

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,
*et al.*¹

Plaintiffs,

v.

WILBUR ROSS, in his official
capacity as Secretary of Commerce,
*et al.*²

Federal Defendants,

and

MASSACHUSETTS LOBSTERMEN'S
ASSOCIATION, INC., and MAINE
LOBSTERMEN'S ASSOCIATION,

Intervenor-Defendants.

Civil Action No. 1:18-cv-00112-JEB

**DECLARATION OF ELIZABETH CASONI IN SUPPORT OF
MASSACHUSETTS LOBSTERMEN'S ASSOCIATION, INC.'S
REMEDY BRIEF**

I, Elizabeth Casoni, declare and state as follows:

1. I make the statements in this declaration based on my own knowledge except as to those stated as being based on my belief or understanding.
2. I am the Executive Director of the Massachusetts Lobstermen's Association, Inc. (the "MALA"). I have been employed in this position since July 1, 2014. I have worked for the MALA in a variety of positions since October 2008.

¹ Defenders of Wildlife, the Humane Society of the United States, and the Conservation Law Foundation.

² Chris Oliver, in his official capacity as Assistant Administrator of the NOAA Fisheries, and the National Marine Fisheries Service.

3. Established in 1963, the MALA is a member-driven organization of professionals that accepts and supports the interdependence of species conservation and the members' collective economic interests.
4. We strive to be proactive on issues affecting the lobster industry and are active in the management process at both the state and federal levels, advocating on behalf of our members and educating legislators and regulators on the practical reality of operating a lobstering business.
5. The MALA is one of several such voluntary commercial fishing trade associations in the New England area. We have about 1,800 members hailing from Canada to North Carolina fishing for a multitude of species.
6. In my role, I work very closely with commercial fishermen, our members and beyond, so that I can understand their needs as commercial fishermen and as businesspeople.
7. The Massachusetts commercial lobster industry is among the most proactive in terms of protecting the endangered right whale population.
8. Massachusetts regulations surrounding lobstering are particularly conservative. For instance, Massachusetts requires the use of sinking groundlines year-round and a 600lb break-away link at the base of surface buoys. In addition, speed limits and the February 1st to April 30th, 3,071 square mile MA Bay Restricted Area Closure to all trap/pot fishing are strictly enforced. The Massachusetts commercial lobstermen fish under the strictest right whale conservation rules anywhere in the United States.

9. The MALA vigilantly promotes the conservation of whales and encourages its members to abide by existing regulations.
10. MALA President, Arthur Sawyer, is a Massachusetts Marine Fisheries Commissioner and has been an active member of the Atlantic Large Whale Take Reduction Team (ALWTRT) for over 15 years. The Executive Director of MALA has held an active seat on the ALWTRT since its inception in 1997 and has participated in the development of all Atlantic Large Whale Take Reduction Plan. I, as a representative of the MALA, am actively involved in the ALWTRT, one of several take reduction teams established by NOAA's National Marine Fisheries Service (NMFS) to help develop plans to mitigate the risk to marine mammals posed by fishing gear, including the promotion of measures to reduce potential risks to the right whale from commercial lobstering. I am also involved with the Massachusetts Ocean Advisory Commission, the Massachusetts Ocean Acidification Advisory Commission, the New England Fisheries Management Council (specifically the Habitat and Herring Advisory Panels), Board member for the Lobster Foundation of Massachusetts, and Massachusetts Fisheries Advisory Board for Offshore Wind.
11. MALA also works cooperatively with the Massachusetts Division of Marine Fisheries ("DMF") in efforts to further reduce risk of entanglement to right whales. Among other things, MALA is also partnering with the Lobster Foundation of Massachusetts (LFoM) and the DMF on an effort to field test 1700lb weak red rope to further reduce interactions with right whales and vertical lines. Currently, the LFoM is in the process of distributing over 700 coils of the

1700lb weaker red rope to lobstermen in Massachusetts to be field tested during the 2020 fishing season. Our goal is to acquire a viable and acceptable “weak contrivance” options to be off the shelf ready for implementation in the 2021 fishing season here in Massachusetts.

12. Massachusetts commercial lobster fishing is an approximately \$94 million industry supporting the livelihood of thousands of Massachusetts fishermen. There are an estimated 850 active commercial lobster permits issued in Massachusetts that allow individual permit holders to engage in commercial lobster fishing. The majority of these vessels are predicated on the owner operator status and run as a small business by individual fishermen. In addition, Massachusetts lobstermen supply restaurants and processing facilities which, in turn, employ thousands of workers. In 2019, Massachusetts commercial lobstermen landed over 16 million pounds of lobster in over 50 ports across the state.
13. The COVID 19 pandemic has devastated the Massachusetts lobster industry. Most lobster is consumed in restaurants rather than at home. The closure of restaurants has dramatically reduced the demand for lobster and, as a result, the price and demand have dropped by an estimated 45%. In addition, international demand for lobster has decreased and has been affected by travel restrictions.
14. I have reviewed the Plaintiffs Opening Brief on Remedy in this action. I understand that plaintiffs are requesting a vacatur of the 2014 BiOp by January 31, 2021 unless NMFS issues a new final Biological Opinion by that date. Most of the small businesses and individuals who operate or work on lobster fishing

vessels in Massachusetts have limited financial resources and could not withstand an extended shut down of fishing operations.

15. I also understand that Plaintiffs have asked for an injunction that would create a new year-round closure area South of Martha's Vineyard and Nantucket. This is an area that has been fished by Massachusetts lobstermen for years. I am aware of at least 35 Massachusetts commercial lobstermen who regularly fish this area. To my knowledge, there has been no documented case of a right whale being entangled in lobster fishing gear from this area in the past 10 years. I am very concerned that a year-round closure of the sort requested by Plaintiffs would increase the risk to right whales as fishermen move their gear from the proposed designated area to adjacent waters thereby increasing the density of gear in those waters.
16. As described above, MALA has worked cooperatively with NMFS and with the DMF to reduce the risk to right whales including with respect to the design and implementation of proposed closure areas. Deciding where and when to impose a closure on fishing is a complicated process that requires extended deliberation and input from government agencies with the necessary expertise as well as the lobstermen who fish the waters. I do not believe that the closure proposed by Plaintiffs in this case is warranted or necessary and I am very concerned that it will not increase the conservation as projected by the Plaintiffs for the right whales while shutting down the lobster fishery. The so-called resident right whales in the proposed closure keep shifting their location while chasing the food source. The right whales will follow the food source wherever it goes, vacating

the proposed closed area, and once the food source is gone the lobstermen will have been shut down for good for naught. The proposed closure will be displacing the lobstermen into adjacent areas creating denser fishing gear areas and creating a ripple effect throughout the region.

I declare under the penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: June 18, 2020

 /s/ Beth Casoni
Elizabeth Casoni