UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW HAMPSHIRE

U.S. DISTRICT COURT
DISTRICT OF NH
FILED

2018 AUG 24 P 3: 15

RICHARD MAXIMUS STRAHAN	)	
	)	
Plaintiff	)	
	)	Civil Action No.
v.	)	
	)	18-CV-752
ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ("NOAA")	)	
	)	
ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE ("NMFS")	)	24 August 2018
	)	
Defendants	)	

VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF AND A REQUEST FOR A JURY TRIAL

I the Plaintiff — Richard Maximus Strahan — SPEAKS:

1. Plaintiff Strahan is a conservation scientist petitioning the Court to enforce the "take prohibitions" imposed by the Endangered Species Act against all of the Defendants to stop their future killing and injuring of species of whales and sea turtles listed as protected species under the Endangered Species Act. The Defendant are killing and injuring Endangered Whales and Sea Turtles pursuant to their licensing and regulating commercial fishing.

2. These species include the Northern Right Whales and other endangered species of whales. **FN1** This also includes Green Turtles and other endangered species of Sea Turtles. **FN2** The Defendants are killing and/or injuring Endangered Whales and Sea Turtles incidental

[1] The Endangered Whales includes: (1) The Sei Whale, *Balaenoptera borealis*; (2) The Northern Right Whale, *Eubalaena glacialis*: (3) The Humpback Whale *Megaptera novaeangliae*; (4) The Fin Whale *Balaenoptera physalus*: and (5) The Blue Whale, *Balaenoptera musculus*.

[2] The Endangered Sea Turtles include: (1) The Green turtle, *Chelonia mydas*,; (2) Loggerhead turtle, *Caretta caretta*,; (3) The Olive Ridley turtle, *Lepidochelys olivacea*; (4) The Hawksbill turtle, *Eretmochelys imbricate*; (5) The Kemp's Ridley turtkle, *Lepidochelys kempii*; and (6) The Leatherback turtle, *Dermochelys coriacea*.

to their permitting and regulating the deployment of pot fishing gear ("Pot Gear") and gill net fishing gear ("Gill Nets") in marine waters within the United Sates ECZ off its northeast coastline. For the last twenty years and before, Endangered Whales and Sea Turtles have been entangled by Pot Gear and Gill Nets that is being deployed in the essential marine wilderness inhabited by these ESA listed species under license and regulation by the Defendants. The principal feature of Pot Gear that is entangling these ESA listed species is the buoy rope that is attached to the pots deployed on the seafloor and rises vertically to attach to marker buoys floating on the sea surface ("Vertical Buoy Rope" or "VBR"). For Gill Nets Endangered Whales are entangled by both VBR and the netting it is used to hold vertically in the water column.

NOAA/NMFS Ongoing "Whale Fraud"

3. The Defendants' entanglements of Endangered Whales and Sea Turtles is arresting the recovery from their endangered species status. It is also significantly precipitating their extinction. In the case of a critically endangered species like the Northern Right Whale, their critically low population size and severely low birth rate insures that a single killing from any anthropogenic activity of these whales in a single a year is likely to precipitate their imminent extinction. During its 2018-2019 breeding season, the Northern Right Whale's remaining population did not give birth to a single calf. This complete shutdown of species reproductivity during its annual breeding season is incontrovertible evidence that Northern Right Whale are experiencing a statistical certainty of extinction in the immediate future unless aggressive efforts are made to stop all anthropogenic killings and also enhance its ability to reproduce.

4. It is established law that the Defendants are liable for the violation of the ESA's Section 9 prohibition on taking listed endangered species when any of the fishing gear that they permit and regulate actually entangles an Endangered whale or Sea Turtle. **FN3** It is incontrovertible that the Government Defendants current and past licensing and regulating Pot Gear and Gill Net fisheries routinely causes the killing and injuring of ESA listed endangered

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[3] See *Strahan v. Coxe*, 939 F. Supp. 963 (Dist. Mass. 1996) and affirmed by 127 F. 3d 155 (1st Circuit, 1997) (Massachusetts marine fishing agency liable under ESA Section 9(a) for unlawful taking of ESA listed species of endangered whales by entanglements of endangered whales in fishing gear licensed and regulated this agency).

species of whales and sea turtles. It is also indisputable that the Government Defendants in doing so are violating the ESA Section 9 take prohibitions by unlawfully talking endangered species of whales and sea turtles. The Court has little or no discretion but to enjoin the Government Defendants from authorizing any further deployment of Pot Gear and Nets into US coastal waters until they stop licensing Pot Gear and Gill Nets that entangle Endangered Whales and Sea Turtles and therefore cause the incidental taking of listed species of whales and sea turtles that are prohibited by ESA Section 9.

5. The Defendant agencies by statutory mandate and culture serve only commercial marine fisheries and this industry's commercial exploitation of the marine environment. They officially consider compliance with the ESA's mandates and prohibitions as an unacceptable threat to their governmental vested interests. The Defendants have always deliberately refused to enforce the ESA's Section 9 take prohibitions against state and federally licensed commercial fishing operations. Instead NOAA/NMFS has historically chosen to protect these commercial vested interests of theirs from any adverse impact as a result of the enforcement of the ESA. For similar reasons, these Defendants themselves refuse to comply with the mandatory and non-discretionary duties imposed on them by the ESA;s Section 7 to conserve and protect Endangered Whales and Sea Turtles. This is why Endangered Whales are still being entangled and killed by Vertical Buoy Ropes two decades after a federal judge in *Strahan v. Coxe* ruled that government agencies were liable for the killing and injuring of Endangered Whales caused by the lobster pot fishing they licensed and regulated.

6. Instead of complying with the *Strahan v. Coxe* decision, NOAA/NMFS went on the defensive to concoct and implement an elaborate scheme to evade Public scrutiny and from being compelled to enforce ESA Section 9 prohibitions against the commercial fishing industry (or themselves having to comply with the mandates imposed on federal agencies by ESA Section 7). They engaged in what I call **"Whale Fraud." FN4** NOAA/NMFS employees worked with commercial fishermen to solicit specific non-government organizations ("NGOs"), with generous grants of government funds and issuing them permits to guarantee their exclusive access to conduct field research on Endangered Whales and Sea Turtles. In return these NGOs agreed to conduct research on these species that would only produce data benign to

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[4] Strahan BC Law review article

commercial fishing industry and never actually document the entanglement of Endangered Whales or Sea Turtles in fishing gear. These NGO's would never allow their field data to be used by environmental activists in lawsuits against NOAA/NMFS or the commercial fishing industry.

7. To enforce the ESA or Marine Mammal Protection Act. These favored NGO's used their exclusive possession of ESA/MMPA research permits to control all other research on these species to insure both their own dominance in research on these species an control all other researchers by allowing them opportunity for field research with them in exchange for their own cooperation with the NGOs and NOAA/NMFS Whale Fraud.

8. The Public's access to records of fishing gear entanglements of Endangered Whales and Sea Turtles is being stopped by NOAA/NMFS and their Whale Fraud partner NGOs. **FN5** The Defendants refuse to allow the Public to have routine access to records on events of Endangered Whale and Sea Turtle being entangled in US coastal waters. The Defendants do so deliberately to thwart the ability of unbiased scientists and conservationists to rouse Public support for programs to protect endangered species from entanglement in fishing gear. Additionally their Whale Fraud Partners refuse to allow the Public any access to the field data collected by them on Endangered Whales and Sea Turtles as a result of their research activities funded and licensed by NOAA/NMFS, which records of sighting of entangled whales and sea turtles.

9. The Plaintiff and Whale Safe USA requests for access to Endangered Whale and Sea Turtles entanglement records have been repeatedly denied by NOAA/NMFS. They have been forced to utilize the Freedom of Information Act as a "can opener" to get access NOAA/NMFS' said entanglement records involving Endangered Whales hales and Sea Turtles. Pursuant to their Whale Fraud Program, these FOIA requests have either been unlawfully refused outright or NOAA/NMFS has attempted to bill the Plaintiff thousands of dollars to obtain a simple Excel™ spreadsheet documenting these entanglement events. **FN6**

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[5] The NGO's working in concert with NOAA/NMFS' Whale Fraud program ("Whale Fraud Partners") include the New England Aquarium, the Center for Coastal Studies and the Woods Hole Oceanographic Institute.

[6] In response to Plaintiff's 2018 FOIA request for records of whale entanglements, NOAA/NMFS written response demanded a payment of over $20,000 just for the Defendants to begin "looking" for the requested records.

10. The Plaintiff is seeking a Permanent Injunction from the Court against the Defendants —

a. Enjoining the Defendants from requiring the further use of Vertical Buoy Ropes by the commercial fishermen that it licenses and regulates.

b. Enjoining the Defendants from further licensing the use of fixed Gill Nets off the US northeast coastline.

c. Order the Defendant to publish with monthly updates for routine Public inspection all its scientific records of Endangered Whales and Sea Turtles entangled and otherwise sighted off the US northeast coast in its possession and that ws acquired by research efforts it either funds or licenses.

d. Order the Defendants to supply the Plaintiff the documents he seeks pursuant to his past and future FOIA requests to them concerning Endangered Whales and Sea turtles and to do so without any cost to him.

e. Order the Defendant NOAA to commence an ESA Section 7 review on which infra-agency it will assign the ESA/MMPA's supervisory and administrative duties assigned to it by Congress in preference to its historical assignment of them to NMFS, which was done without the requisite ESA Section 7 review.

f. Order the Defendants to commence and conduct a lawful ESA Section 7 review concerning the adverse impact on Endangered Sea Turtles and Whales of their licensing and regulating commercial fishing operations.

g. Order that the Defendants must require that commercial marine fisheries licensed and regulated by state governments in coastal waters under their state jurisdiction be subject to an ESA Section 10 Incidental Take Permit issued individual state marine fishing agencies or individual commercial fishermen licensed by a state to use Lobster Pots and Gill Nets in marine waters under its state jurisdiction.

11. The Plaintiff is seeking a jury trial on his request for a declaratory judgment against the Defendants. He is also seeking an award against the Defendants of his costs of litigation in the instant action.

The Parties

12. Plaintiff Richard Maximus Strahan recently graduated *magnum cum laude* with a

Bachelor of Arts degree in Classics Studies from the University of Massachusetts in Boston MA. He currently enrolled in the graduate school at the University of New Hampshire seeing a Master of Arts degree in Liberal Studies. He volunteers as the Chief Science Officer of Whale Safe USA, a campaign to make the US coastline environmentally safe for endangered species of coastal whales and sea turtles. Strahan is a conservation scientist whose profession activities include designing and implementing conservation programs that protect Endangered Species of Whales and Sea Turtles in order to stop their extinction and to provide for their recovery from their endangered species status. Every major conservation effort for Endangered Whales in US coastal waters has originated and designed by him. This includes imposing 500 yard protection zones around the Northern Right Whale and the designation of protected critical habitat for it.

13. Strahan is a licensed commercial lobster pot fishermen in New Hampshire. He is now being forced by NH to use Vertical Buoy Ropes in his lobster pot gear. He does not want to do so because of VBR posing a threat to entangle marine wildlife. He needs the Court to stop the Defendants from permitting VBR in Pot Gear and require that New Hampshire obtain a ESA Section 10 Incidental Take Permit in order to continue to license and regulate commercial fishing in its state waters. His business mailing address is P. O. Box 82, Peterborough NH 03458.

14. Defendant Administrator of the National Oceanic and Atmospheric Administration is being sued in its official capacity as a violator of the ESA Section 9 prohibitions on taking and for violating its mandatory and non-discretionary duties under ESA Section 7. Its official business address is 1401 Constitution Avenue NW, Room 5128, Washington, DC 20230.

15. Defendant Assistant Administrator of the National Marine Fisheries Service is being sued in its official capacity as a violator of the ESA Section 9 prohibitions on taking and for violating its mandatory and non-discretionary duties under ESA Section 7. Its official business address is % Office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring MD 20910.

Jurisdiction and Standing

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) under the ESA, APA, 5 U.S.C. § 701 et seq. (APA), 28 U.S.C. § 1361 (mandamus) and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. § 2202 (declaratory and injunctive relief). An actual, justiciable controversy now exists between Plaintiff and Defendants, and the requested relief is proper under 28 U.S.C. §§ 2201-2202, 5 U.S.C. §§ 701–706, and 16 U.S.C. § 1540(g). Pursuant to 16 U.S.C. § 1540(g), Plaintiff on or about 4 June 2018 served a notice on each of the Defendants and the Secretary of Commerce pursuant to 16 USC § 1540(g) more than 60 days prior to his commencing the instant action ("ESA Notice"). In his ESA Notice Strahan notified the Defendants that he was going to commence a civil action against the Defendants for their said violations of the ESA. [7]

17. Venue in this judicial district is proper under 28 U.S.C. § 1391(e) because this is an action against an agency of the United States and officers of the United States acting in their official capacity. Additionally at least one plaintiff resides in this district.

18. The Plaintiff has Article III standing pursuant to his professional involvement and recreational observational activities of Endangered Whales and Sea Turtles off the US northeastern coast. Additionally he has Article III standing to protect his profession interests in his commercial fishing activities from violating the ESA Section 9 taking of Endangered Whales and Sea Turtles. **FN8**

The Regulatory Scheme for the Protection of Endangered Species

19. In enacting the ESA, Congress recognized that certain species "have been so depleted in numbers that they are in danger of or threatened with extinction" and that these species are "of esthetic, ecological, educational, historical, recreational, and scientific value to

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[7] Strahan "confirmed" the proper service of his ESA Notice on the Defendants by his filing a copy of his ESA Notice in a prior action against these Defendants in the US District Court for the District of Massachusetts. See *Strahan v. Administrator NOAA, et al.*, 18-CV-10392-DJC (D. Mass 2018). At no point henceforth has the Defendants claimed that they did not receive Strahan's ESA Notice. The Defendants were eventually dismissed without prejudice pursuant to FRCP Rule 41(a) from the Massachusetts lawsuit.

[8] *Japan Whaling Association v. American Cetacean Society*, 478 U.S. 221, 230 n.4 (1986) (plaintiffs "whale watching" activities establishes Article III standing to seek enforcement of conservation laws); *Bennett v. Spear*, 520 US 154 (1997) (Rancher has Article III standing to protect his commercial interests from enforcement of ESA).

the Nation and its people." 16 U.S.C. § 1531(a) (2) and (3).

20. The ESA protects imperiled species by listing them as "endangered" or "threatened." A species is "endangered" if it "is in danger of extinction throughout all or a significant portion of its range." *Id.* § 1532(6). A species is "threatened" if it "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Id. § 1532(20). The Secretary of Commerce is charged with administering and enforcing the ESA for most marine species, including North Atlantic right whales, and has delegated this responsibility to NMFS. 50 C.F.R. § 402.01(b).

21. The ESA seeks "to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such . . . species." 16 U.S.C. § 1531(b). The ESA defines conservation as "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary." Id. § 1532(3). Accordingly, the ultimate goal of the ESA is not only to prevent listed species from going extinct, but also to recover these species to the point where they no longer require ESA protection

22. To accomplish these goals, Section 9 of the ESA generally makes it unlawful for "any person" to "take" an endangered species. Id. § 1538(a)(1). A "person" includes private parties as well as local, state, and federal agencies. Id. § 1532(13). "Take" is defined broadly under the ESA to include harassing, harming, wounding, killing, or capturing a protected species (or attempting to engage in such conduct), either directly or by degrading its habitat enough to impair essential behavior patterns. Id. § 1532(19); 50 C.F.R. § 222.102. The ESA prohibits the acts of parties directly causing a take as well as the acts of third parties, such as governmental agencies, whose acts cause such taking to occur. 16 U.S.C. § 1538(g). Additionally, Section 7(a)(2) of the ESA requires federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any" endangered or threatened species. Id. § 1536(a)(2).

23. To comply with Section 7(a)(2)'s substantive mandate, federal agencies must consult with NMFS when their actions "may affect" a listed marine species. 16 U.S.C. § 1536(a)(2). NMFS and the action agency must utilize the "best scientific and commercial data available" during the consultation process. Id.; 50 C.F.R. § 402.14(a).

24. Where, as here, NMFS is the action agency as well as the expert consulting agency, NMFS must undertake intra-agency consultation. At the completion of consultation, the consulting branch of NMFS issues a biological opinion that describes the expected impact of the agency action on listed species. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14. The biological opinion must include a summary of the information upon which the opinion is based, an evaluation of "the current status of the listed species," the "effects of the action," and the "cumulative effects." 50 C.F.R. § 402.14(g)(2), (g)(3). "Effects of the action" include both direct and indirect effects of an action "that will be added to the environmental baseline." Id. § 402.02. The "environmental baseline" includes "the past and present impacts of all Federal, State or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process." Id. "Cumulative effects" include "future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area." Id.

25. Thus, in issuing a biological opinion, NMFS must consider not just the isolated share of responsibility for impacts to the species traceable to the activity that is the subject of the biological opinion, but also the effects of that action when added to all other activities and influences that affect the status of that species. After NMFS has added the direct and indirect effects of the action to the environmental baseline and cumulative effects, it must make its determination of "whether the action is likely to jeopardize the continued existence of a listed species." 16 U.S.C. § 1536(b)(3), (b)(4); 50 C.F.R. § 402.14(h). A likelihood of jeopardy is found when "an action [] reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02. Recovery is defined as "improvement in the status of listed species to the point at which listing is no longer appropriate." Id. A biological opinion that concludes that the agency action is not likely to jeopardize the continued existence of a listed species but will result in take incidental to the agency action must include an incidental take statement. 16 U.S.C. § 1536(b)(4).

26. The incidental take statement must specify the amount or extent of incidental taking on such listed species, "reasonable and prudent measures" that NMFS considers necessary or appropriate to minimize such impact, and set forth "terms and conditions" that must be

complied with by the action agency to implement the reasonable and prudent measures. Id.; 50 C.F.R. § 402.14(i). Additionally, when the listed species to be incidentally taken are marine mammals, the take must first be authorized by NMFS pursuant to the MMPA, and the incidental take statement must include any additional measures necessary to comply with the MMPA take authorization. The take of a listed species in compliance with the terms of a valid incidental take statement is not prohibited under Section 9 of the ESA. 16 U.S.C. § 1536(b)(4), (o)(2); 50 C.F.R. § 402.14(i)(5). If NMFS determines in its biological opinion that the action is likely to jeopardize the continued existence of a listed species, the biological opinion must include "reasonable and prudent alternatives" to the action that will avoid jeopardy. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3).

27. Regardless of the conclusion reached in the biological opinion, the agency undertaking the federal action has an independent duty to ensure that its actions are not likely to jeopardize the continued existence of listed species. 16 U.S.C. § 1536(a)(2). An agency's reliance on a legally flawed biological opinion to authorize an action does not satisfy its substantive duty to ensure against jeopardy.

Moreover, the ESA's implementing regulations further require an agency to reinitiate Section 7 consultation when: (a) the amount of take specified in the incidental take statement is exceeded; (b) new information reveals that the action may have effects not previously considered; (c) the action is modified in a way that was not previously considered; or (d) a new species is listed or critical habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16. The ESA specifies that Section 7 consultation must typically be completed within ninety days after initiation. 16 U.S.C. § 1536(b)(1); 50 C.F.R. § 402.14(e). The substantive duty to ensure against jeopardy of listed species remains in effect regardless of the status of the consultation.

The Administrative Procedure Act

28. The APA governs judicial review of federal agency actions. 5 U.S.C. §§ 701–706. Under the APA, courts "shall . . . hold unlawful and set aside agency action, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or made "without observance of procedure required by law." Id. § 706(2)(A), (C), (D).

Background on Endangered Species of Whales and Sea Turtles Adversely Affected by Commercial Fishing

29. The Northern Right Whale is the world's most critically endangered large whale species and also one of the world's most endangered mammals. Northern Right Whale's essential marine habitat is within the 200 mile ECZ of mostly the US but extends northwards into Canada. They live in the "urban sea" of the United States. Their coastal marine habitat is no longer marine wilderness from having so hugely been adversely impact from commercial development of area within 100 miles inland of the US coast that spills outward to the Ocean.

The Northern Right Whale living along the US coastline is more akin to a moose trying to live in a suburb of an eastern city like Boston or Concord NH. Not a good situation. Right whales migrate annually from their summer feeding grounds off the Northeast coast of the United States to their winter breeding grounds off the Southeast coast.

30. Females typically reach sexually majority at age nine or ten and give birth to a single calf. The gestation period lasts roughly one year. From 2005 to 2014, the average right whale calving interval (i.e. the amount of time between the birth of a right whale calf and a subsequent calf from the same mother) ranged from three to five years. The average right whale calving interval has increased every year since 2014, to a high of 10 years in 2017. Right whales have raised patches of roughened skin on their heads, known as callosities. These callosities are found only on right whales and, like human fingerprints, have distinctive patterns that enable scientists to individually identify right whales. The callosities are covered by barnacles and tiny crustaceans known as whale lice.

31. NMFS amended the Atlantic Large Whale Take Reduction Plan in 2015, but did so to exempt certain waters from the requirements of the 2014 rule. 80 Fed. Reg. 30,367 (May 28, 2015). make the callosities appear white or pale yellow and thus visible from boats or during aerial surveys. Scientists maintain an extensive catalogue that documents each of the North Atlantic right whales known to exist. Although the Northern right whale has been protected under the ESA since 1973, the species has not recovered to a sustainable population level. Scientists estimate that the species consisted of only 458 individuals as of 2016. Not a single new born Northern Right whale calf was sighted by dedicated survey efforts during the 2017-2018 calving season. NMFS has previously admitted that the species' survival is dependent on protecting every individual, concluding that the loss of even one whale may contribute to the

extinction of the species. Entanglement in commercial fishing gear and ship strikes are the two most significant documented sources of mortality and serious injury for Northern Right Whales. Since 1973 Defendants NOAA/NMFS have failed to meaningfully manage commercial fishing and vessel operations off the US eastern coastline in order to significantly reduce the unlawful taking of Endangered Whales and Sea Turtles by commercial fishing and vessel operations.

32. To reduce the threat of ship strikes, NMFS issued regulations in 2008 as a result of the Plaintiff's petition and then in 2013 requiring ships 65 feet in length and longer to slow to ten knots or less in Northern Right whale habitat areas at certain times of year. 73 Fed. Reg. 60,173 (Oct. 10, 2008); 78 Fed. Reg. 73,726 (Dec. 9, 2013). The rule has not reduced right whale mortalities from ship strikes. Entanglement in fishing gear has been the primary cause of death and serious injuries to Endangered Whales and Sea Turtles in recent years. NMFS has acted arbitrarily and capriciously in refusing to enforce ESA Section 9 prohibitions against individual commercial fishermen or otherwise regulate commercial fishing operation to minimize their causing the entanglement and otherwise unlawful taking of Endangered Whales and Sea Turtles.

33. When Northern Right whales and other Endangered Whale s get tangled up in fishing gear, they can drown immediately. In a significant number of cases, however, the animals die over an extended time period as they become incapacitated by injuries or infections caused by the entanglement or starve. Gear often wraps around whales' flippers, mouths, and tails and, particularly in growing animals, cinches tighter over time. Such injury often results in major tissue and bone damage and systemic infection. The animals often lose weight, causing them to sink when dead so that death from entanglement is often underreported. From 2010 to 2014, there were 24 records of serious injuries and mortalities of right whales that involved entanglement or fishery interactions – an average of 4.65 whales per year.

34. In 2015, there were at least 4 new confirmed entanglements of right whales in fishing gear; in 2016 there were at least 7 new confirmed right whale entanglements; and in 2017, there were at least 9 new confirmed right whale entanglements. From 2010 to 2016, entanglement related deaths accounted for 85% of diagnosed right whale mortalities. In its 2016 stock assessment report, NMFS established an annual right whale PBR of 1. In other words, NMFS has determined that only a single right whale may be killed as a result of human activity while still allowing the species to reach its optimum sustainable population under the Marine

Mammal; Protection Act. 16 U.S.C. § 1362(20). Therefore, current documented serious injuries and mortalities are unsustainable and vastly exceed the standards of the MMPA.

35. Most right whale entanglements and mortalities are undocumented. Documented serious injury and mortality rates may vastly underrepresent actual mortality. Scarring data may better reflect actual entanglement rates. For example, a study of scarification data estimated that between 1980 and 2009, nearly 83% of known right whales suffered entanglements and 59% of right whales have been entangled more than once. A recent follow-up study indicates that the pattern persisted through at least 2012, and there is no evidence to suggest this threat has been mitigated. In addition to causing serious injuries and mortalities, entanglement in fishing gear causes other significant harm to Endangered Whales and Sea Turtles. . For example, research indicates that survivorship probability for individual Northern Right whales is reduced by at least 40% after an entanglement event.

36. Chronic entanglement impairs foraging and locomotion. Impaired locomotion can contribute to starvation, while an entanglement of the mouth directly impedes foraging, causing starvation. One entangled North Atlantic right whale gradually starved to death over the course of 320 days owing solely to his impairment of feeding and infection of wounds caused directly by entanglement. An entanglement can also increase stress hormone levels, which can contribute to the development of systematic infections. Severe wounding from an entanglement or repeated entanglements of right whales can increase their susceptibility to disease.

37. Entanglements are reducing the reproductive success of right whales, inhibiting the species' ability to recover from the brink of extinction. Studies show that severe wounding and repeated entanglements of right whales can cause reduced reproduction. Studies have also found that female right whales seen alive and carrying gear or with severe wounds from entanglement had a significantly lower chance of calving again. Females that experienced moderate or severe entanglement wounds between calving events had a significantly longer calving interval than females that experienced minor or no entanglement wounds. Other studies have found that significant energetic impacts also occur from entanglements, especially in reproductive females. The drag from fishing gear can delay right whale reproduction by months or years.

38. The myriad negative impacts from entanglements are contributing to the dire status of the right whale population. Just since 2010, calving rates have dropped by nearly 40%,

and the last four decades have seen increasing numbers of right whales killed, primarily by entanglement in fishing gear. The right whale population is now in decline.

39. The declining population trend was evident even before the spring and summer of 2017, during which at least 17 Northern Right whales were found dead in the United States and Canada. Twelve whales were found dead in Canadian waters, and five were found dead in U.S. waters. The cause of death is still being investigated for many of these deaths, but necropsies show that at least two of the whales found dead in Canadian waters appear to have died from entanglement in fishing gear. Two of the whales found dead in U.S. waters show evidence of entanglement. Some of the whales were too decomposed to determine cause of death.

40. These mortalities, which amount to nearly 10% of the current right whale population, will compound negative impacts to right whales, especially considering that at least four of the dead whales have been identified as females and only five calves were born in 2017. Conservation scientists assign a high probability that Northern Right whales owing to their reduced viability cause just by the Defendants said commercial fishing activities that ESA Section 9 prohibits will become biologically incapable of survival as a species by the second half of this century. If the Court fails to order the Defendants to stop their ongoing said prohibited killing and injuring of Northern Right whales, they will soon be extinct even after being fully protected under law by the ESA.

41. All Endangered Whales and Sea Turtles become routinely become entangled in the Pot Gear and Gill Nets licensed and regulated by the Government Defendants. These Endangered Whales and Sea Turtles are then killed and injured as a result. In recent years the incidents of entanglements have increased for Endangered Whales and Sea Turtles. This is because there has been an explosion in the population of Amerikan Lobsters off the US northeastern coast coincident with an increase in the consumer market for lobster. Now more commercial fishermen are deploying more commercial fishing gear due to the greater market demand and the larger lobster population that can meet this demand.

42. It is important to note that there are more lobsters because their main predator — the Cod fish — was recently wiped out by overfishing authorized and encouraged by Defendant NMFS. Despite its constantly decreasing population over many years, NOAA/NMFS refused to list the Codfish under the ESA as an endangered/threatened species and still refuses to do so to the current day. Their failure is a systemic error owing to their singular loyalty to the commercial

fishing industry and not to the Public interest or to the rule of law. If the NOAA/NMFS are not ordered to do otherwise, they will continue to ignore the entanglement of Endangered Whales and Sea Turtles by the Pot Gear and Gill Nets that they license and regulate till the Northern Right Whale goes extinct. It will be the first and not last species of whale or sea turtle to be extirpated by the negligence and commercial loyalty of NOAA/NMFS — the "foxes guarding the chicken coop."

43. Because of the extinction of Codfish off the US northeastern coast as a result of its being overfished, the Amerikan Lobster population greatly increased from it no longer being preyed upon by the Codfish. Once its predator was eliminated by overfishing the population of Amerikan lobsters was no longer restrained by predation. It must be noted as a lesson of history that it was the refusal of NOAA/NMFS to list the Codfish as an endangered species that resulted in its remaining population being totally depleted from overfishing leading to its extirpation in the US northeast coastal waters. Despite all the data collected by NMFS clearly showing that the Codfish population was decimated from overfishing and it was facing imminent extinction, NMFS refused to put any moratorium on its further commercial exploitation nor did it list the species as endangered under the ESA. To this day, NMFS' complete dedication to the commercial exploitation by commercial fishing makes it incapable of stopping its licensing the commercial fishing of Cod.

44. All of the above should be a convincing example of why NOAA/NMFS must be ordered by the Court to obey the ESA if there is any possibility of stopping commercial fishing from causing the extinction of any of the Endangered Species of Whales and Sea Turtles.

Plaintiff's Claims Against the Defendants

COUNT I: *Defendants Violation of 16 USC § 1536(a)(1):The Defendants NOAA/NMFS Failure to Comply with the Mandatory Duties Imposed on Them by ESA Section 7(a)(1) to Use Its Authorities Under Law to Insure the Continued Survival of ESA Listed Species of Endangered and Threatened Whales and Sea Turtles.* **FN9**

45. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 44.

46. The Defendants (i. e. NOAA. NMFS) have completely refused and failed to adequately comply with their non-discretionary and mandatory duties under ESA Section 7(a)(1) to use their authorities to insure that Endangered Species of Whales and Sea Turtles protected by the ESA will recover from their protected status as depleted species of wildlife. NMFS has failed to enact such consultations over its marine fisheries activities and has not used its lawful authorities to assist in the recovery of these ESA protected species from their depleted biological status. They have wholly failed to enforce the ESA Section 9 prohibitions against state agencies and commercial fishing operations that license them.

47. For their part, Defendants NOAA and NMFS have violated their mandatory and non-discretionary duties imposed by ESA section 7(a)(1) on them by wholly refusing to do an internal ESA Section 7 consultation in order to implement a program to effectively use their authorities and responsibilities under ESA Section 7(a)(1) to assist the recovery of Endangered Species of Whales and Sea Turtles. For example, NMFS wholly fails to effectively enforce the ESA Section 9(a) prohibitions against taking Endangered Species of Whales and Sea Turtles against individual commercial fishermen and state governments that license and regulate commercial fishing in federal waters under concurrent state jurisdiction of these states. Defendant NOAA violated its said ESA Section 7(a)(1) mandatory and non-discretionary duties by transferring to NMFS its duties and responsibilities assigned it by Congress under the ESA in an arbitrary and capricious manner without any concern for the adverse impact on listed endangered species from it doing so.

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[9] **ESA Section 7(a)(1)**: The Secretary [i. e. Secretaries of the Departments of Commerce and Agriculture] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

48. These said violations of the Defendants will continue to reoccur daily until the Court orders these Defendants to comply with their mandatory and non-discretionary duties under ESA Section 7(a)(1).

COUNT II: *Defendants Violation of 16 USC § 1536(a)(2): The Defendants NOAA/NMFS' Failure to Engage in a ESA Section 7(a) Consultation to Insure that the Government Defendants Commercial Fishing Operations and Enforcement Practices of ESA Section 9 Prohibitions will Not Jeopardize the Continued Survival of Endangered and Threatened Whales and Sea Turtles.* **FN10**

49. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 48.

50. These Federal Defendants (i. e. NOAA. NMFS) are violating the mandatory and non-discretionary duties imposed on them by ESA Section 7(a)(2) concerning the adverse impact on Endangered Whales and Sea Turtles from commercial fishing that they license and regulate in concert. Since 1973 and continuing to the present, they have failed to adequately comply with their mandatory and non-discretionary duties to meaningfully consult on the adverse impact on Endangered Species of Whales and Sea Turtles of its authorizing and regulating commercial fisheries operations off the US Atlantic coastline using Pot Gear and Gill Nets that has resulted in the continued killing and injuring of these ESA listed species incidental to their entanglement in the said fishing gear and currently threatens the continued survival of each of these ESA listed endangered species.

51. Defendant NOAA violated its mandatory and non-discretionary duties under ESA Section 7(a)(2) by transferring its ESA management authority assigned it by Congress concerning listed species of marine wildlife to its infra-agency NMFS. It did this unlawfully without first conducting an internal ESA Section 7(a) consultation to insure that such a transfer would not jeopardize the continued survival of Endangered Species of Whales and Sea Turtles.

52. NOAA wholly failed its lawful requirement to consider a more suitable agency to which it would transfer its ESA management responsibility such as the National Ocean Service.

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[10] ESA Section 7(a)(2): Each Federal agency shall, in consultation with and with the assistance of the Secretary [i. e. FWS/NMS], insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, ... In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

It was an act of arbitrary and capricious incompetence that NOAA would hand Endangered Species of Whales and Sea Turtles over to the custody to an agency like NMFS whose licensing and regulation of commercial fishing routinely kills and/or injures Endangered Species of Whales and Sea Turtles. The ESA Section 7 requires that NOAA first produced a Biological Assessment and then a Biological Opinion before deciding to invoke the said trans of its ESA management authority for Endangered Species of Whales and Sea Turtles.

53. Since 1973 Defendants NMFS has wholly failed in its mandatory and non-discretionary duties under ESA Section 7(a) to enter into an internal consultation over its programs and policies concerning its enforcement of the ESA Section 9 prohibitions against the taking of Endangered Species of Whales and Sea Turtles.

54. As a result of these failures, commercial fishermen now routinely kill and injure members Endangered Species of Whales and Sea Turtles incidental to their commercial fisheries operations without a scintilla of fear that they will be prosecuted by NMFS for these ESA Section 9 prohibited takings of Endangered Species of Whales and Sea Turtles

56. For their part, Defendants NMFS/NOAA/ASMFC have violated their said mandatory and non-discretionary duties imposed by ESA section 7(a)(2) and they will continue to do so unless compelled to do otherwise by the Court.

COUNT III: Defendants Violation of 16 USC § 1538(a): The Defendants Violation of the ESA Section 9(a) Prohibitions Against the Incidental Taking of Endangered Species of Whales and Sea Turtles Occurring as a Direct Result of their Respective Individual Commercial Fishing Operations **FN11**

57. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 56.

58. The Government Defendants (i. e. NOAA, NMFS) are licensing and regulating commercial fishing operation off the Atlantic coastline that violates the ESA Section 9 prohibitions of the ESA. The Defendants licensed fishing operations and its individual members are violating the ESA Sections 9 prohibitions by deploying lobster pot gear in US coastal waters that incidentally entangles Endangered Whales and Sea Turtles in a routine and continuous manner since 1973. Defendants never issued any ESA Section 10 Incidental Take Permit to authorize any incidental taking by them of Endangered Whales and Sea Turtles in the commercial fishing gear that they license and regulate to be deployed in US coastal waters under the concurrent state jurisdiction of Massachusetts.

59. The Defendants have never issued any ESA Section 7 incidental take statement authorizing their incidental taking of said endangered species pursuant to their regulating and licensing said commercial fisheries operations in US coastal waters. These Defendants are violating the ESA Section 9(a) prohibitions in their incidental taking Endangered Species of Whales and Sea Turtles by their facilitating the operation of commercial fisheries that deploy Pot Gear and Gill Nets in US coastal waters. This deployment of said fishing gear continuously and routinely kills and/or injures members of Endangered Species of Whales and Sea Turtles from their entanglements in the said fishing gear.

60. Endangered Species of Whales and Sea Turtles are killed and injured from entanglement in Pot Gear and Gill Nets deployed by the Defendant MLA members and by the Government Defendants licensing and regulating these commercial fisheries. Federal courts have

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[11] ESA Section 9(a):[I]t is unlawful for any person subject to the jurisdiction of the United States to— (A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; (C) take any such species upon the high seas; (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C); … or (G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

repeatedly held federal agencies liable for violating the ESA's Section prohibitions when their agency actions expectedly and routinely cause commercial development in ecosystems utilized by ESA listed species and that results in the unlawful taking of these species in violation of the ESA Section 9(a) prohibitions. **FN12**

61. The Defendants will continue their said ESA Section 9(a) prohibited taking of Endangered Species of Whales and Sea Turtles into the future unless ordered to stop by the Court.

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[12] See *Strahan v. Coxe*, 939 F. Supp. 963 (Dist. Mass. 1996) and 127 F. 3d 155 (1st Circuit, 1997) (Massachusetts marine fishing agency liable under ESA Section 9(a) for unlawful taking of ESA listed species of endangered whales by entanglements of endangered whales in fishing gear licensed and regulated this agency). See also *Florida Key Deer v. Paulison*, 522 F.3d 1133 (11th Cir. 2008) and *Florida Key Deer v. Stickney*, 864 F. Supp. 1222 (Dist. FL 1994) (Federal Emergency Management Agency violates ESA §§ 9 and 7 for its authorizing, regulating, and funding commercial development in habitat of ESA listed endangered deer species).

PRAYER FOR RELIEF

I. For a Declaratory Judgment that that NOAA/NMFS are violating the ESA Section 9 take prohibitions by licensing and regulating Pot and Gill Net fisheries that are killing, injuring and otherwise taking Endangered Whales and Sea Turtles by entanglement of members of these endangered species in Vertical Buoy Ropes and netting and that its permitting of these said fisheries in itself is now a categorical violation of ESA Section 9 prohibitions as they pose a clear and present danger to entangle said endangered species.

II. For a Declaratory Judgment that NOAA is now in continuous violation of its mandatory and non-discretionary duties under ESA Section 7 by transferring its authority to supervise enforcement of the ESA for Endangered Whales and Sea Turtles to NMFS without the required review and because NMFS by statute is a dedicated commercial fishing agency and the "Fox guarding the chicken coop and eating the chickens." It therefore is categorically unsuitable under the ESA to assume such supervisory responsibility for any protected wildlife.

III. For an order, enjoining NMFS from licensing lobster and crab pot fisheries employing Vertical Buoy Ropes in marine waters possibly inhabited at any time of year by Endangered Whales and Sea Turtles or permitting states to do so in waters under their jurisdiction.

IV. For an order, ordering the Defendants to comply with their mandatory and non-discretionary duties under ESA Section 7 in regards to their licensing and regulating commercial fishing operations and to require that states must apply for and be issued ESA Section 10 Incidental Take Permits to license commercial fishing operations in coastal waters under their state jurisdiction and to redo all relevant biological opinions.

V. For an award of the Plaintiff's direct costs of his prosecution against the Defendants.

VI. For any further relief that the Court deems appropriate.

BY:

/s/ Richard Maximus Strahan

Richard Maximus Strahan
POB 82, Peterborough NH 03458
esistoo@yahoo.com, 617-817-4402

Pro Se and Proud!

VERIFICATION OF THE COMPLAINT

I Richard Maximus Strahan verify under the pains and penalties of perjury that all the facts alleged in the above complaint are known to the best of my ability to be true. Signed under the pains and penalties of perjury this 24th Day of August in the year 2018.

/s./ Richard Maximus Strahan

Richard Maximus Strahan

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

U.S. DISTRICT COURT
DISTRICT OF NH
FILED
2018 AUG 24 P 3: 14

RICHARD MAXIMUS STRAHAN *Plaintiff*	)	Civil Action No. 18-CV-752
v.	)	
ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ("NOAA") ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE ("NMFS")	)	24 August 2018
Defendants	)	

PLAINTIFF'S MOTION FOR ACCESS TO THE ECF FILING SYSTEM SO THAT HE MAY FILE DOCUMENTS WITH THE COURT I THE INSTANT ACTION

Plaintiff — Richard Max Strahan — SPEAKS:

I am asking the Court to allow me to make filings with the Court through its ECF filing system. I have vast experience with the ECF system and its requirements. I currently have been authorized to make ECF filings in several civil action pending in the US District Courts.

For the above reasons, I ask the Court to grant my requested relief.

BY:

/s/ Richard Maximus Strahan

Richard Maximus Strahan
POB 82
Peterborough NH 03458

Pro Se and Proud!

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

U.S. DISTRICT COURT DISTRICT OF NH FILED 2018 AUG 24 P 3:25

I. (a) PLAINTIFFS Richard Max Strahan

(b) County of Residence of First Listed Plaintiff Hillsboro NH *(EXCEPT IN U.S. PLAINTIFF CASES)*

(c) Attorneys *(Firm Name, Address, and Telephone Number)* Pro Se

DEFENDANTS Administrator NOAA

County of Residence of First Listed Defendant N/A *(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)* N/A

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☒ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: 16 USC 1532 et seq

Brief description of cause: Violations + Illegal Killing Endangered Species

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ 1,000,000

CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE LaPorte DOCKET NUMBER Strahan v. DHS 18-CV-161-JL

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.