

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FOLKS - FRIENDS OF THE LOWER
KEYS, LLC,

Plaintiff,

Civil Case No. _____

v.

CITY OF MARATHON, FLORIDA,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES PURSUANT TO THE CLEAN WATER ACT AND
THE ENDANGERED SPECIES ACT**

FOLKS - Friends of the Lower Keys (“FOLKS”), by and through its counsel, hereby alleges as follows:

I. SUMMARY OF THE CASE

1. The City of Marathon (“Marathon”) is violating the federal Clean Water Act by discharging pollutants from shallow sewage wells to the waters of the Florida Keys without a National Pollutant Discharge and Elimination System (“NPDES”) permit.

2. Marathon disposes of sewage through shallow wells that release pollutants 60 to 120 feet underground. But the ground into which Marathon has drilled its shallow sewage wells is the highly porous limestone geology known as karst that makes up the Florida Keys. The rock is riddled with voids, tunnels and conduits that act as pipelines for sewage pollution to move away from the wells. Using these subsurface highways, pollutants migrate quickly—in a matter of days, and without substantial change in chemical composition—from Marathon’s wells to adjacent surface waters.

3. Marathon is also violating the Clean Water Act by discharging sewage pollution that contributes to exceedances of state water quality standards. The nearshore waters that receive Marathon's shallow sewage well discharges are already in violation of Florida water quality standards for nutrients. Yet Marathon continues to discharge sewage with harmful levels of nutrients into these waters—as well as bacteria, pharmaceuticals, illicit drugs, personal care products, pesticides, and other pollutants.

4. Marathon is also violating the federal Endangered Species Act. When it reaches surface waters, Marathon's sewage pollution harms threatened and endangered species of fish, corals, turtles, and other animals, and thus constitutes prohibited "take" of these species under that law. The waters near Marathon, part of the Florida Keys National Marine Sanctuary, are home to at least 23 species of animals that are federally listed as threatened or endangered. Many of the waters surrounding Marathon have been identified as "critical habitat" for several of these threatened or endangered species. Marathon's sewage pollution injures endangered corals, fish, and other animals directly and indirectly too, by damaging sensitive habitats they rely upon, like coral reefs and seagrass beds.

5. Florida law and Monroe County policies both direct Marathon to abandon shallow sewage wells for a better technology: deep sewage wells that dispose of pollution 2000 feet or more below ground. Deep sewage wells are economically practical and are widely used by other municipalities across the Keys. They would eliminate Marathon's impacts on nearby surface waters and Marathon's violations of federal law. But despite decades of notice that deep wells should be used in the Florida Keys, and although the other major population centers in the Keys moved from shallow to deep sewage wells, Marathon continues to use shallow sewage wells and recently sought authorization to discharge even more sewage pollution through them.

6. FOLKS brings this action to compel Marathon to (1) cease discharges from shallow sewage wells to surface waters without NPDES authorization, (2) stop contributing to violations of water quality standards, (3) use only deep wells for future subsurface disposal of sewage pollution, and (4) end the illegal “take” of threatened and endangered animals.

II. JURISDICTION AND VENUE

7. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq. (“Clean Water Act”) and the Endangered Species Act, 16 U.S.C. §§ 1531. This Court has subject matter jurisdiction over the parties and this action pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), Section 11 of the Endangered Species Act, 16 U.S.C. § 1540(c), and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

8. On November 8, 2021, FOLKS issued a sixty (60) day notice letter (“Notice Letter”) to the City of Marathon. The Notice Letter is incorporated by reference and attached as Exhibit 1. The Notice Letter informed Marathon of its violations of the Clean Water Act and Endangered Species Act and of FOLKS’ intention to file suit against Marathon. The Notice Letter was also sent to the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IV, and the Secretary of the Florida Department of Environmental Protection (“FDEP”) as required by the Clean Water Act. *See* 33 U.S.C. § 1365(b)(1)(A). Further, the Notice Letter was sent to the Secretaries of the Departments of the Interior and Commerce, and their respective representatives, the Director of the Fish and Wildlife Service and Administrator of the National Marine Fisheries Service, as required by Section 11 of the Endangered Species Act, 16 U.S.C. § 1540(g)(2)(A), and the Services’ implementing regulations.

9. More than sixty (60) days have passed since the Notice Letter was issued to Marathon and the state and federal agencies.

10. FOLKS is informed and believes, and therefore alleges, that neither the EPA, the Department of Interior, the Department of Commerce, nor the state of Florida has commenced or is diligently prosecuting an action to redress the violations alleged in the Notice Letter and in this Complaint under the Clean Water Act, 33 U.S.C. § 1365(b)(1)(B) or the Endangered Species Act, 16 U.S.C. § 1540(g)(2)(A). This action is not barred by any prior administrative penalty matter. Accordingly, because the requirements of 33 U.S.C. § 1365(b)(1)(B) and 16 U.S.C. § 1540(g) have been met, this matter may be commenced.

11. Venue is proper in the Southern District of Florida, pursuant to 33 U.S.C. § 1365(c)(1) and 16 U.S.C. § 1540(g)(3)(A), because the sources of the violations are located within this judicial district, specifically within Monroe County.

III. PARTIES

A. Plaintiff FOLKS - Friends of the Lower Keys

12. FOLKS is an all-volunteer Florida limited liability corporation, with members and supporters throughout Monroe County, that works to preserve the low-density community character of the Florida Keys, to protect and improve the nearshore water quality of the Florida Keys, and to protect and preserve the wildlife and habitats found in those nearshore waters. FOLKS works with other organizations to protect water quality and local ecosystems together as a community. FOLKS' approach combines sound science, policy advocacy, grassroots community engagement, education, and where necessary litigation. FOLKS' organizational purposes include the elimination of shallow sewage wells in the Florida Keys as a key measure to protect water quality and preserve aquatic ecosystems. Members and supporters of what is now FOLKS have been active in opposing shallow sewage wells in the Florida Keys since 2014. FOLKS represents

its members and supporters in and around Monroe County who have personally suffered harm to their aesthetic, recreational, and economic interests due to discharges of sewage pollution to the groundwater beneath the Florida Keys that rapidly travels to the Atlantic Ocean, Florida Bay, and the Gulf of Mexico. FOLKS members and supporters use these waters for boating, recreational fishing and commercial fishing, wading, body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation.

13. FOLKS represents its members and supporters in and around Monroe County who have personally suffered harm to their aesthetic, recreational, and economic interests due to Marathon's illegal discharges of sewage pollution that harms endangered species in the waters of the Florida Keys. FOLKS members and supporters are concerned for the wellbeing and continued existence of endangered corals, turtles, fish, manatees, and other animals that make the Keys ecosystem unique and vibrant. FOLKS members and supporters use, repeatedly visit, and will continue to use and visit the waters and ecosystems that these animals inhabit, and their associated beaches, for wildlife observation, photography, aesthetic enjoyment, spiritual contemplation, and/or in support of their commercial endeavors.

14. FOLKS members and supporters include residents and property owners of Marathon who reside, recreate, and/or work in the vicinity of the waters directly impacted by Marathon's violations and who have reasonably founded fears that the pollutants contained in Marathon's sewage have and will continue to cause or contribute to: (1) poor water quality in the nearshore waters that affects human health, endangered species, and the environment; (2) harmful algal blooms ("HABs") that are dangerous to human health, endangered species, and the environment; (3) the decline in abundance and distribution of seagrasses and coral reef colonies that support local marine life; and (4) damage to nearshore benthic communities that serve as

nurseries for fisheries. These individuals reasonably fear that such pollutants and their effects have and will continue to negatively impair their quality of life, their property values, and other economic interests.

15. FOLKS members and supporters also include commercial fishermen and individuals who own businesses in the marine service industries located within Monroe County. These individuals' livelihoods are adversely affected by Marathon's illegal discharges and the resulting reduction in fisheries, harms to endangered species, and harms to the ecological health of nearshore waters.

16. FOLKS members and supporters conduct water quality studies, and photograph flora and fauna in and around affected nearshore waters. FOLKS members and supporters are concerned about eating locally caught fish or suggesting to visiting friends and relatives that they swim at Marathon beaches.

17. FOLKS members have expressed concern, stress, and frustration that governments have failed to adequately address Marathon's pollution of the nearshore waters and continued use of shallow sewage wells despite recurrent HABs, damage to benthic communities, harms to fish and other marine animals that visit and rely on these waters, and the injuries to members and supporters' businesses, recreational activities and quality of life. FOLKS' members concerns and frustration with governmental inaction to address Marathon's sewage pollution are particularly acute in light of the now 21-year-old 2000 Monroe County Sanitary Wastewater Master Plan, which called for elimination of shallow sewage wells in Marathon, and an 11-year-old State law intended to move the Florida Keys toward deep well injection, both of which are discussed further below.

18. Marathon's illegal discharges of sewage pollution to nearshore waters degrade water quality and harm aquatic life, including threatened and endangered species, and thus threaten or impair each of the uses described above or contribute to such threats and impairments, ultimately interfering with FOLKS members and supporters' use and enjoyment of these waters.

19. For example, one FOLKS member, Don DeMaria, is a resident of Monroe County and an owner of Sea Samples, a small business specializing in the collection of marine invertebrates for bio-medical research. In the past, Mr. DeMaria has visited the waters around Marathon about five times per year to collect samples. He also used to swim regularly in the waters around Marathon. But Mr. DeMaria has stopped his commercial marine endeavors offshore Marathon because of his concern that the impaired water quality would make the fragile marine specimens he collects and sells unviable. He has also stopped swimming in these waters out of concern that he could get sick due to the pollutants in the water, although he would happily resume swimming in the area if the waters were cleaner. Mr. DeMaria is also deeply concerned about the harm that Marathon's pollution is causing to wildlife, including the endangered corals and other animals that are part of these aquatic ecosystems.

20. FOLKS member Cecelia Mattino lives in Marathon with her family. They used to take their many visiting relatives to the beach, but now warn them not to go in the water around Marathon because of pollution from shallow sewage wells and frequent beach closures.

21. Ms. Mattino used to own a boat and go fishing for fun and because the family loves to eat fresh fish. Because of her concerns about Marathon's shallow sewage wells, she sold her boat and no longer eats local fish. She is also concerned about the impact on property values caused by the deteriorating water quality.

22. Both of these members have observed people fishing and swimming in the waters surrounding Marathon and are concerned for them because they know these waters are polluted.

23. Marathon's illegal discharges of pollutants threaten or impair each of the uses described above or contribute to such threats and impairments. Thus, the interests of FOLKS members and supporters have been, are being, and will continue to be adversely affected by Marathon's failure to comply with the Clean Water Act and the Endangered Species Act.

24. The interests of FOLKS members and supporters that FOLKS seeks to protect through this lawsuit are germane to the purposes for which FOLKS was created. FOLKS' organizational purposes include: eliminating shallow sewage wells in the Florida Keys, thereby protecting groundwater and surface waters from pollution and degradation; promoting its members and supporters and the public's abilities to use surface waters for water contact recreation, aesthetic enjoyment, fishing, wildlife observation, educational study, and spiritual contemplation; protecting the viability of the local fisheries that are a mainstay of the Florida Keys economy, and that support property values and tourism; and protecting the nearshore waters for the benefit of the flora and fauna that require clean low nutrient water to reproduce and survive.

25. Continuing commission of the acts and omissions alleged herein will irreparably harm FOLKS members and supporters.

26. The relief sought herein will redress the harms to FOLKS members and supporters caused by Marathon's illegal conduct. As set forth below, FOLKS seeks a court order that declares Marathon to be in violation of the Clean Water Act and Endangered Species Act, enjoins further violations of these laws, imposes civil penalties in accordance with the Clean Water Act, bars Marathon from further discharge of sewage pollution to nearshore waters, and requires Marathon to stop using shallow sewage wells in favor of deep sewage wells. Each of these forms of relief

helps to redress the harms that FOLKS members and supporters are experiencing. The injunctive relief requested would directly reduce the sewage pollution and the take of endangered species that is injuring FOLKS members and supporters. Imposition of civil penalties would incentivize Marathon to end its illegal discharges quickly and would deter future violations. Declaratory relief both enables the injunctive relief and civil penalties and is also valuable in itself. At the very least, a declaration by this Court that Marathon is a lawbreaker will increase public interest and pressure on Marathon to stop discharging sewage into the Florida Keys and to start protecting threatened and endangered corals, fish, turtles and other animals.

B. Defendant City of Marathon

27. Defendant City of Marathon is a municipality incorporated under the laws of the state of Florida and a “person” within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5) and Section 3 of the Endangered Species Act, 16 U.S.C. § 1532(13).

28. Marathon’s political boundary includes seven islands (Knight’s Key, Boot Key, Vaca Key, Fat Deer Key, Long Point Key, Crawl Key, and Grassy Key) in a roughly east-west orientation in the middle of the Florida Keys (an area known as the “Central Keys”). The Atlantic Ocean is to the south of the islands (“ocean-side”). Florida Bay and the Gulf of Mexico are to their north and north-west (“bay-side”).

IV. STATEMENT OF FACTS

A. Marathon built, owns, and operates shallow sewage wells without NPDES permits

29. Marathon built, owns, and operates a sewer system that conveys municipal sewage to five separate wastewater treatment plants (“WWTPs”) within the city, each within its own service “Area.” These five WWTPs dispose of their sewage effluent via twelve shallow sewage wells.

30. The shallow sewage wells are drilled 90 to 120 feet below the ground surface. These wells are only cased to 60 feet, with the remainder an open hole down to 90–120 feet below the ground surface.

31. The ground into which Marathon’s shallow sewage wells are drilled consists of porous and fractured (karstic) limestone formations with many tunnels and conduits.

32. The islands of Marathon are narrow. Accordingly, Marathon’s 12 shallow sewage wells are located close to the shoreline, one (Area 6) as close as 64 feet from surface waters.

33. Marathon is currently discharging in the range of 900,000 to 1.1 million gallons per day (“MGD”) of sewage pollution from its 12 shallow sewage wells (*e.g.*, in November 2021, the monthly average of the daily flow from all of Marathon’s shallow sewage wells was 1.05 MGD). Marathon is currently seeking to increase its shallow sewage well capacity.

34. Marathon has obtained underground injection control (“UIC”) permits from FDEP for the injection of sewage through its shallow wells.

35. The UIC permits authorize Marathon to operate underground injection wells, but do not authorize the discharge of sewage from those wells to the waters of the Florida Keys. The surface waters of the Florida Keys are protected from pollution by the federal Clean Water Act. Discharge to these surface waters is only lawful if the discharger has obtained a NPDES permit and complies fully with all of the water quality protections set forth in that permit.

36. Marathon has not applied for or been issued any NPDES permit that authorizes discharges of sewage pollution from the WWTPs and their shallow sewage wells to the waters of the Florida Keys.

B. A large body of research supports government findings that sewage injected into shallow wells in the Florida Keys migrates swiftly to nearby surface waters

37. A substantial body of evidence shows that pollutants discharged from shallow sewage wells into the porous substrate of the Florida Keys migrate rapidly to surface waters. Since the 1990s, researchers have found that shallow sewage wells in the Florida Keys have a direct hydraulic connection to the nearshore waters of the United States and swiftly add pollutants to those nearshore waters. Studies show that pollutants from shallow sewage wells in the Florida Keys can travel hundreds of feet per day, reaching surface waters in a matter of days. More detail concerning these studies is included in the Notice Letter, Part I.B at 5–7.

38. Correspondingly, in 2008, FDEP issued the “Central Keys Reasonable Assurance Documentation” (“2008 FKRAD”), intended to provide reasonable assurance that sufficient control mechanisms would be implemented in the Florida Keys to return the area to the State’s water quality targets. The 2008 FKRAD concluded that shallow sewage wells provide virtually no attenuation of nitrogen and little reduction of phosphorus before daylighting in surface waters. More detail concerning the 2008 FKRAD is included in the Notice Letter, Part I.B at 7.

39. In 2018, FDEP again reiterated that water quality in these nearshore waters is “impaired” under State water quality standards and the Clean Water Act by an excess of nutrients—in part because of wastewater management practices, including shallow sewage wells.

40. FOLKS has worked to study and document this rapid migration of pollution. For example, in 2019, local residents tested a visible plume in surface waters near Marathon approximately 1500 feet from Marathon’s two Area 4 shallow sewage wells. Sampling of the plume showed high concentrations of sucralose, an artificial sweetener that is present in sewage but not in nature. More detail on these and other efforts is included in the Notice Letter, Part I.B at 7–8, Part I.C at 11.

41. The research and evidence, compiled over more than two decades, demonstrates that when Marathon disposes of its sewage through shallow wells, pollutants travel rapidly and substantially unchanged from the wells through the porous karstic limestone underlying Marathon into the nearby waters of the United States.

C. Marathon conveys multiple pollutants from its shallow sewage wells to nearshore waters

42. Marathon's shallow sewage wells discharge a complex mix of pollutants to surface waters on both the ocean-side and bay-side of the Keys.

43. Marathon discharges sewage, which is itself a pollutant. Constituent pollutants within that sewage include, among others: nutrients, including nitrogen (such as nitrate, nitrite, ammonia, and ammonium) and phosphorus (such as inorganic phosphorus and phosphate salts); oxygen demanding substances (measured in chemical oxygen demand and biological oxygen demand); bacteria (such as fecal coliform); pH-altering substances; suspended and dissolved solids; and residual chlorine.

44. Marathon discharges numerous pharmaceuticals and personal care products ("PPCPs"), as well as other drugs and chemicals that are persistent and mobile in the environment and have been reported in groundwater in multiple regional and national surveys. PPCPs commonly found in sewage are listed in the Notice Letter, Appendix B at 36. On information and belief, FOLKS alleges that these PPCPs are found in Marathon's sewage.

45. Marathon also discharges per- and poly-fluoroalkyl substances ("PFAS"). According to the EPA, PFAS break down very slowly and build up in people, wildlife, and the environment. PFAS are present in many products including food, food packaging, household products, and personal care products; as such they are also found in sewage. PFAS pose human health risks that range from obesity and elevated cholesterol to reproductive health and immune

dysfunction to certain cancers. The accumulation of PFAS in the marine environment is leading to the accumulation of high concentrations of PFAS in the tissue of fish that people eat, contributing to the accumulation of PFAS in people.

46. The accumulation of PFAS in the marine environment is also leading to high concentrations in the tissue of a number of threatened and endangered species, including manatees, turtles, alligators, seabirds, dolphins, and whales. There is cause for concern that these pollutants are accumulating at levels that harm these species.

D. Marathon's sewage pollution contributes to the continuing failure of nearshore waters to meet water quality standards

47. Due to the unique significance of the Florida Keys ecosystems, the Keys have been the subject of significant regional, state, and federal scrutiny. For example, the state of Florida has designated the waters of the Florida Keys as "Outstanding Florida Waters" and "Special Waters," deserving of extra protection.

48. Issues related to deteriorating water quality in the Keys caused by nutrient loads have been recognized for decades. As early as 1975, the Florida Administration Commission declared the Florida Keys to be an area of critical state concern.

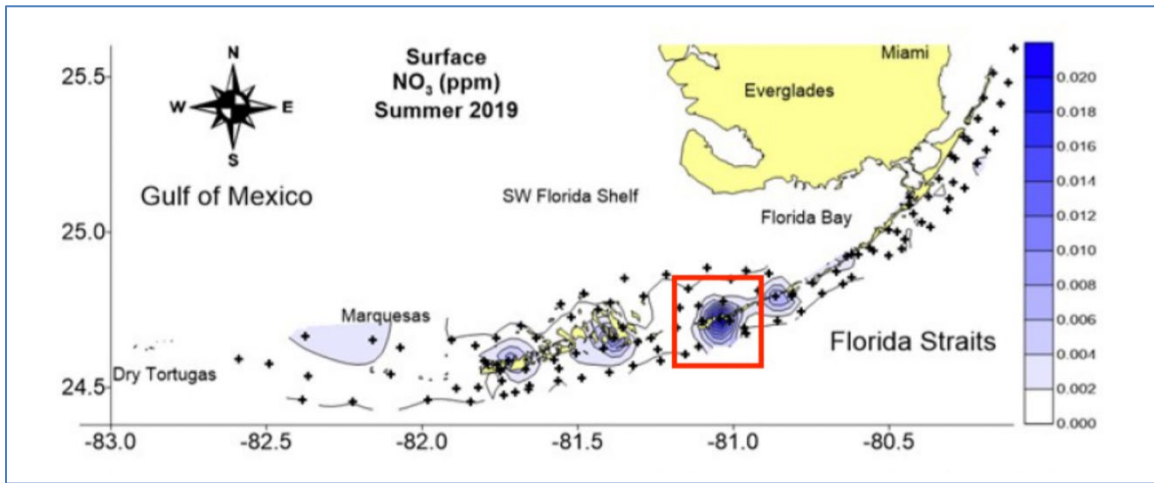
49. In 1990, the U.S. Congress designated the waters of the Florida Keys as the Florida Keys National Marine Sanctuary (the "Sanctuary"). To protect the Sanctuary, Congress created a Water Quality Protection Program for the Florida Keys, requiring Florida, the EPA, and the U.S. National Oceanic and Atmospheric Administration ("NOAA") to work together to achieve strategic targets for various pollution parameters, including dissolved inorganic nitrogen and total phosphorus.

50. From 2012 to 2018, Marathon's waters were noncompliant with EPA's strategic targets 78.2% of the time for nitrogen and 67.9% of the time for phosphorus.

51. Nutrient levels around Marathon are consistently non-compliant with these and other regulatory requirements.

52. Surface nitrate concentrations around Marathon are particularly high compared to many other areas of the Florida Keys. Figure 1 shows recent nitrate concentrations in and around Marathon.

Figure 1: Surface NO₂ (parts per million) in the Florida Keys, Summer 2019



The area around Marathon is identified with a red box.

53. One of the most important functions that a state performs under the Clean Water Act is to promulgate water quality standards. As part of this process, a state identifies the potential uses of each waterbody regulated under the Clean Water Act. *See* Clean Water Act Section 303(c)(2), 33 U.S.C. § 1313(c)(2). For example, a waterbody may be designated as suitable for recreation, or for the propagation of fish and wildlife. States also set numeric and narrative criteria that specify the extent to which pollutants may be present in the waterbody without impairing its suitability for those designated uses. *Id.*

54. The state of Florida has mapped and numerically identified nearshore segments of the waterbodies surrounding Marathon. It has also identified impairments of state-established water quality standards in those waterbodies, as set forth in Table 1.

Table 1: Impaired Waterbody Segments Surrounding the City of Marathon

Waterbody ID	Name	Impairments
6011A	Vaca Key	nutrients; copper; mercury in fish tissue
	Key Colony	nutrients
6011C	Grassy Key	nutrients; mercury in fish tissue
	Duck Key	nutrients; dissolved oxygen
8081A	Coco Plum Beach	nutrients
8081B	Sombrero Beach	nutrients; bacteria
8077A	Curry Hammock State Park	nutrients

55. The nearshore waters around Marathon listed in Table 1 have been impaired since the 1990s and remain impaired, meaning that because of excessive nutrient loading these waters do not meet water quality standards established by FDEP under Section 303(c) of the Clean Water Act. 33 U.S.C. § 1313(c).

56. In addition to nutrients, the waters of Sombrero Beach (on Vaca Key ocean-side) have been impaired for bacteria. Sewage discharge is known to contain bacteria, including fecal coliform.

57. These impairments persist despite significant expenditures, since the 1990s, on wastewater infrastructure based on the use of shallow sewage wells.

58. By discharging significant volumes of nutrients and other pollutants through its inadequate shallow sewage wells, Marathon is contributing to the failure of these waterbody segments to attain Florida's water quality standards and to meet the federal and state targets established to protect the Florida Keys National Marine Sanctuary.

E. Marathon's sewage pollution harms threatened and endangered species and their Designated Critical Habitats.

59. The Florida Keys National Marine Sanctuary contains many nationally significant marine habitats, including seagrass beds, coral reef colonies, hardbottom habitats, and mangrove-

fringed islands. The Sanctuary is home to thousands of marine species, including dozens of threatened and endangered species of animals and plants.

60. At present, there are 23 threatened or endangered marine species in the Sanctuary surrounding Marathon. The National Marine Fisheries Service (a unit of NOAA) has designated critical habitat within the Sanctuary for 12 species, including loggerhead turtles, smalltooth sawfish, elkhorn coral, staghorn coral, and piping plover. All of the waters directly offshore Marathon on the ocean-side are designated critical habitat for loggerhead turtles, elkhorn coral, and staghorn coral. These waters are also proposed critical habitat for boulder star coral, mountainous star coral, rough cactus coral, pillar coral, and lobed star coral.

61. There are also seven coral species within the Keys listed as threatened under the Endangered Species Act, including elkhorn, staghorn, and star corals—all of which are found in the waters near Marathon. In addition to their own intrinsic value, coral reef colonies serve as important habitat for other marine species.

62. The seagrass beds of the Florida Keys are home to many federally threatened and listed marine animals, including American crocodile, various species of sea turtle, roseate tern, wood stork, bald eagle, smalltooth sawfish, West Indian Manatee, and others. Further, many seabird species are dependent on seagrass communities for their diet, including great white heron, reddish egret, tricolored heron, white pelicans, and others.

63. A number of important habitats located in Sanctuary waters are directly affected by Marathon's discharges. NOAA is proposing to recognize six "sanctuary preservation areas" (an increase from the current two such areas) within five miles of Marathon on the ocean-side. These areas are designed to protect important coral reef habitats. NOAA is also proposing to create a variety of restricted access areas just offshore of Marathon on both the ocean-side and bay-side to

protect seagrass and hardbottom habitats. The Office of National Marine Sanctuaries (a unit of NOAA) oversees the Sanctuary and is developing a “Restoration Blueprint” for these important marine and coastal habitats.

64. The sanctuary preservation areas identified for special protection include:

a. Coffins Patch Sanctuary Preservation Area: a reef that hosts some of the largest historic populations of Endangered Species Act-listed staghorn, elkhorn, and pillar corals.

b. Marathon Key Sanctuary Preservation Area: an important coral nursery and degraded reef in need of restoration.

c. Marathon Oceanside Shoreline Wildlife Management Area: the inshore area of the Vaca Bight along the south shore of Vaca Key, which contains important nearshore seagrass and hard bottom habitats.

d. Moser Channel Banks Wildlife Management Areas and Red Bay Banks Conservation Area: these areas north and west of Marathon, beginning just offshore and extending about three miles from Marathon, contain seagrass and hard bottom habitats that are home to sponges, corals, conchs, sea stars, and provide an important connection between the near shore areas and the offshore reefs for juvenile fish.

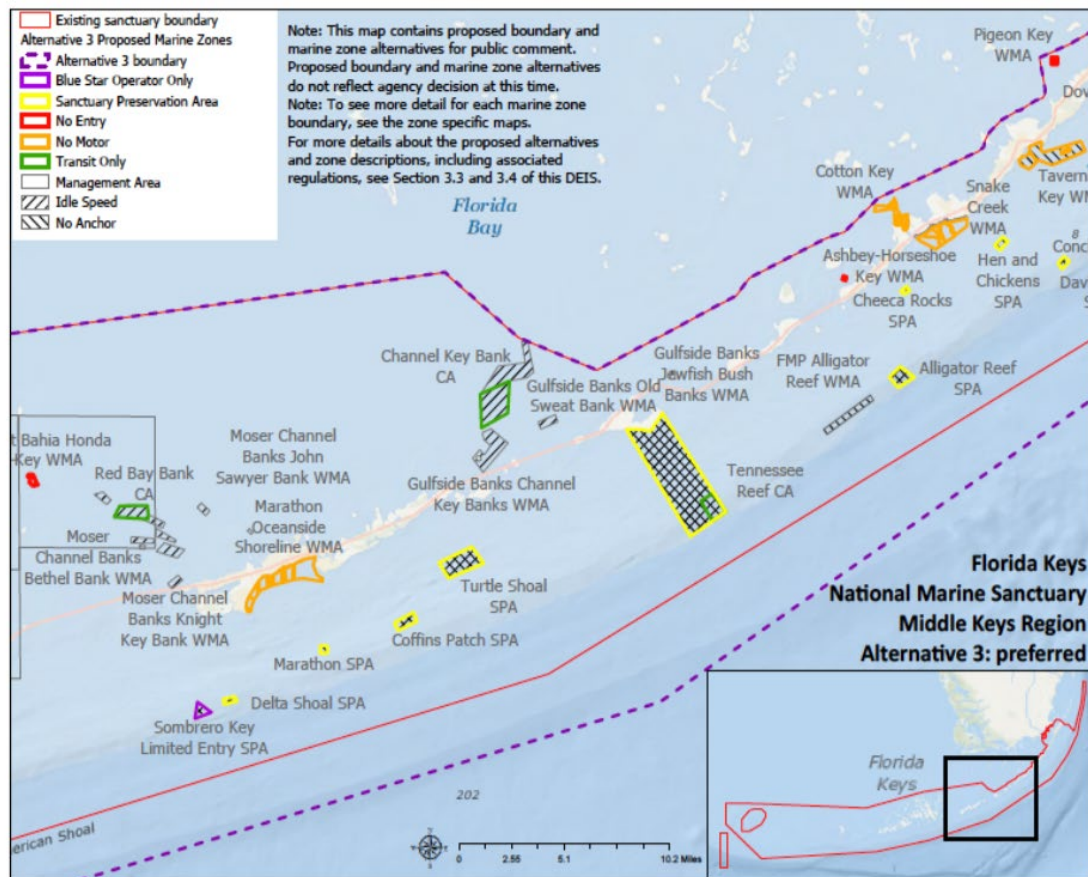
e. Delta Shoal Sanctuary Preservation Area: an area critical as a sanctuary to restore nearby degraded coral reef ecosystems.

f. Sombrero Key Sanctuary Preservation Area: this area, located several miles southwest of Marathon, has a high abundance of Endangered Species Act-listed star corals and is an important site for diverse coral assemblages such as brain and other boulder coral species and barrel sponges.

65. Figure 2 depicts the boundaries of the Sanctuary and the proposed sanctuary preservation areas.

Figure 2: Proposed Sanctuary Preservation Areas

Source: NOAA, *Draft Environmental Impact Statement for Florida Keys National Marine Sanctuary: A Restoration Blueprint* (2019)



66. In sum, the waters surrounding Marathon serve as an important habitat, in some cases critical habitat, for many threatened and endangered species.

67. Water quality degradation, particularly an excess of nutrients, is an important cause of declines in the abundance, distribution, and species composition of coral reefs and seagrass beds in the Florida Keys.

68. As NOAA notes in the Restoration Blueprint for the Sanctuary: “Ensuring good water quality in the sanctuary is essential to maintaining the richness and diversity of its varied

environments. Coral reefs depend on clear, clean, low-nutrient waters to thrive. Seagrass meadows also need a relatively low-nutrient environment and clear water.”

69. As discussed above, the waters around Marathon are impaired by excess nutrients, exceed the water quality Strategic Targets set by the EPA for the Sanctuary, and have higher nitrogen concentrations compared to other areas of the Florida Keys.

70. From its shallow sewage wells, Marathon discharges significant quantities of nutrients—nitrogen and phosphorus—that migrate to surface waters just offshore. These nutrient loadings are harming endangered animals found near Marathon and the habitats they rely on: coral reefs, seagrass beds, and hardbottom habitats.

71. An excess of nutrients is harmful to coral reefs near Marathon. Nutrient-fed algal blooms are a key stressor associated with reduced coral cover in the Florida Keys: algal blooms shade photosynthesizing corals and lower oxygen levels.

72. Nutrient loading in Florida waters is also strongly correlated with seagrass die-offs. Nutrient enrichment leads to phytoplankton growth in the water, which reduces light availability to seagrasses. It also encourages excessive growth of periphyton—algae, bacteria, and other small organisms—on the seagrasses themselves; further reducing light to the seagrasses.

73. Marathon’s sewage pollution also harms listed species and the habitats they rely on in other ways. Marathon’s sewage contains a wide variety of other pollutants besides nutrients that can harm listed species and their habitats: PPCPs, household chemicals, pesticides and herbicides, PFAS, and others.

74. Given this mix of pollutants, it is unsurprising that research conducted in Florida has found that exposure to sewage pollution is associated with increased stress in corals, fish, and reptiles, including some listed species found near Marathon. This increase in stress leads to

immune suppression and a general decrease in health—affected animals are more prone to disease, injury, and death.

75. Similarly, the Sanctuary Restoration Blueprint notes that toxins, including herbicides and pesticides, negatively affect water quality in the immediate waters around the Keys. Several pesticides and herbicides (for example, DEET) are among the chemicals commonly found in sewage.

76. Sewage discharges are understood in the scientific literature to pose a threat to corals because they encourage harmful algal blooms that stress the coral reefs.

77. Sewage discharges can alter the microbiome of corals—the microbial community that lives in and on corals and which is vital to coral health. Research conducted in South Florida has found that sewage pollution can have a direct effect on the microbiome of coral communities located several kilometers away. Even at such a distance, sewage can affect the health and resilience of reef ecosystems.

78. A number of chemicals found in sewage are persistent and bioaccumulative—meaning that when they enter the marine environment, they do not degrade. Instead, they enter the ecosystem, are consumed by smaller lifeforms (i.e., wildlife on lower trophic levels), and accumulate in the tissues of fish, marine mammals, seabirds, and other wildlife (i.e., wildlife on high trophic levels).

79. One such class of substances are PFAS. As discussed above, PFAS are found in sewage plant discharges nationwide, and FOLKS believes and alleges that PFAS are present in Marathon’s sewage discharges. Accumulation of PFAS in the marine environment is leading to high concentrations of these substances in the tissues of multiple threatened and endangered species.

80. Many of the PPCPs and other chemicals discussed above are also bioaccumulative and/or affect the behavior and physiology of animals at relatively low concentrations. This is particularly a concern with pharmaceuticals. Fish and other animals exposed to pharmaceuticals in ambient water or in the prey they eat have been found to suffer adverse physical and behavioral effects. The adverse effects of various of these chemicals include: reduced reproductive success; delayed or incomplete development of sexual organs; growths or tumors; immune system dysfunction; and behavioral changes that reduce an individual's success in avoiding predators and therefore increase mortality.

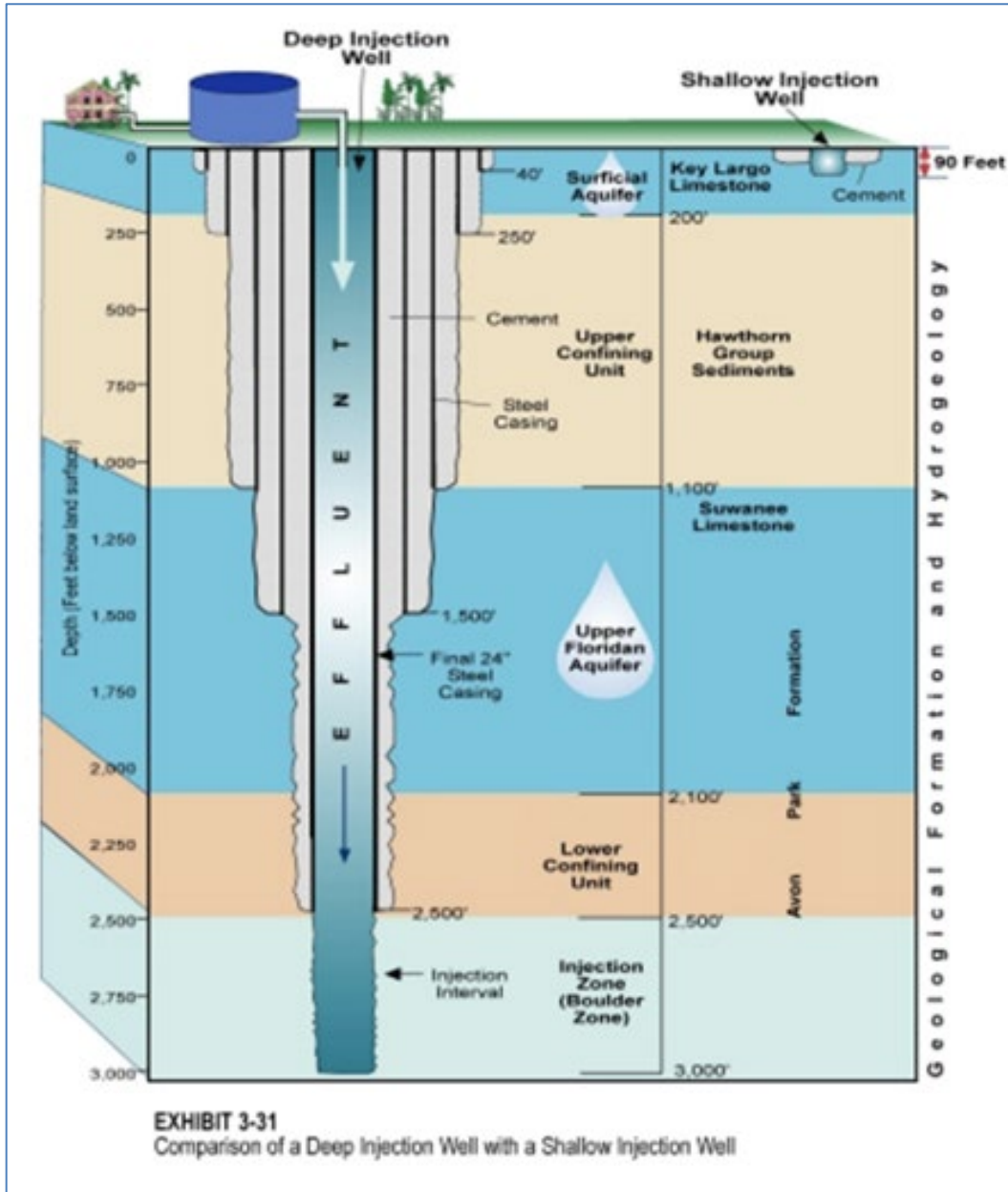
81. In sum, Marathon's discharges into the waters of the Florida Keys injure threatened and endangered species by causing declines in the quantity and health of coral reefs and seagrass beds and their ability to provide forage, shelter, and other critical habitat functions. Marathon also exposes threatened and endangered organisms to pharmaceuticals and other chemicals that bioaccumulate to levels that cause various adverse effects on behavior and physiology. Marathon's sewage pollution directly harms individual threatened or endangered fish, turtles, corals, and other animals. It also harms habitat that is critical for their reproduction and survival.

F. The Court should require Marathon to use deep sewage wells for any subsurface disposal of pollution.

82. For decades, Marathon has put off a change that scientific research, government policy and state law all require: a move from shallow to deep sewage wells for all subsurface disposal of sewage.

83. Figure 3 compares deep and shallow sewage wells and illustrates how shallow sewage wells do not reach below the natural confining geological layers that prevent upward migration of sewage, which is non-saline and therefore buoyant in the salty groundwater beneath the Keys.

Figure 3: Comparison of Deep and Shallow Sewage Well



84. As shown in Figure 3, deep sewage wells are cement and steel encased to depths of 2,000 feet or more and release pollutants as far as 3,000 feet below ground. Shallow sewage wells are only cased to 60 feet and then are open hole to 90-120 feet. Shallow sewage wells release pollution into a surficial aquifer, where it flows readily and quickly through the aquifer into the adjacent waters of the Florida Keys. Unlike shallow sewage wells, deep sewage wells discharge

far below the seabed, beneath geological formations underlying the Florida Keys that serve as natural safeguards to prevent upward leakage.

85. For this reason, FDEP requires monitoring of nutrients in sewage discharged through shallow sewage wells but not for sewage discharged through deep wells. As noted above, the 2008 FKRAD states that deep sewage wells result in no addition of nutrients to local waters.

86. By using deep sewage wells to lock pollution deep below the Florida Keys, Marathon would abate both its discharges of pollutants into nearshore waters and also the harm it is causing to fish, coral reefs, seagrass beds, and endangered species found in those waters.

87. The need for Marathon to use deep sewage wells has been recognized for decades. In 2000, the Monroe County Sanitary Master Wastewater Plan (the “Master Plan”) explained the environmental advantages of deep sewage wells over shallow and laid out a plan for Marathon to develop and operate a regional wastewater system that would use deep sewage wells. Specifically, the Master Plan directed that Marathon’s sewage infrastructure should be consolidated into a regional sewage system designed to handle 1.0 MGD and expanding up to 2.0 MGD of sewage over time. Marathon did not carry out that plan.

88. Ten years later, sewerage in the Keys was still largely incomplete. In 2010, the Florida Legislature enacted the “Monroe County Rule” (Florida Statute §403.086(10), later renumbered 403.086(11)). That law states that “that the only practical and cost-effective way to fundamentally improve wastewater management in the Florida Keys is for the local governments in Monroe County . . . to timely complete the wastewater or sewage treatment and disposal facilities initiated under the work program of . . . the Monroe County Sanitary Master Wastewater Plan, dated June 2000.” *Id.* The legislature ordered Monroe County and each municipality within the county (including Marathon) to comply with the Master Plan by 2015, to build the regional

systems called for (including the one in Marathon), and to install deep wells for all systems with a design capacity of 1.0 MGD or more.

89. Thus, pursuant to § 403.086(11) and the Master Plan, all of the major population centers in the Keys, including Marathon, were required to consolidate sewage treatment in larger systems served by deep sewage wells.

90. Key Largo, Islamorada, Cudjoe Key, and Key West have all converted to deep sewage wells. Marathon is the outlier.

91. Indeed, Marathon is moving in the opposite direction. Instead of ramping down the use of shallow sewage wells and building a deep well, Marathon is currently planning to accommodate growth by almost doubling the volume of sewage it will discharge through the shallow sewage wells serving the Area 3 WWTP.

92. Scientific research, county policy, and state law all indicate that Marathon should have abandoned shallow sewage wells and adopted deep well disposal years ago to protect public health and the environment. In light of Marathon's ongoing violations of federal law it should be compelled, finally, to make the transition.

V. CAUSES OF ACTION

A. First Cause of Action: Unlawful Discharge of Pollutants in Violation of Sections 301 and 402 of the Clean Water Act.

93. FOLKS incorporates and re-alleges paragraphs 1-58 and 82-92 as if fully set forth herein.

94. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits "the discharge of any pollutant by any person" to waters of the United States, except, *inter alia*, as authorized by a valid National Pollutant Discharge Elimination System permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

95. Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6), defines “pollutant” to include sewage, sewage sludge, biological material, and industrial, municipal, and agricultural waste.

96. Section 502(12) of the Clean Water Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

97. A shallow sewage well is a “point source” of pollution. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines “point source” broadly to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, *well* [or] discrete fissure.” (emphasis added)

98. The surface waters of the Florida Keys are “navigable waters” and “waters of the United States” within the meaning of the Clean Water Act and its implementing regulations. *See* 33 U.S.C. § 1362(7) (“The term ‘navigable waters’ means the waters of the United States, including the territorial seas.”); 40 C.F.R. §§ 120.2(1) (for purposes of the Clean Water Act, the term “waters of the United States” includes “[t]he territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide;”).

99. Marathon discharges sewage, which is itself a pollutant under the Clean Water Act, via shallow wells. That sewage contains other pollutants, including nutrients (such as nitrogen and phosphorus) and PPCPs. The pollutants migrate from the shallow sewage wells to the surface waters of the Florida Keys in a matter of days or less. Upon reaching surface waters, the pollution is still characteristically and recognizably sewage pollution, containing the nutrients and chemicals

commonly found in sewage that originates from Marathon's shallow wells, with little reduction in the total amount of pollution.

100. Marathon's disposal of pollutants through shallow wells functions like a direct discharge of pollutants to the Atlantic Ocean, Florida Bay, and the Gulf of Mexico. Marathon's wells effectively convey pollutants from Marathon's WWTPs to surface waters, functioning in a manner that is roughly similar to pipes or other direct conveyances.

101. Marathon's point source discharges through shallow sewage wells located close to the shoreline are the "functional equivalent of a direct discharge" to nearby surface waters, as that concept was articulated recently by the Supreme Court in *County of Maui v. Hawai'i Wildlife Fund*, 140 S. Ct. 1462 (2020).

102. Marathon has discharged and continues to discharge pollutants from point sources to waters of the United States without NPDES permit authorization.

103. Each and every day on which Marathon discharges sewage from a shallow sewage well without authorization under a NPDES permit is a separate and distinct violation of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342. These violations are ongoing and continuous at all of Marathon's shallow sewage wells.

104. Section 505(a) of the Clean Water Act provides for citizen enforcement actions against any "person," for violations of (1) any effluent standard or limitation or (2) an order issued by the Administrator or a State with respect to such a standard or limitation. *See* 33 U.S.C. §§ 1365(a), 1365(f), 1362(5).

105. Section 505(a) also authorizes an action for injunctive relief.

106. An action for declaratory judgment is authorized by 28 U.S.C. § 2201.

107. Further, each separate violation of the Clean Water Act subjects Marathon to civil penalties of up to \$56,460 per day per violation, pursuant to Clean Water Act Sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d), 1365(a). *See also* 40 C.F.R. § 19.4 (updating statutory penalty values to account for inflation).

108. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, the threatened and endangered species found in those waters, FOLKS, and its members and supporters.

109. Wherefore, FOLKS prays for relief as hereinafter set forth.

B. Second Cause of Action: Causing or Contributing to Non-Attainment of Water Quality Standards, in Violation of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

110. FOLKS incorporates and re-alleges paragraphs 1-58, 69-80, 82-92, 94, and 104-107 above as if fully set forth herein.

111. The state of Florida has identified the waters surrounding Marathon as “Class III” waters. Class III waters must be kept in a condition suitable to protect fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife.

112. Florida’s Water Quality Standards for Class III waters include numeric nitrogen and phosphorus criteria and a narrative nutrient criterion, which forbids “nutrient concentrations of a water body [to] be altered so as to cause an imbalance of natural populations of flora or fauna.” Rule 62-302.530(48)(b), F.A.C.

113. As set forth in Table 1, above, the waters surrounding Marathon have been designated by EPA and FDEP as impaired by nutrients in excess of the above criteria; as a result these waters are not attaining designated uses.

114. Marathon's unpermitted discharges add nutrients to nearby surface waters, contributing to the ongoing failure to attain Florida's water quality standards.

115. Florida's Water Quality Standards also prohibit "[s]ubstances in concentrations which injure, are chronically toxic to, or produce adverse physiological or behavioral response in humans, plants, or animals." Rule 62-302.530(62), F.A.C.

116. Marathon's discharges of sewage pollution not only convey excess nutrients to nearby surface waters, but also PPCPs commonly found in sewage, including pharmaceuticals, illegal drugs, and personal care products, as well as PFAS, pesticides and herbicides, and other persistent and harmful substances.

117. FOLKs believes and thereupon alleges that the sewage pollution discharged by Marathon contains concentrations of PPCPs, PFAS, pesticides and herbicides, and other persistent and harmful substances that injure, are chronically toxic, cause disease, alter hormone levels, disrupt endocrine levels, depress immune systems, and/or lead to adverse reproductive and behavioral effects in aquatic organisms.

118. Marathon's sewage pollution compromises the designated use of the waters of the Central Keys for the propagation and maintenance of a healthy, well-balanced population of fish and wildlife.

119. Marathon's sewage pollution compromises the designated use of the waters of the Central Keys for fish consumption.

120. Marathon's sewage pollution compromises the designated use of the waters of the Central Keys for recreation: HABs that feed off nutrient pollution and the pollutants themselves substantially interfere with the use of Marathon's beaches for water contact sports and interfere with fishing by fouling lines and traps.

121. Under Section 301 of the Clean Water Act, no discharge of a pollutant to waters of the United States is permitted except in accordance with a NPDES permit. And no discharge that causes or contributes to violations of water quality standards can be in accordance with a NPDES permit because the effluent limits and standards in a NPDES permit must assure that the permitted discharge does not cause or contribute to violations of a state's water quality standards. *See* 33 U.S.C. § 1312(a); 40 C.F.R. § 122.44(d). Accordingly, until Marathon ends the use of shallow sewage wells or otherwise terminates all discharges that cause or contribute to violations of water quality standards, Marathon's discharges will continue to violate Section 301 of the Clean Water Act.

122. Each and every day on which Marathon discharges pollutants that cause or contribute to violations of Florida water quality standards is a separate and distinct violation of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342. These violations are ongoing and continuous.

123. As set forth above, this Court is empowered to grant declaratory and injunctive relief, and to impose civil penalties, to remedy Marathon's ongoing violations of the Clean Water Act.

124. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, the threatened and endangered species found in those waters, FOLKS, and its members and supporters

125. Wherefore, FOLKS prays for relief as hereinafter set forth.

C. Third Cause of Action: Marathon is Taking Threatened and Endangered Animals in Violation of Section 9 of the Endangered Species Act.

126. FOLKS incorporates and re-alleges paragraphs 1-92 as if fully set forth herein.

127. Section 9(a)(1)(B) of the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(B), prohibits any person from “taking” or causing the take of any member of a threatened or endangered species except as authorized by an incidental take permit.

128. Section 3 of the Endangered Species Act, 16 U.S.C. § 1532, defines “take” to mean to “harass, harm, pursue, shoot, wound, kill, trap, capture, or to attempt to engage in any such conduct.” Courts have also recognized that the likely threat of future harm constitutes a “take” under the Endangered Species Act. *See, e.g., Loggerhead Turtle v. Cnty. Council of Volusia Cnty.*, 92 F. Supp. 2d 1296, 1302 (M.D. Fla. 2000) (“The future threat of even a single taking is sufficient to invoke the authority of the Act.”).

129. The Endangered Species Act’s legislative history supports the broadest possible reading of the prohibition against take, which includes direct as well as indirect harm and need not be purposeful. Thus, the Act’s implementing regulations at 50 C.F.R. § 17.3 define “harass” as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.”

130. The prohibition on take includes a prohibition on significant modification or damage to a species’ habitat. For example, the term “harm” in the definition of “take” is defined to include “significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.” 50 C.F.R. § 222.102.

131. The primary mechanism for avoiding liability under Section 9 of the Endangered Species Act is to apply for an “incidental take permit.” Section 10(a)(1)(B) of the Act, 16 U.S.C. § 1539(a)(1)(B), authorizes the Secretaries of the Interior and Commerce, who administer the

Endangered Species Act, to issue a permit that allows and controls activities that harm threatened and endangered species “if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.” To obtain an incidental take permit, the applicant must consult with the federal agencies that administer the Act (the National Marine Fisheries Service and the Fish and Wildlife Service) and provide them with a conservation plan that identifies the impacts of taking listed species, the alternatives available, steps the applicant will take to avoid take, the funding for those steps, and any other measures required by the federal agencies. 16 U.S.C. § 1539(a)(2)(A). Based on review of the plan, the federal agencies may issue a permit that regulates the applicant’s activities to minimize impacts on listed species. *Id* § 1539(a)(2)(B).

132. Marathon’s discharges of sewage injure and thus “take” threatened and endangered species, in violation of Section 9 of the Endangered Species Act, in at least three ways:

a. Marathon discharges nutrients that harm threatened and endangered species by significantly modifying, degrading, and/or destroying their habitats, including coral reef colonies and seagrass beds, leading to significant impairment of essential behavioral patterns such as feeding, foraging and sheltering. The threatened and endangered species harmed by the discharge of nutrients that adversely modify habitat include: elkhorn coral, staghorn coral, boulder star coral, mountainous star coral, rough cactus coral, pillar coral, and lobed star coral, American crocodile, green sea turtle, loggerhead sea turtle, hawksbill sea turtle, leatherback sea turtle, Kemp’s ridley sea turtle, roseate tern, wood stork, bald eagle, smalltooth sawfish, and West Indian manatee.

b. Marathon’s sewage pollution increases stress on threatened and endangered aquatic organisms, causing a general reduction in the health of the endangered species, a reduced ability to reproduce and thrive, and reduced overall ecosystem health (particularly

given adverse effects on lower trophic level organisms, such as corals and seagrass, on which the entire ecosystem depends). The threatened and endangered species harmed by sewage-induced stress include: elkhorn coral, staghorn coral, boulder star coral, mountainous star coral, rough cactus coral, pillar coral, and lobed star coral, American crocodile, green sea turtle, loggerhead sea turtle, hawksbill sea turtle, leatherback sea turtle, Kemp's ridley sea turtle, smalltooth sawfish, and West Indian manatee.

c. Marathon discharges pharmaceuticals and other chemicals known to interfere with the behavior and physiology of threatened and endangered species (and/or in the wildlife they depend upon) at low ambient concentrations and/or through bioaccumulation to levels that exceed safe thresholds. Marathon's discharges of chemicals have caused, and it is reasonably foreseeable that they will continue to cause, interference with normal and essential behavioral patterns such as breeding, spawning, rearing, migrating, feeding or sheltering. The threatened and endangered species harmed by pharmaceuticals and other chemicals in Marathon's discharges include: elkhorn coral, staghorn coral, boulder star coral, mountainous star coral, rough cactus coral, pillar coral, and lobed star coral, American crocodile, green sea turtle, loggerhead sea turtle, hawksbill sea turtle, leatherback sea turtle, Kemp's ridley sea turtle, smalltooth sawfish, and West Indian manatee.

133. These injuries constitute unpermitted "take" of these species, in violation of the Endangered Species Act.

134. FOLKS is informed and believes, and therefore alleges, that Marathon has not sought or obtained an incidental take permit.

135. The Endangered Species Act authorizes private enforcement of the take prohibition through a broad citizen suit provision. “[A]ny person may commence a civil suit on his own behalf to enjoin any person, including . . . any . . . governmental instrumentality or agency . . . who is alleged to be in violation of any provision of [the Act] . . .” 16 U.S.C. § 1540(g).

136. A plaintiff may seek to enjoin both present activities that constitute an ongoing take and future activities that are reasonably likely to result in take.

137. The Endangered Species Act’s citizen suit provision also provides for the award of costs of litigation, including reasonable attorney and expert witness fees. 16 U.S.C. § 1540(g)(4).

138. Continuing commission of the acts and omissions alleged herein irreparably harms the threatened and endangered species of the State, FOLKs, and its members.

139. Wherefore, FOLKs prays for relief as hereinafter set forth.

VI. RELIEF REQUESTED

140. FOLKs respectfully requests that this Court grant the following relief:

a. Enter a declaratory judgment that Marathon has violated and continues to violate Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), by discharging sewage effluent to waters of the United States without NPDES permit authorization;

b. Enjoin Marathon from discharging sewage effluent through its shallow wells to waters of the United States without a NPDES permit;

c. Enter a declaratory judgment that Marathon has violated and will continue to violate its permit and Section 301(a) of the Clean Water Act by discharging sewage effluent that causes or contributes to violations of water quality standards;

d. Assess civil penalties against Marathon of up to \$56,460 per day for each Clean Water Act violation at each well. 33 U.S.C. § 1319(d), 40 C.F.R. §§ 19.2 and 19.4;

- e. Order Marathon to immediately commence design and promptly construct deep wells for disposal of municipal sewage waste;
- f. Enter a declaratory judgment that Marathon has taken endangered species in violation of the prohibition set forth at Section 9(a)(1)(B) of the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(B);
- g. Enjoin Marathon from continuing to violate Section 9 of the Endangered Species Act;
- h. Award FOLKs its reasonable costs of suit, including attorney, witness, and consultant fees, as provided for under the citizen suit provisions of the Clean Water Act and the Endangered Species Act, 33 U.S.C. § 1365(d) and 16 U.S.C. § 1540(g)(4); and
- i. Any such other relief as the Court deems appropriate.

DATED: January 11, 2022

Respectfully submitted,

MARK MIGDAL & HAYDEN
80 S.W. 8th Street, Suite 1999
Miami, Florida 33130
Telephone: (305) 374-0440

By: s/ Josh Migdal
Josh A. Migdal, Esq.
Florida Bar No. 19136
Jordan Nadel, Esq.
Florida Bar No. 99582
josh@markmigdal.com
jordan@markmigdal.com
eservice@markmigdal.com

Edan Rotenberg
Super Law Group, LLC
110 Wall Street
New York, New York 10005
(212) 242-2355
edan@superlawgroup.com

Pro Hac Vice Motion Forthcoming

Kathryn Schmidt
Van Ness Feldman LLP
1050 Thomas Jefferson St. NW
Washington, DC 20007
(202) 298-1982
kschmidt@vnf.com

Pro Hac Vice Motion Forthcoming

Caron Balkany
Bar No. 236179
Caron Balkany P.A.
P.O. Box 420859
Summerland Key, FL 33042-0859
(305) 849-1073
balkany@aol.com

*Attorneys for Plaintiff FOLKS - Friends of
the Lower Keys*