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**VIA EMAIL AND CERTIFIED MAIL**

August 27, 2020

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**RE: Notice of Intent to Sue Under the Endangered Species Act for the Take of Loggerhead and Green Sea Turtles**

Dear Messrs. and Mmes.:

This letter serves as notice on behalf of Sea Turtle Oversight Protection (“STOP”) and the Center for Biological Diversity (the “Center”) of their intent to sue Rahn Bahia Mar LLC (“Bahia Mar”), Hilton Hotels Corporation (“Hilton”), and Suntex Marinas (“Suntex”) (collectively, the “Bahia Mar Parties”) over violations of Section 9 of the Endangered Species Act (“ESA”), 16 U.S.C. §1538, for the unpermitted “take” of ESA-listed loggerhead and green sea turtles. This letter is provided in accordance with the 60-day notice requirement of the ESA’s citizen suit provision.<sup>1</sup>

**I. Introduction**

Despite repeated requests, warnings, and citations, the Bahia Mar Parties have refused to remove or remedy illegal lighting at the Bahia Mar Resort and Yachting Center on Fort Lauderdale Beach (the “Resort”), which fails to comply with regulations in the Fort Lauderdale City Code designed to protect sea turtles nesting on the beach, and violates the ESA by causing the disorientation of sea turtle hatchlings.

The Resort is located across Seabreeze Boulevard from South Beach Park, prime nesting grounds for loggerhead and green sea turtles. The Resort’s hotel, restaurants, and marina display indoor and outdoor lights visible from South Beach, in violation of the requirements of the Fort Lauderdale City Code.<sup>2</sup> As detailed below, these lights have been documented as the cause for the disorientation of 3,853 loggerhead and green sea turtle hatchlings between 2016 and the date of this letter. Turtle hatchlings that are disoriented move in the wrong direction when they leave their nests, toward artificial lights and away from the ocean, which may result in them being killed by predators or struck by vehicles, or cause them to die of exhaustion or dehydration. Even hatchlings that eventually reach the ocean face decreased odds of survival, because they may be severely debilitated by the time they find the water. Without intervention by STOP volunteers, the Resort’s lights would cause the death of hundreds of sea turtle hatchlings each year.

The need to correct this problem is urgent. As of the date of this letter, the Resort’s lights have already disoriented 698 turtle hatchlings this season, and STOP volunteers are watching seven more nests near the Resort that may hatch any day.

STOP and the Center file this notice as a last resort, after years of attempting other means to convince the Bahia Mar Parties to address this issue. Since 2014, STOP has filed 30 complaints with the city of Fort Lauderdale, reporting that the Resort’s lighting has caused the disorientation of turtle hatchlings.<sup>3</sup> The city issued citations to the Resort for these violations in 2016 and 2019.<sup>4</sup>

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<sup>1</sup> See 16 U.S.C. § 1540(g)(2)(C).

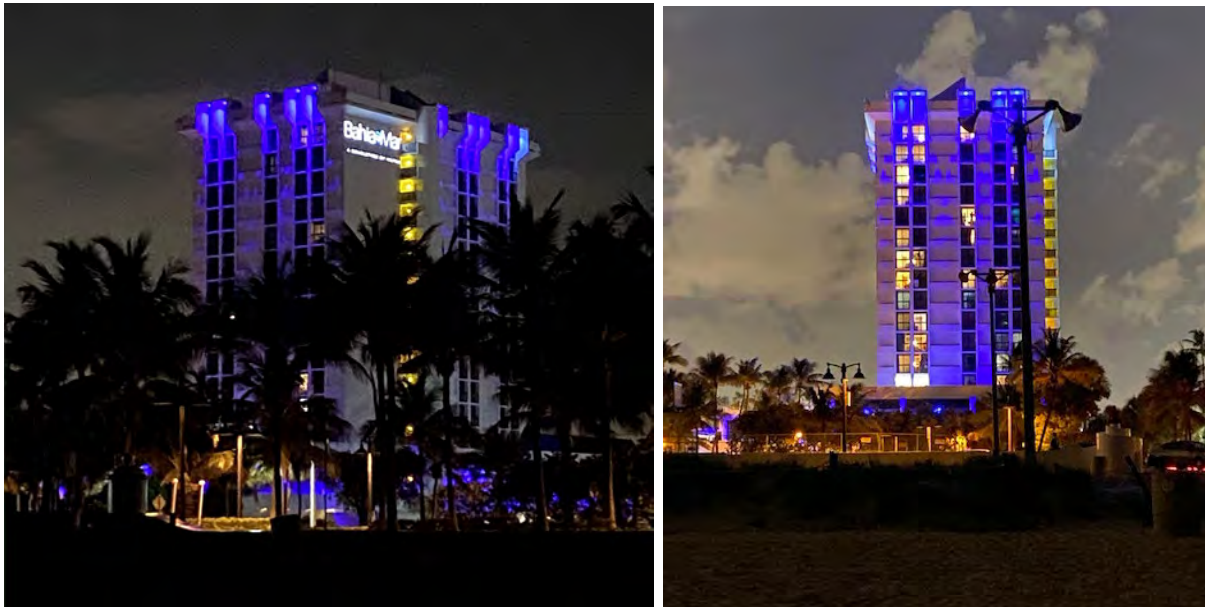
<sup>2</sup> See FORT LAUDERDALE, FL., CODE § 6-51 (2003).

<sup>3</sup> The complaints STOP has filed against the Resort since 2014 are attached to this letter as Appendix A.

<sup>4</sup> See Appendix B (records of citations by City of Fort Lauderdale).

STOP also directly raised concerns over these violations with representatives of the Resort during a May 10, 2016 meeting of the Fort Lauderdale City Commission. Most recently, STOP and the Center sent a certified letter to the Bahia Mar Parties on June 10, 2020, which described these violations in detail, offered to assist the Resort free of charge in developing a plan to remedy the lighting issues, and requested a response by July 1, 2020. To date, none of the Bahia Mar Parties have responded to that letter.

Meanwhile, the Resort has continued to use non-compliant lighting during the current nesting season, which began on March 1, and there is no sign the Bahia Mar Parties took any corrective action following the June 10, 2020 letter. As shown by the pictures below, the Resort's lights shone brightly onto the beach even when the Resort was closed for business as a result of the COVID-19 pandemic. When the Resort reopened, the problem got even worse, with additional lights shining onto the beach from guest rooms.



Photos by STOP

*In the picture on the left, lights blaze from the north side of the Resort onto South Beach on May 2, 2020, at a time when the hotel was closed to guests, including lights from the Bahia Mar sign, unshielded yellow lights in the stairwells, and blue lights running up the façade. The photograph on the right shows the Resort lights that caused the disorientation of 44 sea turtle hatchlings on August 23, 2020, including unshaded lights from beach-facing rooms. Both photographs were taken from South Beach.*

The Resort sits on land owned by the City of Fort Lauderdale and held by Bahia Mar through a long-term lease that requires compliance with zoning and environmental laws.<sup>5</sup> The centerpiece of the Resort is a Double Tree by Hilton Hotel, and the Resort is also famous for its marina, operated by Suntex. Each of these parties is responsible for using non-compliant lighting that results in the illegal take of loggerhead and green sea turtles under the ESA.

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<sup>5</sup> See Amended and Restated Lease Agreement between City of Fort Lauderdale and Rahn Bahia Mar, Ltd., Art. 4 and Art. 4.1, § 2 (Feb. 13, 1995).

The use of these non-compliant lights also violates the public commitments that Hilton and Suntex have made to the environment. Hilton acknowledges its “critical responsibility to protect our planet and preserve the beautiful destinations in which [it operates] for generations to come.”<sup>6</sup> In fact, Hilton has been lauded by environmental groups for its “Travel with Purpose” corporate responsibility policy, through which it has committed to improve the health of the world’s oceans.<sup>7</sup> Similarly, Suntex Marina lists respect for the environment as one of its “core values.”<sup>8</sup>

Hilton and Suntex can make progress toward living up to these commitments by making relatively simple and inexpensive changes to Resort lighting, such as installing shields on exterior lights to direct them toward the ground, using lights that are wildlife-certified, amber-colored LEDs, ensuring that interior lights in common areas do not reach the beach, instructing guests to close their drapes at night, and turning off non-essential lights during turtle nesting season. **Experts at STOP once again extend their offer to work with the Resort free of charge, to perform a lighting survey and help develop a plan to bring the Resort into compliance with the requirements of the ESA and the city lighting ordinance.**<sup>9</sup>

STOP and the Center prefer to avoid protracted and expensive litigation over a problem that can be easily addressed through collaboration and the implementation of relatively simple changes. We urge the Bahia Mar Parties to contact us to discuss how they can take immediate action to eliminate the ongoing harm the Resort is doing to Florida’s threatened sea turtle populations.

## II. Parties Giving Notice

STOP is an all-volunteer organization dedicated to saving disoriented sea turtle hatchlings. STOP is supported by more than 4,000 national and international members, and staffed by 150 volunteers, roughly 90 percent of whom reside in Broward County. STOP’s certified volunteers monitor sea turtle nests and rescue disoriented hatchlings throughout Broward County’s beachfront communities. Since 2007, STOP volunteers have rescued more than 257,000 sea turtle hatchlings that have become disoriented due to artificial lighting, including more than 17,000 so far in the 2020 season. STOP also provides educational resources for the public on sea turtle awareness and holds workshops on responsible beachfront lighting. STOP’s full name and contact information are as follows:

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<sup>6</sup> See *Environmental Impact*, HILTON.COM, <https://cr.hilton.com/environment/> (last visited August 25, 2020).

<sup>7</sup> *Hilton: Purposely Travelling Towards Sustainability*, OUR OCEAN 2019 (Oct. 14, 2019), <https://ourocean2019.no/blog/hilton-purposely-travelling-towards-sustainability/>.

<sup>8</sup> *Suntex Marinas: A superior experience on the water*, SUNTEX.COM, <https://www.suntex.com/> (last visited August 25, 2020).

<sup>9</sup> These experts include STOP Executive Director Richard WhiteCloud and STOP Board Member Dr. Kirt Rusenko. Over the past seven years, Mr. WhiteCloud has volunteered his time to help retrofit 40 properties in Broward County with compliant lighting, advised a major hotel chain on its compliance, engaged in approximately 30 consultations with private parties, and conducted numerous workshops on the implementation of turtle-friendly lighting. Dr. Rusenko is a marine turtle conservationist with the Gumbo Limbo Nature Center in Boca Raton, who is also on the Lighting Technical Committee of the International Dark-Sky Association, for which he served as the sea turtle lighting expert for a project to retrofit lighting in county, state, and federal parks in the Florida panhandle.

Sea Turtle Oversight Protection  
3104 NE 9th Street, Suite A  
Fort Lauderdale, Florida 33304-3344  
Tel: 954-404-0025

The Center is a national, non-profit conservation organization supported by more than 1.7 million members and online activists, including thousands of members in Florida. In Florida, the Center has used science, litigation, creative media, and other advocacy to gain protection for hundreds of species, secure hundreds of millions of acres of critical habitat, and protect endangered and threatened species from harm, including for the loggerhead and green sea turtle populations that nest on Florida's beaches. The Center's full name and contact information are as follows:

Center for Biological Diversity  
P.O. Box 2155  
St. Petersburg, FL 33731-2155  
Tel: 727-490-9190

### **III. Background**

#### *A. Broward County's Loggerhead and Green Sea Turtles Are Threatened Species*

Congress enacted the ESA in 1973 to provide a "program for the conservation of . . . endangered species and threatened species."<sup>10</sup> An "endangered" species is a species "in danger of extinction throughout all or a significant portion of its range," while a "threatened" species is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."<sup>11</sup>

The loggerhead sea turtle (*Caretta caretta*) has been listed as threatened throughout its range since 1978.<sup>12</sup> In 2011, the National Marine Fisheries Service ("NMFS") and United States Fish and Wildlife Service ("USFWS") revised the listing, designating nine distinct population segments ("DPS") of protected loggerhead turtles.<sup>13</sup> Four of the loggerhead DPS were listed as threatened, and five as endangered.<sup>14</sup> The Northwest Atlantic Ocean DPS, which includes all of Broward County, was designated as threatened.<sup>15</sup> Beachfront lighting has been identified as one of the "significant threats" to the continued survival of loggerhead sea turtles within the Northwest Atlantic Ocean DPS.<sup>16</sup>

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<sup>10</sup> 16 U.S.C. § 1531(b).

<sup>11</sup> 16 U.S.C. § 1532(6) & (20).

<sup>12</sup> See Listing and Protecting Loggerhead Sea Turtles as "Threatened Species" and Populations of Green and Olive Ridley Sea Turtles as Threatened Species or "Endangered Species," 43 Fed. Reg. 32,800 (July 28, 1978).

<sup>13</sup> See Determination of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened, 76 Fed. Reg. 58,868 (Sept. 22, 2011).

<sup>14</sup> *Id.* at 58,950.

<sup>15</sup> *Id.* at 58,884-85, 58,950.

<sup>16</sup> *Id.* at 58,919; see also USFWS, North Florida Ecological Services Office, *Loggerhead Turtle Fact Sheet* (updated April 16, 2020), <https://www.fws.gov/northflorida/seaturtles/turtle%20factsheets/loggerhead-sea-turtle.htm> ("disorientation of hatchlings by beachfront lighting" is one reason for the threatened status of loggerhead turtles).

The green sea turtle (*Chelonia mydas*) has also been listed under the ESA since 1978.<sup>17</sup> After a status review, NMFS and USFWS listed three green sea turtle DPS as endangered, and eight as threatened, including the North Atlantic DPS that encompasses the Florida population.<sup>18</sup> Artificial beach lighting is one of the factors that has degraded nesting beaches for the green sea turtle and led to its threatened status.<sup>19</sup>



*Green sea turtle hatchlings move along a beach.*



Photos courtesy of iStock

*A loggerhead sea turtle hatchling.*

### *B. Artificial Lighting Harms Sea Turtle Nesting and Hatching*

Female loggerhead turtles ordinarily lay their eggs on sand beaches above the high-tide line between early May and late August, and green turtles between early June and mid-September.<sup>20</sup> Hatchlings normally emerge from the eggs from June through October, primarily at night. Hatchlings instinctually move towards the brightest light, and under natural conditions, the moon and sky light over the ocean guide them towards the water.<sup>21</sup>

Artificial lighting affects sea turtle nesting behaviors in several ways. First, artificial lighting on beaches deters turtles from leaving the sea to establish nests, and may dramatically reduce nesting attempts.<sup>22</sup> Second, artificial lighting may cause turtles to abandon or abbreviate

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<sup>17</sup> 43 Fed. Reg. at 32,800.

<sup>18</sup> See Final Rule to List Eleven Distinct Population Segments of the Green Sea Turtle (*Chelonia mydas*) as Endangered or Threatened, 81 Fed. Reg. 20,058, 20,077-78, 20,086-88 (April 6, 2016).

<sup>19</sup> *Id.* at 20,077.

<sup>20</sup> See BLAIR E. WITHERINGTON ET AL., FLORIDA FISH AND WILDLIFE RESEARCH INST., FLORIDA FISH AND WILDLIFE COMM'N, UNDERSTANDING, ASSESSING, AND RESOLVING LIGHT-POLLUTION PROBLEMS ON SEA TURTLE NESTING BEACHES 2, at 2 (2014), available at [https://f50006a.eos-intl.net/ELIBSQL12\\_F50006A\\_Documents/TR-2Rev2.pdf](https://f50006a.eos-intl.net/ELIBSQL12_F50006A_Documents/TR-2Rev2.pdf) (“FWRI Report”). However, in recent years, nesting season has started earlier and extended farther into the fall, and STOP saw early nesting activity in 2020.

<sup>21</sup> See U.S. FISH AND WILDLIFE SERV., RECOVERY PLAN FOR THE NORTHWEST ATLANTIC POPULATION OF THE LOGGERHEAD SEA TURTLE (*CARETTA CARETTA*), at I-43 (2d rev. 2008), available at <https://repository.library.noaa.gov/view/noaa/3720> (“Loggerhead Plan”); see also NATIONAL MARINE FISHERIES SERVICE AND U.S. FISH AND WILDLIFE SERVICE, RECOVERY PLAN FOR U.S. POPULATION OF ATLANTIC GREEN TURTLE *CHELONIA MYDAS*, at 3 (1991), available at <https://repository.library.noaa.gov/view/noaa/15995> (“Green Turtle Plan”).

<sup>22</sup> FWRI Report at 2-3; Loggerhead Plan at I-42; 76 Fed. Reg. at 58,918.

their nesting efforts, leading to fewer successful nests.<sup>23</sup> Third, artificial lights may cause adult turtles to have difficulty finding their way to the sea again following nesting, potentially leading to their deaths.<sup>24</sup> Finally, and most critically, artificial lights visible from the beach disorient hatchlings when they emerge from nests and try to find their way to the ocean, often causing them to crawl in the wrong direction, moving toward the artificial lights and away from the ocean.<sup>25</sup>



Photo by STOP

*Loggerhead sea turtle hatchlings are disoriented as they emerge from their nest just south of the South Beach parking lot in August 2018.*

As Florida’s Fish and Wildlife Conservation Commission (“FFWCC”) explains:

The apparent brightness and glare of artificial lighting is what often leads hatchlings astray. To a hatchling on a beach, an artificial light source appears bright because it is relatively close by, yet it is not intense enough to brighten the sky and landscape. The resulting glare makes the direction of the artificial source appear overwhelmingly bright—so much brighter than the other directions that hatchlings ignore other visual cues and move toward the artificial light no matter where it is relative to the sea.<sup>26</sup>

Without human intervention, disoriented hatchlings are likely to die before reaching the water, from causes including dehydration, exhaustion, predation, and vehicle traffic.<sup>27</sup> Even if they do eventually reach the water, disoriented hatchlings are less likely to survive, as they are

<sup>23</sup> FWRI Report at 4-5; Loggerhead Plan at I-42; 76 Fed. Reg. at 58,918.

<sup>24</sup> FWRI Report at 5-6; Loggerhead Plan at I-42.

<sup>25</sup> See, e.g., FWRI Report at 13-14; Loggerhead Plan at I-42-43; FLORIDA FISH AND WILDLIFE COMM’N, Artificial Lighting and Sea Turtle Hatchling Behavior at 2, at <https://myfwc.com/research/wildlife/sea-turtles/threats/artificial-lighting/#:~:text=Disorientation%20from%20artificial%20lighting%20causes,significant%20marine%20turtle%20conservation%20problem>.

<sup>26</sup> FWRI Report at 75.

<sup>27</sup> See Loggerhead Plan at I-42-43; FWRI Report at 14-15; Michael Salmon, *Artificial Night Lighting and Sea Turtles*, 50 *BIOLOGIST* 163, 166 (2003).

exhausted and depleted, more prone to being killed by predators, and will “usually swim more slowly and on less direct paths.”<sup>28</sup>

Official disorientation reports indicate that tens of thousands of hatchlings are disoriented by artificial lights in Florida each year.<sup>29</sup> However, USFWS cautions that this number is “likely a vast underestimate,” and that hundreds of thousands of hatchlings are actually disoriented in the state each year as a result of artificial lighting, with very high mortality for these disoriented turtles. On Fort Lauderdale’s beaches specifically, roughly 50% of turtle hatchlings were reported to have been disoriented in 2015.<sup>30</sup>

To address the issue, the Fort Lauderdale City Commission updated its code in 2003, “to reduce the impacts of artificial coastal lighting on threatened and endangered sea turtles that nest on the beaches of Fort Lauderdale by restricting artificial lighting that disorients turtle hatchlings.”<sup>31</sup> Fort Lauderdale’s code requires that “no artificial light shall illuminate any area” of the city’s beaches.<sup>32</sup> For existing developments, this requires actions such as turning off lights at night during nesting season, or installing screening, tinting, shielding and other measures to ensure interior and exterior lights do not reach the beach.<sup>33</sup>

### *C. STOP Volunteers Monitor Broward County Beaches Every Hatching Season*

Since 2007, STOP volunteers have logged more than 148,000 field hours monitoring turtle nests on Florida’s beaches at night from April to October, documenting disorientations and assisting disoriented hatchlings. STOP has permits from FFWCC to recover and release disoriented hatchlings on specified beaches in Broward County.<sup>34</sup> Because these turtles are listed under the ESA, STOP must maintain a rigorous FFWCC-approved training protocol for its volunteers.

STOP assigns its volunteers to patrol specific nesting areas at night during nesting season. During their patrols, STOP volunteers monitor identified nests to watch for hatching activity, and collect data for each nest when it hatches, including the number of hatchlings, the direction they go when they leave the nest, and lighting sources on the beach that have caused any disorientation. Pursuant to their FFWCC-approved training, STOP volunteers are trained to track disoriented hatchlings, even if they are not present when the turtles emerge. Volunteers do not interfere with hatchlings that are headed to the water, but they will rescue hatchlings that are headed more than 90 degrees away from a direct line to the ocean and release them near the water.

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<sup>28</sup> Jacquelyn Kay Lore & Michael Salmon, *Effects of Exposure to Artificial Lighting on Orientation of Hatchling Sea Turtles on the Beach and in the Ocean*, 3 ENDANGERED SPECIES RESEARCH 23, 23 (2007); FWRI Report at 15.

<sup>29</sup> See Loggerhead Plan at I-43.

<sup>30</sup> See DEREK BURKHOLDER & CURTIS SLAGLE, TECHNICAL REPORT ON BROWARD CNTY. SEA TURTLE CONSERVATION PROGRAM, at 24, 42 (Table 12) (Nova Southeastern Univ. 2015), available at [https://www.broward.org/NaturalResources/BeachAndMarine/Documents/2015\\_BCSTCP\\_Technical\\_Report\\_FINA\\_L4website.pdf](https://www.broward.org/NaturalResources/BeachAndMarine/Documents/2015_BCSTCP_Technical_Report_FINA_L4website.pdf).

<sup>31</sup> FORT LAUDERDALE, FL., CODE § 6-45 (2003).

<sup>32</sup> *Id.* § 6-49.

<sup>33</sup> *Id.* § 6-51.

<sup>34</sup> STOP’s permits for 2020 are attached as Appendix C.



STOP volunteers are usually able to assist disoriented hatchlings reach the water if they are present when the nest hatches, but hatchlings will often turn back toward the bright lights on land multiple times before they swim into the ocean. By that time, the turtles may be exhausted, and their likelihood of survival greatly diminished. In addition, volunteers may not always be present when a nest hatches, either because the nest was not identified in advance, or because volunteers were not on the beach at the time or were attending to another hatch emergence. In this case, the disoriented hatchlings are much more likely to die without ever reaching the water.

After each nest has hatched, STOP volunteers complete detailed reports including the nest number, hatching date and time, number of disorientations, drawings of the direction taken by disoriented hatchlings, and lists and photographs of artificial light sources that attracted hatchlings and caused disorientation. STOP has a quality control team that reviews each of these reports for completeness and accuracy before they are submitted to FFWCC. STOP also maintains an internal database of this disorientation data.

#### **IV. The Resort Violates the ESA by Causing Sea Turtle Disorientation**

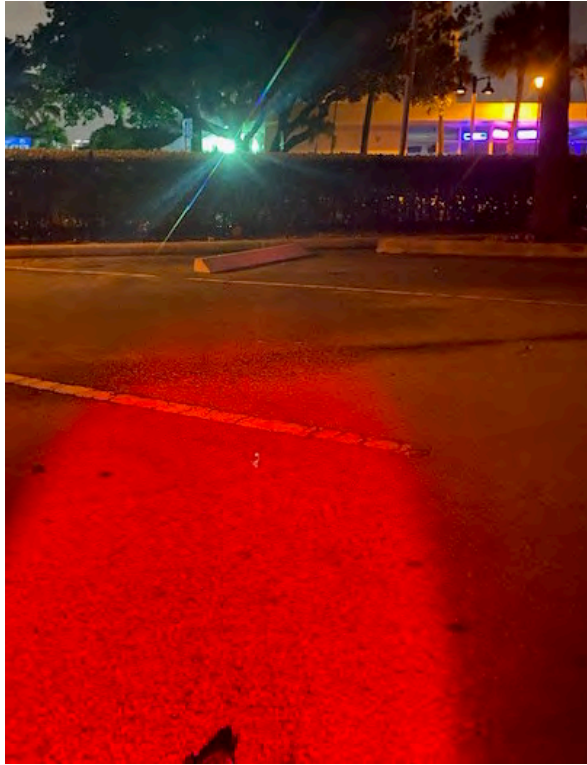
##### *A. The Resort's Non-Compliant Lighting Disorients Turtle Hatchlings*

During every season since 2010, STOP volunteers have documented Resort lights causing the disorientation of hatchlings. Since 2014, STOP volunteers have reported the Resort to Fort Lauderdale for lighting violations 30 times, including for non-compliant floodlights, globe lights, carriage lights, landscape lights, wall lights, and spotlights used in the signage, exterior, interior, balconies and stairways of the Resort's hotel area, parking lots, restaurants, and marina.<sup>35</sup> Many of these same non-compliant lights were still visible during the 2020 nesting season, including prominent lights that are blue in color—the wavelength that is most harmful to turtles.

STOP's reports have documented that the Resort's non-compliant lighting has disoriented 3,838 loggerhead and green turtle hatchlings between 2016 and the date of this letter, in addition to another 15 disorientations documented last year by Broward County Sea Turtles ("BCST").

<b>Year</b>	<b>Loggerhead Sea Turtles Disoriented by Resort Lights</b>	<b>Green Sea Turtles Disoriented by Resort Lights</b>
2016	682 (STOP)	–
2017	867 (STOP)	33 (STOP)
2018	1,180 (STOP)	5 (STOP)
2019	373 (STOP); 15 (BCST)	–
2020 to date	690 (STOP)	8 (STOP)
<b>TOTAL</b>	<b>3,807</b>	<b>46</b>

<sup>35</sup> See complaints attached as Appendix A.



**Photo by STOP**

*Lights from the Resort's closed marina and restaurant shine onto the Fort Lauderdale Beach parking lot at 1:15 a.m. on August 23, 2020. This photo is from the perspective of a hatchling that was killed by a car while trying to reach the lights, just visible at the bottom of the frame. That night, Resort lights caused the disorientation of 44 hatchlings—rescue volunteers recovered 22, 1 was found dead, and 21 could not be located, and had likely been killed.*

Many of the 3,853 hatchlings disoriented by Resort lights required human assistance to reach water, some were found dead or injured, and others could not be found, and had likely been killed. In particular, the Resort's lights routinely draw turtles into the parking lot for Fort Lauderdale Beach Park and the adjacent roadway, both of which are located between the beach and the Resort. STOP volunteers find disoriented turtles in this area every season, and STOP assigns volunteer teams to patrol the parking lot and road to try to rescue disoriented turtles before they are killed by cars. Before STOP began its regular patrols, hundreds of turtles would be found dead each year in this area alone. In addition, STOP volunteers have found both live and dead turtles that had made their way across the parking lot and roadway to the Resort's portico near the valet drop off point. Despite regular patrols, STOP has found dead hatchlings disoriented by the Resort's lights in each of the past three years, including one found just last week after volunteers arrived at a nest a few minutes after it hatched.



Photo by STOP

*STOP volunteers discovered these remains of a loggerhead sea turtle hatchling in 2018, after the Resort's lights drew it into the parking lot for Fort Lauderdale Beach Park.*

#### *B. The Resort Is Unlawfully Taking Sea Turtles under the ESA*

The Resort commits a violation of Section 9 of the ESA for each loggerhead or green sea turtle hatchling that is disoriented by its lights.

Absent a valid incidental take authorization, the ESA categorically prohibits the “take” of “any [listed] species within the United States or the territorial sea of the United States.”<sup>36</sup> Congress has defined “take” broadly, including to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” a listed species.<sup>37</sup> In turn, “harass” is defined as any “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 behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.”<sup>38</sup>

The take prohibition applies to any “person,” defined as “an individual, corporation, partnership, trust, association, or any other private entity.”<sup>39</sup> It applies even if there is no intent to harm or harass and regardless of whether the impact is direct or indirect.<sup>40</sup> An individual who harms a listed species by modifying or degrading its habitat commits a “take” in violation of Section 9 of the ESA.<sup>41</sup>

The take prohibition of the ESA may be enforced by federal or state wildlife agencies, as well as through private enforcement actions brought in federal court. Specifically, the ESA’s

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<sup>36</sup> 16 U.S.C. § 1538(a)(1)(B); *see also* 50 C.F.R. § 17.31.

<sup>37</sup> 16 U.S.C. § 1532(19).

<sup>38</sup> 50 C.F.R. §17.3.

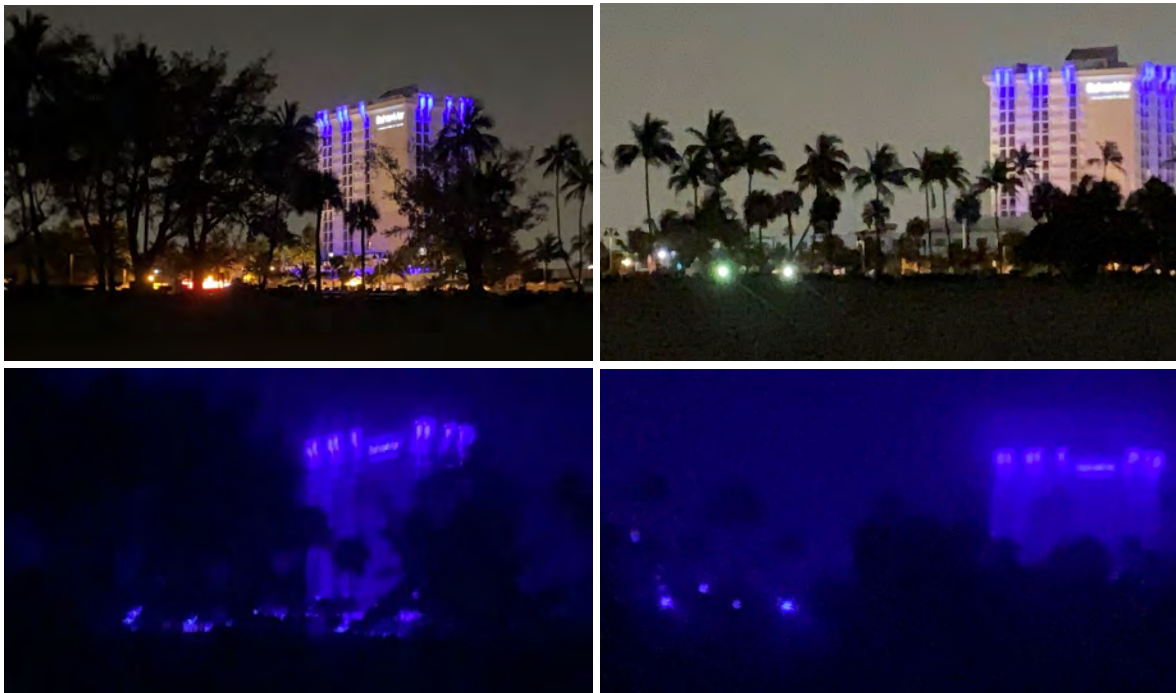
<sup>39</sup> 16 U.S.C. §§ 1538(a)(1), 1532(13).

<sup>40</sup> *Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 704-05 (1995).

<sup>41</sup> *Id.* at 708.

citizen-provision allows “any person [to] 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 ESA] or regulation issued under the authority thereof.”<sup>42</sup>

The Resort has committed, is committing, and unless corrective action is taken will continue to commit “take” of ESA-listed nesting sea turtles and their hatchlings with its use of artificial lighting visible from the beach during nesting season. These lights cause the sea turtles direct harm and harassment, by “creat[ing] the likelihood of injury” through “annoying [them] to such an extent as to significantly disrupt [their] normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”<sup>43</sup> Federal courts have found that the available evidence “overwhelmingly supports the conclusion that artificial beachfront lighting harms and harasses the sea turtles within the meaning of the [ESA],” and thus constitutes a “take.”<sup>44</sup>



Photos by STOP

*The photographs on the left show lights from the Resort’s restaurant, parking lot, and front entrance visible from South Beach on May 2, 2020. At right, lights from the Resort’s marina blaze onto South Beach on the same date. The top photographs were taken with normal camera settings, while the bottom photographs show the same lights filtered through a Turtle SafeLight Guide, which blocks turtle-friendly lights and shows only non-compliant lighting. All four photographs are taken from South Beach.*

<sup>42</sup> 16 U.S.C. § 1540(g).

<sup>43</sup> 50 CFR §17.3.

<sup>44</sup> *Loggerhead Turtle v. Cnty. Council*, 92 F. Supp. 2d 1296, 1305 (M.D. Fla. 2000) (internal quotation and citation omitted).

## I. Corrective Action

To comply with the ESA, the Resort must implement measures to ensure that its lights are not visible from the beach during nesting season. If a “light . . . can be seen by an observer standing anywhere on the beach,” it is probably a source of disorientation.<sup>45</sup>

There is a clear path forward, which likely does not entail significant expense or drastic changes to the Resort’s operations. The Resort should implement the measures mandated by Fort Lauderdale’s City Code to prevent the Resort’s lighting from reaching the beach. For existing development, this includes the installation of window treatments in windows or glass doors facing the beach, screening of outdoor security lights, shielding exterior wall lights and overhead lights, and turning off lighted signs at night during nesting season if they can be seen from the beach.<sup>46</sup> As an alternative, the Resort should consider utilizing measures required for new development and recommended by the FFWCC, such as installing shields on exterior lights so that they are directed downward; recessing lights; using only low-wattage, wildlife-certified, amber-colored LED bulbs in all fixtures with non-reflective surfaces; mounting lights as low as possible; using motion detectors for security and safety lights; using full cutoff lighting; turning off nonessential lighting, including lighted signs; and using shade screens or window tinting to block interior lights.<sup>47</sup>

Some of these simple steps could be taken immediately with little to no cost: the Resort should turn off unnecessary outdoor lighting during sea turtle nesting season, draw window shades or drapes in common areas, and instruct guests with ocean-facing rooms to close their drapes at night. STOP has designed tokens for hotels to provide to guests in ocean-facing rooms, as well as signs that can be posted in elevators and common areas, alerting them to the need to close their blinds to protect turtles during nesting season. STOP can provide these tokens to the Resort at cost, or work with the Resort to develop its own materials to educate guests.



Photos by STOP

*STOP tokens developed for hotels to give to residents in beach-facing rooms.*

<sup>45</sup> Loggerhead Plan at I-43; *see also* FWRI Technical Report at v (“If light from an artificial source is visible to a person standing on a beach, that light is likely to cause problems for sea turtles that nest there . . . Light is being properly managed when it cannot be seen from the beach.”)

<sup>46</sup> *See* FORT LAUDERDALE, FL., CODE § 6-51 (2003).

<sup>47</sup> *Id.* at § 6-49.

The Resort is not alone in facing this challenge. In addition to the assistance that STOP is offering free of charge, there are excellent resources available from other organizations to guide the Resort in retrofitting its property with turtle-friendly lighting.<sup>48</sup> And some nearby lodging establishments have largely met this challenge, and offer good examples of turtle-friendly lighting. For example, Fort Lauderdale's Ritz-Carlton Hotel, Sonesta Hotel, and Coconut Grove Condominiums have achieved substantial compliance with their lighting fixtures and practices: exterior lights are shielded and use turtle-friendly LEDs, common area lighting is subdued and blocked so it is not visible from the beach, and guests and residents are largely compliant in taking measures to ensure that lights from individual units are not visible from the beach.

## II. Conclusion

The Resort has been a landmark on the Fort Lauderdale coast for more than 50 years. It draws visitors from around the world who want to experience Florida's magnificent coastline and witness its diverse sea life. Yet for many years, the Resort has set a poor example for the rest of the coastal community through its disregard of city ordinances designed to protect Florida's fragile sea turtle populations.

Despite repeated requests and complaints, the Resort continues to use lights that are visible from South Beach Park. In addition to likely decreasing the number of successful nests and potentially disorienting adult female turtles after nesting, the Resort's lighting has resulted in the documented disorientation of thousands of threatened loggerhead and green sea turtle hatchlings. The Resort's non-compliant lighting will continue to result in similar harms to turtle populations in this and future nesting seasons. These are clear violations of Section 9 of the ESA.

We invite the Bahia Mar Parties to collaborate with STOP and the Center to correct these easily-correctible violations—and take an important step toward turning the Resort into the role model for environmental stewardship envisioned by Hilton's Travel with Purpose policy.

However, if the Bahia Mar parties do not remedy these violations, this notice provides the grounds upon which STOP and the Center intend to file suit following the close of the 60-day notice period. If the Bahia Mar Parties wish to take the necessary corrective action but do not believe it can be fully implemented in the next 60 days, please contact the undersigned at the earliest convenience. We may be able to work out an arrangement to avoid the cost and expense that litigation will require. However, absent an arrangement to the contrary, or the Resort's complete implementation of the necessary corrective actions in the next 60 days, we plan to seek judicial relief.

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<sup>48</sup> For example, the Sea Turtle Conservancy has compiled examples of turtle-friendly fixtures and bulbs, photographs of compliant properties and retrofitting projects, and a list of turtle-friendly lighting distributors. See *Beachfront Lighting: Turtle Friendly Lighting Examples*, SEA TURTLE CONSERVANCY, at <https://conserveturtles.org/beachfront-lighting-turtle-friendly-fixtures-lights/> (last visited August 25, 2020).

Respectfully,



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