

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD MAXIMUS STRAHAN,

Plaintiff,

v.

SECRETARY, MASSACHUSETTS
OFFICE OF ENERGY AND
ENVIRONMENTAL AFFAIRS
("MEOEEA"), et al.

Defendants.

CIVIL ACTION 1:19-cv-10639-IT

COMMONWEALTH DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR
ADMISSIONS

Defendants Secretary of the Massachusetts Office of Energy and Environmental Affairs and Acting Director of the Massachusetts Division of Marine Fisheries ¹ (collectively, "Commonwealth Defendants") respond to plaintiff's First Requests for Admissions as follows. The Commonwealth defendants object to the Instructions in the Requests for Admissions to the extent they vary or differ from the requirements in the Federal Rules of Civil Procedure or Local Rules of the United States District Court for the District of Massachusetts:

¹ When this case was filed last year, David Pierce was the Director of the Massachusetts Division of Marine Fisheries. The division is currently lead by Acting Director Daniel J. McKiernan.

SPECIFIC REQUESTS AND RESPONSES

REQUEST NO 1:

Admit that endangered whales on occasion become entangled in either lobsterpot fishing gear and/or gillnet fishing gear that is licensed and regulated by the Massachusetts Division of Fisheries (“MDMF”).

RESPONSE TO REQUEST No. 1:

The Commonwealth defendants object to Request No. 1 because it does not specify a period of time to which the Request is directed. The Commonwealth defendants further object to the term “on occasion” as vague. Without waiving its objection, the Commonwealth defendants have insufficient information after a reasonable inquiry based on information MDMF knows or can reasonably obtain to admit or deny as to the request concerning endangered whales under the Endangered Species Act for the following reason. Since 2000, there have only been two (2) North Atlantic Right whales, which are federally listed as Endangered under the ESA, confirmed to have been entangled in lobsterpot fishing gear, in 2009 and 2016, respectively. After reasonable inquiry based on information MDMF knows or can reasonably obtain, MDMF has insufficient information to admit or deny that North Atlantic Right Whales are at present occasionally becoming entangled in either lobsterpot fishing gear and/or gillnet fishing gear that is licensed and regulated by MDMF.

REQUEST No 2:

Admit that Massachusetts Division of Marine Fisheries (MDMF) requires the use of a surface identification system by vertical buoy rope on lobsterpot gear deployed in Massachusetts coastal waters under its licensure.

RESPONSE No. 2:

Admitted that that MDMF requires the use of a surface identification system by vertical buoy rope on lobsterpot gear deployed in Massachusetts coastal waters under its licensure., except that scientific and research licenses may not require the use of a surface identification system by vertical buoy rope.

REQUESTNO 3: Admit that last year sea turtles became entangled in lobsterpot gear in Massachusetts coastal waters licensed and regulated by MDMF.

RESPONSE No. 3:

Admitted.

REQUESTNO. 4:

Admit that the MDMF has received no authorization from NOAA/NMFS that waives the federal Endangered Species Act's prohibitions against "taking" ESA listed endangered wildlife pursuant to fishing gear deployed in United States coastal waters through MDMF's licensing and regulating commercial fishing gear.

RESPONSE No. 4:

Admitted.

/s/ James A. Sweeney
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March 19, 2020