





## **POINTS AND AUTHORITIES**

### **INTRODUCTION**

The intentions of Plaintiff MAN AGAINST XTINCTION A/K/A M.A.X. (“Plaintiff”) in filing his plethora of lawsuits is in writing and clear – it is not that Plaintiff wants to protect marine life, but **he wants to harass and extort money.**

After filing this Action and after undersigned counsel filed his Declaration and Reply (Dkt. 81-82) demonstrating that he did not give Plaintiff leave to amend his Complaint, on March 8, 2022, Plaintiff filed *Man Against Xtinction A/K/A “MAX” v. Whale Killing Bastards, et al.*, No. 1:22-cv-10364-IT, (D. Mass. Mar. 8, 2022) (“Mar. 8 Dis. Mass. Act.”), and, on March 15, 2022, sent an email to undersigned counsel, copying Defendant Arthur Sawyer (“Sawyer”), stating **“[s]ince [you] called me a ‘liar’ in your last filing and was a meany after you agreed too [sic] be courteous I decided to add smoky [Sawyer] as a defendant in another lawsuit. I am sure your client appreciated how well you represent him.”** Also, on December 1, 2021, Plaintiff emailed Sawyer and demanded, **“[t]ell the MLA and Massachusetts to agree to give me one million dollars and I will settle the lawsuit. You can keep on fishing or NOT.”**

Plaintiff continues to engage in harassing and frivolous litigation tactics against Sawyer, amongst a variety of other defendants. Plaintiff has filed over seventeen lawsuits with the supposed purpose of protecting the northern right whale, but with the intended effect of harassing persons involved with ensuring responsible commercial fishing on the east coast, including Sawyer.

Respectfully, the Court should not countenance Plaintiff’s stated intention to abuse the judicial system under the guise of purported noble intentions. Plaintiff’s continued abuse does



disservice to the courts and decorum, those Plaintiff has targeted, law and order, and the legitimate efforts to protect marine life and reasonably harmonize all actors in our precious ecosystem.

Therefore, pursuant to well-established case law in the District of D.C. and D.C. Circuit, Sawyer moves this Court for a nationwide pre-filing injunction against Plaintiff, or in the alternative, for a pre-filing injunction in the Federal District Courts within the First and D.C. Circuits.<sup>2</sup>

### **FACTUAL BACKGROUND**

To understand the imminent necessity of the present motion, this Court must understand Plaintiff's litigious history, both in this Action and in dozens of related actions, which have been filed using a variety of names including Richard Max Strahan and Man Against Xtinction, a/k/a/ "Max" or "M.A.X." as pseudonyms.

Indeed, a quick glimpse into Plaintiff's email communications with Sawyer and his counsel reveal Plaintiff's *true* intentions in pursuing this saga of litigation against Sawyer and the MLA. On December 1, 2021, Plaintiff emailed Sawyer and demanded, "[t]ell the MLA and Massachusetts to agree to give me one million dollars and I will settle the lawsuit. You can keep on fishing or NOT."<sup>3</sup> (Declaration of Samuel P. Blatchley ("Blatchley Dec."), Ex. A.) Plaintiff, apparently, is fine with the allowing Sawyer and others to fish, so long as he gets paid \$1,000,000

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<sup>2</sup> Including, the Districts of Massachusetts, New Hampshire, Maine, Puerto Rico, and Rhode Island.

<sup>3</sup> The use of this statement complies with Federal Rules of Evidence 408 as an exception to the prohibited uses of compromises offers because it is being offered as proof of Plaintiff's improper intentions for pursuing litigation against Sawyer, not to prove or disprove the validity of a disputed claim. Fed. R. Evid. 408



as he essentially says give me \$1,000,000.00 and you can fish, or, if you do not, you cannot fish. This expressly belies any claimed noble intention on the part of Plaintiff.

Then, on March 15, 2022, in an email to undersigned counsel, Plaintiff stated, “[s]ince [you] called me a ‘liar’ in your last filing and was a meany after you agreed too [sic] be courteous I decided to add smoky [Sawyer] as a defendant in another lawsuit. I am sure your client appreciated how well you represent him.” (Blatchley Dec., Ex. C.) The Plaintiff’s own words demonstrate that Plaintiff’s cases against Sawyer have nothing to do with protecting whales. Instead, Plaintiff is vindictively harassing Sawyer, and his counsel, through judicial process, regardless of the claim’s merit, simply to harass Sawyer and/or the MLA and to obtain financial gain. (Blatchley Dec., Exs. A, C.) He has made clear on several occasions that his intention is to put Sawyer, the MLA, and fishermen out of business by making them pay legal fees to defend against his frivolous suits or by extorting a settlement through them. (Blatchley Dec. ¶ 11.)

### ***Plaintiff’s Seventeen Lawsuits***

Plaintiff is no stranger to the Federal court system. Since 1995, Plaintiff has filed at least seventeen suits in the Federal courts that relate (often obliquely) to protecting the northern right whale.<sup>4</sup> This is of course only counting the allegedly whale-related actions; Plaintiff has filed

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<sup>4</sup> See *Strahan v. Coxe, et al.*, 127 F.3d 155 (1st Cir. 1997); *Strahan v. Linnon*, 967 F.Supp. 581 (D. Mass. 1997); *Northern Right Whale, et al. v. Governor, ME., et al.*, No. 1:00-CV-00087 (D. Me. 2000); *Strahan v. New England Aquarium, et al.*, 25 Fed.Appx. 7 (D. Mass. 2002) (combining Dockets No. 00-2363, 0-2361); *Strahan v. Herzfelder, et al.*, No. 05-10140-NMG, 2006 WL 8458283 (D. Mass. Apr. 19, 2006); *Strahan v. Pritchard, et al.*, 473 F.Supp.2d 230 (D. Mass. 2007); *Strahan v. Bowles*, No. 05-10140-NMG, 2008 WL 11510858 (D. Mass. July 23, 2008); *Strahan v. Holmes*, 510 F.Supp.2d 161 (D. Mass. 2007); *Strahan v. Holmes*, 686 F.Supp.2d 129 (D. Mass. 2010); *Strahan v. Diodati*, 755 F.Supp.2d 318 (D. Mass. 2010); *Strahan v. Roughead*, 910 F.Supp.2d 358 (D. Mass. 2012); *Strahan v. Nat. Oceanic and Atmospheric Admin.*, No. 18-cv-752-LM, 2018 WL 11266497 (D.N.H. Oct. 11, 2018); *Strahan v. Sec’y, Mass. Exec. Off. of Energy and Env’t Aff.*, 458 F.Supp.3d 76 (D. Mass. 2020); *Man Against Xtinction v. Comm. Maine Dept. Mar. Res.*, 478 F.Supp.3d 67 (D. Me. 2020); *aff’d sub nom. Man Against Xtinction v. Keliher*, No. 20-1873, 2020 WL 8815382 (1st Cir. Dec. 21, 2020); *Strahan v. Pentony*, No. 1:21-



numerous other cases in the Federal courts against various defendants on a range of theories.<sup>5</sup>

***Plaintiff's Lawsuits Against Sawyer***

In 2019, Plaintiff began his rampage against Sawyer by filing a lawsuit against Sawyer, in his personal and official capacity, as the “chief executive officer” of the MLA, in the District of Massachusetts.<sup>6</sup> (Dkt. 71, Declaration of Arthur Sawyer (“Sawyer Dec.”), Ex. A ¶ 8.) Virtually identical to the complaints at issue here, Plaintiff’s verified District of Massachusetts Amended Complaint alleged, *inter alia*, that Sawyer had, though his use of vertical buoy ropes (“VBR”) fishing equipment, engaged in takings in violation of the Endangered Species Act (“ESA”), § 1538(a) and (g),<sup>7</sup> and that said behavior constituted a public nuisance claim under Massachusetts state law. (Dkt. 71 – Ex. A ¶¶ 64-72, 102-103.) On July 19, 2019, Sawyer moved the District Court for the District of Massachusetts to dismiss Plaintiff’s District of Massachusetts Amended Complaint. (Dkt. 71.) On February 3, 2020, the District Court for the District of Massachusetts granted Sawyer’s Motion to Dismiss. (Dkt. 71 – Sawyer Dec., Ex. C.)

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cv-01131-TJK, (D.D.C. 2021); *Man Against Xtinction v. Mass. Port Auth.*, No. 21-cv-10185-DJC, 2022 WL 344560 (D. Mass. Feb. 4, 2022); *Man Against Xtinction v. McKiernan et al.*, No. 1:22-CV-10364-IT (D. Mass. Mar. 8, 2022).

<sup>5</sup> See e.g., *Strahan v. Frazier*, 156 F.Supp.2d 80 (D. Mass. 2001) *aff’d* *Strahan v. Frazier*, 62 Fed.Appx. 359 (1st Cir. 2003); *Strahan v. Kelly, et al.*, No. 17-cv-00163-JL, 2017 WL 2982956 (D.N.H. July 12, 2017); *Strahan v. Mann, et al.*, No. 1:17-CV-00163 (D.N.H. Oct. 19, 2017); *Strahan v. Nielsen, et al.*, No. 18-cv-161-JL, 2018 WL 3966318 (D.N.H. Aug. 17, 2018).

<sup>6</sup> Sawyer was and is the President of the Massachusetts Lobstermen’s Association, not its chief executive officer. The Massachusetts Lobstermen’s Association does not have a chief executive officer position.

<sup>7</sup> Regarding the Amended Complaint at issue in the instant motion, Plaintiff asserts Endangered Species Act (“ESA”) § 9 takings against Sawyer. This should be understood to be a takings claim under 16 U.S.C. § 1538(a) and (g), which is an ESA § 9 takings claim. See ESA § 9(a)(1), 16 U.S.C. § 1538(a)(1)(B).



In its Memorandum accompanying its Order, the District Court for the District of Massachusetts dismissed each claim against Sawyer with prejudice. (Dkt. 71-4 at p. 1); Fed. R. Civ. P. 41(b) (“Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.”). Specifically, as to Plaintiff’s ESA § 1538(a) and (g) takings claim, the District Court for the District of Massachusetts found that Plaintiff’s “allegations in support of [his takings claim] do not provide any allegations related to” Sawyer. (Dkt. 71-4 at p. 5, n. 4.) As to the public nuisance claim under Massachusetts law, the District of Massachusetts found that Plaintiff had failed to “plead [] a unique injury that would entitle him to bring a claim for public nuisance.” (*Id.* at pp. 8-9.)

Plaintiff, proceeding *pro se*, has now brought the exact same claims against Sawyer in this Action, alleging generally that Sawyer has violated the anti-taking provision of Section 9 of the Endangered Species Act, 16. U.S.C. § 1538, through the use of VBR fishing equipment lobster fishing in Massachusetts coastal waters. Plaintiff has also alleged that Sawyer is a public nuisance under Massachusetts law due to the alleged death of whales resulting from Sawyer’s use of VBR fishing equipment. Plaintiff alleges he is suing Sawyer in his individual and official capacity, as the chief executive officer of Defendant Massachusetts Lobstermen’s Association. (Dkt. 41.)

### ***Plaintiff Attempts to Trick Defendants into Defaulting***

On October 1, 2021, Plaintiff filed his First Amended Complaint in this action, which he unsuccessfully sought to withdraw on October 5, 2021. (Dkt. 27-29.) On the same day, October 5, 2021, he then moved for default judgment against Defendants. (Dkt. 30.) After Federal Defendants filed a motion for clarification, the Court confirmed the Amended Complaint as the then-operative



pleading.<sup>8</sup> (10/07/21 Min. Order.) But Plaintiff refused to accept the Court’s Order as legally binding, forcing the Court to again reiterate the Amended Complaint as the operative complaint on November 4, 2021. (Dkt. 34 at p. 3, Dkt. 36.) The Court then rejected Plaintiff’s motion for default, observing that Plaintiff’s filings amounted to “an attempt to create confusion on Defendants’ part to the operative complaint and the appropriate responsive deadline, and to use that confusion to seek default.” (Dkt. 36 at p. 3.) The Court stated it would “not countenance Plaintiff’s manipulation of this litigation,” and ordered that Plaintiff “shall refrain from use of harassing or abusive language in his filings and communications with or about the Court and its staff, the Clerk of Court, Defendants, or opposing counsel, and shall act with civility at all times.” (*Id.* at pp. 3, 7.)

***Plaintiff Attempts to Avoid Responding to Defendants’ Motion to Dismiss***

On November 4, 2021, Defendants moved, separately, to dismiss the First Amended Complaint. (Dkt. 37.) On November 8, 2021, the Court warned Plaintiff that he must respond to the motions to dismiss the First Amended Complaint by December 6, 2021, or risk dismissal of his case with prejudice. (Dkt. 39.) On November 25, 2021, Plaintiff evaded his responsibility to respond to the motion to dismiss his First Amended Complaint by filing a Second Amended Complaint, further delaying the litigation. (Dkt. 41.)

***Plaintiff Files a Second Amended Complaint Without Seeking Leave from Defendants***

Plaintiff attempted to file a Second Amended Complaint on November 25, 2021. (Dkt. 41.) Despite his misrepresentations to the contrary, he did so without seeking leave from or conferring with Defendants to stipulate to the filing of another amended complaint. (*See id.*; Dkt. 82 – Samuel

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<sup>8</sup> Federal Defendants constitute Michael Pentony, Richard W. Sprinrad, Ph.D., in his official capacity as the Administrator of the National Oceanic and Atmospheric Administration, and Janet Coit, in her official capacity as the Assistant Administrator of NOAA Fisheries.



P. Blatchley 3/10/22 Declaration (“Blatchley 3/10/22 Dec.”).) On December 1, 2021, the Court accepted the Second Amended Complaint as-filed, and denied Defendants’ First Motion to Dismiss as moot. (12/1/21 Min. Order.) On February 7, 2022, Defendants timely moved to dismiss all counts pertaining to them in the Second Amended Complaint, specifically, Counts I-V and X. (12/1/21 Min. Order.) The Court *sua sponte* granted Plaintiff an extension through March 9, 2022, but once again reiterated in its February 9, 2022 Order that Plaintiff must respond to the motion to dismiss, or risk having his case dismissed. (Dkt. 63.)

***Plaintiff’s Continued Attempts to Delay this Litigation and Bad Faith Misrepresentation of his Conversation with Defendants’ Counsel***

On February 11, 2022, Plaintiff requested an additional extension of time solely on the basis of his *pro se* status. (Dkt. 65.) He requested April 4, 2022, as the new deadline to respond. (*Id.*) The Court granted Plaintiff’s motion. (02/21/22 Min. Order.) Yet again, in a transparent attempt to avoid responding to Defendants’ motions to dismiss, Plaintiff filed a “Corrected Second Amended Complaint” on February 28, 2022.<sup>9</sup> (Dkt. 73.) This “corrected” Second Amended Complaint is identical to the original Second Amended Complaint but for edits made to remedy fatal defects in his Prayer for Relief. (*Compare* Dkt. 41 at p. 41, *with* Dkt. 73 at p. 41.)

On March 3, 2022, Defendants jointly filed a motion to strike Plaintiff’s “corrected” Second Amended Complaint. (Dkt. 76.) In response to Defendants’ motion, Plaintiff misrepresented the conversation he had with counsel, making a false statement to this Court that he was given permission to file a new Second Amended Complaint to correct his failure to properly request relief. (Dkts. 78, 81, 82 – Blatchley 3/10/22 Decl.) Plaintiff continued, threatening to file another amended complaint, to again clarify his claims because “Defendants . . . are too dim witted

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<sup>9</sup> The “Corrected Second Amended Complaint” is Plaintiff’s third attempt to amend the Complaint and should be titled the Third Amended Complaint.



and so ignorant of their own actions as NOT to be able to understand the claims I make against them,” referring to Defendants as “Defendant shysters” or “DOJ Shysters,” and disparaging them as acting maliciously to prevent Plaintiff from bringing his own claims. (Dkt. 78 at pp. 1, 2.)

***Plaintiff’s Other Vexatious Filings in the Above-Captioned Matter***

Plaintiff’s vexatious and rude litigation antics were not limited to his pleadings, however. On July 1, 2021, Plaintiff filed a motion seeking an ECF password and threatened to file a lawsuit against Court personnel seeking \$1,000,000 in damages if the Court did not grant such motion. (Dkt. 15.) After the Court reminded Plaintiff to conduct himself with civility, courtesy, and respect, Plaintiff renewed his attempt to obtain an ECF password and threatened Honorable Judge Kelly and the Chief Judge with a civil rights action if his request was not granted. (Dkt. 26 (“A draft of the complaint has been prepared. I am ready to file it immediately after Kelly denies the instant motion. I can hardly wait to make history.”).) The Court again reminded Plaintiff of his obligation to show appropriate civility, courtesy, and respect. (10/02/21 Min. Order.)

However, Plaintiff has not stopped using threatening and abusive language against the Court. (*See e.g.*, Dkt. 26 (“[Judge Kelly] possesses a hateful bigotry toward pro se petitioners” and “in his individual capacity Kelly can be a defendant in a *Bivens* action.”); Dkt. 34 (“I was RAPED by the court as my constitutional right to control of my filings and pleadings,” and “[t]he Court’s 26 October 2021 order – either by Kelly’s own poisoned penned or by the barf of one of his RETARD clerks . . .”); Dkt. 70 (“You can go to Hell judge Kelly if you believe that I will comply with your unconstitutional act of bigotry towards me.”).)

Nor has Plaintiff stopped using threatening and abusive language against Sawyer and the other Defendants, generally. (*See e.g.*, Dkt. 34 (“Department of Injustice ‘DOI’ shyster” with continued reference to the DOI); Dkt. 70 (“worm tongued shysters”); Dkt. 76.3 (“Your buddy and



coconspirator Gross Bitch will be joining you as a defendant.”); Dkt. 76.1 (“You and the DOJ are parasites and the Public Bad. . . You represent the worst kind of [sic] worm tongue, corrupt government employment.”); Dkt. 76.2 (“You fucked up. Bye-Bye.”).)

Plaintiff’s intention to disobey Court’s orders is blatantly obvious. (*See e.g.*, Dkt. 15 (“I hereby certify that I POINTLESSLY emailed a PRE-FILING copy to the shysters for the whale killing government on 1 July 2021 . . . OMG! IS THAT F\*\*\*ING OBVIOUS FROM THE START.”); Dkt. 34 (“This is REALITY no matter what Kelly wants to order otherwise. That is OUTSIDE the bounds of his judicial authority,” and “I decline to accept as legally binding Kelly’s or his RETARD clerk’s 7 & 26 October 2021 orders.”); Dkt. 70 (“Even if a shyster made such a complaint, ‘who cares?’” and “I can state in affirmative that my compliance with this order is not going to happen.”).)

***Plaintiff’s Newest Complaint Against Arthur Sawyer***

While Plaintiff was engaged in the instant action against Sawyer, he filed yet another complaint in the U.S. District Court for the District of Massachusetts against Sawyer, in his personal capacity and professional capacity as a member of the Massachusetts Marine Fisheries Commission. (Blatchley Dec., Ex. D – Mar. 8 Dis. Mass. Act.) U.S. District Judge Indira Talwani immediately ordered the term “Whale Killing Bastards” to be stricken from Plaintiff’s Complaint and replaced with the first named Defendant, Daniel McKiernan. (Blatchley Dec. Ex. D – Mar. 8 Dis. Mass. Act. Compl.) The March 8, 2022, Complaint mirrors this action against Sawyer as it alleges Sawyer has violated the ESA by using VBR fishing gear and alleges Sawyer is a public nuisance under Massachusetts law. (Blatchley Dec. Ex. D – Mar. 8 Dis. Mass. Act. Compl. ¶ 67, 74.) In addition, Plaintiff improperly alleges a § 1983 violation and a Massachusetts Civil Rights Act violation against Sawyer. (Blatchley Dec., Ex. D – Mar. 8 Dis. Mass. Act. Compl. ¶¶ 72, 79.)



Sawyer is actively monitoring other court dockets to ensure he has not been sued in any other jurisdiction.<sup>10</sup>

***Plaintiff Threatens Arthur Sawyer's Counsel For Bringing the Present Motion***

In fulfilling their obligation to meet and confer regarding the present motion, District of D.C. Local Rule 7(m), Sawyer's counsel sent, by FedEx overnight, meet and confer correspondence on March 24, 2022, and emailed a copy of the same on March 25, 2022. (Blatchley Dec. Ex. E – March 25, 2022 Meet and Confer Email.) On March 25, 2022, Plaintiff responded with “a COMMAND for your to cease and desist in your unlawful attempt to trespass on my First Amendment rights” and threatening that “if you make any further attempt to do so, file any motion asking for a court to restrain my said opportunity, I will immediate commence a civil rights lawsuit against you and your employers under the Massachusetts civil rights act to obtain an injunction against you doing so and to seek punitive damages” and that he would “also seek to have you disbarred in every state you practice to owing to you [sic] unethical practice of stopping citizens participation in democracy.” (*Id.*, Ex. F – Plaintiff's March 25, 2022 Email to Sawyer's Counsel.) Plaintiff's hyperbolic and erroneous threats have not and will not deter

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<sup>10</sup> Mere hours before Sawyer filed the present motion, Plaintiff filed an appeal in his 2019 District of Massachusetts case, long past the time period set out in Fed. R. App. P. 4 for appeals, appealing *every order issued* by the District Court for the District of Massachusetts in that proceeding. *See (Strahan v. Massachusetts Executive Officer of Energy and Environmental Affairs, et. al, 1:19-cv-10639-IT, Dkt. 647.)*



Sawyer's counsel from zealously representing him, and the present motion has been filed accordingly.<sup>11</sup>

### **LEGAL STANDARD**

A vexatious litigant is an “overly litigious litigant,” that “abuse[s] the judicial process by filing frivolous, duplicative, and harassing lawsuits.” *Caldwell v. Obama*, 6 F.Supp.3d 31, 49 (D.D.C. 2013). A court may employ a pre-filing injunction enjoining a vexatious litigant who threatens “the integrity of the courts and the orderly and expeditious administration of justice,” by flooding the courts with meritless, fanciful claims. *In re Powell*, 851 F.2d 427 (D.C. Cir. 1988) (quoting *Urban v. United Nations*, 768 F.2d 1497, 1500 (D.C. Cir. 1985)). A pre-filing injunction is an “extreme remedy, and should be used only in exigent circumstances.” *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988) (quotations omitted). While such remedy against a pro se plaintiff should be approached with caution, a plaintiff's pro se status does not provide a shield behind which they may bombard the court and other parties with meritless claims. *Id.* at 427.

Before the court may issue a pre-filing injunction, the court must: (1) provide the plaintiff notice and opportunity to be heard; (2) develop a record to ensure the filer's due process rights are not violated, including a consideration of the number and content of previous filings; and (3) make substantive findings as to the frivolous or harassing nature of the litigant's actions. *Caldwell*, 6 F.Supp.3d at 50 (summarizing the three-step requirement from *In re Powell*, 851 F.2d at 431). Upon a finding that all three elements are met, the Court may fashion an appropriate remedy to enjoin the vexatious litigant while “tak[ing] great care not to ‘unduly impair a litigant’s

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<sup>11</sup> However, given Plaintiff's threats (and his demonstrated contempt for the Court, its staff, and now its officers), Sawyer's counsel fully anticipates Plaintiff will instigate a tsunami of suits against them in any court he is allowed to file in. As such, Sawyer's counsel respectfully asks that the pre-filing injunction include suits against counsel and their firm, Eckland & Blando LLP.



constitutional right of access to the courts.” *Urban*, 768 F.2d at 1500 (alterations omitted). The burden is on the defendant(s) to show the Court that a litigant’s history justifies an injunction. *See Duru v. Mitchell*, 289 F.Supp.3d 112, 118 (D.D.C. 2018) (finding that movants failed to apply three-step framework or allege particularized facts about litigant’s history so that a pre-filing injunction was not warranted).

### **ARGUMENT**

Plaintiff continues to inundate Sawyer and the District Courts for the Districts of Columbia and Massachusetts’s dockets with repetitive lawsuits and numerous, meritless, and harassing motions. This assault shows no signs of stopping. Moreover, Plaintiff continues to exhibit a blatant, bad faith disregard for this Court’s Orders. He repeatedly fails to meet deadlines, files derogatory, baseless motions to harass the Court and Defendants, and directly ignores this Court’s orders by so filing. The Court must grant Sawyer’s request for a pre-injunction filing that prevents Plaintiff from filing any further actions against Sawyer, the MLA, or Sawyer’s counsel in Federal District Courts nationwide, or in the alternative, for the District Courts within the First and D.C. Circuits to prevent Plaintiff’s gross abuse of the judicial process from continuing.

#### **I. A Pre-Filing Injunction is Necessary to Prevent Plaintiff’s Vexatious Filings.**

Plaintiff has barraged Sawyer, and the courts, with repetitive lawsuits and incoherent filings while throwing procedural rules to the wayside. This Court must end Plaintiff’s abusive tactics.

##### **A. Plaintiff continues to harass Sawyer with numerous, frivolous lawsuits and filings, which are virtually identical in regurgitating baseless or barred claims.**

This Court may make a record regarding findings of a pattern of harassment or frivolousness by “considering the number and content of the filings, the similarity of the filings to previous actions, and ‘whether the litigant is attempting to harass a particular adversary.’” *Gharb*



*v. Mitsubishi Elec. Corp.*, 148 F.Supp.3d 44, 56 (D.D.C 2015) (quoting *In re Powell*, 851 F.2d at 431). Plaintiff sued Sawyer three times in the last three years for the same claims, even after his first lawsuit was dismissed against Sawyer with prejudice. In bringing the most recent lawsuit, Plaintiff admitted to Sawyer’s counsel that the only reason he added Sawyer to the matter was to retaliate against Sawyer because undersigned counsel called him a “liar.”<sup>12</sup> He has now threatened to sue Sawyer’s counsel for zealously advocating on Sawyer’s behalf. Because of his malicious and frivolous intentions, and his wasteful litigation tactics, Plaintiff is deserving of the vexatious litigant title and corresponding pre-filing injunction.

In *Urban v. United Nations*, the Court entered a pre-filing injunction against the plaintiff, noting that the plaintiff’s “fast growing track records of frivolous suits” warranted such injunction 768 F.2d 1497, 1500 (D.C. Cir. 1985) (finding plaintiff’s filings lacked substantive allegations over which the court had jurisdiction). In *Urban*, the plaintiff had filed over fifty appeals and motions with the court, but the *In Re Powell* court noted that a litigant’s litigiousness need not reach *Urban* levels to trigger an injunction. 851 F.2d at 434. Rather, the test is whether the “orderly and expeditious administration of justice” has been so impeded as to require such an extreme sanction. *Id.* (citing *Urban*, 768 F.2d at 1500). Further, in determining whether a litigant has filed

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<sup>12</sup> Quite the contrary, undersigned counsel merely clarified as follows – “Whether this statement arises from a misunderstanding or blatant misrepresentation, undersigned counsel confirms that he did not “agree” that “[Plaintiff]” should amend his Complaint.” Indeed, at the end of the telephone conference, undersigned counsel was clear that he would speak with his client regarding Plaintiff’s request for leave to further amend Plaintiff’s Complaint, but that undersigned counsel did not believe that he or his client would agree and that Plaintiff ***did not*** have Sawyer’s consent to further amend his Complaint at that time. (Dkt. No. 81 at p. 3.) Note that Plaintiff did not dispute the veracity of undersigned counsel’s Declaration and statement in Plaintiff’s March 15, 2022 email. (Blatchley Dec., Ex. C.)



similar claims or, to analyze the prospective effect of claims, a district court may consider cases currently pending. *See In re Powell*, 851 F.2d at 431.

Beyond Plaintiff's currently pending lawsuits, his long and egregious history of suits demonstrate that he is filing repetitive actions against Sawyer. As stated earlier, in the last twenty-seven years, Plaintiff has filed at least seventeen complaints against a variety of defendants in the Districts of Massachusetts, D.C., Maine, and New Hampshire, and in state courts, all which name government officials in some capacity and, through a variety of insufficient legal theories, have the purported purpose of protecting the northern right whale. *See Kaufman v. I.R.S.*, 787 F.Supp.2d 27, 29–30 (D.D.C. 2011) (issuing a pre-suit injunction where *pro se* plaintiff had filed fifteen suits over ten years). Indeed, since 2018, Plaintiff has increased his litigation activity, filing seven different lawsuits, for similar violations of law for the alleged purpose of saving the northern right whale from extinction.<sup>13</sup> Sawyer has been named as a defendant in three of these post-2018 suits. *See Strahan v. Sec'y, Mass. Exec. Off. of Energy & Env'tl. Affairs*, 558 F.Supp.3d 76 (D. Mass. 2019); *Strahan v. Pentony, et al.*, No. 1:21-CV-01131 (D.D.C. Apr. 27, 2021); *Man Against Xtinction v. McKiernan et al.*, No. 1:22-CV-10364-IT (D. Mass. Mar. 8, 2022). Plaintiff's recent uptick in litigation (seven suits in four years), exceeds the rate of lawsuits in *Kaufman*, demonstrating the necessity of a pre-filing injunction in this action. 787 F.Supp.3d at 29-30 (fifteen suits in ten years).

Duplicitous and vexatious – that is the only way to describe Plaintiff's latest lawsuits, which are for an identical purpose, request similar relief, and are asserted against a laundry list of

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<sup>13</sup> This number is a best estimate because Plaintiff uses a variety of pseudonyms or alterations of his name in his filings, e.g., Richard Maximus Strahan, Richard Max Strahan, M.A.X., Man Against Xtinction, to name the ones Sawyer is aware of. In addition, Plaintiff has at filed at least twenty-seven (27) actions in federal district courts since 1995, which allege misconduct by government officials but do not have the alleged purpose of protecting whales.



government officials or related professional organizations that conduct, regulate, or steward commercial fishing in the eastern coastal waters. This pattern of litigation, of “[r]e-filing the same complaint against the same defendants,” is harassing to Sawyer, as “the only notable differences between the otherwise repetitive lawsuits is the addition as new defendants of . . . other government officials involved in an official capacity in a previously dismissed suit.” *Caldwell*, 6 F.Supp.3d at 51; *see also Mikkilineni v. Penn Nat. Mut. Cas. Ins. Co.*, 271 F. Supp. 2d 142, 143 (D.D.C. 2003) (finding that the “plaintiff has filed similar claims repeatedly” forcing the “defendants to spend resources litigating previously-resolved claims” as appropriately harassing in nature to warrant an injunction).

This Court has the power to prevent Plaintiff from further harassing Sawyer, his counsel, and the MLA, and wasting Sawyer’s, his counsel’s, the MLA’s, and the Court’s resources, by imposing a pre-filing injunction on Plaintiff. *See Davis v. United States*, 569 F.Supp.2d 91, 99 (D.D.C. 2008) (imposing pre-filing injunction after plaintiff filed a fourth “essentially identical” suit); *see also Gharb v. Mitsubishi Elec. Corp.*, 148 F.Supp.3d 44, 56 (D.D.C. 2015) (finding a pre-filing injunction warranted where a litigant attempted to litigate a claim twice, after it was already dismissed in a different federal district with prejudice). Where the current complaint and previous lawsuits are “substantially similar and have the same goal,” a pre-filing injunction is necessary. *Gharb*, 148 F.Supp.3d at 56. Here, Plaintiff has harassed Sawyer by filing three lawsuits, with the same or similar claims against Sawyer (and different government agencies and/or their agents).<sup>14</sup> Even though Plaintiff may be naming new parties and government officials,

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<sup>14</sup> Plaintiff has sued the Secretary of Massachusetts, the Director of Massachusetts Department of Fish & Game, the Director of Massachusetts Division of Marine Fisheries, as well as the Administrator of the National Oceanic and Atmospheric Administration, Administrator of the National Marine Fisheries, Atlantic States Coastal Marine Fisheries Commission, Defenders of Wildlife, New England Aquarium. *Strahan v. Pentony*, No. 1:21-cv-01131-TJK, (D.D.C. 2021);



the crux of the complaints are the same: requesting injunctive relief to protect the northern right whale from fisherman who use the VBR rope system (without any proof that VBR rope harms the northern right whale in any way). Sawyer has now found himself a part of these laundry list lawsuits for the third time in three years, and is once again exposed to Plaintiff's aggressive, harassing litigation scheme. Moreover, Plaintiff has even admitted that Sawyer is now a party to the new District of Massachusetts claim for a meritless reason – harassment because undersigned counsel clarified Plaintiff's misrepresentation. (Blatchley Dec., Ex. C.)

Within Plaintiff's last three years of litigation against Sawyer, his manipulative procedural rampage is apparent through the quantity and quality of his filings. He has repeatedly and willfully impeded the "orderly and expeditious administration of justice" by burdening the Court and parties with numerous, confusing filings. *In re Powell*, 851 F.2d at 434. In just *Strahan v. Secretary, Mass.* alone, the Court and Sawyer endured approximately two hundred (200) motions and filings from Plaintiff. 558 F.Supp.3d 76 (D. Mass. 2019). In the instant matter, Plaintiff has filed numerous amended complaints, refusing to accede to the Court's orders regarding which complaint is operative. *See* (Dkt. 34 ("My OFFICIAL operating complaint is NOW the original complaint I served . . . I will recognize no other. . ."); Dkt. 73 ("Amended Petition for Relief"); 3/11/2022 Min. Order (striking ECF No. 73); Blatchley Dec., Ex. B ("I will be filing a motion for leave to file a third amended complaint."))

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*Strahan v. MEOEEA*, No. 1:19-cv-10639-IT (D. Mass. 2019). In actions unrelated to Sawyer, Plaintiff has also brought similar allegations to purportedly protect whales against the Governor of Maine, the United States Coast Guard, the Secretary of Commerce, Dept. of Homeland Security, Navy, and others. *See Northern Right Whale, et al. v. Governor ME, et al.*, No. 1:00-CV-00087 (D. Me. 2000); *Strahan v. New England Aquarium*, 25 Fed.Appx. 7 (1st Cir. 2002); *Strahan v. Linnon*, 967 F.Supp. 581 (D. Mass. 1997); *Strahan v. Roughead*, No. 08-cv-10919-MLW, 2010 WL 4827880 (D. Mass. Nov. 22, 2010).



Plaintiff abuses the judicial system by emphasizing his *pro se* status. For example, while Plaintiff had his now stricken Second Amended Complaint pending against Sawyer in the District of Columbia, he also filed for, and was granted, an extra sixty days to reply to Defendants' motions to dismiss.<sup>15</sup> (Dkt. 73.) Within this extended period of time, where Plaintiff has yet to file a response to Defendant's Motion to Dismiss, Plaintiff (1) filed his Second Amended Complaint adding relief against Sawyer without complying with Fed. R. Civ. P. 15; (2) filed for recusal of a judge in a previously adjudicated case;<sup>16</sup> (3) filed a new complaint against Sawyer in the District of Massachusetts;<sup>17</sup> and (4) submitted an explicit filing to and against Judge Kelly.<sup>18</sup> Plaintiff's actions continue to harass and burden the judicial system and delay the resolution of his baseless claims.

Further, Plaintiff has shown no signs of slowing his vexatious rampage, as he apparently believes his meritless litigation is the only thing preventing the northern right whale's extinction, which, of course, he will be comfortable with if he gets \$1,000,000. (Dkt. 77; Blatchley Dec., Ex. A.) In a recent email, he listed six filings he intends to make, including a motion for leave to file a third amended complaint, a new action in the "DCD" [sic], a motion to disqualify counsel, and a motion to recuse the judge. (Blatchley Dec., Ex. B.) Further, he now plans to sue Sawyer's counsel

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<sup>15</sup> Defendant moved to dismiss the District of D.C. matter on, *inter alia*, the grounds of res judicata, as the same claim was pending and lost in the District of Massachusetts. (Dkt. 71.)

<sup>16</sup> See "Plaintiff's Petition to Recuse Shyster Talwani as a Bigot and for Unethical Conduct", *Man Against Xtinction v. Mass. Exec. Off. of Energy & Env'tl. Affairs*, (No. 19-cv-10639-IT).

<sup>17</sup> Verified Complaint for Declaratory, Injunctive, and Other Relief and a Request for a Jury Trial, *Man Against Xtinction A/K/A "Max" v. Whale Killing Bastards, et al.*, (No. 1:22-cv-10364-IT).

<sup>18</sup> *Man Against Xtinction* to Judge Kelly: "Go to Hell", *Man Against Xtinction v. Pentony, et al.*, (No. 21-cv-01131-TJK).



and attempt to disbar them because of the present motion. (*Id.*, Ex. F.) Plaintiff's litigious behavior continues to harass Sawyer with repetitive patterns of filing meritless motions.

**B. Plaintiff's lawsuits and amended complaints are harassing and disrespectful in nature.**

Even more egregiously, Plaintiff is explicitly harassing Defendants, Defendants' agents, the Court, and Court staff in the current matter via his complaints, subsequent slew of motions, and other communications. Despite this Court *twice* ordering Plaintiff to act with civility, courtesy, and respect, Plaintiff continues to use vulgar language and accuse Defendants of meritless claims. *See* (07/02/21 Min. Order; 10/02/21 Min. Order; *cf.* Dkt. 76.1 ("You asshole. . . You lie to get gullible judges to let the government break its own laws."); Dkt. 76.2 ("I will be moving to have you disqualified for lying to the court and committing a fraud upon it."); Dkt. 76.3 ("Your buddy and coconspirator Gross Bitch will be joining you as a defendant.")) Plaintiff's filings are riddled with crude names regarding Defendants, including Sawyer, such as "shysters," "Department of Injustice," "worm tongued shysters," and "dim witted." (Dkts. 70, 78.) Plaintiff harassed Defendants' agents, requiring the Honorable Judge Kelly to order that Plaintiff shall only talk to Defendants' counsel, not their agents, to which Plaintiff responded with another explicit filing telling Judge Kelly to "Go to Hell." (Dkt. 70.) In Plaintiff's direct communications to counsel, he forcefully disparages and harasses Defendants and their counsel. (Blatchley Dec., Ex. B. ("Attention Shysters . . . You have till close of this business day to agree or not to accede to these motions.")) And in Plaintiff's newest action, he titled Defendants, including Sawyer, as "Whale Killing Bastards." (Blatchley Dec., Ex. D – Mar. 8 Dis. Mass. Act.) Plaintiff's obvious antipathy



toward Defendant and the Court must be acknowledged for what it is: harassment that goes well beyond a pattern of filing frivolous suits.

Indeed, Plaintiff's harassing and abrasive attitude to Defendants and the Federal courts is not new. *See Strahan v. Coxe*, 939 F.Supp. 963, 967 (D. Mass. 1996) (noting that Plaintiff "is a highly aggressive and abrasive individual whose conduct has generated a number of complaints and requests by Defendants for sanctions against him."); *see also Strahan v. Adm'r Nat'l Oceanic & Atmospheric Admin. et al.*, No. 18-CV-752-LM, 2020 WL 8167476, at \*1 (D.N.H. Jan. 14, 2020) (noting that Mr. Strahan has "engaged in profane and abusive verbal harassment," to the clerk's office staff, and "filed documents referring to court personnel as 'Nazis' and drawn swastikas on the filings to underscore his points."); (District of Massachusetts Nov. 30, 2020 Findings of Fact and Conclusions of Law (finding an adverse inference instruction appropriate after Plaintiff asserted his Fifth Amendment right to remain silent after being questioned on whether he caused false information to be submitted to the court).). Plaintiff's aggressive and disrespectful attitude toward Sawyer, his counsel, and Defendants generally, further support that he intends to harass them in this litigation.

**C. Plaintiff continues to disobey Court Orders and procedural rules in defiance of the judicial system.**

Plaintiff's circumvention of Court orders shows his contempt for the justice system. In *Mikkilineni*, the court found a variety of plaintiff's actions circumvented the justice system, including when the plaintiff filed a new civil action after the court struck his first amended complaint. 271 F.Supp.2d at 149. Although Plaintiff has done exactly that, he has also admitted directly to the Court that he does not believe the Court's actions are binding. (Dkt. 34.) Here, a non-exhaustive list of Plaintiff's vexatious actions includes:



- Plaintiff, after being ordered to conduct himself with civility, courtesy, and respect, renewed his attempt to obtain an ECF password, and in the process threatened to sue two U.S. District Court judges. (Dkt. 26.)
- Plaintiff refused to accept the Court's order confirming the Amended Complaint as legally binding. (Dkt. 34 at 3.)
- After the Court warned Plaintiff that he must respond to the motions to dismiss his first Amended Complaint by Dec. 6, 2021, Plaintiff filed a Second Amended Complaint without seeking leave of the Court or Defendants' consent on Nov. 25, 2021. (Dkt. 41.)
- Plaintiff filed a "Corrected Second Amended Complaint" on Feb. 28, 2022, without seeking leave of the Court or Defendants' consent. (Dkts. 73, 74.)
- Plaintiff filed a new lawsuit in the District of Massachusetts, naming Sawyer as a Defendant, on near-identical claims that were listed in all of Plaintiff's District of D.C. filings, and his previous action in the District of Massachusetts. (Mar. 8 Compl.)
- Threatening to sue Sawyer's counsel and attempt to get them disbarred for filing the present motion. (Blatchley Dec., Ex. F.)

In addition, after the Court struck Plaintiff's "Corrected Second Amended Complaint" in a March 11, 2022 Minute Order, Plaintiff threatened, in a March 14, 2022 email to Defendants' counsel, that he would file "a motion for leave to file a third amended complaint," and that he has "the authority to request whatever relief I damn well choose to pursue." (Blatchley Sec. Dec., Ex. A.) Not only has Plaintiff already circumvented the Federal Rules of Civil Procedure and the District of D.C. Local Rules by repeatedly filing similar amended complaints without consent or leave, he has also threatened to do it again. Plaintiff's pattern of contempt for Defendants and the Court shows that, as long as he has the ability to file unhindered, he will continue to do so, in



order to harass and burden Defendants. The efficient administration of justice will be the collateral victim of Plaintiff's unhinged crusade.

## **II. A Pre-Filing Injunction Will Not Interfere with Plaintiff's Constitutional or Statutory Rights.**

This Court must enjoin Plaintiff with the proposed pre-filing injunction to protect the orderly administration of justice for both Plaintiff and Sawyer. *See De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (“[T]here is strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.”). By following the three step *Powell* analysis, a district court may enjoin a vexatious *pro se* litigant with a pre-filing injunction, if that litigant “continues to abuse the judicial process by filing frivolous, duplicative, and harassing lawsuits,” without impeding a litigant’s constitutional right of access to the courts. *Caldwell*, 6 F.Supp.3d at 49-50 (citing *Powell*, 851 F.2d at 431). Here, the proposed pre-filing injunction would require Plaintiff to seek leave from the Court before filing a new complaint in District Courts nationwide, or alternatively, in the District Courts within the First and D.C. Circuits.

Generally, a pre-filing injunction is constitutional because, although it limits Plaintiff’s ability to freely file claims, he retains the ability to file complaints if they are made in good faith and are claims that have never before been raised and disposed of on the merits by the courts. The proposed pre-filing injunction is constitutional, as it has been fashioned based on other pre-filing



injunctions under similar circumstances in *Urban*<sup>19</sup> and *Mikkilineni*.<sup>20</sup> Moreover, Plaintiff's due process rights are satisfied, as Plaintiff has a right to be heard in this instant motion before the Court may consider such sanction against him. *See In re Powell*, 851 F.2d at 31.

Imposing a nationwide pre-filing injunction is entirely appropriate to prevent Plaintiff's continued vexatious behavior. *See Urban*, 768 F.2d at 1500 (imposing a nationwide pre-filing injunction on a vexatious plaintiff). As Plaintiff has exhibited, he is intricately familiar with the federal court system and knows exactly how to use and abuse it. An injunction that enjoins Plaintiff in anything less than the entire federal district court system would only cause Plaintiff to move venues, as he has proved capable of doing by litigating in the Districts of D.C., Maine, Massachusetts, and New Hampshire for whale-related claims. For the reasons discussed herein, a nationwide pre-filing injunction, similar to *Urban*, is necessary and tailored to Plaintiff's pattern of abusive litigation.

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<sup>19</sup> The injunction in *Urban* enjoined plaintiff Urban from "filing any civil action in this or any other federal court of the United States without first obtaining leave of that court. In seeking leave to file, Mr. Urban must certify that the claim or claims he wishes to present are new claims never before raised and disposed of on the merits by any federal court. He must also certify that the claim or claims are not frivolous or taken in bad faith. Additionally, the motion for leave to file must be captioned 'Application Pursuant to Court Order Seeking Leave to File.' Mr. Urban must either cite or affix a copy of today's order to that motion. Failure to comply strictly with the terms of this injunction will be sufficient grounds for denying leave to file." 768 F.2d at 1500.

<sup>20</sup> The injunction in *Mikkilineni* required the following: Before filing any new complaints in the United States District Court for the District of Columbia, the plaintiff must seek and obtain approval from the Chief Judge of this court. To seek approval, the plaintiff must file a motion captioned "Application Pursuant to Court Order Seeking Leave to File." The motion must include a copy of the court's March 31, 2003 order, the proposed complaint, and any complaints, dismissal orders, and injunctions filed in cases with related claims or the same defendants. The motion must also include certification by the plaintiff that the claims in the proposed complaint are new claims never disposed of on the merits by any federal court and not pending in any federal court. The plaintiff must also certify that the claims are not filed in bad faith. 271 F. Supp. 2d at 149-50.



Alternatively, Sawyer requests a pre-filing injunction smaller in size, such as enjoining Plaintiff for the District Courts within the First and D.C. Circuits, as these Districts have been the most popular venues for Plaintiff to file his actions.<sup>21</sup> *See Mikkilineni*, 271 F.Supp. 2d at 142 (supporting a narrowed pre-filing injunction when the plaintiff was only active in that district, after the plaintiff was already subject to pre-filing injunctions in other states). While Sawyer admits this more narrowly tailored injunction may only act as a band-aid for Plaintiff's extremely harassing litigation, such action would still be welcomed to prevent at least some of Plaintiff's behavior.

### **CONCLUSION**

WHEREFORE, Defendant Arthur Sawyer, in his individual and official capacity, respectfully request this Court grant his Motion for Pre-Filing Injunction, incorporating Defendant's Proposed Order filed in conjunction with this present Motion, and grant such other relief which is just and equitable.

Defendant Arthur Sawyer, by his  
attorneys,

Dated: March 25, 2022

ECKLAND & BLANDO LLP

/s/SAMUEL P. BLATCHLEY

Samuel P. Blatchley, Esq. (*pro hac vice*)  
22 Boston Wharf Road, 7<sup>th</sup> Floor  
Boston, MA 02210  
(617) 217-6936  
sblatchley@ecklandblando.com

Daniel J. Cragg, Esq. (#MN0016)  
800 Lumber Exchange Building  
10 South Fifth Street  
Minneapolis, MN 55402  
(612) 236-0160  
dcragg@ecklandblando.com

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<sup>21</sup> However, should only a district-wide pre-filing injunction be granted, it is extremely likely that Plaintiff will find another east coast court to file in, as he has already shown capable of filing in other federal east court courts. A nationwide injunction is more appropriate.



**CERTIFICATE OF CONFERENCE LOCAL RULE 7(m)**

Per Local Rule 7(m), counsel for Arthur Sawyer contacted Plaintiff to request his position on the instant motion on March 25, 2022. On March 25, 2022, Plaintiff responded via email (esistoo@yahoo.com) and opposed the motion.

/s/SAMUEL P. BLATCHLEY

Samuel P. Blatchley, Esq.



4. I received a forwarded email from Sawyer on February 19, 2022, which is attached as **Exhibit A**. In the original email on this chain, Plaintiff emailed Sawyer and requested one million dollars in order to settle the lawsuit.



5. On March 14, 2022, I received an email from Plaintiff Richard Maximus Strahan (“Plaintiff”) with the subject line stating: “MAX v. Whale Killing Bastards.” Attached as **Exhibit B** is a true and correct copy of this email.

6. On March 15, 2022, I received an email from Plaintiff titled “M.A.X v Whale Killing Bastards: Requested Waiver of Servi [sic]” in which he requested that Sawyer waive service of a summons in the matter originally entitled *Man Against Xtinction A/K/A “MAX” v. Whale Killing Bastards, et al.*, No. 1:22-cv-10364-IT, (D. Mass. Mar. 8, 2022). Attached as **Exhibit C** is a true and correct copy of the email I received. I did not respond to this email.

7. Again, on March 15, 2022, Plaintiff emailed me on the same email chain, as shown in **Exhibit C**, and explained that he added my client, Sooky, because I called him a liar in our last filing and “was a meany.” I did not respond to this email.

8. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff’s March 8, 2022, complaint in the District Court for the District of Massachusetts, which was originally entitled *Man Against Xtinction A/K/A “MAX” v. Whale Killing Bastards, et al.*

9. Attached hereto as **Exhibit E** is a true and correct copy of the Meet and Confer email with attached PDF sent to Plaintiff regarding this motion on March 25, 2022. On March 24, 2022, we sent the same letter by FedEx overnight to Plaintiff.

10. Attached hereto as **Exhibit F** is a true and correct copy of the email, subject line “Notice to Cease and Desist “, sent by Plaintiff to me on March 25, 2022 responding to Sawyer’s Meet and Confer.

11. I am informed and believed that, as a party opponent, Plaintiff has stated that his intention is to put Sawyer, the MLA, and fishermen out of business by making them pay legal fees to defend against his frivolous suits or by making them pay a settlement to him.



I declare under penalty of perjury that the foregoing is true and correct. Executed on March 25, 2022, in the City of Boston and Commonwealth of Massachusetts.

/s/SAMUEL P. BLATCHLEY  
Samuel P. Blatchley



----- Forwarded Message -----

**From:** Esis Esis <[esistoo@yahoo.com](mailto:esistoo@yahoo.com)>

**To:** "[sooky55@aol.com](mailto:sooky55@aol.com)" <[sooky55@aol.com](mailto:sooky55@aol.com)>; Amy Knowlton <[aknowlton@neaq.org](mailto:aknowlton@neaq.org)>; Jane Davenport <[jdavenport@defenders.org](mailto:jdavenport@defenders.org)>; Michael Senatore <[msenatore@defenders.org](mailto:msenatore@defenders.org)>; Eric Krauss <[ekrauss@neaq.org](mailto:ekrauss@neaq.org)>

**Sent:** Wednesday, December 1, 2021, 02:49:30 PM EST

**Subject:** MAX v. Pentony

Arthur





The judge issued an order to have you served a summons. You and the MLA are coming to court.

Heads up. I am filing a new lawsuit against the MLA and your fishy buddies in Massachusetts, The judge there said that she is willing to ban vertical buoy ropes. She also ruled that ropeless gear is stupid and that 1700 pound breakaway ropes aint whale safe. Check out the LAST paragraph of the order.

NO SETTLE, BYE-BYE LOBSTER POT FISHING

Tell the MLA and Massachusetts to agree to give me one million dollars and I will settle the lawsuit. You can keep on fishing or NOT.

Good Times.

Richard Maximus Strahan  
Chief Science Officer  
Whale Safe USA



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yahoo.com <esistoo@yahoo.com>

**Date:** Monday, March 14, 2022 at 10:42 AM

**To:** J. Stephen Simms <jssimms@simmsshowers.com>, cmbenson@simmsshowers.com  
<cmbenson@simmsshowers.com>, dhnat@simmsshowers.com  
<dhnat@simmsshowers.com>, jdallen@simmsshowers.com <jdallen@simmsshowers.com>,  
John B. Grosko <brett.grosko@usdoj.gov>, EFILE\_WMRS.ENRD@usdoj.gov  
<EFILE\_WMRS.ENRD@usdoj.gov>, Leslie Paul Machado <lmachado@ohaganmeyer.com>,  
cgentry@ohaganmeyer.com <cgentry@ohaganmeyer.com>, Sam Blatchley  
<sblatchley@ecklandblando.com>, Delaney K. McLoone <dmcloone@ecklandblando.com>,  
Leah Happke <lhappke@ecklandblando.com>, Sean Hoe Donahue  
<sean@donahuegoldberg.com>

**Subject:** MAX v. Whale Killing Bastards.





14 March 2022

Attention Shysters

1. I will be filing a motion to have the court accept my formally filed corrected Prayer for Relief to my second amended complaint. Since I have the authority to request whatever relief I damn well choose to pursue, I know you will accede to my motion.
2. I will be filing a motion for leave to file a third amended complaint with the proposed complaint attached as an exhibit.
3. I will be filing a motion to vacate NOAA/NMFS/DOJ shysters previously filed notice claiming that it is replacing my claims against pentony with a tort claim against the united states. This is so stupid and devoid of lawful authority that I will be bring this as an additional claim against grossko for violating my First Amendment and Fourth Amendment protected right to petition the court.
4. I will be filing a notice that I will be hitting grossko et al with a Bivens action in the DCD next week.
6. I will be filing a motion to disqualify grossko representing noaa/nmf since he's a jerkoff and a defendant in my bivens action against it.
8. I will be filing an amended motion to recuse the judge.

Let me thank you shysters in advance for opposing all these



motions.

You have till close of this business day to agree or not to accede to these motions.

Richard Maximus Strahan  
Chief Science Officer  
Whale Safe USA



**From:** Esis Esis <esistoo@yahoo.com>

**Date:** Tuesday, March 15, 2022 at 3:43 PM

**To:** Sam Blatchley <sblatchley@ecklandblando.com>

**Cc:** sooky55@aol.com <sooky55@aol.com>

**Subject:** Fwd: M. A. X v Whale Killing Bastards: Requested Waiver of Servi

15 March 2022

Sammy

Hi there. Since toy called me a “liar” in your last filing and was a meany after you agreed too be courteous I decided to add smoky as a defendant in another lawsuit.

I am sure your client appreciated how well you represent him.

Richard Maximus Strahan  
Chief Science Officer  
Whale Safe USA





Begin forwarded message:

**From:** Esis Esis <[esistoo@yahoo.com](mailto:esistoo@yahoo.com)>

**Subject:** M. A. X v Whale Killing Bastards: Requested Waiver of Servi

**Date:** March 15, 2022 at 2:08:47 PM EDT

**To:** [sooky55@aol.com](mailto:sooky55@aol.com), [eapjohn@campbell-trial-lawyers.com](mailto:eapjohn@campbell-trial-lawyers.com), Jared Silva  
<[jared.silva@mass.gov](mailto:jared.silva@mass.gov)>, Maryanne Reynolds <[maryanne.reynolds@state.ma.us](mailto:maryanne.reynolds@state.ma.us)>,  
[jim.sweeney@state.ma.us](mailto:jim.sweeney@state.ma.us)

**Cc:** [beth.casoni@lobstermen.com](mailto:beth.casoni@lobstermen.com)

15 March 2022

To: Arthur Sawyer, 368 Concord Street, Gloucester, MA 01930. & the  
Massachusetts Marine Fisheries Advisory Commission

Re: M. A. X v Whale Killing Bastards: Requested Waiver of Service

You are named defendants in the above captioned civil action in the USDC District of  
Massachusetts.

I have attached a court form that requests waiver of the service of summons upon you. I  
have also included the required copy of the complaint and the official case coversheet.

I also attached a court form for your signature in which you agree to waive the service  
of he summons.

If you fail to agree to waive the service of the summons, you will be automatically  
ordered by the court to pay me for the cost of my having you hand delivered the  
summons at your residence.

Do email me back the form with your signature agreeing waive service of the  
summons,

Have a nice day.

Richard Maximus Strahan  
Chief Science Officer  
Whale Safe USA



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MAN AGAINST XTINCTION A/K/A “MAX”

*Plaintiff*

v.

WHALE KILLING BASTARDS A/K/A  
DANIEL MCKIERNAN & MASSACHUSETTS  
DIVISION OF MARINE FISHERIES

JANE COIT & NATIONAL MARINE FISHERIES  
SERVICE

ARTHUR SAWYER & MASSACHUSETTS MARINE  
FISHERIES ADVISORY COMMISSION

JOHN HAVILAND

ROBERT MARTIN

*Defendants*

Civil Action No. \_\_\_\_\_

8 March 2022

FILED  
IN CLERKS OFFICE  
2022 MAR -9 PM 11:39  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF  
AND A REQUEST FOR A JURY TRIAL FN1

I the Plaintiff — Man Against Xtinction — SPEAKS:

1. I am a scientist who is conducting a ongoing project over the last couple decades to increase the remaining population of Northern Back Whales and to enhance the quality of their marine environment in order to have the species delisted from its current status as a protected species under the Endangered Species Act (ESA). I and my associates are being irreparably injured in our ability to “recover” the NBW species by the Defendants’ long and never ending killing and otherwise harming of the NBW and its ESA listed designated critical habitat. The Defendants marine fishery activities (“Fishing Activity”) now constitutes prohibited conduct

<sup>1</sup> M. A. X. is petition the Court pursuant to his First Amendment protected right to petition the court and said protected right is enforceable directly against the court and any judicial magistrate assigned to adjudicate the proceedings.

EXHIBIT

D



under the Endangered Species Act and the Marine Mammal Protection Act. The Defendants Massachusetts Division of Marine Fisheries (“MDMF” and the Massachusetts Marine Fisheries Advisory Commission (“MFAC”) “Fishing Activity” concerns their acting in concert to license and regulate the deployment of pot and gillnet fishing gear that utilizes vertical buoy ropes (“VBR”) in USA coastal waters. The Defendants Sawyer, Martin, & Haviland are MDMF and federally licensed fishers who in 2022 and previous years deploy pot and/or gillnet fishing gear off the Massachusetts coast. The Defendants Fishing Activity is killing and injuring ESA Listed Species of whales and sea turtles off the Massachusetts coast. It is also causing the current annual decline of the remaining population of NBW. I am seeking immediate and/or permanent injunctive relief from the Court to stop the Defendants from the further deployment of vertical buoy ropes in US coastal waters and otherwise conducting their said ESA prohibited activities pursuant to their Fishing Activity towards NBW and all other ESA Listed Species of whales and sea turtles. FN2

2. As a Green Fisherman, who is a state licensed commercial & recreational lobsterpot fisher, I am also seeking injunctive relief from the Court to stop the state and federal defendants (“Government Defendants”) from forcing me and other fishers to deploy VBR in US coastal waters. I do not want my fishing activities to pose as a threat to kill or injure ESA Listed Species of whales or sea turtles. By requiring licensed fishers to use of VBR, the federal and state defendants are preventing the establishment of a marketplace for Whale Safe fishing equipment. I and my associates have invented and developed whale safe fishing system for pot and gillnet fishing. But the Government Defendants requiring the use of VBR prevents my own using of the WSFS and preventing a marketplace where other licensed fishers would be motivated to buy and use my WSFS so their own fishing activity would be benign towards ESA Listed Species of whales and sea turtles.

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<sup>2</sup> As a “Green Fisherman” the Plaintiff does not want to injure other species of marine wildlife when he attempts to sustainably harvest lobsters. He seeks to conduct his commercial fishing operations to be Whale Safe. The State Defendants have adopted regulations requiring the use of Vertical Buoy Ropes (VBR) or Killing Ropes in lobster/pot and gill net commercial fishing licensed by them. The State Defendant are threatening the Plaintiff with fines and loss of his right to fish if he does not use Killing Ropes that will cause him to “take” endangered marine wildlife in violation of the ESA’s Section 9 prohibitions against such.



3. M. A. X. is a “Citizen Attorney General” authorized by Congress pursuant to 16 USC § 1540(G) to prosecute individuals engaged in ESA Section 9 prohibited conduct and to obtain prospective injunctive relief from the Court to stop the said prohibited conduct from occurring in the future. M. A. X. is seeking a permanent injunction against the Government Defendants from their further requiring the use of Vertical Buoy Ropes by him and other recreational and commercial licensed pot and gillnet fishers. **FN3**

4. Upon information and belief, these killing and injuring of NBW by the Government are negligent and deliberate. The NBW are not alone as a species being intentionally exterminated by the Defendants. All other ESA Listed Species of whales **FN4** and sea turtles **FN5** by their said prohibited conduct deploying fishing gear using VBR. They are crimes of commission and omissions by the Whale Killing Bastard employees of the Defendant DMF. These employees are refusing to either comply with or enforce state and federal wildlife laws protecting NBW in order to wipe out the NBW to insure that the ESA will not be enforced against the fishing industry by any court or regulatory body. Generally, the Massachusetts agencies supervising the Defendants, the Office of the Secretary of Energy & Environmental Affairs and the Office of the Attorney General, have handed over all marine wildlife to the MDMF for its consumption and exploitation. The MDMF then insures that no state or federal; environmental law is enforced against the states fishing industry. They do so in violation of state law – most notably the Massachusetts Endangered Species Act which explicitly assigns all

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<sup>3</sup> See 322 CMR § 4.13(c): “Surface Identification of Traps. 1. Single Traps. Single traps shall each be marked with a single buoy measuring at least seven inches by seven inches or five inches by 11 inches. Sticks are optional, but if used, shall not have a flag attached. 2. Trawls. The east end of a trawl shall be marked with a double buoy, consisting of any combination of two buoys measuring at least seven inches by seven inches or five inches by 11 inches and one or more three foot sticks. The west end of a trawl shall be marked with a single buoy measuring at least seven inches by seven inches or five inches by 11 inches buoy with a three foot stick and a flag.”

<sup>4</sup> The Endangered Whales includes: (1) The Sei Whale, *Balaenoptera borealis*; (2) The Northern Black Whale, *Eubalaena glacialis*; (3) The Humpback Whale *Megaptera novaeangliae*; (4) The Fin Whale *Balaenoptera physalus*; and (5) The Blue Whale, *Balaenoptera musculus*.

<sup>5</sup> 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 turtle, *Lepidochelys kempii*; and (6) The Leatherback turtle, *Dermochelys coriacea*.



endangered marine wildlife species to the care and protection of the state's Natural Heritage and Endangered Species Program.

5. Because these whales are protected wildlife from being hunted or possessed by anyone absent a permit, in order to protect the whales from anthropogenic stressors that prevent their thriving sufficiently any longer to have a sustainable population any longer, I need to have government agencies ruthlessly obey the ESA in order that they be willing to mangle coastal activities to prevent the killing or harming of individual whales and the critical natural resources that they need supplied by their marine ecosystem. Therefore the Government Defendants employees are violating my constitutional right to petition the government by their unwillingness to petition them in order to protect the ESA Listed Species when they only want to violate the ESDA in order to prevent its enforcement against the marine fishing industry.

6. The Plaintiff is also now the object of a vendetta being conducted against him by Defendant Daniel McKiernan who in 2019 and 2020 retaliated against M. A. X.'s commencing lawsuits to enforce the ESA against the MDMF. He personally stopped MDMF employees from renewing M. A. X.'s recreational marine fishing permit and his requested Student Commercial Fishing permit.

7. In 1996, this Court ruled that ESA Listed Species of whales and sea turtles are liable for every whale and sea turtles being caught by the VBR deployed in the Massachusetts state Fishing Activity that constitutes an ESA Section 9 prohibited taking. <sup>FN6</sup> The Court also ruled that the State Defendants requiring the use of VBR caused the catching of endangered whales by the said VBR laden fishing gear deployed by their licensed agents. The Court deemed it fitting to order the State Defendants to apply for an obtain an ESA Section 10 Incidental Take Permit from the federal government to authorize its commercial fisheries activities so they no longer would violate the ESA.

9. The Court is mandated by the ESA and the Public Interest to ENFORCE the ESA's Section 9 prohibitions independent of the NMFS and especially so when NMFS is failing to enforce the ESA Section 9 prohibitions and is also itself killing and injuring ESA Listed

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<sup>6</sup> See *Strahan v. Cox*, 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).



Species of whales and sea turtles. There the Court is under a mandated and non-discretionary duty imposed on it by Congress and the Constitution to stop the Defendants Fish Activity from any further conduct that is prohibited by ESA Section 9 take prohibitions. The Court is under a mandated duty to stop the further deployment of Vertical Buoy Ropes into NBW Critical Habitat in the Gulf of Maine. These Killing Ropes are the single most significant cause for the fishing gear licensed and regulated by the State Defendants routinely entangling Endangered Whales and Sea Turtles. The simple deployment of Killing Ropes must be considered a categorical taking of endangered whales and sea turtles prohibited by the ESA's Section 9 prohibitions against taking Endangered Whale and Sea Turtles.

10. The Plaintiff is also bringing supplemental claims against the non-government employee Defendants (i. e. Sawyer, Haviland and Martin) for tortious injuries inflicted on him and the Public by their being a public nuisance and for violations of the Massachusetts Civil Rights Act by using threats of killing endangered wildlife to interfere with M. A. X's enjoyment of the his rights under the Constitution & the Massachusetts Constitution to enjoy the his right to petition the government and enjoy the environment.

11. In REPRISE, M. A. X. is Petitioning the Court for —

- A. A DECLARATORY JUDGMENT declaring that the deployment of lobsterpot and gillnet fishing using vertical buoy ropes into the waters bounded by Northern Black Whale ESA Listed Critical Habitat is conduct prohibited in its own right as a per se prohibited taking of ESA Listed Species of whales and sea turtles pursuant to the ESA's Section 9 take prohibitions.
- B. A PERMANENT INJUNCTION stopping the MDMF and McKiernan from requiring the Plaintiff and other recreational and commercial licensed fishermen to use VBRs on their fishing gear.
- C. A PERMANENT INJUNCTION stopping Defendants Sawyer, Haviland and Martin from deploying off the USA coastline pot, gillnet or any kind of fishing gear utilizing vertical buoy ropes.
- D. A PERMANENT INJUNCTION stopping Defendant McKiernan from bullying & intimidating Massachusetts government employees to coerce them from have direct communications with M. A. X & trespassing him from MDMF offices.



- E. The Plaintiff is also seeking appropriate award of compensatory and punitive damages against each of the Commercial Defendants.
13. The Plaintiff is seeking a Jury Trial against each of the Defendants.

### **The Parties**

12. Plaintiff Richard Maximus Strahan is an officer of Calm Earth Corporation, a 501(c)(3) IRS tax-exempted business and serves as its Chief Science Officer. He received a Masters' Degree from University of New Hampshire in 2020. His published graduate thesis evaluated the likelihood of the United States extirpating the Northern Black Whale species. According to the results of his scientific research, the Northern Black Whale's extinction by the end of the century is inevitable. Not only will NMFS and MDMF continue to murder these whales in violation of the ESA but wildlife interested NGOs or WINGOS will only aid the Fishing Industry in their continuing to successfully evade the enforcement of the ESA against it. He is licensed by the State Defendants to do recreational lobster pot fishing in Massachusetts State waters. He is also licensed as a commercial lobster pot fisherman by the State of New Hampshire. He is also an avid whale watcher and researcher on whales and sea turtles. He is employed 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. His business mailing address is % Calm Earth Corporation, Suite #3112, One Washing Street, Dover NH 03820.

13 Defendant Daniel McKiernan is being sued in his official capacity as the Director of the Massachusetts Division of Marine Fisheries & separately as a private individual for violating M. A. X.'s constitutionally protected rights under the Constitution and the Civil Rights Act. Defendant McKiernan's business mailing address is % Office of the Director, Division of Marine Fisheries, 251 Causeway Street, Suite 400, Boston, MA 02114 The Plaintiff intends to serve McKiernan IN HAND for his claims against him as an individual.

14. Defendant Arthur Sawyer is being sued as an individual and separately in his official capacity as a member of the Massachusetts Marine Fisheries Commission. His business address is Arthur Sawyer, 368 Concord Street, Gloucester, MA 01930.

15. Defendant John Haviland is being sued as an individual in his personal capacity. His business mailing address is John Haviland % PO Box 543, Green Harbor, MA 02041.



16. Defendant Robert Martin is being sued as an individual in his personal capacity. His business mailing address is Robert Martin, 392 Route 6A Sandwich, MA 02537.

### **Jurisdiction and Standing**

17. 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. § 2201, 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 and 5 U.S.C. §§ 701-706. The ESA — 16 U.S.C. § 1540(g) — only grants jurisdiction to hear his ESA Section 9 claims to enforce the take prohibitions and does not provide the Court any jurisdiction to knowingly tolerate or ignore the prohibited taking of ESA listed wildlife species.

18. Venue in this judicial district is proper under 16 USC § 1540(g) and 42 USC § 1983.

19. The Plaintiff has Article III standing pursuant to his living and working in the habitats of Endangered Whales and Sea Turtles in the Gulf of Maine. He is an avid whale and sea turtle watcher. For the last two decades he has conducted a professional & scientific based program to recover the Northern Black Whale species from its government protected status as an endangered species. M. A. X./ is also a licensed commercial fisher in New Hampshire and a recreational fisher in Massachusetts. In 2021, M. A. X. obtained a scientific permit from the MDMF to experiment with whale safe systems for doing pot fishing in Massachusetts state waters. He is a co-inventor of a whale safe fishing system (WSFS) for pot and gillnet fishing. He and his business associates are intending to offer their WSFS for sale in 2022. Endangered whale species are migratory along the US Atlantic coastline. Their being killed and injured by the Defendants in Massachusetts adversely affects their appearance and presence in New Hampshire, Maine and in other coastal states. The Plaintiff has previously served the requisite notice under 16 USC § 1540(g) in a timely manner on each of the Defendants of his intent to bring the instant claims against them under the ESA.

20. The Plaintiff has Article III standing because he is personally being injured by the Defendants unlawful activities as described in the following paragraphs.



21. The Plaintiff conducts research on endangered species of whales and sea turtles off the US northeast Atlantic coast. These species decline and extinction is adversely affecting his scientific research interests in these species. As an enthusiastic “whale watcher” off the coastline of Massachusetts, New Hampshire and Maine he has a vested interest in protecting the abundance of whales for his viewing activities and to have more personal access to these whales by having them delisted as ESA protected species. More importantly, “whale watching” on Northern Black Whales is now banned by both Defendants NMFS and MDMF owing to their critically endangered species status. If M. A. X. is ever going to be able to go “whale watching” on Black Whale in the future, he must first stop NMFS & DMF’s killing of these whales.

22. As a commercial fishermen licensed in New Hampshire, recreational lobsterpot fisher in Massachusetts, and a licensed commercial fishing technology researcher in Massachusetts, the plaintiff is being injured by the Defendants by their requiring him to use vertical buoy ropes on his lobster pot gear. This requirement unlawfully exposes him to violate the ESA by causing the entanglement of EFA listed species of endangered whales and sea turtles in his fishing gear. Also, the Plaintiff seeks to increase the number of ESA listed species off the US coastline and this interest is adversely affected by his having to use VBR that kills and injures ESA listed species. Additionally, the Plaintiff is attempting to operate a “Whale Safe” business offering Lobsters for sale that were harvested in an environmentally safe manner. The Defendants requirement that he use VBR is antithetical to his commercial interests in operating a business to provide “Whale Safe” caught Lobsters for sale.

23. The Plaintiff for over two decades operates a business as a recovery agent for the Northern Black Whale. He operates his business in New Hampshire, Massachusetts and Maine to protect and recover ESA listed species. His customers pay him money to stop the killing of whales and sea turtles and increase their numbers. The Defendants continued unlawful killing and injuring ESA listed species antithetical to the business interests of the Plaintiff.



24. He cannot eat Lobsters as long as they are harvested in a manner that kills or injures ESA listed species. Despite his enjoyment the consumption of Lobsters. He no longer can do so until lobsterpot fishing no longer catches whales, kills and /or injures them.

### **The Regulatory Scheme for the Protection of Endangered Species of Plants and Animals**

25. 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 the Nation and its people.” 16 U.S.C. § 1531(a) (2) and (3). The ESA imposes a mandatory and non-discretionary duty to review the status of biological species and to list those meeting the above cited criteria as ESA Listed Species of endangered wildlife. 16 USC Section 1533. The ESA protects imperiled species by listing them as “endangered.” A species is “endangered” if it “is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6). The Secretary of Commerce is charged with administering and enforcing the ESA for most marine species, including North Atlantic Black Whales, and Congress then delegated this responsibility to NOAA. 50 C.F.R. § 402.01(b).

26. The ESA’s Section prohibits any degree of takings of ESA Listed Species including ones that are seen as not intentional but simply the result of conducting an activity in the habitat of an ESA Listed Species. 16 USC Section 1538(a). ESA Section 9(g) prohibits the simple “soliciting” or funding of any activity causing a prohibited taking. Any activity that is the “proximate cause” of a prohibited taking is a prohibited activity. The ESA Section 9 imposes a “strict liability” standard for causing a prohibited taking. All that matters is for an activity to cause a taking. Intent is not a factor. Since “lack of intent” offer no free “get of jail card” to any ESA offender, all ESA prohibited taking should be considered intentional by default. If a fisher is intentionally deploying fishing gear with VBR attached to it, then it must be seen as intentionally intending to catch an ESA Listed Species of whale and sea turtle also.

27. Any activity of Hominin that causes ongoing ESA Section 9 prohibited takings in the past and is scientifically determinable to likely cause further prohibited takings in the future becomes in itself a *per se* prohibited activity pursuant to ESA Section 9 taking prohibitions without any required taking occurring every time the prohibited activity is conducted. The deployment in 2022 and beyond of VBR laden pot or gillnet fishing gear in Northern Black



Whale Critical Habitat in the Gulf of Maine is itself a per se prohibited conduct pursuant to the ESA Section 9 taking prohibitions. In 2022 any fisher simply deploying a single lobsterpot trawl employing with one attached vertical buoy into Black Whale ESA designated critical habitat rope is engaging in ESA Section 9 prohibited taking of ESA Listed Species of whales and sea turtles. There is no concurrent need for the gear to catch any endangered whale. The simple act of deployment of VBR attach fishing qualifies as an ESA Section 9 prohibited taking by the fisher.

28. The ESA Section 9 take prohibitions is intended to be enforced by Courts against NMFS and its employees without any applicable deference to it as a government agency. The ESA imposes a mandated and non-discretionary on a District Court to enjoin any activity it recognizes caused an ESA Section 9 prohibited taking in the past of an ESA Listed Species and is likely to do so again in the future. The ESA does not allow the Court to either defer to NMFS nor to provide a defend the opportunity to take years to apply for and possibly obtain a permit from NMFS to take a listed species. Obviously, the very permit NMFS issues will be subject to its own ESA prosecution. Therefore, the Court must immediately stop the prohibited taking and put the burden of the defendant to show that it either has the requisite permit, that the permit is lawful or that its activity is not going to repeat the past prohibited taking.

29. Any activity that engages in ESA Section 9 prohibited taking of any member of a endangered species is construed by the ESA As taking of the species itself. A prohibited taking of an ESA protected endangered species constitutes – without proof otherwise – constitutes an irreparable injury to the species ability to recover from its endangered status. No determination of an endangered species for ESA listing is accompanied by a description on how many of them can get killed or otherwise taken without irreparably injuring the ability of the species to recover from its endangered status. The only buffer under the Act recognizing a possible safety margin for prohibited takings is when a species is listed as a “threatened species” under the ESA. It is not the courts job to figure out how many prohibited takings an endangered species can experience without irreparably injuring its ability to recover. For any court – without a statement by NMFS providing it the required information – the number of prohibited takings for it to allow any defendant to make is ZERO.



30. Any activity's likely future ESA Section 9 prohibited taking of an ESA Listed Species whose population is declining in number must be construed as irreparably injuring that species ability to recovery. As such the activity must be enjoined without regard for the adverse impact on any defendant. An ESA Listed Species with a declining population must be recognition as being in the middle of an "extinction event" that will lead to its imminent extinction unless something is done pro-actively to disrupt the event's progression. The only pro-active thing a court can do is to enjoin any activity that is likely to cause a future ESA Section 9 prohibited taking of any member of the declining species.

**Background on Examples of ESA Listed Endangered Species of Whales  
and Sea Turtles that are Adversely Affected by Commercial Fishing**

31. In the United States coastal waters, the Government Defendants are the #1 killers and inflictors of injury on Northern Black Whales and other ESA Listed Species of whales and sea turtles. All of their killings and harming of ESA Listed Species of endangered whales constitutes ESA Section 9 prohibited conduct. VBR Ropes are responsible for virtually all the historical entanglements of endangered whales and sea turtles by lobster/crab pot gear deployed along the US coastline.

32. Upon information and belief since 1973 NMFS operates under an official policy of not enforcing the ESA Section 9 prohibition neither against itself, the state marine fishing agencies of Maine and Massachusetts, or against any state or federal license marine fisher. Concurrent with its No ESA Today practices, it chooses to manage endangered whales as "living marine fisheries resources," that might one day be harvested again by the fishing industry. As such, it requires the use of VBR and only considers the catching of whales by pot gear and gillnet fisheries as innocent "bycatch." As "bycatch" the Defendants considers endangered whales and sea turtles to be the same as a Sea Bass fish caught in the gear of a fisher only licensed to catch Pollack fish and nothing more of a problem. Endangered wildlife is just the same as commercially harvested fish caught by a fisher's fishing gear when it was not licensed to catch that particular species of otherwise commercially harvested fish. As "bycatch," whales just get tossed away by the fishers like they toss their bycatch of "trash" fish overboard without any concern that most of them are already dead.

33. NMFS treats whales as commercial fisheries bycatch. In doing so it only deals with these caught endangered whale species by just managing commercial fisheries under the



Marine Mammal Protection Act. The MMPA 1994 Amendments (drafted by a WINGO for the fishing industry) immunizes marine mammal bycatch from the MMPA's take prohibitions. NMFS historically just ignores the ESA Section 9 prohibitions. Under the 1994 Amendments fishers only need to comply with the fisher friendly regulations on their fishing implemented as regulations pursuant to MMPA Section 118 "Take Reduction Plans." The MMPA imposes no real restraints on whale bycatch despite the statute claiming it should have ended by 2000. Every TRP regulation issued for endangered whales in the Gulf of Maine since 1997 still requires fishers to use VBR attached to their fishing gear.

34. Owing to NMFS, Maine and Massachusetts' Fishing Activity to continuously catch and kill Black Whales, by 2010 the species viability or sustainability was irreparably injured from the continuing unlawful takings by the Defendants Fishing Activity. The Black Whale's population commences to crash. The Northern Black Whale's population is now declining by ten percent each year which NMFS itself recognizes. "Doing the math" results with an incontrovertible estimate for Black Whale extinction occurring in just a little over a decade in the beginning of the 2030's.

35. The Court in 2021 issued a decision as a final judgment memorandum on findings of fact law after a two-week trial in June 2021 on M. A. X's ESA claims against Defendant MDMF in a civil action he commenced against it in 2019. FN7. In that 2021 Judgment the Court ruled that Defendant MDMF's in 2021 licensing of lobster pot gear routinely catches ESA Listed Species of whales and it is prohibited conduct pursuant to ESA's Section taking prohibitions. The Court's earlier decision in *Strahan v. Cox* has since been repeatedly cited by federal courts as controlling precedent. It is being used as controlling precedent by parties in a current federal lawsuit against the California's state-licensed Dungeness Crab pot fishery. This commercial marine fishery also requires the use of VBR. It is also violating the ESA's Section 9 by entangling endangered whales in California state waters.

36. It is incontrovertible that the deployment of VBR in the coastal marine habitat of whales and sea turtles is on its own a categorical violation of the ESA's Section 9 prohibitions on

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<sup>7</sup> *Man Against Xtinction v. Secretary, Mass. EOEAA et al.*, 19-cv-10639 (D. Mass. 2021). There was a trial held in June 2021. On 1 December 2021 that court issued a sixty-page memo that found that the state licensed pot and gillnet fishery entangled endangered whales and this conduct constitutes an ongoing ESA prohibited taking of ESA Listed Species of whales and sea turtles



the taking of these listed species. Over a hundred thousand Killing Ropes are annually deployed by fishermen licensed by the State Defendants for months at a time off the Massachusetts coast. These killing ropes are deployed in the coastal marine habitat of large whales and sea turtles. Every year, many Endangered Whales and Sea Turtles are routinely entangled, killed and/or injured from their encounter with VBR deployed in Massachusetts waters. Each of the Killing Ropes required to be deployed by the State Defendants' possess a significant risk to entangle, kill, and otherwise seriously injure large whales and sea turtles on any day of the year in Massachusetts coastal waters.

37. MAX as a state licensed commercial and recreational fisher refuses to use VBR in his lobster pot fishing equipment anymore. He is refusing to use VBR laden pot fis in order to prevent the entanglement of any Endangered Whale or Sea Turtle in his deployed lobster pot gear. Upon information and belief, he knows that every VBR in Massachusetts waters poses a significant risk to entangle and Endangered Whale or Sea Turtle inhabiting the area on any given day of the year.

38. The Black Whale as a species is now effectively EXTINCT. Black Whales no longer are capable of giving birth in the numbers required to support the survival of their species. In 208, there was zero births by Black Whales. This is a result of female Black Whales being repeatedly and unrelenting killed and seriously injury by the said VBR deployed under permit from the State Defendants. Only an immediate cessation of any further entanglement of Black Whales in Massachusetts waters will provide any reasonable chance for the Black Whale species continued survival on the Earth.

39. MAX is a conservation scientist petitioning the Court to ruthlessly enforce the "take prohibitions" imposed by Section 9 the Endangered Species Act against all the Defendants to stop their killing and injuring any more Endangered Whales and Sea Turtles from their deployment of killing ropes in Massachusetts coastal waters. Endangered Whale species include the Northern Black Whales and other species of whales <sup>FN8</sup>. Endangered Sea Turtles species

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<sup>8</sup> The Endangered Whales includes: (1) The Sei Whale, *Balaenoptera borealis*; (2) The Northern Black Whale, *Eubalaena glacialis*; (3) The Humpback Whale *Megaptera novaeangliae*; (4) The Fin Whale *Balaenoptera physalus*; and (5) The Blue Whale, *Balaenoptera musculus*.



includes Green Turtles and other species of Sea Turtles. FN9 All of these Endangered Species are recognized as native resident species of Massachusetts. Endangered Whales and Sea Turtles are year round inhabitants of US coastal waters under the concurrent jurisdiction of Massachusetts.

40. NMFS & MDMF are categorically violating the ESA's Section 9 take prohibitions by requiring that thousand plus fishermen that they license to use VBR when they go lobster pot fishing in United States coastal waters. Massachusetts' own endangered species Act ("MESA") prohibits the State Defendants from killing or injuring these endangered animals by requiring the use of VBR.

41. Endangered Whales and Sea Turtles are resident species of the "Urban Sea" that exists along the northeast coastline of the United States. The Urban Sea consists of the harbors, bays, and inlets of the peri-urban coastal waters under the concurrent state jurisdiction of Maine, New Hampshire, Massachusetts and the other New England states and all federal waters out to the 200-mile ECZ boundary. In the Urban Sea, the Endangered Whales and Sea Turtles are routine killed, injured and their reproduction impaired by commercial and recreational anthropogenic activities. These anthropogenic activities include in part commercial fishing, vessel traffic and harbor operations, chemical pollution, disposal of plastic debris, and noise pollution ("Anthropogenic Threats").

42. The Black Whales viability as a species has been eviscerated by the Anthropogenic stressors occurring in the Urban Sea of the United States and especially by the commercial activities licensed and regulated by the Defendants MDMF and its supra agency MEOEEA ("State Defendants"). Defendant MDMF is acting in concert with Defendant NMFS and other defendants to annually cause the deployment of veritable "mine fields" constituting thousands of Vertical Buoy Ropes ("Killing Rope Fields") that act like "fly paper" to entangle and kill and Black Whale, Sea Turtles and members of other species of whales — especially Humpback Whales — that come to swim through them. Individual Black Whales are repeatedly entangled by the Defendants licensed fishing gear in the Killing Fields of lobster/crab pots and

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9 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 turtle, *Lepidochelys kempii*; and (6) The Leatherback turtle, *Dermochelys coriacea*.



gill nets. As a result they are seriously injured and killed as a result of these entanglements. Additionally, the ability of female Black Whales to breed is being adversely impaired from the repeated injuries inflicted on them by these entanglements and the adverse impact of the establishing of Killing Fields off the Massachusetts coast by the commercial defendants.

43. The Black Whale's extinction in a few decades is now inevitable. The Black Whale's remaining population is no longer viable. Black Whales reproduction capability as a species has collapsed under the burden of the Anthropogenic Threats. Black Whales did not give birth to any young in 2018. Over the last ten years, Black Whales births have not replaced the Black Whales killed by Anthropogenic Threats and natural mortality. The Black Whales are effectively extinct unless all VBR Fields are eliminated and pro-active efforts commenced to increase their annual production of newborn calves.

44. The Defendants are now conspiring to commit "Whale Fraud." The Defendants are maliciously acting in concert to deliberately prevent the enforcement of federal and state environmental laws at the intensity necessary to protect Black Whales and other endangered marine wildlife from being routinely killed and otherwise injured by VBR. They want as a categorical imperative to prevent any environmental laws from being enforced against the commercial fishing industry. Amazingly the Defendants have adopted a strategic practice to encourage the extinction of the Black Whale as its resolution to the legal conflict of its VBRs killing Endangered Whales and Sea Turtles.

45. The fact of the Defendants Whale Fraud is factually supported by the fact that Defendant MDMF was found liable by the Court in 1996 for violating the ESA's Section 9 prohibitions by their killing and injuring Endangered Whale Species through their licensing and regulating commercial fishing by requiring the use VBR in pot and gillnet fishing gear. Instead of changing its ways after the Court's ruling, this Defendant chose to double-down on their illegal activities by use of fraud and force. They solicited the services of non-profit companies (e. g. the Center for Coastal Studies in Provincetown MA) to feign ineffective alterations of their illicit activities as reducing the incidents of Black Whales and Humpback Whales being killed and injured by their commercial fishing activities on Black Whale survival

46. Upon information and belief, in recent years the incidents of the Defendants pot gear and gill nets catching Endangered Whales and Sea Turtles has increased and not diminished. 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. 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 Defendants NMFS and MDMF

47. The bottom line is that the Black Whale now faces inevitable extinction in the next few decades. This species extinction is mostly due to its annually being repeatedly being killed and injured by the Defendants deployment in the Gulf of Maine of pot and gillnet fishing gear constituting hundreds of thousands of VBR. In 2022, one Black Whale caught by the Defendants' Fishing Activity constitutes an irreparable injury to this species ability to recover from its biological endangered status. Unless the Defendants' Fishing Activity is stopped immediately the extinction of the Black Whale's species is inevitable.

### **Plaintiff's Claims Against the Defendants**

COUNT I: *Defendants Violation of 16 USC § 1538(a and g): The Defendants MDMF, MFAC & NMFS Licensing and Regulating Individuals to Deploy Fishing Gear Using VBR is Prohibited Conduct Pursuant to the ESA Section 9(a & g) Prohibitions Against the Taking of Endangered Species of Whales and Sea Turtles* **FN10**

48. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 47.

49. Endangered Whales and Sea Turtles are resident species of wildlife in US coastal waters under the concurrent state jurisdiction of Massachusetts. Black Whales reside in every month of the year in Massachusetts coastal waters. Black Whales are known to give birth in Cape Cod Bay, other bays and inlets along the Massachusetts coastline. All Endangered Whales and Sea Turtles are listed by Massachusetts as resident species of Massachusetts and protected as endangered species under the Massachusetts Endangered Species Act.

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<sup>10</sup> **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.



50. Defendants NMFS and MDMF/MFAC are licensing and regulating all recreational and commercial fishing operation off the Atlantic coastline in waters under the concurrent state jurisdiction of the state of Massachusetts. These Defendants — require only by regulation and not by statute — that the Public it licenses to do lobster/crab pot fishing must use VBR on their pot gear. The MDMF licenses about 1,000 private individuals to do commercial pot fishing and thousands of other individuals to do recreational pot fishing in Massachusetts coastal waters.

51. Since 1973, Massachusetts resident Endangered Whales and Sea Turtles are routinely caught in their encounters with VBR deployed in Massachusetts state waters. In Massachusetts state waters fishing gear using VBR are responsible for nearly all the entanglements of Endangered Whales and Sea Turtles in fishing gear licensed and regulated by NMFS and MDMF/MFAC. In prior lawsuits against NMFS and MDMF, the M. A. X. subpoenaed from NOAA entanglement records of Endangered Whales and Sea Turtles. In these records NOAA reported that VBR was the apparent cause in all these reported entanglements of Endangered Whales and Sea Turtles.

52. The NMFS and MDMF/MFAC have required the use of VBR in lobsterpot hear from 1973 to the present day. From 1973 to the present day, Endangered Whales and Sea Turtles have been entangled, killed and injured by their encounters with VBR deployed in Massachusetts state waters. Endangered Whales and Sea Turtles are attracted to VBR. Whales enjoy rubbing up against them and this phenomenon results in their becoming entangled in the VBR.

53. Starting in 1996 and continuing in 2021, the Court ruled repeatedly that Endangered Whales were routinely being entangled in VBR on pot gear deployed in state waters. The Court then ruled repeatedly that MDMF is violating the ESA's Section 9 prohibitions against taking Endangered Whales requiring the use of VBR by the fishermen that they license to deploy pot and gillnet fishing gear in state waters made them liable This is after the Court first ruled in *Strahan v. Cox* that these said entanglements by the NMFS and MDMF were a violation of the ESA Section 9 prohibition against taking ESA listed endangered species of wildlife.

54. Based on the Court's *Strahan v. Cox* ruling, there is no doubt that since 1973 the NMFS and MDMF/MFAC annually have intentionally violated the ESA's Section 9 prohibitions by continuing to require the use of VBR on the fishing gear that they license and regulate for



deployment in Massachusetts state waters. Since 1996, the NMFS and MDMF/MFAC chose to continue requiring the use of VBR by its licensed lobsterpot fishermen. In fact, since 1996 the State Defendant the number of VBR deployed in Massachusetts state waters. At a minimum the NMFS and MDMF/MFAC are currently responsible for the annual deployment over 100,000 VBR in Massachusetts state waters. There is no question that the NMFS and MDMF/MFAC licensing and regulation of lobsterpot fishing is responsible for many of annual reported entanglements of Black Whales and other Endangered Whales in VBR in US coastal waters.

55. In 2021 NOAA produced a “stock assessment report” under the MMPA assessing the number of annually killings and serious injuring of Black Whale in lobsterpot gear. It claims there are annually about five reported killings/injuring of Black Whales in recent years. The report also claims that NOAA has determined that the killing/injuring of a single Black Whale threatens their species with imminent extinction. Since Massachusetts accounts for almost half of all lobsterpot fishing activity along the US coastline, there is no question that the NMFS and MDMF/MFAC are liable for several killings/injuring of Black Whale in the VBR used in lobsterpot gear.

56. At the April 2019 meeting of the NOAA’s Atlantic Large Whale Take Reduction Team, the NMFS and MDMF/MFAC voluntarily agreed to reduce by thirty percent or more the deployment the risk it currently poses to annually kill/injure Black Whales in its state lobsterpot fishery. This constitutes incontrovertible admission by the NMFS and MDMF/MFAC that its lobsterpot fisheries poses in 2022 a clear and present danger to kill/injure annually several Black Whales. Since NOAA has determined that the continued killing of just one Black Whale annually condemns the Black Whale species to extinction, the NMFS and MDMF/MFAC’ lobsterpot fishery also poses a clear and present danger to extirpate the Black Whale species in the near future.

**In 2022, NMFS & MDMF/MFAC Fishing Activity is Prohibited Conduct Pursuant to ESA’s Section 9 Prohibitions Against Taking Endangered Whales and Sea Turtles.**

57. Since the Court in 1996 determined that Defendants NMFS, MDMF & MFAC lobsterpot fishery violated the ESA’s Section 9 prohibition, its still requiring that VBRs be used on its licensed lobsterpot gear continues to the present day and it’s a continuing violation until it is cured. The ESA Section 9 prohibitions is a core requirement of the ESA statute, regulations, ESA case law and NOAA policy. Any individual’s activities once determined to have violated



the ESA Section 9 prohibitions retains its violator status until it is purged by either a Court or by NOAA's making a formal determination — pursuant to an application under ESA Section 10 for an Incidental Take Permit — that the violator's said activity is unlikely to take a ESA listed species in the future.

58. It is also now a categorical violation of the ESA's Section 9 take prohibitions for anyone to deploy VBR and gill nets in marine habitat historically used by Endangered Whales and Sea Turtles. Only when the deployment can be guaranteed to occur without the presence of Endangered Whales and Sea Turtles is it possible to construe the use of VBR as not categorically violating ESA Section 9 take prohibitions. Putting Killing Ropes in habitat occupied by whales is just like pouring cyanide in the water. Since it cannot be removed immediately when an endangered whale or sea turtle shows up, the deployment cannot be lawfully done in the first place. This reality is enforced by two incontrovertible facts. If a whale touches a VBR this is a prohibited entanglement. Endangered Whales and Sea Turtles are attracted to and readily interact with VBR.

59. The NOAA listed Cape Cod Bay and other areas subject to the NMFS and MDMF/MFAC lobsterpot fishing activities as ESA listed designated critical habitat for the Northern Black Whale **FN11** Defendants MDMF/MFAC are licensing and regulating commercial fishing operation off the Atlantic coastline in waters under the concurrent state jurisdiction of the state of Massachusetts. The deployment of VBR in listed ESA designated critical habitat for the Black Whale in Cape Cod Bay an off the Massachusetts coastline. The deployment of many tons of plastic fishing and the resultant "ghost gear" left behind adversely alters the marine habitat of the Black Whales critical habitat. Black Whales have been know to give birth in Cape Cod Bay and other areas of its designated critical habitat.

60. Once an individual engages in an activity that constitutes ESA Section 9 prohibited conduct, then the burden of proof shifts to that individual to PROVE that its continuing activity will not violate the ESA Section 9 prohibitions in the future. The only way it can lawfully do that is by applying to NOAA for an Incidental Take Permit pursuant to ESA Section 10. It is incontrovertible that the NMFS and MDMF/MFAC bear the burden now of proving that their continuing licensed/regulated deployment annually of over 100,000 VBR in

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<sup>11</sup> 50 CFR 226.203 and *Federal Register*, Vol. 81, No. 17, 27 January 2016



Black Whale habitat will not result in the entanglement of a single Black Whale or any other Endangered Whale or Sea Turtle. As stated, it is incontrovertible that the NMFS and MDMF — annually licensing the deployment of over 100,000 VBR in state waters — cannot prove that at least one further incident of an entanglement of a Black Whale in their licensed lobsterpot gear.

**NMFS, MDMF, and MFAC Fishing will Never Stop their ESA  
Prohibited Fishing Activity Absent a Coercive Order**

61. In 1996 and continuing today, Defendants NMFS, MDMF & MFAC, their employees, and the other Defendants are part of an occupational culture that opposes and fights to prevent any environmental laws from being enforced against the recreational and commercial fishing industry. For example, the Massachusetts Environmental Policy Act requires a review of all commercial activities for their impact on the environment. Yet, the NMFS and MDMF have refused to do a MEPA review on the state's commercial fishing industry.

62. FIRST, Massachusetts statute imposes no authority on the Defendants MDMF and MFAC either to authorize the taking of ESA listed species or to “conserve” these species. The opposite is true. The Massachusetts Endangered Species assigns the conservation of all state listed marine endangered species to another state agency. Massachusetts' statutes only authorize the MDMF/MFAC to regulate recreational and commercial marine fisheries. There is no Massachusetts statute that authorizes MDMF/MFAC to regulate any activity – including marine fisheries – to protect state listed endangered marine wildlife for any reason. Historically, Massachusetts government chose to deliberately adopt an unlawful policy of allowing the MDMF/MFAC to evade the enforcement federal and state wildlife laws by deciding on its own whether or not state listed marine wildlife is murdered by its licensed and regulated marine fisheries. This means that all the MDMF/MFAC implemented regulations pursuant to 322 CMR 12.00 et seq. to “conserve” Black Whales are facially invalid since the MDMF has no statutory authority to either to tell boaters to stay away from Black Whales or to even stop anyone from killing any marine mammal in state waters.

63. The above is blatant and incontrovertible evidence of the ongoing malicious and unlawful efforts of the NMFS and MDMF to evade any enforcement of the ESA and all other environmental laws against the Massachusetts commercial fishing industry. In Massachusetts the governance culture surrounding the commercial marine fishing industry is facially and as applied



in violation of the Constitution and the Massachusetts Constitution. The Massachusetts statutes and regulations that controls the MDMF, and the ESA violations by the Defendants only serves the Public Bad and not the Public Interest.

64. Since 1996, the number of VBR deployed in Massachusetts coastal waters has steadily increased. This means that the quantifiable threat factor for entanglement has risen — and not decreased — for VBR to entangle Endangered Whales and Sea Turtles in Massachusetts waters. Also since 1996, *Strahan v. Coxe* has set a precedent for Federal courts to repeatedly hold federal and state agencies liable for violating the ESA's Section 9 prohibitions when their licensing actions results in the unlawful taking of these species in violation of the ESA Section 9(a) prohibitions. **FN12.**

COUNT II: *Defendants Violation of 16 USC § 1538(a and g): Defendants Sawyer, Martin & Haviland's Deployment of Fishing Gear Using VBR in ESA Designated Northern Black Whale Critical Habitat off the Massachusetts Coast is by Itself a Categorically Prohibited Conduct Pursuant to the ESA's Section 9 Taking Prohibitions* **FN13** (Defendants Haviland and Sawyer).

65. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 64.

66. The Deployment of fishing gear by anyone using VBR in the ESA Listed critical habitat for Northern Black Whales in the Gulf of Maine constitutes in itself per se prohibited conduct pursuant to the ESA's Section take prohibitions. Defendants Haviland, Martin and Sawyer in the past and in 2022 are engaged in ESA Section 9 prohibited conduct by their deploying in waters off the Massachusetts coast fishing gear using VBR. They are licensed in 2022 by the NMFS and/or MDMF to deploy pot and/or gillnet fishing gear laden with VBR in United States coast waters off the coast of Massachusetts. The pot and gillnet fishing of these

<sup>12</sup> See also *Florida Key Deer v. Paulison*, 522 F.3d 1133 (11<sup>th</sup> 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).

<sup>13</sup> **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.



Defendants routinely kills and seriously injured ESA listed endangered whales and sea turtles by entanglement. The National Marine Fisheries Service issued its List of Fisheries for 2021 under the authority given it by the Marine Mammal Protection Act. NMFS' LOF lists these Defendants pot and gillnet fisheries as Category I fisheries that repeatedly kill and seriously injure Black Whales and other ESA listed endangered species of whales. These Defendants activity of engaging in lobsterpot and gillnet fisheries is prohibited by the ESA's Section 9 prohibitions against the taking of ESA listed species of whales and sea turtles.

67. The Defendants Haviland, Martin and Sawyer deploy their lobsterpot and/or gillnet fishing gear in United States coastal waters that NMFS listed as ESA designated critical habitat in the Gulf of Maine for the Northern Black Whale. These Defendants take Black Whales through "Harm" by altering their critical habitat as to impair their feeding, breeding and other vital life functions. Additionally, the Defendants annually dump and abandon thousands of pounds of plastic fishing gear and vertical buoy line into critical habitat for the Black Whale. This is "ghost gear" that continues to "harm" and otherwise kill, injure and take Black Whales.

68. These 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.

COUNT III: *Defendants Violation of 42 USC § 1983: The Defendants McKiernan and Sawyers Violation of the Civil Rights Act: The Retaliation Against the Plaintiff for Petitioning the Courts by Refusing me Access to Public Information, Gagging State Employees for Talking to Me, and Refusing to Accept My Petitions for Regulatory Reform.*

69. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 68.

70. The Defendant Daniel McKiernan is a state who is violating the Plaintiff's First Amendment protected rights to petition the MDMF and the Court to engage in core political Free Speech. This defendant is intimidating and coercing state employees from talking and otherwise communicating with the Plaintiff on any issue. He has deliberately and maliciously denied the Plaintiff access to Public records and the opportunity to consult with MDMF employees in order to deter him from being able to affect and alter MDMF current policy to evade environmental laws being enforced against MDMF's Fishing Activities and to thwart his ability to petition the Court for said redress.



71. Starting in 2019, Defendants McKiernan usurped his employment authority to personally coerce MDMF employees in order stop them from providing the Plaintiff any opportunity to apply for either a commercial or recreational lobsterpot fishing license. On 4 April 2019 and on 29 April 2019, MDMF attempted to get either a recreational and/or a commercial lobsterpot permit for students. This Defendant coerced and intimidated MDMF employees to stop them from issuing fishing licenses to the Plaintiff that he was legally entitled to get. He did this to intimidate and coerce M. A. X. from petition the Court for relief and in retaliation for his ongoing efforts to stop the deployment of any VBR fishing gear off the Massachusetts coast.

72. Because McKiernan and Sawyer usurps their MDMF employment authorities to implement and enforce an unlawful MDMF policies that are prohibited under the ESA & MMPA, they are preventing M. A. X. from being able to petition the MDMF/MFAC to not allow state licensed marine fishing activity to adversely affect Ocean biodiversity. This violates his constitutionally protected right to petition the government and obtain a fair consideration by Massachusetts agencies of his petitioned for protections by it of Ocean biodiversity. His petitions are insured of being immediately rejected from any fair consideration by state agencies by being a threat to MDMF/MFAC unlawful policy of allowing the fishing industry to kill off all endangered marine wildlife.

73. M.A.X. has wasted over \$100,000 of his personal resources since 1997 trying to recover Ocean biodiversity simply owing to McKiernan, Sawyer and other Massachusetts state actors refusing to allow him to petition MDMF/MFAC in order to insure that the fishing industry is unimpaired in being allowed to destroy Ocean biodiversity pursuant to their commercially harvesting of marine wildlife.



### The Plaintiff's Supplemental Claims Against the Defendants

COUNT V: *Defendants Sawyer, Martin Haviland, Martin are Public Nuisances and Have Caused Millions of Dollars of Injury to the Plaintiff in Injuring Him and Other Members of the Public.* **FN14**

74. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 73.

75. The said Defendants have for decades unlawfully killed and injured marine wildlife protected under state and federal law to serve the Public Interest. They annually in the past and will in 2022 deploy fishing gear in Massachusetts state waters using VBR that is prohibited from them doing so by the ESA's Section 9 take prohibitions and is also prohibited under the MMPA. In doing so these Defendants routinely catch, kill and injure ESA Listed Species of whales and sea turtles. Annually their fishing activity dumps tons of plastic and metal debris into Massachusetts coastal waters and remains as "ghost gear" that continues to kill and injure all forms of marine wildlife.

76. The Plaintiff is uniquely situated to suffer tortious injury from these Defendants as a result of there being Public Nuisances. He belongs to a small group of licensed commercial and recreational marine fishermen that is being injured by their killing marine mammals and as a result the Plaintiff is being threatened with arrest and loss of fishing license if he does not use vertical buoy ropes or if he approached any endangered whales or sea turtle. Strahan is attempting to do research and recover the Black Whales. These Defendants' public nuisance has caused the Plaintiff tortious injury and prevented them from recovering the Black Whale from its endangered species status.

COUNT VI: *Defendants McKiernan and Sawyer's Violation of the Massachusetts Civil Rights Act* **FN15**

78. The Plaintiff re-alleges his claims of fact and law asserted in paragraphs 1 – 77.

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<sup>14</sup> See *Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Court*, 448 Mass. at 34–35 & *Planned Parenthood League of Mass., Inc. v. Operation Rescue*, 406 Mass. 701, 707 (1990) (valid case for public nuisance where the defendant had interfered with the rights of the plaintiff's patients to obtain abortion).

<sup>15</sup> GL Chapter 12 § 11H



79. The Defendants McKiernan & Sawyer are acting as individuals and usurping their state employment authority to use threats against Strahan and MDMF/MDMF employees to stop the Plaintiff from getting any commercial/recreational lobsterpot license and to coerce him from suing the Massachusetts government to save the Black Whale. These threats and intimidation are a facial and applied violation of the Massachusetts Civil Rights Act. Defendant McKiernan issued a trespass notice against the Plaintiff to unlawfully threaten and coerce him from entering ever again the Public areas of the MDM/MFACF office. These Defendants have also threatened and coerced in violation of law all other MDMF/MFAC employees to not speak with the Plaintiff, provide him any state services, and to not allow him access to any public records that is in MDMF possession. All of these unlawful acts by these Defendants is a threat to intimidate the Plaintiff and to coerce him from protecting endangered wildlife, bringing lawsuits against the NMFS and MDMF and commercial fishermen, and conducting political advocacy for whale safe fishing.

80. Unless the Court orders McKiernan & Sawyer to stop, they will continue to threaten and intimidate the Plaintiff to coerce him from enjoying his statutory and constitutionally protected rights of Free Speech and to petition the courts.



# PRAYER FOR RELIEF

- I. For a Declaratory Judgment that in 2022 the deployment of pot and gillnet fishing gear by any individual, or by the said deployment being required and/or licensed by NMFS, MDMF or MFAC, in ESA listed designated critical habitat for the Northern Black Whale off the Massachusetts coast is by itself *per se* prohibited conduct pursuant to the ESA's Section 9 taking prohibitions.
- II. For a Declaratory Judgment that the Defendants are violating the ESA's Section 9(a and g) prohibitions by taking members of Endangered Species of Whales and Sea Turtles off the US coast pursuant to their respective involvement in pot and gillnet fishing operations that deploy Vertical Buoy Ropes in coastal waters that within the boundaries of ESA listed designated critical habitat for the Northern Black Whale off the Massachusetts coast. .
- III. For an order, enjoining the Defendants from licensing or engaging in further Pot and/or Gill Net fisheries operations catch and otherwise take ESA Listed Species of whales and sea turtles and otherwise adversely affect the quality of the ESA listed designated critical habitat for Northern Black Whales need for this species to recover from its biological endangered status.
- V. For an award of 1,000,000 in compensatory relief and punitive damages from Defendants Sawyer, and McKiernan.
- VI. For an award of the Plaintiff's direct costs of his prosecution against the Defendants.
- VII. For any further relief that the Court deems appropriate.

BY:

/s/ Richard Maximus Strahan

Richard Maximus Strahan as Man Against Xtinction  
617-817-4402

*Vir Rei Publicae Necessarius Est*

# VERIFICATION OF THE COMPLAINT

The Plaintiff 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 scientifically true. Signed under the pains and penalties of perjury this 8th day of March in the year 2022.

BY:

/s/ Richard Maximus Strahan

Richard Maximus Strahan as Man Against Xtinction



**From:** [Delaney K. McLoone](#)  
**To:** [esistoo@yahoo.com](mailto:esistoo@yahoo.com)  
**Cc:** [Daniel Cragg](#); [Robert Dube](#); [Sam Blatchley](#); [Rachel S. Lantz](#); [Leah Happke](#)  
**Subject:** 21-cv-1131 - Meet and Confer Letter  
**Date:** Friday, March 25, 2022 10:39:29 AM  
**Attachments:** [Ltr to MAX re Prefiling Injunction Motion.pdf](#)

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Dear Mr. Strahan,

Attached please find a true and correct copy of the Meet and Confer letter for Pre-Filing Injunction, which was delivered via FedEx to the following address at 9:44am EST today:

Richard Maximus Strahan  
Citizen Attorney General  
83 Main Street, 6080 GSS  
Durham, NH 0824

Best regards,

**Delaney K. McLoone**

Legal Assistant  
Eckland & Blando  
10 South Fifth Street – Suite 800  
Minneapolis, Minnesota 55402  
(612) 682-0540 (Direct)  
(612) 236-0160 (Office)  
[dmcloone@ecklandblando.com](mailto:dmcloone@ecklandblando.com)

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Daniel J Cragg  
dcragg@ecklandblando.com  
(612) 236-0160

March 24, 2022

**VIA FEDEX OVERNIGHT**

Richard Maximus Strahan  
Citizen Attorney General  
83 Main Street, 6080 GSS  
Durham, NH 03824

Re: *Meet and Confer for Pre-Filing Injunction Motion, Case No. 21-cv-01131-TJK*

Dear Mr. Strahan:

Pursuant to District of Columbia Local Rule 7(m), we are notifying you of our intent to move the District Court for the District of Columbia for a pre-filing injunction against you in U.S. District Courts nationwide. Our proposed pre-filing injunction, if granted, would require you to seek leave of court to file any new complaints against Arthur Sawyer or the Massachusetts Lobstermen's Association. You would retain the ability to file such complaints with judicial approval, only if they were made in good faith and have never been raised and disposed of on the merits by the courts.

Please advise whether you will stipulate to this pre-filing injunction at your earliest convenience. Otherwise, we will proceed with the filing of the motion.

Kindest regards,

A handwritten signature in blue ink, appearing to read "D. J. Cragg", written over the typed name.

Daniel J. Cragg



**From:** [Esis Esis](#)  
**To:** [sblatchley@ecklandblando.com](mailto:sblatchley@ecklandblando.com); [dcragg@ecklandblando.com](mailto:dcragg@ecklandblando.com)  
**Subject:** Notice to Cease and Desist  
**Date:** Friday, March 25, 2022 12:40:30 PM

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25 March 2022

To: Samuel P. Blatchley, Esq (*pro hac vice*) 22 Boston Wharf Road, 7<sup>th</sup> Floor Boston, MA 02210  
Daniel J. Cragg, Esq. (#MN0016) 10 South Fifth Street, Suite 800 Minneapolis, MN 55402

RE: Notice to Cease and Desist

This is a COMMAND for you to cease and desist in your unlawful attempt to trespass on my First Amendment rights to trespass on my First Amendment protect right to petition the court of the United States.

If you make any further attempt to do so, file any motion asking for a court to restrain my said opportunity, I will immediate commence a civil rights lawsuit against you and your employers under the Massachusetts civil rights act to obtain an injunction against you doing so and to seek punitive damages. I will also seek to have you disbarred in every state you practice to owing to you unethical practice of stopping citizens participation in democracy.

You have been warned.

Richard Maximus Strahan  
Chief Science Officer  
Legal Bastards  
"Practicing the Law without Shyster Approval"





UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

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MAN AGAINST XTINCTION A/K/A	)	
M.A.X,	)	Civil Action No.: 21-cv-01131-TJK
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Michael Pentony, et. al,	)	
	)	
	)	
Defendants.	)	

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**ORDER AND INJUNCTION**

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The above-entitled matter came on for hearing before the undersigned Judge of U.S. District Court on Defendant Arthur Sawyer’s Motion, made in his individual and official capacity as President of the Massachusetts Lobsterman’s Association, for a Pre-Filing Injunction against Plaintiff Richard Maximus Strahan (a/k/a Man Against Xtinction/M.A.X.). Plaintiff appeared *pro se*. Defendant Arthur Sawyer was represented by Samuel Blatchley, Esq. and Daniel J. Cragg, Esq. The Court, being duly advised in the premises, makes the following:

**ORDER AND INJUNCTION**

1. IT IS HEREBY ORDERED that Defendant Arthur Sawyer’s Motion for a Pre-Filing Injunction be, and the same is, **GRANTED**.
2. IT IS HEREBY FURTHER ORDERED that Plaintiff Richard Maximus Strahan (a/k/a Man Against Xtinction/M.A.X.) be, and is, **ENJOINED** as follows:
  - a. Plaintiff must seek and obtain leave of Court before commencing or attempting to commence any civil action in this or any other U.S. District Court against



Arthur “Sooky” Sawyer, the Massachusetts Lobsterman’s Association (“MLA”), any officer or employee of the MLA named in his or her individual or official capacity, Samuel P. Blatchley, Daniel J. Cragg, and their firm Eckland & Blando LLP, or any partner or employee of Eckland & Blando LLP.

- b. In seeking leave to file, Plaintiff must certify that the claim or claims he wishes to present are new claims, never before raised and disposed of on the merits by any court.
- c. Plaintiff must also certify that the claim or claims are not frivolous or made in bad faith.
- d. Plaintiff must caption the motion for leave to file as “Application Pursuant to Court Order Seeking Leave to File.”

3. IT IS HEREBY FURTHER ORDERED that the Clerk of Court shall mail a copy of this Order and Injunction to Plaintiff.

4. **PLEASE TAKE NOTICE THAT FAILURE TO COMPLY WITH THIS INJUNCTION MAY RESULT IN FURTHER SANCTIONS, UP TO AND INCLUDING STRIKING PLEADINGS, DISMISSING CLAIMS AND COUNTERCLAIMS, ENTERING A DEFAULT JUDGMENT, CRIMINAL AND CIVIL CONTEMPT OF COURT, OR A MONETARY SANCTION.**

SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Timothy J. Kelly  
United States District Court Judge