp 75; 84 Fed. Reg. 44976, 44978 (Aug. 27, 2019). The “as a whole” language conflicts with the statutory language of the ESA because it “authorizes piecemeal diminution of critical habitat, which, by definition, has already been deemed ‘essential.’ The statutory text, by contrast, prohibits adverse modification entirely.” *Ctr. for Biological Diversity*, 2026 WL 898264, at *17.

Here, NMFS measured harm to critical habitat in the Project area against “the function of the *overall* critical habitat designation,” 2025 BiOp 73 (emphasis added); 2020 BiOp 75. For

example, despite concluding that the Project will “result in the permanent loss of up to 6.03 ac[res]” of critical habitat for lobed star, mountainous star, boulder star, pillar, and rough cactus corals, 2025 BiOp 69, 74, NMFS concluded the Project would not destroy or adversely modify critical habitat, in part because it viewed this loss as “a very small portion of the Florida Area Unit of critical habitat,” *id.* at 73–74. Likewise, NMFS discounted the loss of 23.6 acres of elkhorn and staghorn critical habitat by comparing it to the *whole* 850,560 acre Florida Unit of critical habitat. 2020 BiOp 76–77. This approach violates the ESA because it fails to assess whether a particular area, however small, is uniquely important to a species’ survival or recovery. Indeed, this area *is* uniquely important: it is one of the only known sites where listed coral are still present and actively reproducing despite mounting threats from disease and warming. Desai Decl. Ex. 3. NMFS’s approach allows for piecemeal destruction of critical habitat that could damage areas a species needs for critical life functions, violating the ESA’s “plain terms” to “insure” against adverse modification. 16 U.S.C. § 1536(a)(2); *Ctr. for Biological Diversity*, 2026 WL 898264, at *17.

b. NMFS arbitrarily failed to consider the Project’s effects by using an invalidated regulatory definition of “effects of the action.”

NMFS considered the Project’s impacts as “effects of the action” only if the effect to the species or critical habitat was “reasonably certain to occur.” 2025 BiOp 57; 2020 BiOp 51; *see also* 50 C.F.R. § 402.02; 84 Fed. Reg. at 44978. As explained in *Center for Biological Diversity*, this definition violates the ESA’s mandate to ensure against jeopardy and destruction of critical habitat because it limits the effects analyzed to only those that are “reasonably certain to occur” rather than all effects that are “likely,” as the ESA requires. 2026 WL 898264, at *11–15. This narrowing “ensures . . . categories of evidence are removed from consideration before the Services analyze the likelihood of jeopardy or harm.” *Id.* at *12. The court vacated the definition because it is “more stringent than the statute’s requirement that effects be likely.” *Id.* at *15.

By applying the invalid regulation, NMFS committed the precise violation described in *Center for Biological Diversity*. NMFS explained it would consider effects only if they “would not occur but for the proposed action and if it is reasonably certain to occur” and that this analysis “forms the foundation for [the] jeopardy analysis.” 2020 BiOp 51; 2025 BiOp 57. NMFS used this definition to explicitly limit its analysis of the Project’s impacts. NMFS predicted sedimentation via modeling, 2025 BiOp 57, and defined “sedimentation that is reasonably certain to occur as a result of the proposed action . . . as a range of possible

outcomes.” 2020 BiOp 58–59. NMFS determined that even the more severe end of this range of predicted sediment impacts was “reasonably certain to occur.” *Id.* at 60. Based on this analysis, NMFS only examined sediment impacts that extended to the end of the mixing zone and not beyond, even though coral critical habitat and listed staghorn is located just beyond the edge of this area to the north. *See* 2025 BiOp 58 (fig. 21). By focusing only on sediment impacts the agency deemed “reasonably certain to occur,” the agency missed impacts that were likely to occur, such as the probability of sediment traveling beyond the edge of the impact area, thereby applying a “more stringent standard than the statute’s requirement.” *Ctr. for Biological Diversity*, 2026 WL 898264, at *11–15. This error had real-world consequences: sediment impacts *did* travel beyond the predicted impact area and NMFS failed to consider these impacts or ensure they would not jeopardize species or adversely modify critical habitat. *See supra* Section I.A.

2. NMFS’s adverse modification determination for coral critical habitat is unlawful because it conflicts with evidence before the agency and relies on mitigation benefits that are not likely to occur.

NMFS’s determinations that the Project will not adversely modify coral critical habitat are arbitrary because they rely on a mitigation strategy—the re-exposure of hard substrate in a rubble removal area—to decrease NMFS’s estimate of the Project’s net destruction of critical habitat, even though NMFS’s own science shows this area will not function as intended due to repeated sediment exposure. *See Defs. of Wildlife v. U.S. Dep’t of the Interior*, 931 F.3d 339, 349 (4th Cir. 2019) (finding a biological opinion arbitrary when it “ignore[d] evidence that the [expert] agency itself has developed.”). Relying on mitigation that is unlikely to provide high functioning replacement habitat to conclude no adverse modification violates NMFS’s duty to “ensure” the Project does not adversely modify critical habitat. *Ctr. for Biological Diversity v. Haaland*, 87 F.4th 980, 988–89 (9th Cir. 2023) (reliance on mitigation that was unlikely “to yield tangible benefits” to listed species to conclude no adverse modification violates the ESA).

NMFS’s no adverse modification conclusion for coral critical habitat is based on an arbitrary assumption that re-exposure of the rubble removal area will decrease the net acreage of critical habitat the Project will destroy. In both BiOps, NMFS subtracts 7.31 acres from the total loss of critical habitat, assuming that one Project element, removing rubble from a 7.31-acre area, will “provide the same high level of function as the area being removed.” 2020 BiOp 76. However, NMFS’s conclusion that this area will function as intended conflicts with the best available science and NMFS’s own recognition that habitat must be free from sediment for corals

to reproduce and grow. NMFS's key conservation objective for coral critical habitat is to support successful reproduction, survival, and growth. 2020 BiOp 75; 2025 BiOp 74. NMFS defined hardbottom seafloor "free from . . . sediment cover" as an essential feature of coral critical habitat. 50 C.F.R. § 226.216(a); *see also id.* § 226.230(c). Consistently, the best available science shows "[e]ven small increases in sedimentation can significantly reduce coral recruitment and survivorship." 2025 BiOp 69; Desai Decl. Ex. 16 (Rodriguez-Ruano et al. 2025); *id.* Ex. 17 Rodriguez-Ruano et al (2024) (finding sediment levels as low 0.2 cm can harm coral recruits). In sum, to benefit corals and foster reproduction, seafloor must have very little or no sediment.

But the mitigation area is not and will not be free from sediment. First, part of this area is expected to receive up to 1 cm of sediment from Project construction, double the level NMFS found results in permanent loss of critical habitat. *See* 2025 BiOp 58 fig. 21, 69. Second, the area will receive routine sediment exposure every two to four years, during maintenance dredging of the sand pit. 2020 BiOp 9, 69. Finally, the area is within the impact zone of the planned Port Everglades Harbor Expansion Project, which is anticipated to deposit up to 5 cm of sediment in the area, a sediment depth *ten times greater* than the level that results in permanent loss. Desai Decl. Ex. 13, at I-22. NMFS fails to explain how this mitigation will offset damage to critical habitat when this area will be subjected to the very same impacts that caused the damage in the first place. By failing to "consider[] the potential inadequacy of these proposed measures, the agency failed to consider an important aspect of the problem." *Save Our Cabinets v. U.S. Fish & Wildlife Serv.*, 255 F. Supp. 3d 1035, 1063 (D. Mont. 2017); *see also AquAlliance v. U.S. Bureau of Reclamation*, 287 F. Supp. 3d 969, 1073 (E.D. Cal. 2018) (opinion arbitrary where it failed to rationally explain how conservation measures could ensure against jeopardy when they did not achieve the benefits the opinion stated would help species).

3. NMFS's jeopardy determination for queen conch is arbitrary.

The ESA requires NMFS, in making its jeopardy determination, to use the best available science to analyze the extent to which the Project will reduce reproduction, numbers, or distribution of the species and how that will affect the species' ability to survive or recover. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.02. The 2025 BiOp's jeopardy analysis fails to meet these requirements. First, NMFS arbitrarily underestimates the number of conchs the Project will kill. Second, NMFS fails to articulate a rational connection between its no jeopardy conclusion and the best available science before the agency, which shows the Project will severely impact the

Port Everglades aggregation and that a healthy aggregation is necessary to recover the species. These flaws fatally undermine the BiOp's no jeopardy conclusion.

a. NMFS arbitrarily underestimates the Project's harm to conch.

The 2025 BiOp's jeopardy determination for conch determines the Project's total impact on conch by estimating the number of adult and juvenile conch within the Project area, assuming all these conchs will be relocated, and assuming 28 percent of the relocated conch will die. The BiOp estimates that 1,630 conchs will be relocated and that up to 457 of these conchs will die after relocation. 2025 BiOp 62. These post-relocation mortalities are the only mortalities NMFS evaluates in determining whether the Project will reduce conch numbers and reproduction. *Id.* at 47, 61 (assessing mortality only to relocatable conch).

But the Project will also have devastating, though unassessed, impacts on conch eggs and larvae. NMFS found in the BiOp that as little as 0.1 *millimeter* of sediment accumulation can cause "severe mortality" to conchs in larval stages. *Id.* at 47. But the agency only examined the extent of sediment impacts at depths of 1.5 mm or more, *id.* at 58, despite the evidence that larval conch are harmed at sediment depths *more than 10 times less* than this. This violates the APA requirement to consider all important aspects of the problem. "In the context of the ESA, the 'problem' is whether a proposed project will cause jeopardy to a listed species and 'any effect that is likely to adversely affect the species is plainly an important aspect of this problem.'" *Native Fish Soc'y v. Nat'l Marine Fisheries Servs.*, 992 F. Supp. 2d 1095, 1111 (D. Or. 2014) (citation omitted). NMFS offers no explanation for why it failed to consider the full extent of conch mortality—including evidence that the Project may be killing large numbers of conch eggs and larvae—when determining whether the Project may jeopardize the species.

NMFS's failure to evaluate all the ways in which the Project "reduc[es] the . . . numbers" of conch undermines NMFS's jeopardy finding and arbitrarily underestimates the Project's total harm to the species. 50 C.F.R. § 402.02; *see also S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, 723 F. Supp. 2d 1247, 1269 (E.D. Cal. 2010) (holding failure to evaluate all stressors that could adversely affect endangered fish constituted failure to consider an important aspect of the problem, rendering agency's no jeopardy conclusion arbitrary).

b. NMFS arbitrarily dismissed the importance of the Port Everglades aggregation to recovery of the queen conch.

NMFS's conclusion that the Project will not impede the recovery of the queen conch contradicts the best available science and NMFS's own statements about the Port Everglades

aggregation's critical importance for sustaining and restoring conch populations in Florida and beyond. NMFS found reproductive capacity is "a major factor limiting the recovery" of queen conch and that "reproductive potential is primarily reduced by the removal of spawning conch from the population." 2025 BiOp 39. NMFS also found "[c]onnectivity among queen conch populations is essential as the flow of larvae among different populations impacts the species' ability to reproduce, find mates, and maintain genetic diversity. Effective connectivity helps populations of queen conch to replenish themselves and support overall species health." *Id.* at 34. Recognizing its importance, NMFS states "[t]he aggregation at Port Everglades may play a major role in sustaining nearshore Florida populations and may also have important seeding potential for both the Florida Keys and the nearby Bahamas archipelago." *Id.* at 35. The 2025 BiOp also states this aggregation "play[s] a significant role in the recovery potential of the species" because it is one of a "limited number of reproductively viable aggregation sites within the U.S." *Id.* at 34–35. NMFS also recognizes that the population's ability to fully play this important role is already compromised: "the best available data indicate the density of large adult [conchs] is still too low and/or compromised . . . to restore healthy populations across the three distribution zones in South Florida." *Id.* at 45. Together, these findings demonstrate that a healthy Port Everglades aggregation is critical to the species' survival and recovery.

NMFS evaluated Project effects in terms of reducing reproductive females and estimated the Project will result in the loss of 6.87 million individuals over its ten-year duration. *Id.* at 71. NMFS determined that this loss will "reduce the abundance of adult queen conch and the overall spawning capacity of the larger Port Everglades aggregation." *Id.* at 72. Despite these findings, NMFS ultimately concluded that the Project will not appreciably reduce queen conch survival or recovery. *Id.* The BiOp lacks any "reasoned discussion of the agency's apparently contradictory positions about the" importance of Port Everglades aggregation, the Project's significant impacts to its reproductive capacity, and its no jeopardy conclusion. *Defs. of Wildlife*, 931 F.3d at 352–53. NMFS fails to explain, for example, whether the aggregation will be able to continue to play its critical role in seeding nearby populations if its overall spawning capacity is reduced, or after the loss of 6.87 million conchs. By failing to provide that explanation, NMFS "acted arbitrarily in determining that the likely impacts of the [project] . . . will not jeopardize the species' continued existence and recovery." *Id.*

C. Corps' Reliance on Facially Flawed Biological Opinions Violates the Corps' Independent Duty to Ensure No Jeopardy or Adverse Modification

The Corps cannot rely on BiOps whose flaws are “apparent on [their] face” to satisfy its independent legal duty to ensure that the Project avoids jeopardy and adverse modification of critical habitat. *W. Watersheds Project v. Haaland*, 69 F.4th 689, 716 (10th Cir. 2023) (citation omitted). Facial flaws include arbitrary decision-making such as failing to consider an important aspect of the problem, *id.*, relying on uncertain mitigation, *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101, 1128 (9th Cir. 2012), failing to articulate a rational connection between facts and conclusions, and other legal flaws, *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 532 (9th Cir. 2010). The BiOps here check each of these boxes. The Corps' complete reliance on these BiOps fails to satisfy its substantive Section 7 obligations.

First and foremost, the Corps' cannot feign ignorance of the BiOps' flaws where NMFS has already notified the Corps that the opinions were predicated on analyses that failed to account for the Project's real world, larger-than-anticipated impacts. *See supra* Section I.A. This new information—and the fact that it undermines the effects determinations—means the Corps cannot meet its duty to “ensure” that the Project is not likely to jeopardize listed coral, conch, or adversely modify coral critical habitat. 16 U.S.C. § 1536(a)(2). *See Nat'l Parks Conservation Ass'n v. Jewell*, 62 F. Supp. 3d 7, 19–20 (D.D.C. 2014) (holding action agency's reliance on opinion that failed to consider new information was arbitrary.).

Second, it is arbitrary for the Corps to rely on mitigation to satisfy its duty ensure against adverse modification of habitat when it knows, based on its own modeling, that its future actions will negate the long-term effectiveness of that mitigation by burying the mitigation area in sediment. *See supra* Section B.2; *Nat. Res. Def. Council v. Rodgers*, 381 F. Supp. 2d 1212, 1247 (E.D. Cal. 2005) (holding reliance on BiOp arbitrary where agency “knew of the deficiency.”).

Third, the jeopardy determination for conch is facially flawed because it fails to account for all conch harmed by the Project and reaches a conclusion that conflicts with facts before the agency. *See supra* Section B.3. In *Wild Fish Conservancy*, the court found an agency's reliance on a BiOp arbitrary in very similar circumstances: the expert agency failed to articulate a rational explanation for its no jeopardy conclusion in light of its finding that the action would cause a decline and reduce reproduction in a listed fish population. The court held this failure a legal flaw, and the action agency's reliance on this legally flawed opinion arbitrary. 628 F.3d at 528.

Finally, it is arbitrary for the Corps to rely on opinions that use invalidated regulatory

definitions that are inconsistent with the ESA’s statutory text. *See supra* Section B.1; *Ctr. for Biological Diversity v. Regan*, 734 F. Supp. 3d 1, 58 (D.D.C. 2024) (action agency’s reliance on flawed opinion is arbitrary where the opinion’s “inadequacies raise questions of law.”).

For the foregoing reasons, Plaintiffs are likely to succeed on the merits.

II. Preliminary Relief Will Prevent Irreparable Harm to Coral and Conch, as Well as Coral Critical Habitat

Under the ESA, even “harm to a small number of animals” can constitute irreparable harm. *Sierra Club v. Kempthorne*, No. 07-0216-WS-M, 2007 WL 9717745, at *4 (S.D. Ala. May 31, 2007). “Showing an extinction-level threat to listed species is not required before an injunction can issue under the ESA.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 818–19 (9th Cir. 2018). And “destruction of optimal habitat of an endangered species[] is clearly irreparable.” *See Sierra Club v. Norton*, 207 F. Supp. 2d 1310, 1340 (S.D. Ala. 2002).

Here, the harm is irreparable because resumed dredging will harm multiple ESA-listed species as well as coral critical habitat. NMFS explicitly recognized all the ways in which the Project, and dredged sediment, can harm, injure, and kill ESA-listed coral and conch, including through direct removal and smothering, as well as via sublethal effects like blocking light and impeding reproduction (coral) and ruining habitat and compromising gill function (conch). *See* 2025 BiOp 47, 51, 69. The 2020 BiOp estimates the Project will kill up to 125 staghorn corals of the corals left *in situ*, which is 100 percent of the remaining staghorn within the Project site. This acknowledged take and harm is more than sufficient to demonstrate irreparable harm. *See Kempthorne*, 2007 WL 9717745, at *4 (finding irreparable harm where the BiOp “itself predicts that the project will take 38% to 53% of the [listed species] on the project site.”). The dredging will also damage coral critical habitat and make it harder for corals on the brink of regional extinction to reproduce. *See e.g.*, 2020 BiOp 76. This also constitutes irreparable harm. *See Sierra Club v. Martin*, 71 F. Supp. 2d 1268, 1327 (N.D. Ga. 1996) (finding irreparable harm where the project “will destroy . . . suitable habitats for . . . sensitive and endangered species.”). And while it is not necessary to establish an extinction level threat to receive injunctive relief under the ESA, *Nat’l Wildlife Fed’n*, 886 F.3d at 818–19, here, regional extinction of staghorn is possible—new information demonstrates that some of the last wild staghorn colonies in Florida are at risk from the Project, Desai Decl. Ex. 3. This imminent risk of population loss to highly imperiled species is precisely the kind of “extreme or very serious damage” that justifies injunctive relief even under the most stringent of standards. *See Dunkin’ Donuts Franchised*

Rests. LLC v. Rizvi, Inc., No. 07-61308-CIV, 2007 WL 9701084, at *1 (S.D. Fla. Dec. 13, 2007). Finally, the loss of listed species and critical habitat will harm Plaintiffs, whose recreational, professional, and business interests depend on a healthy reef and abundant coral and conch populations. Compl. 22–30, ECF No. 1. The relief requested here would remedy Plaintiffs’ injuries by ensuring NMFS and the Corps give these species and habitat the full protections the law requires before the Project proceeds, thereby diminishing the Project’s harms.

III. The Balance of the Equities and Public Interest Favor Protecting the Listed Species and Critical Habitat

In the ESA context, the balance of the equities and public interest factors always weighs in favor of listed species. *Fla. Key Deer*, 386 F. Supp. 2d at 1285. However, even under the traditional test for injunctive relief, Plaintiffs satisfy these last two factors.

First, the evidence shows that recommencing dredging will put extremely vulnerable species and habitat at further risk. Any benefits of resuming dredging prior to consultation cannot outweigh the potential loss of these species and habitat. *See Martin*, 71 F. Supp. 2d at 1329 (contribution of timber contracts to the local economy “is outweighed by the public interest in preserving vital aspects of the environment. Once the trees . . . are logged, and the habitats for sensitive plants and animals destroyed, they will take years to grow back. Moreover, the individual . . . plants and animals that will be killed cannot be replaced.”); *see also Norton*, 207 F. Supp. 2d at 1343 (survival and recovery of listed beach mouse outweighed financial interest in continuance of a construction project for condominiums).

Second, ensuring agencies comply with the law and issue rational, scientifically-sound biological opinions serves the public interest. “[T]he public has an interest in preventing Defendants from acting in a manner inconsistent with the applicable law.” *Martin*, 71 F. Supp. 2d at 1329; *Miccosukee Tribe of Indians of Fla.*, 2008 WL 11332080, at *12 (“Ensuring that federal laws are followed certainly cannot be said to be adverse to the public interest.”); *Kemphorne*, 2007 WL 9717745, at *6 (holding a permit “issued on the basis of an arbitrary and capricious [biological opinion] – and thus in violation of law – cannot serve the public interest.”). The threat of irreversible loss of vulnerable species and habitat and ensuring Federal agencies follow the law weigh in favor of an injunction.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court enjoin the Corps from authorizing any construction of the Project until the Court decides this case on the merits.

Respectfully submitted this 5th day of August, 2026.

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