UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTER FOR BIOLOGICAL DIVERSITY,
WATERKEEPER ALLIANCE, INC., and
RIVERKEEPER, INC.,

           Plaintiffs,

           v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and ANDREW
WHEELER, in his official capacity as
Administrator of the United States
Environmental Protection Agency,

           Defendants.

Case No. 1:20-cv-06572 (JSR)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs challenge the U.S. Environmental Protection Agency's ("EPA") total failure to comply with the Endangered Species Act ("ESA") regarding EPA's decision to suspend myriad environmental legal obligations in light of the COVID-19 pandemic.[1] On March 26, 2020, EPA issued a memorandum entitled "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," that established an unprecedented policy whereby EPA voluntarily suspended the enforcement of environmental legal obligations under various regulatory programs, such as the Clean Air Act and Clean Water Act, for all industries during the pandemic (the "Policy"). Pls.' Rule 56.1 Statement ¶ 1. As a result, many of the key pollution reduction pillars elemental to federal environmental law – including monitoring, reporting, and enforcement – were relaxed or arrested altogether, leading thousands of industrial polluters to bypass their environmental compliance obligations. In easing regulatory programs that are intended to limit pollution and prevent adverse environmental harm, the Policy certainly harms endangered species by increasing the probability of exposure to harmful pollution and further degrading habitats critical to their survival. *See* 16 U.S.C. § 1536(a)(2) (2018). EPA, however failed entirely to consult at all with the U.S. Fish and Wildlife Service ("FWS") and/or the National Marine Fisheries Service ("NMFS") (collectively the "Services") on the Policy, in violation of the ESA.

The duty to prevent jeopardy—actions that will reduce an ESA-protected species ability to survive and recover in the wild—in consultation with the Services is one of the ESA's cornerstones for the conservation of imperiled species. In order to effectuate the substantive

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[1] The facts underlying this motion are set forth in Plaintiffs' Rule 56.1 Statement of Undisputed Facts. ("Rule 56.1 Statement").

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