

**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 CINDY DONNELL**

I, Cindy Donnell, declare and state as follows:

1. My name is Cindy Donnell. I am a lifelong resident of York, Maine. I am the wife of a York lobsterman, mother to two York lobstermen and a York lobster buyer.

2. My husband Jeff has been lobstering for 50 years. He is passionate about the fishery and its traditions. Lobstering is in his blood and defines who he is. He has worked hard to build a successful lobstering business and has passed his passion for the lobster fishery on to our three children.

3. My son Matthew has been lobstering for 26 years and now has two sons of his own who are learning to lobster as well. My son Zachary has been lobstering for 28 years and

has two young children. My daughter Lindsey is the founder of Off the Boat Lobsters based at Sewall's Dock in York where she buys and sells her family's lobster catch as well as other local wild caught sustainable seafood. She also has two children and at 4 years old, Vivienne is already working at the dock alongside her mom and dad.

4. My entire family is passionate for our marine conservation practices which include protecting the lobster resource and right whales making Maine lobster one of the world's most sustainable fisheries. Our family is typical of other Maine lobstering families where each generation works hard to leave the ocean and its resources in better shape than we received it so the next generation can earn a living from the sea. We do this without hesitation because it is part of who we are and what we do. Maine lobstermen have been v-notching and measuring lobsters since 1890. What amazing conservation efforts have been created in this industry from early on and have continued on since its inception! The lobster industry is an amazing bunch of conservationists.

5. We hold ourselves accountable for our actions and take our responsibility to keep right whales safe from our fishing gear very seriously. But we've reached a point where the National Marine Fisheries Service (NMFS) is asking us for changes that make no sense. NMFS has no record of Maine lobster gear ever killing or causing serious injury to a right whale. So now they are telling us that our fishing gear is responsible for right whale deaths that have never been seen which they are calling "cryptic." NMFS itself says it does not even believe its new requirements for Maine will save the species. That means NMFS is prepared to gamble away my family's way of life for no good reason.

6. This whole mess has happened because NMFS is not using its own data that show Maine lobstermen are not the culprits in the decline of the right whale. And this has confused

others about what is actually happening to the whales. I get extremely frustrated when I see groups blaming Maine lobstermen for entangling right whales but show pictures of whales entangled in rope that is significantly larger than any rope used in our fishery.

7. For me and my family, it is urgent for us to know whether there is any future for us in this fishery, and things look very bleak. If NMFS closes the fishery or imposes any more drastic measures like massive closures, trap limits and weaking all of our rope, my sons will be regulated out of business because there is no feasible way to meet a 90% -- or ultimately a 98% risk reduction. It is hard enough to run a successful lobstering business not knowing how many lobsters you will catch or the price you will get paid or when you may need to replace a blown engine as well as the increase in bait to \$0.89 per pound and high fuel prices. How can any small business continue to grow not knowing if it will be allowed to operate from one year to the next, or meet unknown regulations?

8. More than 20 years ago lobstermen were told by NMFS to install break-away links at the buoy so that the buoy would pop off if a whale entanglement occurred allowing the rope to slide free of the whale. They were also told to mark the rope by adding a red mark to the line to identify its origin if any whale were to get entangled in it.

9. They did this and it was a lot of work and cost. To mark the gear, they had to remove all of their traps from the water and all of the rope had to be run up and down the driveway to be dried. They unlaidd the rope and put a thin red line in between the lathes of the rope or painted the rope with red marks. This took months of work. They also changed to knotless connections, reduced the amount of floating rope on endlines and switched to sinking ground lines to make our gear much safer for whales.

10. Later they were told to add two more red marks to the line, and make each mark longer, which again entailed them taking the traps out of the water, drying the lines, adding the marks and putting the traps back in the water. Just as they were finishing, NMFS added yet another green mark for the gear they fished around Jeffrey's Ledge.

11. Then again, in 2020, they were ordered to re-mark all of their lines with purple instead of red and add another even longer mark. So again the traps came out of the water and went through the same costly and time-consuming scenario.

12. Just over a year later, NMFS changed it again. This time all the gear fished in federal waters had to come back out of the water and the fishermen were ordered to add large green marks beside each of the four purple marks.

13. This year, NMFS decided weak links at the buoy are now optional. Lobstermen can't figure out why NMFS would remove a whale protection measure when we are trying to reduce risk. And they added more: a new 1700 pound weak link had to be inserted half way down the rope and boats had to re-rig gear with more traps on each buoy line. Lobstermen did all of these things even though it is dangerous to have 25 or more traps to haul up each time, not to mention the added danger of hauling that load with a weak line. This is also impossible for smaller boats and our aging lobstermen and women.

14. The weak link requirement was particularly stressful, confusing and expensive. NMFS set a deadline to weaken our endlines, but the deadline came and went before the gear was developed, manufactured or available for lobstermen to purchase. This meant that we couldn't add the new weak points to our line when our gear was already hauled out to add the newly required green marks. Everyone had to scramble to get what we needed to keep our gear compliant with the rules. It has been extremely confusing and expensive because my family has

had to rig up three different sets of end lines to fish in different areas. It's hard to keep it all straight. Each has had to buy more new rope, expensive paint and shrink wrap, weak links, and pay for extra help to do the work. And worst of all, when the traps are out of the water, they do not catch lobsters.

15. This has also created health issues. Doing this repetitive work hurts your joints, shoulders, feet and back. Flaking miles of rope over and over is not an easy task. This last round has taken months to complete. As a wife and a mother, it breaks my heart to see the physical and emotional stress my family members have endured.

16. My family has done everything the government has asked of us. We simply cannot understand how NMFS can now claim that we need to immediately get to a 90% risk reduction even though NMFS cannot look us in the eye and tell us that they have scientific evidence showing a reduction of that magnitude to the Maine fishery would save whales. They are not asking us to reduce our entanglements because you can't get any lower than zero. They are asking us to reduce a hypothetical entanglement risk based on worst case assumptions that are not reality. And they haven't told us how they are going to stop the actual entanglements and vessel strikes that scientists have documented in locations beyond the waters where we fish.

17. We are not a big boat, corporately-owned fleet. We are small fishing businesses owned and operated by individual lobstermen. If NMFS continues to race down the path toward eliminating all of our gear from federal waters, and adding on steep trap reductions and more weak rope measures, my family and lobstering families up and down the coast will be put out of business and our communities will be severely threatened.

18. NMFS may not have considered that right now lobstering families like mine are struggling under the weight of inflated costs of fuel and bait, coupled with plummeting prices

paid for lobster when it is landed. On top of these normal but challenging business risks, it is impossible to know if a lobstering business can remain profitable in future seasons when you have no idea what the regulations will be, but we are scared because all signs point to extreme impacts on the lobster fishery. Lobster boats, traps and other gear are specialized for lobster; there is no other market for these assets. If my sons find that they can no longer make a living lobstering in a few years, everything they have invested in will be worthless because there will be no one to buy their gear. We are already hearing of lobstermen looking to sell out because they fear if they wait until they are forced out, all of their business assets will be worthless.

19. My husband and children sincerely worry if they will make it through the next season. They can only hope that NMFS will reexamine the facts rather than steam rolling ahead with a 90% risk reduction that will drive lobstering to extinction in Maine.

20. If NMFS does not fix its inflated risk reduction assumptions, I am afraid the government is going to regulate my family out of business to save whales that are not dying in Maine lobster gear. Our heritage is at stake! We need the Court of Appeal to take action without delay that will cause NMFS to re-examine its inaccurate assumptions and take actual facts into account. Otherwise, my family and I see no realistic hope for the future of the lobster fishery.

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

Executed on October 6, 2022, in York, Maine.



Cindy L. Donnell