

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

MAINE LOBSTERMEN’S ASSOCIATION,
INC.

Appellant

and

STATE OF MAINE, DEPARTMENT OF
MARINE RESOURCES, et al.,

Appellees,

v.

NATIONAL MARINE FISHERIES SERVICE, et
al.,

Appellees.

September Term, 2022
1:21-cv-02509-JEB

Case No.: 1:22-cv-5238

DECLARATION OF MARK BROOKS

I, Mark Brooks, declare and state as follows:

1. My name is Mark Brooks. I am co-owner of Brooks Trap Mill, a small, third-generation family business headquartered in Thomaston, Maine. We employ 120 people in our wholesale and retail operations, building and selling a wide variety of marine products including manufactured lobster traps and supplies for fishermen who still prefer to build their own. In addition to the headquarters, our business also operates locations in Portland, West Bath, and Jonesboro, Maine and Wakefield, Rhode Island.

2. In 1946, my grandfather, Michael Brooks, set up a trap stock mill on Camden Street in Rockland, Maine after my father, Karl, returned from the U.S. Navy. The mill moved to our current location in 1949 and, in 2003, my brother Stephen, my sister Julie, and I assumed ownership. We stock the largest inventory of lobstering materials in the state of Maine.

3. The first wooden lobster trap was designed and built in Massachusetts in 1806. Today, nearly all traps are made of wire, come in different sizes and colors, but the fundamentals of the trap have remained essentially the same for more than two centuries. Our company produces an estimated 2,500 traps per week in addition to approximately 2,000 trap kits that lobstermen use to build their own traps.

4. Maine lobstermen have long been excellent stewards of the lobster resource and were at the forefront of efforts to ensure a healthy lobster population for future generations. In the late 1800's, Maine lobstermen banned the harvest of egg-bearing females and established a minimum legal size to harvest lobsters. As a result, the Maine lobster industry has thrived and is now a globally-recognized sustainable fishery.

5. The value of Maine's lobster catch at the docks in 2021 was more than \$725 million, and studies have shown the lobster fishery supply chain, of which the trap building industry is an important component, generates an additional \$1 billion annually.

6. There are nearly 5,000 licensed lobstermen in Maine and each is, by law, a small-business owner. The lobstermen's successful management of the fishery has allowed these businesspeople and families to plan ahead and invest in new equipment, boats, traps, supplies. For the past three years, our business has been booked out with orders from lobstermen who could make confident decisions based on the trend in landings.

7. In 2020, as a result of global supply chain issues caused by COVID, our company began experiencing delays that resulted in backlogs and waitlists for orders. Nothing, however, has caused more concern for the future of Brooks Trap Mill than the uncertainty surrounding federal whale regulations.

8. A majority of our customers have done business with us for generations and, as a result, many are trusted friends. On faith, and without collecting deposits, our company has ordered millions of dollars' of the necessary supplies to fulfill the orders we have received thus far – and to keep our employees working at capacity for at least one year.

9. Over the past several weeks, however, nervous lobstermen have started to cancel their orders. They have no idea how many traps they will need in the next six months or year. They have no idea if there will even be a fishery. As a result of this unknown, our company now finds itself in a precarious position. Will we be left owing millions of dollars for supplies we purchased but can't sell? This isn't a hypothetical scenario. A smaller trap building company in Maine already canceled all of its orders and laid off all of its employees. For those workers, the uncertainty sparked by the development of deep cutting whale regulations has already caused real-life consequences. Hardworking people are now without a paycheck because the federal government has not told us what measures will be required to achieve those deep cuts and this has left a vanishingly low level of doubt of a very bleak future for the Maine lobster fishery.

10. The economic impact of this uncertainty is not limited to trap builders like Brooks Trap Mill. Other family-owned businesses such as boat builders, bait dealers, and fuel companies are facing similar dilemmas. How can you make a business plan for the next year when you don't know if you will have any customers? The closure of the federal fishery would cause an economic tidal wave that would wipe out generations of small businesses, destroy the livelihoods

of hardworking families, and change a way of life that has sustained Maine's coastal economy for centuries.

11. We agree that a common-sense solution needs to be found that will help protect the endangered right whale but it should be implemented in areas where science shows clearly that the whale is known to exist. This spring, our company developed a 1700-pound weak link that is designed to break under stress in the rare chance that there be a gear entanglement. By all accounts, the product is safe and works. Though some lobstermen were skeptical, we sold thousands of these weak links and lobstermen installed them in their gear despite the fact that the right whale is extremely rare or entirely unknown in the waters where most of them fish. This demonstrates their ongoing commitment to ensuring that the fishery and the whale can coexist.

12. Maine lobstermen don't want to be a problem, they want to be part of the solution. The regulators should require lobstermen who, in the unlikely event that they do spot a right whale, to report it. These men and women are on the ocean every day and care about protecting it and the marine life in it. Federal regulations can also have unintended consequences. For instance, should new rules require a massive trap reduction, what impact will that have on the lobster population itself? Lobstermen act as farmers of the ocean, and removing the food that they supply as bait, could have a detrimental effect on what is now a healthy lobster population.

13. Maine's lobster industry and the thousands of small businesses that rely on it are currently living on the edge and concerned about the future. This stress is already causing a significant economic strain on the state. We are asking for someone to inject some common-sense into this situation and implement sensible regulations that will protect the whale without destroying an entire industry and wiping out this heritage and way of life that is at the heart of our state's identity.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my information and belief.

Executed on October 6, 2022, in _____.

A handwritten signature in cursive script that reads "Mark Brooks". The signature is contained within a light gray rectangular box.

Mark Brooks