

**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 RUSSEL MUNSEY**

I, Russel E. Munsey, declare and state as follows:

1. My name is Ed Munsey (Russel E. Munsey). I am a 54-year-old lobsterman and lifelong resident of Cundy’s Harbor, a small village in Harpswell, Maine, located at the end of a long peninsula. Cundy’s Harbor is a fishing community, so pretty much all of us just went fishing when we were kids. Me and my two brothers grew up fishing. My father was a draggerman who fished for groundfish when he was young. After working off the water for a time, he became a lobsterman which he still does now.

2. I’ve been a full-time lobsterman for about 27 years and I feel truly lucky to live and work in Cundy’s Harbor. I can’t imagine doing anything else. The lobster fishery has been

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very good to me. It has given me a great life. It has allowed me to raise my three children and provided a good living for my family.

3. Both of my sons, who are now 22 and 19 years old, are lobstermen. They both went through the state of Maine's Student Apprentice program starting when they were eight years old. Each worked their way into the fishery starting in a skiff, earning money to move to a small boat with an outboard engine, and then saving up to get into a lobster boat. Each of them has invested in a federal lobster permit. They have spent a lot of time fishing with me over the years during summers and school vacations so they understand that there is much more potential to build a successful lobstering business by fishing federal waters. Fishing offshore requires a larger investment but has much higher earning potential because you can lobster through the winter months when lobster prices are highest and catches are strong. They both love lobstering and want to spend their careers in this profession. They have no plans to do anything else. I also love lobstering and would never discourage anyone from being a part of this fishery. The lobster resource remains very healthy and it is my true hope that my sons will have the same opportunity and success in the lobster fishery as I have had.

4. I understand that right whales are endangered. I will do whatever I have to do to stay in the lobster fishery because it means everything to me. Over the years I have made many changes to my gear and how I fish because NMFS made them part of a plan to save right whales.

5. This latest round of restrictions for LMA 1 makes no sense to me. I do not want to harm a right whale, but I have never seen one where I fish so I do not understand why NMFS has acted so fast without learning what it means for fishermen. I am troubled that fishing areas have been closed even though right whales are not known to frequent them. If NMFS had real concerns that right whales were at greater risk in some areas of LMA 1, those concerns should

have been explained in advance to those of us who fish those waters. It's not right that NMFS can close fishing grounds without any input from fishermen and without showing us evidence that right whales are at risk in those waters. If we knew why NMFS thinks we might actually harm whales, we would have a chance to figure out a way to avoid that. That's why it troubled me to learn that NMFS is pushing ahead to impose new restrictions quickly. I have no idea why, when or what I will be told to do next. I will do whatever I have to do to keep fishing but I deserve to have a voice in how we do this so decisions are not blind to what lobstermen need to keep fishing. I also need time to plan and make the right investments to increase the chances that I can make future changes work for my lobstering business. I believe NMFS should at least take time to hear from those of us who know the waters and the fishery. Here are some of the things I would have told NMFS if I'd been given the opportunity.

6. I have fished in the LMA 1 Closure area for more than 10 years. I am a Zone F lobsterman. The trap limit in Zone F is 800 traps. Zone E has a trap limit of 600 traps. The LMA 1 closure runs the length of Zones E, D, and C. I cannot legally set gear in Zone E unless I adhere to the 600 trap limit. That means when I fish my gear in the closure area, I must steam an extra 15 miles through Zone E to get to Zone D where I can legally fish 49% of my gear, which is 392 traps. It takes me about three hours to reach these fishing grounds in good weather.

7. In a typical year, I would shift my traps out of Zone F into the LMA 1 closure starting in November. I can move 120 to 130 traps aboard my boat at a time, as long as the weather is not too rough, so it takes me at least three trips to get all of my gear out there. The fishing is best in November and December which makes it worthwhile to fish there even with the leaner catches which happen in the months after that.

8. In 2021, I was not able to shift my gear out to my usual offshore fishing grounds in Zone D due to the seasonal closure. Instead, I had to continue to fish my traps in Zone F in areas that I used to fish years ago. There is a lot more gear being fished there than in past years. In addition to no longer knowing that bottom well, I was unfamiliar with how lobsters are using that bottom, and I had to compete with a lot of other boats that now fish that area. Overall my catch was down quite a bit compared to what I would expect to catch had I fished in the LMA 1 closure.

9. When I was finally able to shift my gear out into the LMA 1 closure area in February, it took me over three weeks to get my full gang out there with the rough seas and winter weather. By the time I got there, the lobsters just weren't there. In all honesty, I lost money fishing out there when the closure reopened because I wasn't allowed to fish there until it was too late to hit the run of lobsters I usually catch. If anyone thinks the lobsters don't move and will still be there when a closure reopens, they are wrong. I am at a loss for what I am going to do next winter but I doubt I will try to shift my gear out there again in February.

10. I was very upset when I learned that the Court had denied all of MLA's claims in its lawsuit against National Marine Fisheries Service on using only doom and gloom assumptions in its computer models. I understand that the federal lobster fishery cannot legally operate without the Biological Opinion and Final Rule in place. I am fully prepared to do whatever I have to do to save the right whales so I can continue to go lobstering. But I do not know how I could reduce my risk by 98% and still be able to make my living lobstering. And I cannot understand how NMFS arrived at a 98% risk reduction. It makes no sense that a fishery with no record of killing right whales would have to give up so much to save them.

11. I can tell you what shutting down the federal lobster fishery would do to Cundy's Harbor, and probably all of the small communities like us along the Maine coast. There are four wharves that buy lobster in Cundy's Harbor. I sell my lobsters to the Cundy's Harbor Lobster Coop which is the largest, buying from about 20 lobster boats. I estimate that 16 of those boats fish in federal waters. It is similar for the other wharves. Lobstering is everything to our community and most of the lobstering revenue comes from the federal waters fishery. I am typical of others in town, generally fishing in federal waters for about 9 months of the year, setting gear close to shore only during the summer. If the federal lobster fishery was shut down, our town would be devastated.

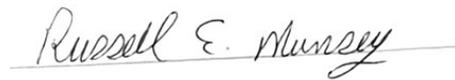
12. I think adjusting to whatever the next round of whale regulations will be is going to be hardest on the younger lobstermen still working to establish themselves. My business is well-established, and I no longer rely on bank loans. The younger guys have boat payments and house payments because they are still building up their business. It is going to be a lot harder for them to make it now that lobstering rules are changing too fast to even know what's coming next and make adjustments. Like any small businessman, lobstermen need time to plan and make adequate preparations to make it work. Their biggest asset is their willingness to work hard. But in the end, you have to be able to land enough lobsters to pay the bills. If new regulations continue to escalate the cost of running your business, or close our fishing grounds, then even the most skilled lobsterman will not be able to land enough lobster for the business to survive.

13. When I think about what might come next and the possibility that our fishery could either be shut down or regulated out of business, I wish that the people making those decisions would come to Cundy's Harbor and see what we do. For many of us, our whole lives depend on the lobster fishery. I ask decision makers to come visit our wharves and come out on a

lobster boat to experience the lobster fishery – we are proud of what we do. Lobstermen are willing to do all we can to save the whales and stay in business. But we can't do the impossible. We wish decision makers would come visit and see the devastation a 98% risk reduction would actually do each of us who want nothing more than to carry on our proud fishing heritage. Perhaps if they understood the impact on peoples' lives they would be more careful to design a whale plan that is aimed at areas where whales are known to be at risk.

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

Executed on October 7, 2022 in Harpswell, Maine.

A handwritten signature in cursive script that reads "Russell E. Munsey". The signature is written in black ink and is positioned above a horizontal line.

Russel E. Munsey