

**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 DWIGHT CARVER

I, Dwight Carver, declare and state as follows:

1. My name is Dwight Carver. I am a 68-year-old fisherman from Beals Island, a community of less than 450 people located in Downeast, Maine. I have been a fisherman for most of my life having learned the trade from my father who was a founding member of the Maine Lobstermen’s Association (MLA). I grew up knowing the virtue of hard work and determination. I have fished full-time since I graduated high school in 1973. Lobstering has provided me with a way to make a proud living in my hometown where I married my high school sweetheart and together we raised our three amazing daughters.

2. It's hard to express how fortunate I feel to be a fisherman on the coast of Maine. When you are a fisherman, you are in love with what you do. Fishing is not only your identity but also the heart and soul of the community. Fishing is also the promise that our children have a future in our communities where job options are extremely limited. Lobstering is everything to my town and to the entire Downeast region of Maine. We lobstermen work around and live off of lobster and the rest of the community lives off of our ability to bring the product in. If lobstering is in trouble, most people in my community will feel like the world is coming to an end.

3. Over years, I have fished in nearly every commercial fishery in the state of Maine from ground fishing to herring to scalloping to lobstering, but have earned my living from lobstering in recent decades as other fishing opportunities disappeared. I stayed active in the gillnet fishery right up until the early 1990s when I used to see plenty of minke and sei whales while fishing offshore. In my area, those whales were much more active in the 1970s and 1980s and came closer to home than now. I still lobster offshore, though not as far off as I used to, and the whale feed just isn't there anymore. I very seldom see any whales now. I have never seen a right whale.

4. Lobstering has been my life, and I have always had a strong belief in the importance of paying it forward and making sure it's good for younger guys the way it has been for me. That is why I have served on the Zone A Lobster Council and Maine Center for Coastal Fisheries Board for many years. I was also more than willing to serve on the MLA Board of Directors for more than 20 years. I only stepped down from MLA because I felt strongly that it was time for a younger fellow to step up and guide the future of the fishery for the next generation.

5. No Maine lobsterman wants to harm a right whale. That would be one of the saddest days of my life if I had come upon that. The Maine lobster industry has been involved in this process since the 1990s, working alongside scientists and different conservation groups working to find a way to coexist with right whales. I have been closely involved in the lobster fishery's efforts to protect right whales since it all started, having worked with National Marine Fisheries Service (NMFS) gear team to develop the 600 pound breakaway back in the 1990s.

6. I am currently a member of the Atlantic Large Whale Take Reduction Team (TRT) and have served in that role since 2012. I go to the TRT meetings because I understand how important it is to talk face to face, and for everyone to bring their knowledge to the table. I have made the 900 mile roundtrip drive to Rhode Island many times, usually missing a week of prime fall fishing to be there. But I understand how important it is to find a solution to the whale issue so I make the sacrifice to be there. We must continue to have conversations and actually listen to one another if we are going to find a way to preserve the lobster fishery and right whales. Sadly, I have found it very difficult to participate in the most recent meetings that we have had on the computer. I am not proud of this, but I am so angry when I hear what they want to do to the lobster fishery that I cannot compose myself enough to speak. They talk about saving whales that rarely swim through the areas we fish without any genuine concern for the lives they will surely ruin.

7. We teach our young ones at an early age that keeping the lobster fishery going is extremely important. But now I find myself questioning whether there is actually a future for these young ones. At the May virtual TRT meeting I learned that NMFS is already coming back to the lobster industry to do more to conserve right whales. They are now saying 90% reductions are necessary straight away. This is a shock because we are still coping with all the new whale *Maine Lobstermen's Ass'n, Inc., v. NMFS, et al*

protections we put in place this spring. We are still adapting to these changes and learning how to work safely with untested weakened gear. The May TRT meeting was a sad reality check for me. When my grandson asked me why I was so upset I could hardly bring myself to explain to him that I don't see that there will be a lobster fishery for him when he's old enough to enter the profession. I can hardly believe it has come to this since in all my years at sea I have honestly never seen a right whale and I know of no right whale that has been injured or killed in our gear.

8. I am deeply disturbed by the sincere and genuine effort that the lobster industry has put towards working with the NMFS over the years only to be disregarded over and over again. The other TRT lobstermen members and I have raised concerns with how NMFS is misusing the science to set unrealistic conservation goals for our fishery. We have attended all of the meetings, worked with our fishermen to find solutions, written letters and comments, and poured through the data. We've told NMFS that lobstermen can't solve this issue alone. It will take all fishermen from Florida to Maine, and a larger effort from Canada, if we are to find a solution to this problem. Instead we are facing the "writing on the wall" of a 98% risk reduction because NMFS has not been listening to us. Lobstermen are worried whether they will have a fishery next year as a consequence of NMFS's actions. Already, I am seeing some of the older lobstermen stepping away from the business they love so much because they can't keep pace with the changes. Some of the younger fellows have put their boats and traps up for sale because they are afraid that these assets, which are their life's work, will be worthless. I myself am not sure how to plan for next year because I don't know what we will need to do or when it has to be done. I know I want to fish and I pray I will be able to continue. It is extremely stressful and very sad to think that the very fishery we have built to make sure the next generation has the same opportunity we've had may not be here.

9. Despite the anxiety and anger, one thing I know to be true is that Maine lobstermen want to be part of the solution. We have continually worked with NMFS and the TRT in good faith. We are always willing to sit down and go over new measures that could work for us and for the whales. But I feel like instead of listening to us and working with us, they have loaded the gun and are asking us to pull the trigger. And all the while, we continue to urge lobstermen to do the right thing and implement all the measures being asked of us to protect right whales, even at higher and higher cost. And even though, like me, they have seen no right whales where they fish. We are also trying to keep morale up with our fishermen but I don't know how to explain to them how it has come to a point where a fishery with no track record of harming a right whale has to get to 90% risk reduction right away, and then to a 98% risk reduction in such a short time without every seeing how well the last set of measures have worked. I'd say most of us are still in shock as we try to understand what this will mean for our families and our communities.

10. I want my grandson and all of the other hard working youngsters to have an opportunity to choose the lobstering profession so they have the same chance I had to live and work in Downeast, Maine, keep our communities alive and carry forward the legacy of our proud lobstering heritage. Time is running short for the lobstering profession. I believe it does not have to be that way if NMFS and the TRT would re-evaluate what the science actually tells us about how and where right whales are at risk of harm. I don't have a problem with using computer models to help get this done, but you still need to use common sense. If the model in no way matches up with what is actually happening then what good is it? The MLA's lawsuit raises a number of concerns that I hope will be addressed before the Maine lobster industry is subjected to the kind of reductions presently required and contemplated by NMFS right now. If

they aren't, I truly fear a future of lobstering for my grandsons and my community will be lost.

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 Downeast, Maine.

A handwritten signature in cursive script that reads "Dwight Carver". The signature is written in black ink on a light-colored background.

Dwight Carver