



Testimony of Amber Crooks
Senior Environmental Policy Advisor, Conservancy of Southwest Florida

Before the United States House of Representatives Committee on Natural Resources
Subcommittee on Water, Wildlife, and Fisheries

Hearing Titled: "Legislative Hearing on H.R. 177, H.R. 3717, H.R. 5935, H.R. 6869, H.R. 8546,
H.R. 9017, H.R. 9590 and H.R. 10117"

September 16, 2026

Summary of Main Points:

- Florida's water bodies and unique wetlands are incredibly valuable resources, and these ecosystems deserve all of the protections afforded by Federal laws like the Endangered Species Act.
- In late 2020, the US Environmental Protection Agency and US Fish and Wildlife Service rushed to approve Florida's Clean Water Act Section 404 Assumption application.
- The approval was in part reliant on an extremely inadequate, illegal Biological Opinion (required by the Endangered Species Act for major federal actions such as this).
- The Biological Opinion was found to violate the Endangered Species Act by two courts of law, the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia.
- H.R. 9017 is trying to circumvent the judgment of those two courts and decree that the Biological Opinion is now suddenly adequate and legal despite many shortcomings, trying to clear the way for a Florida Department of Environmental Protection permitting program posing significant risks to Florida ecosystems and endangered species. Members of the committee should oppose this legislation.

Chairwoman Hageman, Ranking Member Hoyle, and Members of the Subcommittee:

Thank you for the opportunity to submit testimony regarding H.R. 9017, the "Restore Florida Water Independence Act of 2026."

I am Amber Crooks, Senior Environmental Policy Advisor for the Conservancy of Southwest Florida, a nonprofit environmental organization based in Naples. The Conservancy was

established in 1964 in its fight to protect Rookery Bay,¹ one of the few remaining undisturbed mangrove estuaries in North America,² from development which threatened our sensitive wetland coastline. Today, our focus has grown and we advocate to preserve the water, wildlife, and landscapes that make southwest Florida unlike anywhere else in the world. We work in five counties, across four congressional districts, with people of all ages, from different professions and backgrounds, and often with different politics, united by their appreciation for and love of southwest Florida's natural treasures.

Why This Issue Matters to the Conservancy of Southwest Florida

Water defines Florida. The state has approximately 1,200 miles of coastline, over 7,500 major lakes, thirty-three first magnitude springs, and about 27,500 linear miles of rivers and streams.³ With approximately eleven million acres of wetlands, Florida has more wetlands than any of the other lower forty-eight states⁴ – despite the fact that since Florida became a state, total wetland area has decreased by about 44 percent.⁵

Florida's waters are critical to several multi-billion dollar industries, including agriculture and tourism.⁶ These waters and wetlands underpin the unique ecosystems home to iconic species like the Florida panther⁷ and serve as the lifeblood for critical drinking water aquifers.⁸

Through my nearly 20-year tenure with the Conservancy and through the lens of my formal education, I have seen how our region, and indeed the state of Florida, has been changing due to the persistent threats of reckless and rampant development.⁹ If H.R. 9017 were to pass, we are concerned that our mission to preserve our natural heritage and ensure a future quality of life for our community will be increasingly at risk.

If Florida Department of Environmental Protection ("Florida DEP") were to assume the permitting authority again without fixing the inherent problems with the Biological Opinion, it could be disastrous. As a result, the Conservancy's goals of preservation, education, and

¹ Conservancy of Southwest Florida, "History," available at www.conservancy.org/about/history.

² Rookery Bay National Estuarine Reserve, "Visit," available at www.rookerybay.org/visit.

³ Florida Waters: A Water Resources Manual from Florida's Water Management Districts, available at https://www.sfwmd.gov/sites/default/files/documents/florida_waters.pdf

⁴ USFWS, Florida's Wetlands: An Update on Status and Trends 1985–1996.

⁵ "Florida's Wetland Waterfowl Habitat", Florida Fish and Wildlife Conservation Commission, available at <https://myfwc.com/conservation/freshwater/wetland-habitat/>

⁶ Conservancy of Southwest Florida, 2017. Estuaries Report Card: A Guide to Understanding the Health of Southwest Florida's Rivers, Estuaries, and Bays; Greene Economics, 2023. Impacts of Water Quality on the Southwest Florida Economy. Prepared for Conservancy of Southwest Florida, Sanibel-Captiva Conservation Foundation, and Captains for Clean Water.

⁷ Conservancy of Southwest Florida, "Florida Panther Information Central," available at <https://conservancy.org/pantherdashboard/>

⁸ US Geological Survey, Floridan Aquifer System Groundwater Availability Study available at <https://fl.water.usgs.gov/floridan/intro.html>

⁹ Conservancy of Southwest Florida, 2025. Wetland Loss: Collier and Lee Counties, available at <https://conservancy.org/wetlands/>.

advocacy will become incredibly difficult: the ecosystems we protect would likely face increased development while the Conservancy and others who defend these places will have fewer means to ensure proper evaluation of impacts to protected species and the wetlands they call home, and fewer routes for legal advocacy. We oppose this bill because it would hinder endangered species recovery and endanger wetland ecosystems that have been recognized internationally for their ecological value, such as the RAMSAR-recognized Corkscrew Swamp,¹⁰ and dark skies of the Big Cypress National Preserve.¹¹

The Conservancy of Southwest Florida has long established that our advocacy positions are science-based, balanced, and solutions-oriented. We are not “anti-development,” we steward smart growth, advising on transportation planning and land-use decisions. However, we remain committed to our now eight-year effort to ensure that destruction of Florida’s wildlife and wetlands are not hastened by the state’s improper assumption of the Clean Water Act Section 404 dredge and fill permitting program (“Section 404 program”), including the flawed and illegal Biological Opinion that is the subject of H.R. 9017. Florida’s endangered species deserve the same protections as those in any other state; our unique and exceptionally valuable wildlife requires the maximum protection available, not a reduction, which is the apparent aim of this legislation.

EPA and USFWS Illegally Approved Permitting Authority for Florida DEP, and Congress Should Not Bless Those ESA Violations

The Environmental Protection Agency’s (“EPA”) Section 404 permitting is a core part of the Clean Water Act (“CWA”). These permitting decisions can have profound impacts on ecosystems and communities that rely on them. The ecological and economic stakes of moving this permitting program from federal to state control are high. This is no minor proposition.

Situations like this are why Congress, under the Endangered Species Act (“ESA”), required federal agencies to consult with wildlife agencies—US Fish and Wildlife Service (“USFWS”) and the National Marine Fisheries Service (“NMFS”) — for any action that may affect an ESA-listed species.¹² This initial analysis is important, because if the program is assumed by a state entity, the typical Section 7 consultation under the ESA is no longer an option for applicants, despite applicants still needing individual take coverage. Species will no longer receive the full suite of ESA protections once the state is in charge of these permits, as Florida wanted to use a regulatory scheme, as explained in this Biological Opinion, that gives complete immunity to both the state and permittees while never requiring USFWS to weigh in.

And yet, in late 2020, the EPA and USFWS rushed to approve Florida’s CWA 404 Assumption application, including issuing the offending Biological Opinion which lacked necessary and

¹⁰ National Audubon Society, “Corkscrew Swamp Sanctuary,” available at <https://www.audubon.org/corkscrew>.

¹¹ Dark Sky International, “Big Cypress National Preserve,” available at <https://darksky.org/places/big-cypress-dark-sky-park/>,

¹² 16 U.S.C. § 1536

legally-required components (such as an analysis of how future permits would impact species or their critical habitats, or the effect of cumulative impacts).

The Opinion¹³ was supposed to analyze 160 protected species from the Keys to the Panhandle, including the Key deer, Florida panther, West Indian manatee, Florida scrub-jay, Gulf sturgeon, and Perdido Key beach mouse at our Alabama border.

But it failed to do that. And yet, US FWS concluded that no protected species would be jeopardized by US EPA's approval of Florida's program which is the purpose of the consultation.

In addition to not executing species-specific analysis as required, the Opinion also unlawfully extended broad liability coverage to future permittees and Florida into perpetuity with no guardrails or backstops, such as identifying the extent of take (such as injury or death) that would trigger reinitiation, or terms and conditions that ensure proper avoidance and mitigation.

EPA approved the program in spite of these apparent issues. For at least these reasons, EPA should not have rubber-stamped the USFWS analysis when accepting the application from Florida DEP.

After the state's program was approved in December 2020, the Conservancy of Southwest Florida tracked the implementation of the state-assumed 404 program closely. We documented cases in which the state of Florida failed our listed species by omission, error, or negligence as the state considered permits for developments in southwest Florida involving eastern indigo snakes, crested caracara, and Florida bonneted bats – all federally-protected species. The implications of the legally insufficient Biological Opinion were not merely hypothetical, but were unfolding before us.

In February 2024 and March 2026, the Biological Opinion was found to violate the ESA by two courts of law, the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia.

And yet: this is the same Biological Opinion that this proposed legislation would decree is now suddenly legal.

Supporters of this legislation are hoping to legislate a convenient exemption from the ESA, likely hoping it would cure one defect and resurrect Florida's program. However, the courts did not analyze other potential issues since these ESA violations alone were sufficient to stop the illegal assumption process. Although the ESA analyses contained a variety of illegal shortcuts and omissions, the courts actually did not reach analyses of other potential violations such as CWA violations. Even so, Congress should not be in the business of irresponsibly legislating away illegal violations.

¹³ U.S. Fish and Wildlife Service, 2020. Programmatic Biological Opinion for U.S. Environmental Protection Agency's Approval of FDEP's Assumption of the Administration of the Dredge and Fill Permitting Program under Section 404 of the Clean Water Act. November 17, 2020.

In sum, if the Biological Opinion failed to make the required assessments and set take limits required by the ESA, the USFWS should not have acted beyond its authority in conferring the blanket immunity to future permittees, and EPA should not have overlooked these deficiencies when approving the program. H.R. 9017 should not try to legitimize these blunders, particularly when other pathways are available and under way.

There is No Need for H.R. 9017

After two judgments against the Biological Opinion, the State of Florida filed a petition for rehearing en banc on August 7, 2026.¹⁴ H.R. 9017 is not needed, as the judicial process is still underway.

Further, if Florida desires to assume the CWA 404 program without waiting for the judicial process to play out, Florida DEP can utilize the process Congress laid out in the Clean Water Act. They can reapply for the program with the EPA, USFWS can fix the flaws in the Biological Opinion to bring it consistent with ESA requirements, and EPA can analyze Florida's application without violating any laws.

H.R. 9017 attempts to take a shortcut: the proposed legislation aims to absolve an illegal Biological Opinion, in disregard to the established checks-and-balances of our American government and outside of the typical administrative and judicial pathways that are still available to the state of Florida.

Critical Resources Are at Stake if H.R. 9017 is Approved

The Florida panther is a species of particular interest to me and to the Conservancy of Southwest Florida. My Master's Degree Capstone research was about the endangered Florida panther. The entirety of my professional career I have been working to ensure that this species – and the wild and rural habitats that are needed to support a wide-ranging large mammal – are kept intact. If the areas necessary to support the panther are retained, it provides the foundation for our local quality of life, drinking water aquifers, floodwater storage, agricultural needs, and recreational and aesthetic values.

There are only 120-230 adult and subadult Florida panthers left on planet Earth.¹⁵ In order to be considered recovered, about three times the current population (with adequate habitat and genetic exchange through a secured Florida Wildlife Corridor) is necessary.¹⁶ The area where the Conservancy of Southwest Florida operates, the Greater Western Everglades, is effectively

¹⁴ Petition for Rehearing En Banc of the State of Florida and Florida Department of Environmental Protection, Center for Biological Diversity v. Zeldin, Nos. 24-5101, 24-5156, 24-5159. Filed August 7, 2026 in the United States Court of Appeals for the District of Columbia Circuit.

¹⁵ U.S. Fish and Wildlife Service, 2017. Florida Panther Population Estimate Updated, available at <https://www.fws.gov/press-release/2017-02/florida-panther-population-estimate-updated>.

¹⁶ U.S. Fish and Wildlife Service, 2006. Florida Panther Recovery Plan, 3rd revision.

the panther's last remaining core habitat. The best available science has established that continued habitat loss would risk future extinction.¹⁷

The aim of H.R. 9017 is apparently to return the Section 404 permitting program to the state of Florida and to continue to utilize a Biological Opinion that is not conforming with the Endangered Species Act. If so, large-scale developments, roads, and mines that propose to impact thousands of acres of essential habitat for the endangered Florida panther would be reviewed without the full benefit of the Endangered Species Act, and within a state regulatory framework that has incentivized reckless development by providing incidental take immunity to permittees and to Florida.

Similar stories will be repeated for species throughout the state of Florida as the University of Florida estimates that we will add over 3.5 million acres of development by the year 2070, if smarter growth principles are not applied.¹⁸ All of the tools in the toolbox are necessary to balance the effect of the 33.7 million new Florida residents projected by 2070.

The risk to Florida resources is so great that on April 25th, 2025, the Everglades Coalition -a group of 60 local, state, and national conservation advocates from across the political spectrum - passed a resolution opposing legislation which would grant this permitting program to Florida DEP.

The resolution stated that "in the face of increased growth and development, the protection and restoration of the Greater Everglades -an ecosystem largely comprised of wetland habitats- is better accomplished by maintaining the existing process pending the completion of judicial review of Florida's December 2020 program and agency review of any subsequent proposal to EPA for 404 assumption by Florida, including notice and comment by stakeholders. The Everglades Coalition, with its nearly 60 organizations dedicated to protecting and restoring America's Everglades with a 12.2-million-constituent network for followers, hereby opposed federal legislation with that would restore or otherwise give full force and effect to EPA's December 2020 approval of Florida's 404 program via Congressional action."¹⁹

Everglades protection goes beyond the 'pipes and pumps' of restoration projects: to preserve the integrity of the Greater Everglades ecosystem, natural wetland infrastructure and healthy wildlife populations must also be a significant component. Weakening protections for Florida wildlife would undermine the significant investments made by Congress in restoring the Everglades.

¹⁷ U.S. Fish and Wildlife Service, 2006. Florida Panther Recovery Plan, 3rd revision; Kautz et al, 2006. How Much is Enough? Landscape-scale Conservation for the Florida Panther. Biological Conservation, 130 (2006), P. 118-133; Frakes et al, 2015. Landscape Analysis of Adult Florida Panther Habitat. PLoS ONE 10(7): e0133044. doi:10.1371/journal.pone.0133044.

¹⁸ Geoplan Center at the University of Florida, 2016. Technical Report Florida 2070: Mapping Florida's Future - Alternative Patterns of Development in 2070. A Research Project Proposed for the Florida Department of Agriculture and Consumer Services and 1000 Friends of Florida.

¹⁹ Everglades Coalition, Position Papers, available at https://www.evergladescoalition.org/_files/ugd/599879_d09f431243294f50857709504f6e1403.pdf.

Conclusion

From Florida's coastlines to our rivers and lakes, from the first-magnitude springs to the slow-moving River of Grass of America's Everglades, our waters support a global biodiversity hotspot. The duality of Florida's waters and wildlife define our most iconic landscapes and public trust lands. H.R. 9017 is an unnecessary bill that strives to circumvent the judicial process to advance an illegal Biological Opinion that is inconsistent with the Endangered Species Act. For these reasons, I respectfully urge Congress to reject HR 9017.

Thank you for your consideration of our comments and appreciate any questions you may have.