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Maine Lobstermen's Community Alliance

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LANDINGS

News & Views from Maine's Lobstering Community

November 2022 | Vol. 30, No. 11

MLA WINS EXPEDITED REVIEW OF WHALE RULES

Former U.S. Solicitor General joins MLA's legal team

By MLA staff

A federal appeals court has sided with the Maine Lobstermen's Association (MLA) in granting its request to expedite consideration of its appeal. The Court rarely grants motions to expedite. In granting the motion for expedited appeal, the court laid out a timeline that requires all briefs to be submitted by January 10, 2023.

This decision came just a week after the MLA announced it has expanded its legal team and retained former U.S. Solicitor General Paul Clement to represent it in its appeal to the D.C. District Court of Appeals in its court case against the National Marine Fisheries Service (NMFS) (Maine Lobstermen's Association v. National Marine Fisheries Service) to reverse a scientifically flawed federal whale plan that will cripple Maine's lobster industry. The request for expedited appeal comes in response to District Court Judge James Boasberg's ruling against the association in September.

"We are pleased that the appeals court understands the urgency of hearing our argument that National Marine Fisheries Service has abused its discretion and that its current whale plan will not only destroy our industry and our livelihoods, but also won't recover the right whale," said Patrice McCarron, executive director of the MLA.

Clement served as U.S. solicitor general and is widely recognized as a leading Supreme Court advocate, focusing on appellate matters and constitutional litigation. He has argued more than 100 cases before the Supreme Court including

several of the highest-profile cases of the past decade.

"When we said we refuse to let a single judge's decision be the last word and that MLA is preparing to go all the way to the Supreme Court, we weren't kidding," said MLA president Kristan Porter. "We are incredibly grateful that Paul Clement, arguably the most qualified attorney in the nation on these matters, has chosen to stand with us. Paul has looked at the facts and agrees with what we have been saying all along — NMFS abused its discretion. Maine lobstermen are not driving the right whale toward extinction, but we are being punished by un-

sound federal rules that will wreck this industry but won't recover the whale." In September 2021, MLA filed its lawsuit challenging the federal government's fundamentally flawed 10-year whale protection plan mandating a 98% risk re-



Paul Clement. NPR photo.

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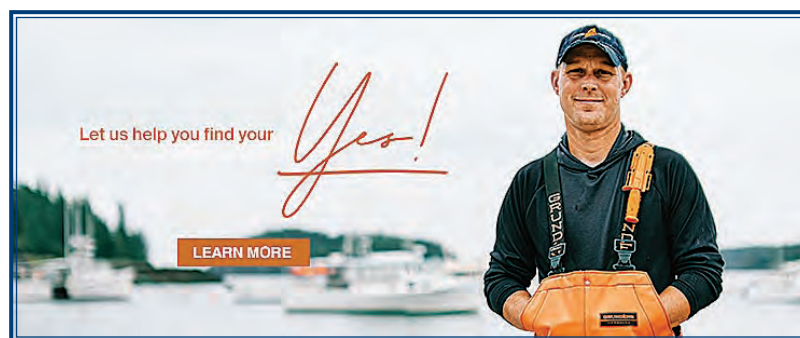
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MACHIAS SAVINGS BANK COMMITTS \$250,000 TO SAVE MAINE LOBSTERMEN



Press release

Machias Savings Bank (MSB) announced on October 26 that it will donate \$250,000 to the Maine Lobstermen's Association's (MLA) Save Maine Lobstermen campaign. The donation comes after a federal appeals court granted a motion to expedite the MLA's appeal of a decision in its lawsuit against National Marine Fisheries Service (NMFS). The MLA seeks to reverse what it calls a scientifically flawed federal whale plan that will cripple Maine's lobster industry and negatively impact the economy of Maine and our coastal communities.

"This isn't about choosing our hard-working lobstermen and women over whales. This isn't about choosing the economy over conservation. This is about choosing common sense," said Larry Barker, President and CEO of Machias Savings Bank. "The post-pandemic

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COASTAL OUTLOOK *Thoughts from MLCA President Patrice McCarron*

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MLCAlliance is a 501 (c) (3) non-profit organization, established in 2010, which achieves its charitable mission through programs in education, research and charity.

What does the future hold? No one knows for sure. What we do know is that events happening right now will influence what the Maine lobster fishery will look like in the future, if it exists at all.

The Maine Lobstermen's Association (MLA) knows that the measures taken by the National Marine Fisheries Service (NMFS) to protect right whales are fundamentally flawed and must not be permitted to decimate a centuries-old fishery, one recognized throughout the world as sustainable and the foundation of the state's coastal economy.

To ensure a future for Maine lobstermen, in October the MLA retained former U.S. Solicitor General Paul Clement to represent it in its appeal to the D.C. District Court of Appeals of Judge Boasberg's September ruling. Clement served as U.S. Solicitor General from 2004-2008 under George W. Bush. He is widely recognized as a leading Supreme Court advocate, focusing on appellate matters and constitutional litigation and has argued more than 100 cases before the Supreme Court.

The stature of Mr. Clement reflects the significance of the MLA's court case. "This is a clear case of government overreach. It is no exaggeration to say that the fate of the Maine lobster fishery, a national icon, hangs in the balance," said Paul Clement. The Court has set an expedited schedule to hear the MLA's appeal.

To provide much-needed financial support for the MLA's legal efforts businesses and individuals throughout the state have stepped up to donate to the Save Maine Lobstermen campaign. From youngsters in Jonesport to lobstermen in Portland, Maine people are making sure that the MLA has the ammunition it needs to take its appeal all the way to the Supreme Court if necessary. Whether the donation is large or small, every dime goes to the legal fight against NMFS's flawed measures. "It's the injustice of the whole thing," Richard Black, a Portland lobsterman, said. "There's no data against us and tons on ship strikes. Why are these people running over the top of us?"

Reflecting on the future of the Maine lobster fishery inevitably leads to thoughts about its past. Robin Alden, founder and former publisher of Commercial Fisheries News and former Department of Marine Resources Commissioner, considers the changes that she has seen in the past fifty years in this month's issue. Fifty years ago most vessels were made of wood, wire traps were just coming in, and lobstermen had the flexibility to move among different fisheries based on the season. "As the lobster fishery fights for its existence confronted with new whale rules, declining catches and stunning costs, looking back with that 50-year perspective can help clarify what is deeply important about

lobstering and the strengths fishermen possess to meet a time of such profound change," Alden writes.

While lobstermen are addressing the possibility of stringent reductions in their ability to fish next year, the federal Bureau of Offshore Energy Management (BOEM) is moving forward rapidly to begin leasing parts of the Gulf of Maine for wind energy development. As part of the Biden administration's effort to increase U.S. wind energy production, BOEM announced a Request for Interest in Gulf of Maine leasing in August. Numerous fishing organizations, environmental groups and individual fishermen formally protested the speed with which the agency was moving and the impact such leases could have on endangered right whales. The members of the Governor's Offshore Wind Road Map Fisheries Working Group wrote in opposition to BOEM's haste. "Considering the importance of the Gulf of Maine as an ecosystem and economic driver within the blue economy, the speed at which the BOEM process is moving forward is disturbing and unnecessary," the group commented.

Knowing where you are is fundamental to success as a fisherman. But how one determines location at sea has changed greatly over the centuries, as our article on the Osher Map Library and Smith Center for Cartographic Education at the University of Southern Maine explains. The Library holds multiple collections of historic charts, maps, globes and other materials, dating from the 1400's onward. The charts highlight evolving views of the world's oceans and coastal areas, from the days of sea serpents and dragons to 20th century charts of impeccable precision.

Landings also looks at the importance of sleep to fishermen. Lack of consistent and deep sleep leads to many health issues as well as injuries at sea. Finding ways to assure regular sleep among fishermen is a challenge, one that the Northeast Center for Occupational Health and Safety in addressing in a two-year study. Although lack of sleep may be something that is generally accepted in fisheries circles, sleep plays a very important role in overall health, cognitive functioning

and mental health, according to Julie Sorensen, director of the New York Center for Agricultural Medicine and Health at the Northeast Center.


Finally, the holiday season is upon us and with it comes an array of cheerful events along the coast. From lobster trap tree lightings to Santa Claus arriving by lobster boat, coastal communities will be enthusiastically welcoming the holidays as they have for many years past. We hope you find time to enjoy some of these hallmarks of the season.

Patrice



Will this still be a common sight five years from now? MLA photo.

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GUEST COLUMN: *A 50-year perspective on the Maine lobster fishery*

By Robin Alden

I have been looking back at what fishing was like in 1973, the year I founded *Commercial Fisheries News*. The differences are stunning, even to someone like me who reported on those changes, sold ads for the new gear, was part of creating the new lobster laws in the 1990s, and tried to connect fishermen so that they could contribute to better science and better rules.

As the lobster fishery fights for its existence confronted with new whale rules, declining catches and stunning costs, looking back with that 50-year perspective can help clarify what is deeply important about lobstering and the strengths fishermen possess to meet a time of such profound change.

Fifty years ago, lobstermen were fishermen. If a lobsterman wanted to make more money than he could by lobstering, he could go tub trawling, gillnetting or dragging for groundfish, scallops and shrimp. There were herring to catch in stop seines, clams to dig, and mussels once DMR developed a market in the 1970s. Maine offered only three license types: lobster, commercial fishing, and commercial shellfishing. All were open entry.

Fishermen gained a lot of knowledge from having that versatility. Observations of a fisherman working in one fishery in an area gave him useful knowledge about other fisheries. Fifty years ago, technology hadn't overwhelmed the skill that comes from direct observation and a good memory, the skill, for example, of finding your traps in a fog mull without radar, Loran, GPS, or Olex sonar. Just a compass, running time, your flasher, and alertness: sound, smell, bird activity, the feel of the tide and the sea.

Fifty years ago more than half the new lobster boats were wood, virtually all in the 30-36' range. There were only a few new fiberglass models on the market: Repco 30 and 37, and one hull each from Webber Cove, Jarvis Newman, and Bruno and Stillman. Most new lobster boats had gas engines, diesels only if the owner planned to do other fisheries too. Traps were wood, mostly built or repaired in the shop each winter; heads were knit at home. Buoys were transitioning between wood and Spongex. The first Friendship Trap ad for wire traps showed up in *Commercial Fisheries News* in 1977.

The Coast Guard was going town-to-town in 1973, introducing the new Loran C technology. Only draggers had used Loran A at the time, so initially the change didn't mean much to lobstermen, whose only electronics were a flasher and for some, a CB radio.

Today's fleet of lobster boats may look quaint to a tourist but there has been a technological explosion in the last 50 years. Contrast the boats of the 1970s with today's wide, able 40-50' boats, complete with trap racks and 600-800+ hp clean diesels, with radar, GPS, sonars, radio, cell phone and even computers aboard, fishing 800 wire traps delivered completed from the factory.

The fishery

There has also been an explosion of lobster. Today's Maine lobster fishery is catching more than six times the poundage being caught 50 years ago, increasing from 17 million to 109 million pounds. Most lobstermen today have only fished when landings have been increasing. Why? Probably because of Maine's good management which protects breeders and juveniles accompanied by climate-related changes in the Gulf. The price, until this year, has kept up with inflation so that, in real terms, the Maine lobster fishery is bringing in over six times the money to coastal towns than it was in 1971.

When has there ever been such a long run of good times in a fishery?

Rules, laws and government

A third explosion occurred in government; the world of 50 years ago is unrecognizable today. The Maine Department of Marine Resources (DMR) was created in the early 1970s out of the Department of Sea and Shore Fisheries. DMR was given rule-making power. Before that, fisheries rules seldom changed because virtually any changes had to go through the state legislature. At the federal level, the Clean Air Act, the Clean Water Act, the Marine Mammal Protection Act, and the Endangered Species Act were all passed in the first four years of the 1970s. The Maine-New Hampshire border hadn't been settled and it was almost 15 years before the US-Canadian boundary line went into effect.

There were 200-250 foreign vessels fishing in the Gulf of Maine and on Georges Bank every month, including factory trawlers, purse seiners, mid-water trawl-

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Robin Alden is the founder of *Commercial Fisheries News*, former DMR Commissioner, and co-founder of the Center for Coastal Fisheries. World Fisheries photo.

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SAVE MAINE LOBSTERMEN CAMPAIGN GROWS EVER MORE IMPORTANT

By Melissa Waterman

Anger about the Monterey Aquarium Seafood Watch's ill-informed listing of American lobster as a "red list" seafood species coupled with frustration stemming from the National Marine Fisheries Service (NMFS) mandate of an immediate 90% reduction in entanglement risk to North Atlantic right whales has created an outpouring of support from throughout Maine for the Maine Lobstermen's Association (MLA) Save Maine Lobstermen campaign this fall.

"The Maine lobster industry has done everything it has been asked to do and more," said Debbie Gagnon, co-owner of Red's Eats in Wiscasset. "We're able to do what we do because they do what they do." Gagnon teamed up with the MLA to launch its fall fundraising challenge, urging all businesses that rely on a strong lobster industry to contribute to the Save Maine Lobstermen campaign. Red's Eats itself contributed \$2,500 to the campaign.

Portland lobsterman Richard Black organized a lobster feed fundraiser in October at the Pizza Villa in Portland. "I was out hauling and the owner called up and asked 'what can we do about this nonsense,'" Black said, referring to the Seafood Watch listing. "We decided to do a small clambake behind the restaurant, and it just escalated from there." Escalate it did, with hundreds of lobsters donated by Casco Bay Seafood and four other lobstermen who berth with Black on Union Wharf. In the end, more than \$6,000 was donated from the afternoon event to the Save Maine Lobstermen campaign.



Four dollars of each bag of Save Maine Lobstermen coffee will go to the legal campaign. Mornings in Paris photo.

"It's the injustice of the whole thing," Black commented about NMFS's actions. "There's no data against us and tons on ship strikes. Why are these people running over the top of us?"

The owners of Jess's Market in Rockland decided that they wanted to help as well. The market advertised to customers that it would donate 15% of all lobster sales, which included live, cooked, and meat bought in the store and online during one week in September. That week included Friday, September 23, when people throughout Maine wore red to show solidarity with lobstermen. In the end Jess's donated \$2,144 to the campaign.

"We saw a lot of enthusiastic customers wearing red and eating lobster while contributing to your legal fund. We greatly appreciate all your association does for the lobster industry here in Maine," Sharon O'Brien, co-owner of the business, wrote with the donation.

Beals Island resident and lobsterman's wife Amanda Smith is a member of Downeast Housewives for the Fishing Industry, a tongue-in-cheek name for a dedicated group of wives and partners of lobstermen. "My husband and two brothers-in-law are lobster fishermen, my father-in-law lobster fished, and our three nephews are all lobster fishermen," Smith said.

She and other members of the group organized "Supporting Our Heritage: Maine's Lobster," a September 26 rally on Beals. Jonesport school children set up a lobster roll and lemonade booth at the event. "It was after the red listing came out and we wanted to feel useful. People came to the rally from all around and the kids sold a lot of lobster rolls," she said. In the end the children's efforts resulted in a \$1,198 donation to the Save Maine Lobstermen campaign.

Smith reflected on the anguish many lobstermen and their families are experiencing right now. "A lot of guys don't know what to do. They are facing the loss of everything they know and have put their hearts into," she said. "Trap companies are laying off and people are losing their jobs. A lot of lobstermen don't even have the words to use to describe how they feel."

Tony Esposito, owner of Dover Ford and Union Fair Auto Sales, dedicated one month of radio advertising to raise awareness of the *Save Maine Lobstermen* campaign and pledged \$200 for every auto sold in October. Starting in November, Friend & Friend Powersports in Ellsworth will donate \$100 for every new, adult-size unit sold. And Paul Hastings, owner of Mornings in Paris coffee shops in Kennebunk and Ogunquit, has brewed a special coffee blend, known as the #SaveMaineLobstermen Brew, and will donate \$4 for every pound sold.

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Rockland's 2022 Sea Goddess brings attention to Jess's Market's fundraiser. S. O'Brien photo.



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Alden continued from page 3

ers and others. Fish stocks were depleted. A foreign captain complained that his tows had dropped to only five to 25 tons. Maine lobstermen lobbied for a federal law to declare lobster a “Creature of the Continental Shelf” and led the first leg in a “sail-in” to Washington with other East Coast fishermen. After years of outcry, the Magnuson Fishery Conservation and Management Act went into effect in 1977, putting in a 200-mile limit that excluded foreign boats.

The new law also created the New England Fishery Management Council. The Council brought a type of management that had never existed before in New England: permit purchasing, individual transferrable quotas, quota leasing and consolidation. Over time, the approach virtually eliminated Maine’s small-scale dragger, gillnet, and herring fleets, while allowing stocks of cod, haddock, and herring to plummet in the Gulf of Maine.

Lobstering avoided this fate as a result of dogged determination by the Maine Lobstermen’s Association (MLA), led by Ed Blackmore of Stonington who was on the Council. He achieved wins that we take for granted now: protection for v-notch and oversize lobsters and limits on dragging for lobsters. Each was a multi-year battle. Especially critical, lobster management outside three miles was removed from the Council and its federal management approach and transferred to the Atlantic States Marine Fisheries Commission (ASMFC). Once in ASMFC, Maine state rules were extended to the Area 1 line. Along the way, the fishery added vents to traps and increased the minimum size of lobsters. Initially, many lobstermen vigorously opposed both measures.

In the mid-1990s Maine faced tremendous pressure to limit entry and put in a trap limit. Once again, with leadership from the MLA and many lobstermen, Maine went a different way. Entry was controlled through apprenticeship; owner-operator was put into law and Maine licenses couldn’t be traded. The trap limit was set at 1200, to be gradually lowered to the current 800. Though many realized the number of traps was probably too large, at the time it was the lowest number that could pass the Maine State Legislature. Each Zone Council was given the right, which they have still today, to vote in a lower trap limit. Only Zone E has done so.

Looking ahead

50 years later, lobstermen now operate within a set of very complex rules. Gone is the anonymity of fishing without electronics, with new whale rules and trackers continuing the trend. Few lobstermen today are also fishermen. They have virtually no options to diversify in federal waters. State water fisheries cannot match the opportunities of the booming lobster fishery of the last 25 years.

Now, after 50 years of good times, lobstermen are facing daunting debt and an uncertain future in the face of climate change. All that is terrifying. Making a living in a wild caught fishery is never guaranteed. This is the hard part of fishing, which some older fishermen remember well.

Thirty years ago, Maine lobstermen created and stood up for changes that have given them important resilience and a model for the future. They created something new in fishery management, based on what they wanted the business to look like. The result? Lobstering has prospered in communities the length of the Maine coast. Without this vision, the explosion of both lobsters and technology over the last 50 years would have resulted in a consolidated, corporate lobster fishery based in a few big towns, with far fewer fishermen, working as employees, and our towns turned into tourist traps.

On top of all the rules that protect lobster’s biology, lobstermen stood up for and got these other principles passed into law in the 1990s:

- Owner-operator is key to keeping lobstering in coastal communities.
- Apprentice-based entry to require a commitment to the business.
- Across-the-board traps limits to ensure skill, not your bank account, determine how much you catch.
- No transferable licenses or traps to prevent consolidation and make it affordable for young people to start out.
- Lobster Management Zones to keep lobstering opportunities in local communities.
- Lobster Zone Councils to recognize area and fleet diversity and give lobstermen a voice about issues in their area, which differ along the coast.

None of this was easy — 4 to 5000 independent people, their crews and families didn’t, and won’t ever, speak as one. But as all of us enter this new world of climate-related changes in the Gulf of Maine, it’s worthwhile acknowledging the creativity and leadership it took to get where we are.

The Gulf of Maine is a natural system, not just a place to steam over to go take lobster. Who can deny that our technology today has the ability to overwhelm any natural system? The problems don’t all come from the government; sometimes they come from us. As the ocean changes, we will all need to learn and adapt as we go — fishermen, scientists, and government.

The lobster fishery has always shown it can lead with humility and creativity, as well as with power and anger. It can chart an ecologically and community-centered future for those of us who fish.



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STEAMING AHEAD

Nothing is more infuriating than not being listened to. That is what happened in September when Washington D.C. District Court Judge Boasberg ruled in favor of the National Marine Fisheries Service (NMFS) in the MLA's court case.

Judge Boasberg gave deference to NMFS, ruling that the agency had followed the proper administrative processes when creating its Biological Opinion and ten-year whale conservation plan. NMFS explained why it did what it did in creating a conservation plan that would largely erase the lobster fishery — and that, according to Judge Boasberg, is all the law requires.

I have to admit I was a bit shocked that there was any scenario in which the Court would not carefully examine MLA's argument that the agency deliberately chose "worse case scenarios" and ignored its own data in crafting the ten-year whale plan. Apparently, the Judge has no qualms empowering NMFS to eliminate the Maine lobster industry using a "crap in equals crap out" approach as long as it explains why it considers that the best available scienc.

Hell no! That just won't do. The MLA made a sound and potentially precedent-setting argument in our court case and we were not heard. Instead of fixing a broken management process, the Judge's ruling instead provides NMFS with a blank check to continue to disregard actual data in its regulation of a fishery that has zero documented right whale deaths.

Then, the day after Boasberg's ruling, NMFS launched its rulemaking process to require the lobster fishery and every other fixed gear fishery from Maine to Florida to reduce estimated risk to right whales by 90%. Despite the fact that this regulatory change literally threatens to put many fishermen out of business, NMFS only provided a one-month public comment period!

A tsunami of bad news? Absolutely. Yet it is in these moments that you learn what you are made of. The MLA Board showed that clearly — they immediately kicked into high gear. The MLA firmly believes that the entire foundation on which NMFS has built its whale plan is wrong. For years, NMFS has refused to listen to the MLA's concerns, and now Judge Boasberg has done the same. The MLA knows that the lobster industry's concerns over the whale plan are real and must be heard. So the Board did not hesitate to continue to push forward.

With strong guidance from our legal team, the MLA filed its notice to appeal Judge Boasberg's decision within a week of his ruling. Less than a month later, we retained the services of Paul Clement, the country's top appellate attorney and one of the nation's most highly accomplished U.S. Supreme Court advocates. This was not a decision taken lightly.

Paul Clement has argued over 100 cases before the Supreme Court. In fact, since 2000 he has argued more Supreme Court cases than any lawyer in or out of government. He has initiated major administrative law challenges and constitutional litigation against the federal government. In short, he is the perfect lawyer to represent MLA through this next phase of litigation and allow the MLA to pursue its arguments all the way to the Supreme Court, if necessary.

Mr. Clement promptly filed a motion to expedite MLA's appeal. The MLA staff put a lot of work into this request,

submitting with our brief ten declarations from lobstermen and businesses to document the harm that the fishery is already experiencing as NMFS moves full steam ahead with a 90% risk reduction. On October 11, we got our reply. The Washington D.C. Appellate Court rarely grants motions to expedite but the MLA's request was granted less than a week after submittal. We now are in an aggressive timeline, with all briefings to be filed by all parties by January 10, 2023.

This is a high stakes game and it is painfully easy to second-guess yourself. I want you know that at no time throughout this process, particularly after Judge Boasberg's decision in September, did any member of the MLA board hesitate to continue our legal attack. The MLA case is solid. The entire foundation on which NMFS has built its whale plan is wrong. Judge Boasberg did not actually consider the substance of our claims. The Board will not back down until MLA's case has been heard.

Retaining Mr. Clement means we have added substantial firepower to our legal team. When the MLA retained the services of Ryan Steen at Stoel Rives, we hired the best Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) attorney in the country. Without his leadership and forethought in strategically building MLA's lawsuit against NMFS, we would not be in the position to pursue a successful appeal. Steen will continue to serve as MLA's ESA and MMPA expert as the appeal moves through the legal system.

Even with all the progress MLA has made over the past

month, we have an anxious winter ahead of us. While the MLA appeals Judge Boasberg's ruling, NMFS is pushing forward with its rulemaking to decimate the lobster industry through a 90% risk reduction. And yes, when that is done, they will come back to get us finally to the 98% risk reduction.

We are in a race against the clock as we seek justice for Maine's lobstering families. That is why the MLA asked the Appeals Court to expedite the case. If we are successful with our appeal, MLA's original case will go back to District Court to be heard. If we are not successful in our appeal we will take it to the Supreme Court so that our original case can be heard. A proper hearing of MLA's case will force NMFS to fix the science and develop a risk reduction goal that matches the risk posed by the Maine lobster fishery.

I am grateful for the outpouring of support the MLA has received as more and more people come to understand the dire reality facing the Maine lobster fishery. It is painfully clear that the future of the lobster industry now hangs in the balance.

Hiring the best of the best and making the sharpest legal case possible each step of the way costs money ... lots of it. We will need many more people and businesses to step up to keep this fight going. Everyone should take a moment to consider: what will happen to you, your community, and the state if the lobster industry is destroyed?

To all of our members and Save Maine Lobstermen supporters, I can't thank you enough for all your steadfast support. It is what continues to make this fight possible.

As always, stay safe on the water.

Patrice



The Maine Lobstermen's Association is in a race against time to protect the lobstering families of Maine. C. Clegg photo.



MAINE LOBSTERMEN'S ASSOCIATION UPDATE

MLA DIRECTORS MEETING SUMMARY

The MLA Board of Directors met on October 11 in Belfast. The meeting was an open discussion of MLA's work and strategy to save Maine's lobster fishery from NMFS's crusade to impose crushing and unjustified risk reductions on Maine lobstermen. The Board was thrilled to finally announce that MLA had expanded its legal team to include Paul Clement. The MLA continues to retain Stoel Rives and other legal professionals on its legal team. The Board discussed strategies to raise funds to continue MLA's important legal work and also methods to strengthen the organization as it forges ahead in its fight to save the lobster industry.

INDUSTRY LEADERS, DMR MEET HEAD OF NMFS

On October 5, the Department of Marine Resources (DMR) organized a meeting of Maine's fishing industry leaders with Janet Coit, head of the National Marine Fisheries Service (NMFS), Jon Hare, head of the Northeast Fisheries Science Center, and members of the Senate Appropriations staff. Much of the discussion centered around NMFS's handling of its risk reduction mandate for the fishing industry, concerns over its use of the science, lack of transparency about its computer models, fast-tracking of the new rule and the lack of adequate public process. Industry members also raised concern that NMFS is not tagging right whales or conducting adequate surveillance of whales in the Gulf of Maine. Concern was also raised that NMFS did not require the same level of risk reduction for vessel strikes compared to entanglement in its draft vessel speed rule. Senate Appropriations staff were very interested to learn of the industry's concerns over NMFS's actions and pressed the agency for accountability.

NMFS RISK REDUCTION SCOPING MEETING

In response to multiple requests by DMR on behalf of Governor Mills, NMFS held an in-person scoping meeting to hear concerns from the lobster industry over the 90% risk reduction mandate. The meeting was standing-room-only at a large auditorium at the University of Southern Maine in Portland. Lobstermen, some with their families, travelled from all areas of the coast with strong representation from Downeast Maine. After a lengthy presentation by NMFS describing the rationale for the 90% risk reduction, a stream of politicians and political candidates took to the podium to denounce NMFS's plan. After more than an hour, industry members finally had the chance to speak.

Sonny Beal, a third-generation Beal Island lobsterman and MLA Board member, told NMFS that lobster gear is not the problem; ship strikes are. But the Maine lobster industry is paying the price. "You're going to cripple the Maine economy with your lies and computer guesses," he said. "We won't be buying trucks or homes. Our kids won't be going to Maine schools. We won't be shopping at local grocery stores. We won't be taking trips to Old Orchard Beach or Moosehead Lake. In fact, the banks will be crippled because they'll own everything, including our boats."

The meeting was scheduled to run from 6 to 9 p.m., but was extended until 10 p.m. Many left the four-hour meeting frustrated that they did not have an opportunity to speak.

MLA FILES REMEDY BRIEF IN *CBD VS RAIMONDO*

The MLA asked the Court to send the Final Rule and Incidental Take Statement (ITS) back to NMFS and allow NMFS the time it requests to address the issues identified by the Court. MLA writes, "There will be no easy or quick fix on remand. According to NMFS, "[e]ven a complete closure of the federal lobster fishery, without additional measures in state waters and other federal fixed gear fisheries, would likely not reach PBR," the MLA stated.

The MLA goes on to note that NMFS says it is not possible for the agency to issue a "negligible impact determination" (NID) under the Marine Mammal Protection Act (MMPA) for the lobster fishery without requiring "massive shutdowns of federal fisheries." Yet, illogically, the draconian measures NMFS believes are required to reduce the lobster fishery's supposed impact to below PBR, or to a NID level, will make little difference for the right whale. As NMFS already determined, "the [right whale] population is likely to decline if human-caused mortalities in Canada continue at current rates, *regardless of efforts in the United States.*" [italics added for emphasis]

None of this makes any sense, the MLA argued. It is implausible that Congress intended that NMFS, through its application of the Endangered Species Act (ESA) or the MMPA, could shut down an exemplary, sustainable fishery with no documented take in more than 18 years knowing that so doing would not achieve its stated end, protection of an endangered marine mammal species.

Ultimately, this ruinous situation is one of NMFS's own making. NMFS wed-

ded itself to worst-case risk assumptions, shunning observed data and reasonably certain effects, and the Court, in the *MLA v. NMFS* case, deferred to that approach. As a consequence, the remedy process will necessarily be time-consuming and arduous as the industry, states, and regulators struggle to deal with ever-more punishing, real-world restrictions on the lobster fishery called for by NMFS's hypothesized worst-case "risk assessment." And while confessing that some of its assumptions may need to be revisited, the agency has dug itself a deep hole as a result of its unrealistic and biased analysis of the impacts of the fishery. The MLA holds no illusion that NMFS will quickly reverse course and espouse a rational approach that is consistent with the "best scientific and commercial data available" and the law.

Meanwhile, the livelihoods of tens of thousands of people from 120 rural communities along 3,500 miles of Maine's coastline hang in the balance. To find solutions that address NMFS's dire assessment without unnecessarily laying waste to the future of those communities will require a herculean effort involving all stakeholders.

The MLA in its brief called on NMFS to embrace an open, transparent, objective, and ultimately effective approach rather than rush to implement new, blunt rules just to show it is doing something. The Take Reduction Plan is multifaceted and cannot be reduced to a game of numerical plug-and-play using an unreliable model that has been problematic for years. The worst outcome is one that devastates Maine's coastal communities in a futile effort to save the right whale.

MLA HIRES TOP ATTORNEY TO CONTINUE LEGAL CHALLENGE

On October 11, the MLA announced that it had expanded its legal team by hiring former U.S. Solicitor General Paul Clement to lead its appeal of Judge Boasberg's September ruling against the MLA. Clement filed for expedited consideration of MLA's appeal to the United States Court of Appeals for the District of Columbia in its lawsuit against NMFS. On October 18, the Appeals Court granted MLA's motion to expedite, something which the Court rarely does. All briefs will be filed by early January 2023.

MLA SUBMITS SCOPING COMMENTS TO NMFS

The MLA submitted written comments to NMFS on the agency's plan to move forward with new rules to reduce the lobster fishery's estimated risk to right whales by 90%. The MLA objected to the scoping process as premature because the model being used by NMFS to assess risk reduction is still under development and the duration of the comment period is far too short. The MLA raised a series of issues that NMFS must address before it moves forward with new rulemaking.

MLA SUBMITS COMMENTS TO NMFS ON LIST OF FISHERIES

The MLA has once again requested that NMFS remove the Maine state waters lobster fishery from the Category I Northeast/Mid-Atlantic American lobster trap/pot fishery and add the Maine state waters lobster trap fishery to the Category II fisheries list. Under the MMPA, U.S. commercial fisheries are classified as follows:

- Category I fisheries include those that take marine mammals frequently (i.e., at levels greater than 50% of any stock's PBR per year).
- Category II are those with occasional takes (i.e., between 1 and 50% of any stock's PBR per year).
- Category III have no, or a remote, likelihood of takes (i.e., less than 1% of any stock's PBR per year).

MLA, DMR MEET WITH INDUSTRY LEADERS TO DISCUSS WHALE RULES

The MLA worked with DMR to organize meetings with industry leaders to begin discussions of what a 90% risk reduction would look like for the Maine lobster fishery. The DMR has access to NMFS's DST computer model which it used to do preliminary assessments of various risk reduction scenarios. However, the discussions raised more questions than answers. The industry is baffled that an area of Downeast Maine, with virtually no whale observations, represents more than 40% of the state's estimated risk to whales. There is no way for the fishery to achieve a 90% risk reduction without significant closures of the fishery and trap reductions.

GARFO HEAD EXPLAINS WHAT'S NEEDED TO KEEP LOBSTER FISHERY ALIVE

Declaration of Michael Petony submitted in CBD v Raimondo remedy brief

September 19, 2022

I am responsible for the development and implementation of management programs for the living marine resources of the northeast United States. I supervise the personnel in the Greater Atlantic Regional Fisheries Office (GARFO) Protected Resources Division who are charged with developing and administering the Atlantic Large Whale Take Reduction Plan (ALWTRP) pursuant to the Marine Mammal Protection Act (MMPA), as well as the consulting agency responsibilities associated with the Endangered Species Act (ESA).

Potential Biological Removal

Potential Biological Removal level (PBR) is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Population estimates and the associated PBR for marine mammal stocks are published annually in marine mammal stock assessment reports, most recently in the 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment. The current PBR for North Atlantic right whales is 0.7 mortalities or serious injuries (M/SI) per year. Based on the recent PBR of 0.7, the risk reduction needed for the U.S. commercial fisheries to reach PBR has increased from 60-80 percent in 2019 (when we began work on the Phase 1 rulemaking) to a risk reduction of approximately 89-94 percent. Since the Phase 1 rule only achieved an estimated 46 percent reduction of risk posed by coastwide ALWTRP fisheries, at least an additional 43 percent risk reduction is needed in order to reduce M/SI to a level below PBR.

The 89-94 percent range acknowledges existing uncertainty regarding apportionment of cryptic mortalities between the United States and Canada. For the Phase 1 rule and Final Environmental Impact Statement ("FEIS"), we assumed half of all incidents occurred in each country (50:50). NMFS intends to reevaluate apportionment in light of new information and studies that were not available at the time the last rule was developed. The range of current risk reduction targets reflects a range of potential U.S./Canada apportionments (50:50, 40:60, and 30:70).

NMFS has conducted a preliminary exploratory analysis of the scale and types of management measures that may be necessary to achieve PBR (89-94 percent risk reduction target) and can report on several findings. First, a complete closure of the Federal trap/pot and gillnet fisheries alone would not be sufficient to reach PBR. Moreover, without additional restrictions, if all ALWTRP Federal fisheries were closed, dually-permitted vessels would simply shift their gear into state waters. Decision support tool (DST) runs on these scenarios, which also include all Phase 1 measures, results in an approximately 85 percent risk reduction if all gear in federal waters was entirely removed from the ocean, and approximately 61 percent risk reduction if all gear in federal waters was removed from federal waters and redeployed in state waters.

Second, the Plaintiffs proposal would not achieve PBR. The proposal the Plaintiffs describe in the briefing is ambiguous. However, we modeled it to give Plaintiffs the benefit of the doubt to resolve all ambiguity by maximizing risk reduction in a manner that is consistent with their briefing, as well as discussions at Take Reduction Team ("TRT") meetings, and a May 2022 written submission to NMFS (See attached). Plaintiffs' proposal, as modeled by NMFS includes: (1) Continuing the measures included in the Phase 1 rule; (2) seasonal closure of Lobster Management Area 3 above 40.3 degrees from October through December; (3) a year-round closure of a large area south of Martha's Vineyard and Nantucket, statistical area 537 (incorrectly labeled as area 529 in Plaintiffs' brief); (4) seasonal closure of Lobster Management Area 1 from January through May; (5) requiring the use of one buoy line in Lobster Management Area 3 year-round; and (6) measures described in Plaintiffs' written submission paragraphs 4, 5, 6, 7 (Plaintiffs also broadly proposed dynamic closures but we lack the information needed to model such closures) in a manner that reasonably resolves ambiguity to maximize risk reduction. DST runs on this proposal from Plaintiffs' result in an approximately 82 percent risk reduction. If we simply modeled Plaintiffs' proposal as they describe in their remedy brief without resolving ambiguity toward greater risk reduction or including measures listed in written submission, the result would have substantially less risk reduction and fall well short of reaching PBR.

As illustrated in the initial exploratory analysis, achieving PBR will require a broad suite of management measures implemented in both the federal and state waters that are informed by the most recent scientific information. Any suite of management measures capable of achieving PBR will likely include the following measures: (1) continuation of existing Phase 1 measures; (2) targeted large scale closures where gear is entirely removed from the water and brought to shore for extended periods as opposed to being redeployed elsewhere; (3) broad vertical line reductions (achieved through trap allocation reductions, use of a single vertical buoy on lobster trawls, increased use of on-demand technology, or other means); and (4) expanded use of weak rope or weak links.

The scope of the measures required to reach PBR will have severe economic and social consequences to the affected fisheries and surrounding communities. Large scale closures—even if only for a portion of a year—are likely to impact individual fishing businesses by seasonally reducing revenue. While different fish-

ermen will be affected differently depending on the nature of such closures, if a fishing business relies upon fishing a particular area at a certain time of year and such an area is unavailable, such a loss could constitute the end of a viable fishing operation—and currently for many fishing operations, profit margins are not large. The more widespread such closures are, the more fishing businesses that will be impacted, and the scale of risk reductions needed to reach PBR suggest that this will affect a large number of Northeast fishermen. In addition, the other types of measures likely necessary to accomplish PBR would require the purchase of additional gear (i.e., weak rope or weak links), or the implementation of new means of fishing that, if not developed methodically and carefully, could result in significant gear conflicts that have financial and safety impacts on the fishermen regulated under these measures as well as adjacent mobile gear fishermen.

It is important to note that risk reduction becomes exponentially more difficult, and more far reaching, as risk reduction approaches 90 percent because it becomes necessary to restrict fishing in areas that have relatively low fishing effort. This provides diminishing returns for risk reduction. For example, it is far easier to move to 70 percent risk reduction from 60 percent, than getting to 80 percent from 70 percent. To get to 90 percent risk reduction from 80 percent will take extraordinarily broad measures, far beyond what Plaintiffs propose.

Timeline for PBR

The Phase 1 rulemaking took approximately three years to complete (October 2018-September 2021). NMFS believes that two years, from November 2022, are necessary to finalize a rule that would allow the U.S. fisheries to reduce mortality and serious injury below PBR within six months of the rule's implementation. NMFS has already begun work on this approach and published a notice of intent to prepare an Environmental Impact Statement (EIS) on modifications to the Atlantic Large Whale Take Reduction Plan on September 8, 2022. This timeline would allow for TRT involvement that NMFS believes is critical to develop an effective rule. NMFS has already scheduled TRT meetings for September 19, 22, and 30 with a follow up likely in November with the intent of having the TRT discuss measures necessary to reach PBR. NMFS intends to expedite the TRT process such that TRT deliberations are complete by the end of December 2022. Next, NMFS will utilize the alternatives developed during TRT deliberations to begin drafting a DEIS and proposed rule. Given our experience with NEPA compliance for similarly complex and controversial actions, we anticipate finalizing the DEIS and proposed rule by November 2023 and the FEIS and final rule by the beginning of December 2024.

The proposed timeline also takes into account that NMFS may, after reviewing new information, seek peer review for several critical analytical approaches that underpin the new rule including: (1) the updated and refined DST; (2) reconsideration of apportionment of mortalities and serious injuries between U.S. and Canada; and (3) reconsideration of apportionment of mortalities and serious injuries between vessel strikes and fisheries. Additionally, this timeline will allow NMFS to utilize a new and updated North Atlantic right whale population model. This model updates the work of Linden (2021) and is currently undergoing peer review. The model provides valuable improvements over the prior Linden model by including important parameters that affect whale reproductive rates such as prey availability, individual reproductive cycles, and responses to sublethal entanglement. NMFS expects this model to be available by early 2023. Further, the proposed timeline would allow for the necessary coordination and consultation with the Atlantic States Marine Fisheries Commission and the Mid Atlantic and New England Fishery Management Councils to ensure effective implementation.

Negligible Impact Determination

We calculated the North Atlantic right whale Negligible Impact Determination (NID) value following the NOAA Fisheries procedural directive (<https://media.fisheries.noaa.gov/dam-migration/02-204-02.pdf>). As described in the directive, this value is the product of the minimum population size, half the maximum productivity rate and a negligible impact factor of 0.013 ($364 * .02 * 0.013 = 0.095$). This means that NMFS can make a NID finding only if the fishery causes the incidental mortality or serious injury of no more than 0.095 North Atlantic right whales a year or approximately one mortality or serious injury every eleven years.

Timeline for NID

Other than the full closure of state and federal trap/pot and gillnet fisheries, large-scale on-demand implementation is the only certain pathway to achieving NID. NMFS and our partners continue to work on technological and operational solutions that would support large-scale on-demand fishing. In the Conservation Framework, NMFS committed to reducing North Atlantic right whale M/SI caused by federal fisheries to 0.136 per year in 2030. That commitment was based on NMFS' understanding of when large-scale on-demand fishing would be feasible. NMFS will continue to work towards achieving large-scale on-demand fishing by 2030. Achieving NID will not be possible until that time without massive disruption in the form of wide closures of fixed gear fisheries.



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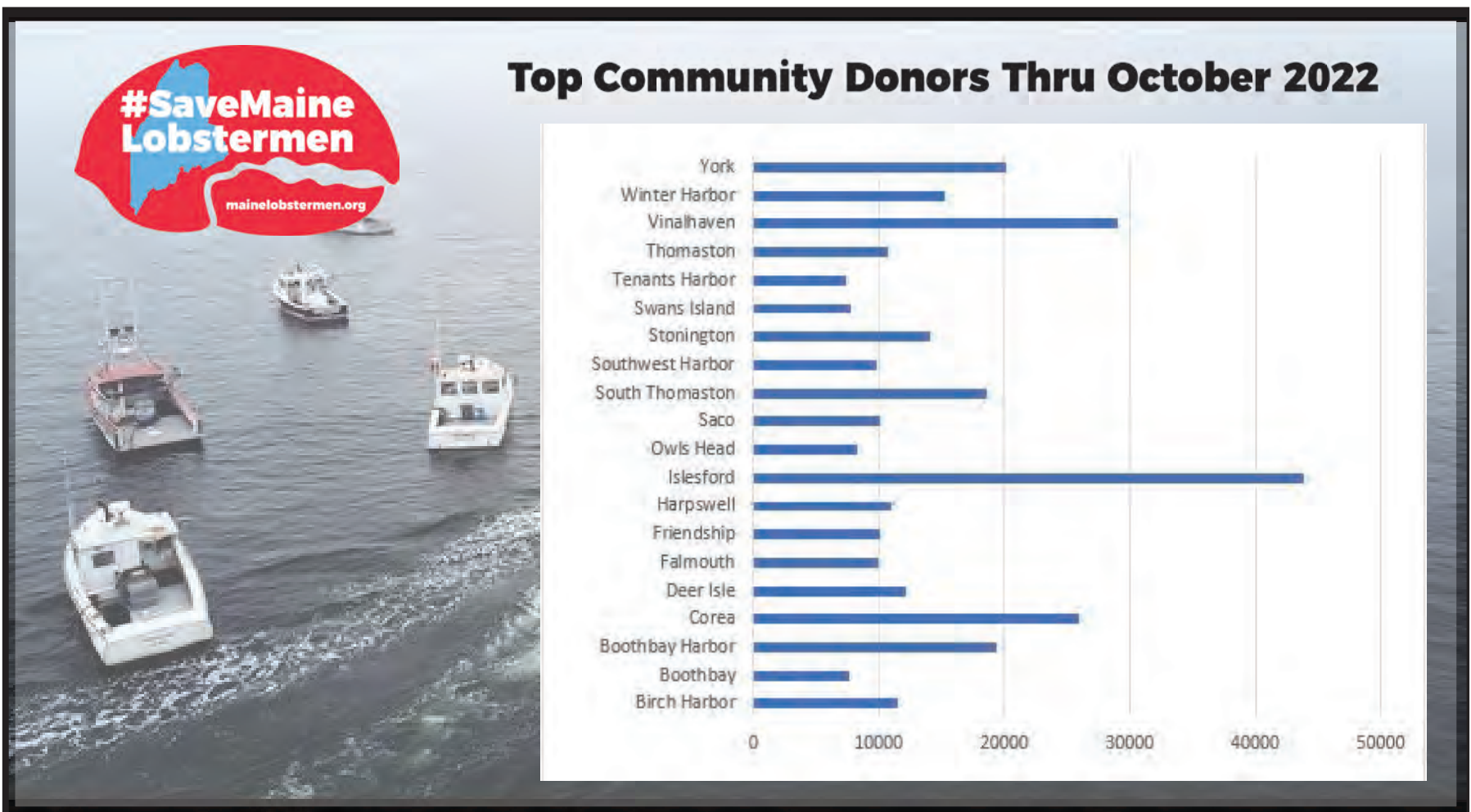
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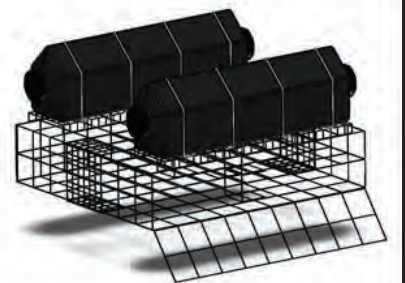
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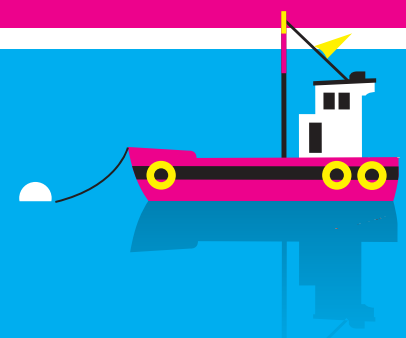


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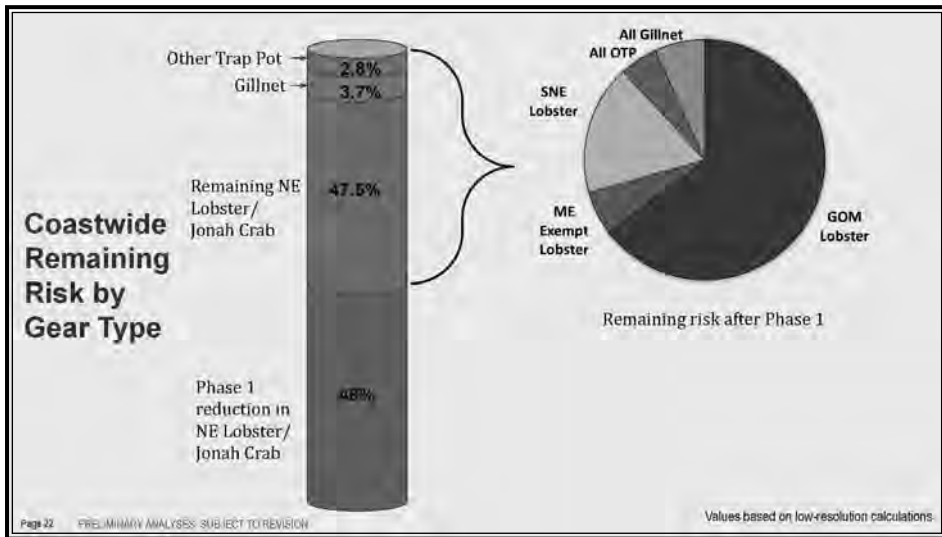


WHALES AND RISK REDUCTION – WHAT IS HAPPENING AND WHEN?

By MLA staff

Every lobsterman wants to know if they really need to reduce risk by 90%, what measures will be implemented to achieve that, and how long they have before it is put in place. And what happened to the 98% risk reduction? The answers are neither simple nor clear.

NMFS has set the risk reduction for the next whale rule at 90%. The risk reduction must be achieved within six months of implementation of the Final Rule. NMFS claims that this risk reduction is based on the best available science. The only way this could change is if the Maine Lobstermen's Association (MLA) is successful in its litigation against NMFS, which challenges the agency's use of the science.



When the 90% risk reduction rule must be completed and the fate of the federal lobster fishery will be determined by Judge Boasberg of the D.C. District Court in the *CBD vs Raimondo* case. In this case brought by the environmental groups, the Judge Boasberg found that both the new Final Rule and new Incidental Take Statement (ITS) are not legal.

Briefings from all parties on how to resolve this case were completed in late October. The environmental groups initially requested the Court require both a new whale rule and new Biological Opinion be completed by NMFS within six months. NMFS requested the Court give them until December 2024 to finalize the new whale rule and until at least 2030 to issue a new Incidental Take Statement (ITS). The MLA and Department of Marine Resources (DMR) both requested the Court give NMFS the time it requested but noted that issuing a new rule by 2024 and a new ITS by 2030 is overly ambitious. In their final filing, the environmental groups conceded that NMFS needs until December 2024 to issue a new whale rule and Biological Opinion.

While it is anticipated that the Court will tell NMFS to complete a new whale rule within a specified time frame, it is important to remember that the Court

could choose a different solution. It is less certain how the Court will resolve the ITS, which is required for NMFS to permit the federal lobster fishery. The Judge is expected to rule by the end of 2022. (To better understand the complexities of the issues in this court case and how it impacts the lobster fishery, read the Declaration of Michael Pentony on page 8.)

How to achieve the 90% risk reduction will be decided by NMFS. While NMFS will consider input from the Take Reduction Team (TRT), the states and other stakeholders, NMFS has final say in what measures are implemented. As was learned during the last round of rulemaking, it could be something that was never discussed during the process, like the LMA 1 Closure. NMFS has stated that new whale measures will be extreme.

According to NMFS, any new management plan will likely include 1) keeping the May 2022 measures in place; 2) targeted large-scale closures where gear is entirely removed from the water and brought to shore for extended periods as opposed to being redeployed elsewhere; 3) broad vertical line reductions (achieved through trap allocation reductions, use of a single vertical buoy on lobster trawls, increased use of ropeless fishing technology, or other means); and 4) expanded use of weak rope or weak links. As an example, NMFS determined that closing all federal fixed gear fisheries falls short of the 90% goal and achieves only 85% risk reduction, assuming that all of that gear is brought to shore.

The 98% risk reduction mandate by 2030 hasn't gone anywhere. The May 2022 measures were just Step 1. Getting to 90% risk reduction will be Step 2, and then NMFS will come back for more risk reduction to achieve a 98% reduction by 2030. NMFS is pushing hard for ropeless fishing because they cannot envision any other way to achieve a 98% risk reduction.

The MLA sued NMFS (*MLA vs NMFS*) in September 2021, challenging the scientific basis of NMFS's risk reduction mandate. MLA argues that NMFS has overestimated the lobster industry's risk to right whales by cherry-picking the science and using unsupported assumptions and "worst-case scenarios." Judge Boasberg rule against MLA in September 2022 in an opinion that deferred to NMFS on all counts without disputing the validity of MLA's concerns over how NMFS used the science.

The MLA immediately appealed this decision and has been granted an expedited appeal schedule that will conclude briefings by all parties in early January 2023. The MLA's goal is to overturn Judge Boasberg's ruling — either at the Appeals Court and if not successful there, at the Supreme Court — so that the MLA's case can go back to District Court to be heard on its merits. If the MLA case is successful, the Court will force NMFS to reevaluate its science and methods to set risk reduction goals which reflect the actual risk posed by the fishery.

The MLA's goal is to save Maine's lobster fishery and preserve the state's fishing heritage. If the MLA is not successful in its litigation strategy, the current risk reduction mandates of 90% and ultimately 98% by 2030 will remain. The lobster fishery as it currently exists will be eliminated.

LDF donors continued from page 4

Patricia Havener and her lobsterman husband Greg started Friendship Lobster Treats back in 2012. The company makes lobster crackers for people and pets. Greg's father Wayne, grandfather Stillman, great-grandfather Chester and great-great-grandfather Lewis all lobstered. The couple's oldest son Andy is also a lobsterman; his three children lobster in the summer. The family understands fully the significance of NMFS's actions, which could shut down a centuries-old fishery.

They came up with a new way to raise money for the Save Maine Lobstermen Campaign: a catnip fish. Buster's Homegrown is a cat toy made using lobster fabric and filled with catnip. Thus far, Friendship Lobster Treats has donated \$400 to the campaign.

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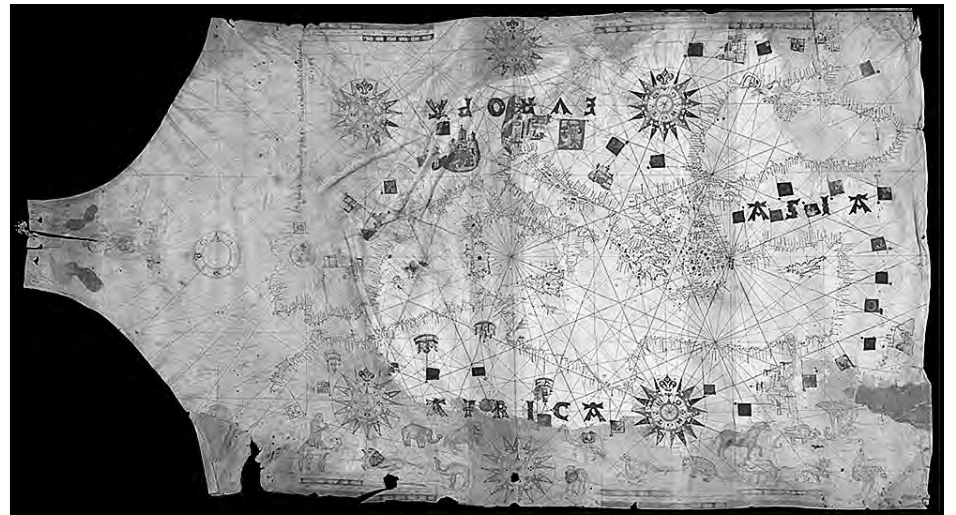
HISTORY OF NAVIGATION STORED IN OSHER MAP LIBRARY

By Melissa Waterman

Fishermen need to know where they are when they are on the water. For some older fishermen, that knowledge is hardwired into them by years of attention using a compass and a watch. Others today may depend on a GPS unit, electronic plotter and other devices. For centuries, mariners relied on charts to give them a sense of their location. Some of those earlier charts provided an imaginative view of the world, often featuring sea serpents and dragons among the known lands.

The Osher Map Library and Smith Center for Cartographic Education on the University of Southern Maine's Portland campus contains a wealth of ancient and modern maps and charts highlighting the evolution of the cartographic art. Louis Miller is the Cartographic, Reference and Teaching librarian at the Library. "Maps and charts capture people's attention. There's something about them universally accessible to everyone," he said.

Eleanor Houston Smith donated her collection of maps, atlases, and globes to the University in 1986, in memory of her late husband Lawrence M. C. Smith. Dr. Harold Osher and his wife Peggy Osher donated their extensive map collection to the University in 1989 as well as additional resources for the creation of a special map library. The physical facility opened in 1994. Since that time, other donations have increased the size and scope of the collections. The



Rhumb lines and knowing the coast were keys to successful navigation in the 1500s. Photos courtesy of Osher Library.

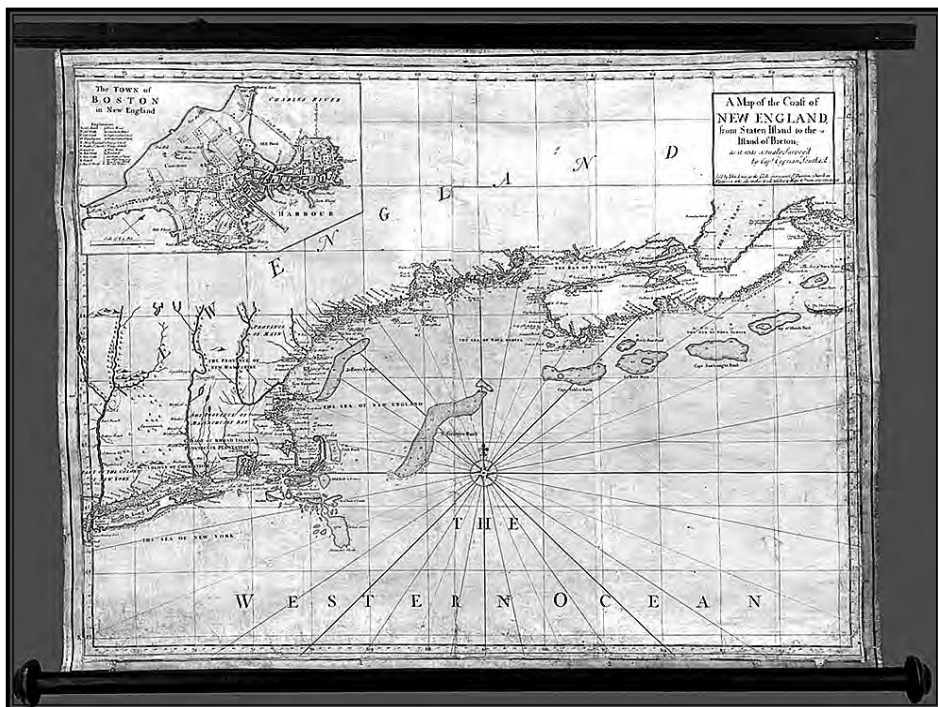
"It is a practical chart used for navigation," said Miller, "but it also shows how someone visualized the world. It has a water stain. It shows that it was used on a voyage."

At that time, sailors navigated via rhumb lines. Mariners paid great attention to such things as wave and cloud patterns or the presence of certain birds to estimate where they were relative to the coast.

As cartography progressed, the degree of detail in charts increased as well. Mythical creatures disappeared as chart makers brought more scientific methods to bear. The Library's J.W. Des Barres charts from the late 1700s are precise illustrations of the islands and water depths along the coast of Maine. A 1776 chart of the islands of Casco Bay, for example, gives soundings throughout the Bay and shows the islands' extensive tidal flats, even roads and houses along the shore.

A 1740 chart by John Senex of the coast from Staten Island to Cape Breton in Canada highlights the large and small fishing banks within the Gulf of Maine. Some are called simply "pollock bank" or "cod bank." Senex also identified dan-

Continued on page 21




John Senex's 1740 chart shows fishing grounds from New York to Cape Breton.

growth of its collections led to expansion of the library in 2009 and purchase of sophisticated digitization equipment to begin digitizing materials.

The Library currently holds half a million maps that date back to 1475. The materials are available not only to USM students but to the general public as well. More than 80,000 materials have been digitized for use online.

Among the highlights of the Library is a 1583 chart called the Portolan chart of the Mediterranean Region. Portolan charts are characterized by a network of rhumb lines leading from the circles, concentrate on the coasts and islands, and have place names written perpendicular to the coastline on the land side. Hand drawn on vellum, this historic Mediterranean chart also has drawings of castles and flags from around the region and a flock of mythical creatures, including a unicorn, along its edges.



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FISHERMEN, ENVIRONMENTAL ORGANIZATIONS URGE BOEM TO SLOW GULF OF MAINE LEASING PROCESS

By MLA staff

On August 19, the Bureau of Offshore Energy Management (BOEM) published two notices in the Federal Register to solicit public comment to move forward on offshore wind development in the Gulf of Maine. The initiative is part of the Biden administration's goal of deploying 30 gigawatts of offshore wind energy capacity by 2030.

BOEM published a Request for Interest (RFI) which "is the first step in BOEM's commercial planning and leasing process to identify the offshore locations that appear most suitable for development, taking into consideration potential impacts to other resources and ocean users. The purpose of the RFI is to gauge interest in the development of commercial wind energy leases within the RFI Area, which consists of about 13,713,800 acres in the Gulf of Maine," BOEM said in a press release.

BOEM also published a Request for Competitive Interest (RFCI) which is the agency's next step in evaluating Maine's application for a research lease in the Gulf of Maine. The state's application requested a lease of 8,700 acres 20 nautical miles from the coast for construction and operation of a floating offshore wind turbine array to conduct research. The research array would comprise up to 12 floating offshore wind turbines capable of generating up to 144 megawatts of renewable energy.

The Maine Lobstermen's Association (MLA), in its comments, pointed out the jeopardy rapid development of the Gulf of Maine would put lobstermen due to the harm such development could have on endangered North Atlantic right whales. "[The] MLA is particularly concerned with the impact of offshore wind on endangered North Atlantic right whales since any negative impacts on this species have direct regulatory impacts on Maine's lobster fishery. Given the significant deficiencies in our understanding of the environmental impacts of offshore wind development and potential for irreparable harm to Maine's fishing industry and coastal communities, the MLA strongly urges BOEM not to move forward with commercial leases in the Gulf of Maine."

The MLA further cautioned BOEM on the rapid speed with which it was encouraging offshore wind energy projects in New England waters. "The MLA remains very concerned that BOEM is moving forward offshore wind development projects in areas of critical importance to North Atlantic right whales, both off of Massachusetts and in New York Bight, and now possibly the Gulf of Maine. It is unconscionable that as National Marine Fisheries Service is moving full steam ahead towards eliminating fixed gear fisheries to save right whales, BOEM is permitting the development of industrial wind farms in the habitats most critical to supporting these whales."

The members of the Governor's Offshore Wind Road Map Fisheries Working Group, organized by the Office of Energy, also wrote in opposition to BOEM's haste in moving forward with leasing.

"Considering the importance of the Gulf of Maine as an ecosystem and economic driver within the blue economy, the speed at which the BOEM process is moving forward is disturbing and unnecessary. Good process leads to better results, and the establishment of a comment period before the Road Map from Maine is even completed does a disservice to the time and commitment that Maine's diverse communities have contributed to this process," the members wrote. "

Members of the Fisheries Working Group (FWG) are concerned that by having a comment period that does not take the findings of the Road Map into consideration that important work and suggestions will be lost to BOEM." The letter included the extensive list of recommendations developed by the FWG on avoiding important commercial fishing grounds, highest use and highest value fishing areas, sensitive habitats and protected areas, as well as safety, navigation, research priorities, among others. Signatories to the comments were Maine Coast

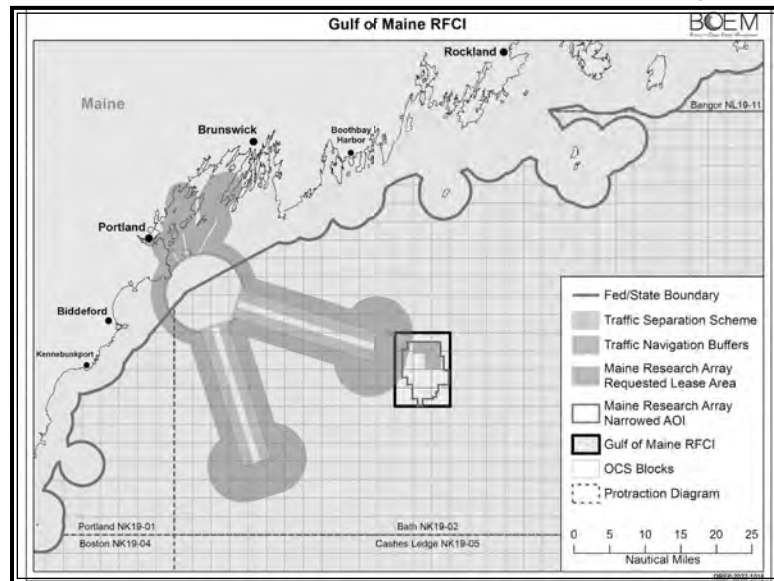
Fishermen's Association, MLA, Maine Center for Coastal Fisheries, Maine Lobstermen's Union, and fishermen Terry Alexander, Dustin Delano, Bob Humphrey, Chris Weiner, and Eben Wilson.

A coalition of environmental organizations also urged BOEM to slow down in their comments. In May, the Conservation Law Foundation, 350 New Hampshire, Acadia Center, Blue Ocean Society, Friends of Casco Bay, Island Institute, League of Conservation Voters, Maine Conservation Voters, Maine Audubon, Massachusetts Audubon, National Audubon Society, National Wildlife Federation, Natural Resources Council of Maine, National Resource Defense Council, New England Aquarium, New Hampshire

Audubon, Oceana, and Surfrider Foundation had asked BOEM to do "a comprehensive environmental review" before proceeding with identifying potential areas in the Gulf of Maine for wind projects.

After the RFI and RFCI were released without any provision for such a review, the group wrote to BOEM, "This decision epitomizes short-term thinking that will only cause problems in the long run. It's simply backwards to choose areas for offshore wind development before doing a full environmental analysis, which would ultimately save time and money if done now. It is critical to advance offshore wind to respond to the climate crisis and clean up our electric grid, but it must be done in a science-based, inclusive and transparent way."

The 25 Fisheries Working Group recommendations are available online at <https://www.maineoffshorewind.org/working-group-recommendations>.



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In the NEWS

WHALE STATISTICS MODIFIED, LITTLE CHANGES

NMFS announced on October 24 that it would be using updated data in its preliminary 2020 North Atlantic right whale population estimate. The agency drew on right whale data from 2016-2020 rather than 2015-2019. Use of that data reduced the number of estimated entanglements due to fishing gear from 70% to 66%. Observed data from 2018-2022 resulted in 74% of all observed entanglements assigned to fishing gear. Prior to 2021, risk reduction estimates were calculated by subtracting out the known country of origin from entanglement cases then applying country ratios to the remaining total estimated mortality or cases with unknown cause of death. Even if NMFS took this approach using the current 2016-2020 mortality data, there would be little change in the total estimated risk reduction required to get mortality and serious injury to a level below the Potential Biological Removal rate.

INJURED RIGHT WHALE ESTIMATE RISES, AGAIN

The National Marine Fisheries Service (NMFS) is adding morbidity cases (i.e., sublethally injured or ill whales) to the ongoing North Atlantic Right Whale Unusual Mortality Event, which began in 2017. The additions are based on a new scientific veterinary peer-reviewed protocol developed to provide a more complete picture of the population's health. The 36 sublethal injury or illness cases reflect vessel strikes, entanglements, and injuries or poor body condition of unknown cause. Adding the new cases brings the total number of whales included in the Unusual Mortality Event to 91.

ATLANTIC SEA SCALLOP STOCKS AT LOWEST SINCE 1999

The New England Fishery Management Council reviewed a scallop survey report in October that showed the Atlantic sea scallop fishery is facing its lowest biomass in over 20 years. From a peak of more than 250,000 metric tons in 2017, the scallop biomass is now under 100,000 in 2022. The survey estimated a biomass decrease of almost 30%. The Georges Bank region saw the largest drop, around 36%. Council staff estimated catch would be lower than 44 million pounds in 2023.

AGENCIES CRAFT STRATEGY TO MOVE OFFSHORE WIND PROJECTS FORWARD

NMFS and the Interior Department released a draft strategy Friday to protect the endangered right whale amid an imminent boom of offshore wind development. The draft lays out a plan for both agencies to engage with the public and ocean users. It also spells out several primary goals for raising wind turbines while trying to recover the whale's population, such as prioritizing mitigation, new research and monitoring, and improving communication. The two agencies are critical in assessing the marine life and fisheries impacts from construction of large-scale wind farms in the ocean, and their approval is needed for developers to obtain permits to build. More than a dozen offshore wind arrays are proposed or approved for construction in federal waters off the coast of New England.

HARPSWELL FISHERMAN NAMED NATIONAL FISHERMAN 2022 HIGHLINER

Terry Alexander of Harpswell, Maine, has fished for over 40 years, running his 62-foot trawler *Jocka* for Gulf of Maine groundfish and squid down into the Mid-Atlantic waters. His other boat, the *Rachel T*, can harvest northern shrimp, gillnet for groundfish in the late summer and winter, and monkfish in waters off Rhode Island.




Photo courtesy Maine Fishermen's Forum.

Alexander has hosted numerous scientists and others conducting cooperative research on both boats, from Nordmore grate work in the northern shrimp fishery to an industry-based cod survey in the Gulf of Maine. He was appointed to the Mid-Atlantic Fishery Management Council in 2009, served a term, and then was appointed to three terms on the New England Fishery Management Council from 2012 to 2021.

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Events Calendar

More details on all of these events can be found online at www.mainelobstermen.org

November 7-10

Atlantic States Marine Fisheries Commission meeting, Ocean Place Resort, Long Branch, NJ.

November 8

ELECTION DAY

MLA Directors Meeting, 5 p.m., United Farmers Market, Belfast.

November 15

Aquaculture Public Hearing, Islesboro Marine Enterprises, Inc., 2 p.m., 150 Main St., Islesboro.

November 10

TRT webinar on whale model used for risk reduction. 2 .pm. to 4 p.m. FMI: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-team#upcoming-meetings-&-webinars>.

November 14, 15, 17, 18

TRT meeting on 90% risk reduction. All day. FMI: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-team#upcoming-meetings-&-webinars>.

December 1, 2

TRT meeting on 90% risk reduction. All day. FMI: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-team#upcoming-meetings-&-webinars>.

December 6

Aquaculture Public Hearing, Acadia Sea Farms, Inc., 4 p.m., Trenton Town Hall.

December 6-8

New England Fishery Management Council meeting, Hotel Viking, Newport, RI. FMI: <https://www.nefmc.org/calendar/december-2022-council-meeting>.

December 12-14

Peer Review of Decision Support Tool (DST) used to calculate risk for whale rules. FMI: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-team#upcoming-meetings-&-webinars>.

December 13

Maine Offshore Wind Roadmap Advisory Committee Meeting, 9 a.m.-noon, virtual meeting. <https://www.maineoffshorewind.org>.

December 14

Shellfish Advisory Council, 1-4 p.m., Moore Community Center, Ellsworth, or Microsoft Teams.

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duction that will all but eliminate the Maine lobster fishery yet still fail to save the endangered North Atlantic right whale. MLA argued that NMFS overestimated the lobster industry's risk to right whales by cherry-picking the science and using unsupported assumptions and "worst-case scenarios" to justify its mandate for Maine's lobster fishery to reduce its already minimal risk to right whales by 98% by 2030. MLA argued that NMFS also failed to follow mandatory legal requirements to assess the economic and social costs of their actions.

On September 8, 2022, Judge Boasberg ruled against the MLA in an opinion that deferred to the federal agency on all counts without disputing the validity of MLA's concerns. As a result, NMFS is requiring larger risk reductions sooner than outlined in its 10-year whale plan and will require Maine's lobstermen to achieve a 90% risk reduction as quickly as possible. If that percentage is not reached, the federal fishery could be shut down. According to Clement, the district court's ruling is entirely unjustified.

Machias Savings continued from page 1

economic climate for the lobster industry has been extremely challenging and has only been exacerbated by the uncertainty of the new deep-cutting federal whale regulations now underway. It has sent a chill through the Maine lobster fishery. We're saying 'Yes' to Maine's lobstermen and women by proudly making this donation to join the fight and support the Maine lobster industry."

"The Maine lobster fishery is essential to Maine's culture, heritage, and economy and has supported communities and generations of families while ensuring that this important natural resource has been sustainably harvested for nearly two centuries," said MLA president Kristan Porter, who is also a commercial fisherman from Cutler. "Maine's lobster fleet directly supports more than 12,000 jobs on the water. In addition, the shoreside wholesale lobster sector -- the lobster supply chain -- supports an additional 5,500 jobs and generates an additional \$1 billion annually, which just begins to touch upon the real value of the fishery to the state. Lobster directly infuses money into multiple sectors of Maine's economy, from real estate, hotels, and restaurants to trucking compa-

"This is a clear case of government overreach. It is no exaggeration to say that the fate of the Maine lobster fishery, a national icon, hangs in the balance," said Paul Clement. "The applicable statute requires the agency to apply the best available evidence. The agency instead has resolved every doubt and every disputed issue against the lobster fishery. The agency is inflicting unprecedented hardship on Maine lobstermen, while explicitly acknowledging that all this suffering will do nothing to restore the right whale so long as they continue to die in Canada."

The MLA continues its urgent fundraising appeals to all who value the Maine lobster fishery. Donations can be made to *Save Maine Lobstermen* at www.save-mainelobstermen.org or by mailing a check to MLA, 2 Storer Street, Suite 203, Kennebunk, ME 04043.

nies, auto dealerships, and banks, to name a few," said Porter.

"The Maine lobster industry is in utter shock and disbelief that their own federal government has set a course to eliminate a fishery that has never been known to kill a single right whale," said Patrice McCarron, MLA executive director. "Lobstermen are already mourning the loss of their fishery. These are good people who care deeply about the ocean, lobsters, and right whales. They want to be part of the solution but, without action by the Court, this is not possible."

Contributions to MLA's Save Maine Lobstermen campaign support MLA's four-pronged strategy to protect both the Maine lobster industry and the North Atlantic right whale and have allowed the MLA to expand its legal team with the recent addition of former U.S. Solicitor General Paul Clement. Mr. Clement is one country's top appellate attorney and a highly accomplished U.S. Supreme Court advocate.

COASTAL TOWNS GET READY FOR THE HOLIDAYS



Rockland Lobster Trap tree lighting, November 26, dusk.

Nubble Lighthouse lighting, Sohier Park, York, November 26. <http://nubblelight.org>

Bar Harbor Buoy Tree lighting ceremony, November 30, 4:30 pm. www.visitbarharbor.com

Kennebunk 41st Christmas Prelude, December 1-11. www.christmasprelude.com

York Festival of Lights, beginning December 1.

36th Christmas by the Sea, Camden, December 2-4. www.camdenmainevacation.com/christmas-by-the-sea-camden-maine.php

The calendar is moving into the holiday season and the coast of Maine is growing brighter with events and festivities. In November and December, you can find shining lobster trap trees, brilliantly lit lobster boats, and even Santa Claus arriving by lobster boat at harbors throughout the state. We offer here a selection of events taking place this holiday season.



Photos, clockwise from top left: Portland lobster boat, Portland Chamber of Commerce. Parade of Lights vessel, Rockland Main Street. Jonesboro trap tree volunteers, Jonesboro Grange. Nubble Lighthouse, WCVB.



Holiday Trail of Lights, The Kennebunks, beginning December 3. <https://gokennebunks.com/holidaytrailoflights/>

Boothbay Harbor Lighted Boat Parade and Fireworks, December 3, 4 p.m. www.boothbayharbor.com/event/annual-lighted-boat-parade-and-sparkle-fireworks

36th Ogunquit Christmas by the Sea, December 9-11.

Portland Harbor Parade of Lights, December 17, 4:45 p.m.

Lubec Sardine and Maple Leaf Drop, midnight, December 31

Winter Harbor Music Festival, New Year's Celebration, December 31. www.winterharbormusicfestival.org



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