

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL	)	
DIVERSITY, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	Civil Action No. 18-112 (JEB)
	)	
v.	)	
	)	
GINA RAIMONDO, <i>et al.</i> ,	)	
	)	
<i>Federal Defendants,</i>	)	
	)	
and	)	
	)	
MAINE LOBSTERMEN’S	)	
ASSOCIATION, INC., <i>et al.</i> ,	)	
	)	
<i>Defendant-Intervenors.</i>	)	
_____	)	

**PLAINTIFFS’ MOTION FOR REMEDY**

Pursuant to the Court’s Minute Order of July 22, 2022, Plaintiffs Center for Biological Diversity, Defenders of Wildlife, and Conservation Law Foundation (collectively, “Plaintiffs”) hereby file this motion for remedy for Federal Defendants’ legal violations of the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) this Court identified in granting Plaintiffs’ second motion for summary judgment on July 8, 2022. *See* ECF Nos. 218 (Order), 219 (Opinion).

The Court held that the National Marine Fisheries Service (NMFS) violated the ESA and MMPA in issuing its 2021 Biological Opinion (2021 BiOp) with an unlawful incidental take statement for lethal take of the North Atlantic right whale in the federal American lobster/Jonah crab fishery. Plaintiffs seek the presumptive statutory remedy of remand and vacatur of the 2021

BiOp with respect to the right whale and federal lobster fishery for this serious legal error, with a six-month stay of vacatur.

The Court also held that NMFS violated the MMPA in issuing its September 2021 Final Rule amending the Atlantic Large Whale Take Reduction Plan (Plan) because that rule failed to contain measures that NMFS anticipated would, within six months of implementation, reduce right whale mortality and serious injury (M/SI) in the U.S. lobster fishery to below the right whale's potential biological removal level (PBR). Plaintiffs seek the ordinary statutory remedy of remand but, given the detrimental environmental consequences of vacatur for the right whale and other whale species, request remand without vacatur.

Plaintiffs request that the Court order NMFS, within six months of the remedy order, to issue a new final rule amending the Plan that contains measures the agency expects to reduce right whale M/SI to below PBR within six months of the new rule's implementation.

Finally, Plaintiffs request that the Court's remedy order contain specific declaratory relief explicitly stating the agency's legal violations of the ESA and MMPA.

A memorandum of support and a proposed order accompany this motion.

Respectfully submitted this 12th day of August, 2022,

/s/ Kristen Monsell

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