

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, et al.,
Plaintiffs,
v.
WILBUR ROSS, et al.,
Federal Defendants, and
MAINE LOBSTERMEN'S ASSOCIATION, INC.,
and
MASSACHUSETTS LOBSTERMEN'S
ASSOCIATION,
Defendant-Intervenors.

Civil Action Nos. 18-112 (JEB)
18-283 (JEB)

DECLARATION OF PATRICE F MCCARRON, EXECUTIVE DIRECTOR OF THE MAINE LOBSTERMEN'S ASSOCIATION, INC, IN SUPPORT OF DEFENDANT-INTERVERVENORS REMEDY RESPONSE BRIEF.

I, PATRICE F. MCCARRON, declare and state as follows:

1. I am the executive director of the Maine Lobstermen's Association (MLA), having served in this role since 2001. I am responsible for overseeing the operations of the association and leading the association's outreach and policy activities, including those pertaining to conserving large whales. I serve as one of Maine's representatives on the Atlantic Large Whale Take Reduction Team (TRT). The MLA has been an advocate for its members on marine resource management issues and has been highly regarded by stakeholders for its efforts to maintain the health of Maine's unique coastal and marine resources since 1954. MLA members are committed to its mission to advocate for a sustainable lobster resource and the fishermen and communities that depend on it.

2. As a business sector, commercial lobstering is a primary economic driver in Maine. Lobstering income serves as the foundation of Maine's coastal economy. Each dollar earned by a lobsterman generates several more locally. When lobstermen are paid for their product at the

dock, they spend those earnings on everything from meals at local restaurants and gas for their trucks and boats to new traps, boats, and homes.

3. Maine lobstermen live along more than 3,500 miles of coastline in 120 rural communities comprising 105 coastal towns and 15 year-round islands. Maine's coastal communities consist primarily of small, rural towns with 80% of coastal communities having fewer than 2500 residents; 25% have fewer than 800 residents.¹

4. The smallest of Maine's coastal communities have very high levels of self-employment compared to the nation. Maine's coast and islands are 23% self-employed; this jumps to 38% for year-round island communities. The national self-employment average is 13%.² The 30 coastal communities with the lowest incomes are almost five times as likely to be involved in fishing, farming and forestry. The annual median household income for Maine's coastal communities is \$49,583, many of which are highly dependent upon lobstering.³ The average net income for Maine lobstermen was estimated at \$35,247 for those who fish with crew and \$18,812 for those who fish alone.⁴

5. By law, every Maine lobsterman is a small, self-employed business owner. Each runs his own boat and lives, works, and spends his earnings locally. Maine's Department of Marine Resources (DMR) assigns a commercial lobster license and a maximum 800 trap tag allocation to a vessel, which is owned by the Captain; the Captain is required to operate his or her own

¹ Island Institute Waypoints, Community Indicators: Livelihoods on Maine's coast and islands located at: <http://www.islandinstitute.org/waypoints-livelihoods>.

² Id..

³ Ib.

⁴ Gulf of Maine Research Institute (GMRI), Portland, ME. A Socioeconomic Survey of New England Lobster Fishermen. 2005.

boat.⁵ There is no corporate ownership of the Maine lobster fleet. Licenses and trap tags can only be sold by the state of Maine; there is no sale or transfer allowed.⁶

6. In 2018 the Maine lobster fishery was composed of 4,830 commercially licensed lobstermen and 1,095 student license holders.⁷ Only 20% of Maine's commercially licensed lobstermen also hold a federal lobster permit allowing them to fish beyond Maine's state waters.⁸ Maine's lobster fleet directly supports more than 10,000 jobs (3,670 Captains, up to 5,750 crew, 1,095 students).⁹ In addition to the harvesters, the shoreside wholesale lobster sector, known as the lobster supply chain, supported an additional 5,500 jobs in 2016.¹⁰ The revenues generated from harvesters, dealers and processors support hundreds of additional businesses throughout Maine's coastal economy.

7. In 2019, the Maine lobster fleet landed 100,725,013 pounds of lobster valued at \$485,405,036. This represented 76% of the value of all of Maine's commercial fishery landings and aquaculture combined (\$673,910 558). The next most valuable fishery in Maine was soft

⁵ Maine Revised Statutes, Title 12, Chapter 619, Subchapter 1, §6431-G.

⁶ Maine Revised Statutes, Title 12, Chapter 619, Subchapter 1, §6421.

⁷ Maine Department of Marine Resource at <https://www.maine.gov/dmr/science-research/species/lobster/licenses-tags.html>.

⁸ Maine state waters encompass the waters from the shoreline out to 3 miles from the last point of land. Federal waters encompass the waters from the state's 3-mile line out the Exclusive Economic Zone (EEZ). In order to fish for lobster outside of 3 miles, one must hold a federal American lobster permit issued by National Marine Fisheries Service.

⁹ This is based on a calculation of potential crew based on categories of lobster licenses sold. In 2018 there were 1,390 Class I licenses (29% no crew allowed); 1,891 Class II licenses (39% one crew allowed); and 1,549 Class III licenses (32% up to four crew allowed). See Maine Revised Statutes, Title 12, Chapter 619, Subchapter 1, §6421.

¹⁰ Donihue, Michael. Lobsters to Dollars: The Economic Impact of the Lobster Distribution Supply Chain in Maine. June, 2018. Colby College.

<http://www.colby.edu/economics/lobsters/Lobsters2DollarsFinalReport.pdf>

shell clams, which represented 3% of the landed value.¹¹ The lobster supply chain generated an additional \$968 million in revenue in 2016.¹² The success of the Maine lobster fishery is paramount to the economic stability of Maine's coastal communities.

8. In 2020, the Maine lobster fishery has been hit hard by the economic fall out of the COVID-19 pandemic. COVID-19 has resulted in significant constriction of the food service and entertainment sectors, where approximately 80% of American lobster is sold.¹³ This translates directly into a lack of customers for the millions of pounds of lobster that are expected to be landed this season. Lobster is particularly vulnerable to price deflation due to the tremendous risk in holding and moving live product. The price paid to lobstermen for their catch dropped nearly in half between Memorial Day and the beginning of June, from \$6.00 per pound to \$3.50. Many fear that the price will continue to drop, putting many lobster businesses at risk of failing this season. According to economist John Sackton, "The issue is how to adjust to structural changes where some distributors estimate 20% to 40% of their foodservice customers will never reopen, and more and more companies try and put seafood through the retail channel. The second issue is to avoid outcomes that permanently devalue a product. The poster child for this is lobster. If the season becomes chaotic with prices dropping to the point where harvesters will no longer fish, the result is likely to be a devaluation of lobster that lasts

¹¹ Maine Department of Marine Resources at <https://www.maine.gov/dmr/commercial-fishing/landings/index.html>.

¹² Donihue, Michael. Lobsters to Dollars: The Economic Impact of the Lobster Distribution Supply Chain in Maine. June, 2018. Colby College.

<http://www.colby.edu/economics/lobsters/Lobsters2DollarsFinalReport.pdf>

¹³ Personal communication with Marianne Lacroix, Executive Director Maine Lobster Marketing Collaborative.

for years... Of all the primary U.S. seafood items, the lobster industry probably has the most difficult path."¹⁴

9. Maine's lobster fishery is a very diverse fleet of vessels. According to Maine DMR, in 2018 roughly 20% of Maine's lobstering vessels were less than 18 feet in length, with an outboard engine and limited deck space. These vessels are often operated by students and older fishermen, typically fishing alone. Approximately 70% of Maine's lobstering fleet is composed of boats from 20 to 39 feet in length. Many of Maine's medium-size vessels are fished by single operators or by the Captain with a small crew of up to two. The smallest portion of the Maine fleet (10%) is made up of its largest vessels, typically ranging from 40 to 50 feet in length. These lobster boats usually operate with a small crew of two to four sternmen.¹⁵ The Maine lobster fishery is a primarily a small boat, day trip fishery in which lobstermen fish local territories that are close to shore.¹⁶

10. The Maine lobster industry is known for its excellent stewardship practices. Maine lobstermen have a long history of protecting the lobster stock so that the fishery can be handed down to the next generation. Maine's lobster conservation program includes minimum and maximum size limits, special protection of breeding females through v-notching, the prohibition of mobile gear to protect lobsters and habitat, requirement for escape vents in traps to let

¹⁴ Sackton, John. Walking the Tightrope of Survival. Uner Barry's SeafoodNews.com. April 21, 2020, <https://mlcalliance.org/2020/05/07/walking-the-tightrope-of-survival/>.

¹⁵ Maine Department of Marine Resources Commissioner Patrick Keliher letter to Michael Pentony, Regional Administrator of Greater Atlantic Regional Office of NOAA Fisheries, September 16, 2019.

¹⁶ Acheson, James M. The Lobster Gangs of Maine. 1988, University Press of New England.

undersized lobsters out, size limits on lobster traps as well as a state-wide limit of 800 traps per vessel.¹⁷

11. In 1997, the state of Maine adopted a co-management strategy to manage the state's lobster fishery in recognition of the shared responsibility among lawmakers, Maine DMR and lobster harvesters for conserving the lobster resource. Maine's lobster fishery is divided into seven lobster management zones – A through G – each of which has the authority to set trap limits more restrictively than the state limit, further limit the legal hours of fishing, and limit entry into the zone.¹⁸ All seven of Maine's lobster zones have limited entry which requires from one to five lobstermen to retire before a new entrant can obtain a license to fish in that zone.¹⁹

12. A unique feature of Maine's lobster zone management program is that it significantly limits where individual lobster harvesters can fish. Lobsterman are required to declare a home zone where they are required to fish a majority of their lobster traps. Maine's zone management system makes it illegal for a lobsterman to move all of his or her lobster gear outside of a home zone to follow lobster hot spots.²⁰

13. The Maine lobster fishery is also unique in its requirement that one must apprentice in order to become eligible for a commercial Maine lobster license. Apprentices must be

¹⁷ Maine Revised Statutes, Title 12, Chapter 619, Subchapter 1, [§6431](#), [§6431-A](#), [§6431-B](#), [§6431-E](#), [§6431-F](#), [§6431-G](#), [§6432](#), [§6432-A](#), [§6433](#), [§6434](#), [§6436](#), [§6438-A](#), [§6440](#), [§6442](#), [§6443](#), and <https://lobsterfrommaine.com/maine-lobster-sustainability/>.

¹⁸ Maine Revised Statutes, Title 12, Chapter 619, Subchapter 1, §6447 and §6448.

¹⁹ Maine Department of Marine Resources at <https://www.maine.gov/dmr/science-research/species/lobster/limitedentry.html>.

²⁰ Maine Department of Marine Resources Regulations, Chapter 25.08, Lobster Trap Tag System.

sponsored by a licensed lobstering Captain, and apprentice for two years during which s/he must log 1,000 hours of fishing and gear work. Apprentice hours must be signed by a local Marine Patrol Officer. Once an Apprentice has completed this training program, s/he is eligible for a lobster license. Due to limited entry, however, apprentices who have completed the program are placed on a waiting list and can only obtain a license when the required number of lobstermen retire from the fishery.²¹

14. Maine lobstermen have adopted a series of whale protection measures dating back to the late 1990's as required under the Atlantic Large Whale Take Reduction Plan (TRP). Whale protection measures include "Universal Gear Requirements," which apply to all Maine lobstermen including those who set gear in waters exempt from the federal TRP. Universal gear requirements include no floating line at the surface, no wet storage of gear for more than 30 days, and maintaining buoy lines as knot-free as possible. Maine requires lobstermen who fish in waters exempt from the TRP to do one of the following: incorporate a weak link into buoy line, use sinking rope for buoy line, or use sinking groundline. Maine lobstermen fishing in waters regulated under the TRP have 1) incorporated a 600 pound weak link at the top of the buoy line so that the line will part should a whale encounter the line, 2) replaced all of their floating lines between traps with rope that sinks, and 3) fished a minimum number of traps on each buoy line based on distance from shore.²² Maine lobstermen also mark their traps with

²¹ Maine Department of Marine Resources at <https://www.maine.gov/dmr/science-research/species/lobster/documents/apprenticebrochure08-17.pdf>.

²² The further from shore one fishes, the more traps required per trawl to reduce the number of vertical lines in the water where the likelihood of encountering a whale is greatest.

three 12-inch red marks at the top, middle and bottom of the line to aid identification if this gear entangles a whale.

15. In recognition that there is a great deal of fishing gear removed from whales for which a fishery cannot be identified, the Maine DMR passed new gear marking regulations in 2019 which require expanded and unique gear marking for all Maine lobstermen, including those who fish in waters exempt under the TRP and are not currently required to mark gear. By September 2020, all Maine lobstermen fishing in non-exempt waters must place three 12-inch purple marks at the top, middle and bottom of the buoy line, plus a fourth 36" purple mark in the top two Fathom of the buoy line. The top two Fathoms of the rope must also be marked with a six-inch green mark. Lobstermen fishing in Maine's exempt waters must affix a 12-inch purple mark at the middle and bottom of the vertical line and a 36" purple mark in the top two Fathom of the line. Buoy lines of 100 feet or less in length, regardless of where they are fished, are required to have only two purple marks, one of 36 inches in the top two fathom of the line, and one of 12 inches at the bottom of the line.

16. If the 2014 Biological Opinion were vacated, defaulting the fishery back to the 2012 Biological Opinion, Maine lobstermen would be required to have only one four-inch gear mark midway down the line and nearly 3,000 miles of buoy lines could be put back in the ocean if the trawling up measures are nullified.

17. The Maine lobster fishery is extremely diverse and includes a wide range of boat sizes and fishing strategies that occur throughout Maine's coast, which features widely varying oceanographic and fishing conditions. Each of Maine's nearly 5,000 individual lobstering businesses have had to adapt to successive rounds of regulations, each requiring an investment

of significant time and resources to alter operating practices to comply. While Maine DMR has an excellent Marine Patrol and enforcement presence, it is impossible to check every fishing operation. Compliance has always been self-driven because lobstermen believe that adhering to marine conservation laws is in the best interest of marine resources, the fishery and the economic well-being of coastal communities. When lobstermen believe that a conservation action will benefit a resource, be it lobsters or whales, they will make the necessary sacrifices to comply. Ensuring that lobstermen have buy-in to management measures makes marine resource management plans such as the TRP effective.

18. Compliance with the Atlantic Large Whale Take Reduction Plan (TRP) has been excellent. NMFS law enforcement reported a compliance rate of 94% in 2015.²³ If the 2014 Biological Opinion is vacated and lobstermen default back to the 2012 Biological Opinion, the large whale risk reduction measures implemented in 2014 would no longer be in force. This would undermine lobstermen's trust in the TRP. The 2014 amendments to the TRP evolved over the course of five years, beginning after the implementation of the sinking line rule in 2009, and included more than 50 outreach meetings with lobstermen in Maine alone. Meetings to discuss the development of the 2014 vertical line rule began when MLA met with lobstermen on a harbor-by-harbor basis in 2009. This was followed by scoping meetings held by NMFS in 2010, scoping meetings held by Maine DMR in 2011, several series of zone council meetings along the Maine coast, outreach meetings held by NMFS in 2013 on the draft rules, a significant

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https://archive.fisheries.noaa.gov/garfo/protected/whaletrp/trt/meetings/2016/nov_2016_lw_kom.pdf

number of outreach meetings held by Maine DMR in 2013-2014, discussions at MLA monthly Board meetings and MLA Annual Meetings in 2012, 2013 and 2014. Rolling back the TRP to the regulations that were in place in 2012 would create a high level of mistrust in the process to manage entanglement risk to large whales and would also create confusion and compliance issues among the lobster fleet.

19. For more than a century Maine's lobster fishery has been a stable presence along Maine's waterfronts. It is an icon of the state of Maine, and an integral part of the state's culture, traditions and economy. The future of Maine's coastal communities depends upon the continued success of the Maine lobster fishery.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 18, 2020 in Kennebunk, Maine.

A handwritten signature in blue ink that reads "Patrice McCarron". The signature is written in a cursive, flowing style.

Patrice McCarron