

Center for Biological Diversity – Cetacean Society International – Conservation Law Foundation  
Defenders of Wildlife – Earthjustice – Environmental Investigation Agency  
Humane Society Legislative Fund – The Humane Society of the United States  
International Fund for Animal Welfare – National Wildlife Federation  
Natural Resources Defense Council – Oceana – The Pew Charitable Trusts  
Whale and Dolphin Conservation

December 16, 2022

The Honorable Chuck Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker of the House  
United States House of Representatives  
Washington, DC 20515

The Honorable Patrick Leahy  
Chairman  
Committee on Appropriations  
United States Senate  
The Capitol S-128  
Washington, DC 20510

The Honorable Rosa DeLauro  
Chairwoman  
Committee on Appropriations  
U.S. House of Representatives  
The Capitol H-307  
Washington, DC 20515

Dear Majority Leader Schumer, Speaker Pelosi, Chairman Leahy, and Chairwoman DeLauro,

On behalf of Center for Biological Diversity, Cetacean Society International, Conservation Law Foundation, Defenders of Wildlife, Earthjustice, Environmental Investigation Agency, Humane Society Legislative Fund, The Humane Society of the United States, International Fund for Animal Welfare, National Wildlife Fund, Natural Resources Defense Council, Oceana, The Pew Charitable Trusts, and Whale and Dolphin Conservation we write to express our strong objection to the proposed addition to the Omnibus on the Atlantic Large Whale Take Reduction Plan. This provision would set a damaging precedent for the political override of science-based decisionmaking under the Endangered Species Act and Marine Mammal Act; undermine active federal litigation and reverse judicial orders; and further threaten the survival of the critically endangered North Atlantic right whale.

The provision would explicitly dictate that the September 2021 Final Rule (86 Fed. Reg. 51970) amending the Plan shall be deemed to comply with the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) for the next ten years. This would nullify a federal district court's opinions and orders in *Center for Biological Diversity v. Raimondo*, Civ. No. 1:18-cv-112 (D.D.C.).

In July 2022, the district court held that NOAA Fisheries violated the plain language of MMPA and ESA in failing to adequately protect the right whale in the September Final Rule and in a May 2022 biological opinion on the proposed rule. In November 2022, the district court ordered NOAA Fisheries to complete its new MMPA rulemaking by December 9, 2024 (a date

proposed by the agency). It remanded the biological opinion but did not order a deadline for a new one. The litigation is active and ongoing.

This provision also strikes at the heart of the ESA and MMPA, our bedrock environmental laws protecting endangered species and marine mammals. Allowing this provision to be added to the Omnibus opens the door to similar provisions in the next Congress to circumvent environmental laws and interfere with active judicial and administrative processes.

NOAA Fisheries states that the iconic North Atlantic right whale, with only 340 surviving animals in 2021, is “approaching extinction.” Entanglements in trap/pot gear used in the Northeast American lobster/Jonah crab fisheries continue to kill an average of four whales a year even after the September 2021 rule, far higher than the species can sustain. Most entanglements are never detected or identified to a fishery because of the difficulties in spotting entangled whales and confirming the source of entangling gear.

Although the right whale also faces threats from entanglements in Canadian waters as well as from vessel collisions in Canadian and U.S. waters, NOAA Fisheries has determined that U.S. commercial fisheries can kill no more than one right whale every eleven years for the right whale to survive and recover.

We urge you to do everything possible to keep this extraordinarily harmful provision, which would set an equally harmful precedent, out of the Omnibus.

Sincerely,

Center for Biological Diversity  
Cetacean Society International  
Conservation Law Foundation  
Defenders of Wildlife  
Earthjustice  
Environmental Investigation Agency  
Humane Society Legislative Fund  
The Humane Society of the United States  
International Fund for Animal Welfare  
National Wildlife Fund  
Natural Resources Defense Council  
Oceana  
The Pew Charitable Trusts  
Whale and Dolphin Conservation