



## MAINE LOBSTERMEN'S ASSOCIATION UPDATE

### Maine Lobstermen's Association

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**Advocating for a sustainable lobster resource and the fishermen and communities that depend on it since 1954.**

President: Kristan Porter  
Cutler, 259-3306  
1st VP: John Williams  
Stonington, 367-2731  
2nd VP: Dustin Delano  
Friendship, 542-7241

#### Directors

Bob Baines, Spruce Head, 596-0177  
Sonny Beal, Beals Island, 497-3440  
Laurin Brooks, Kennebunk, 468-2165  
Herman Coombs, Orr's Island, 807-8596  
Gerry Cushman, Port Clyde, 372-6429  
Jim Dow, Bass Harbor, 288-9846  
Jamien Hallowell, S. Bristol, 677-0148  
Robert Ingalls, Bucks Harbor, 255-3418  
Mark Jones, Boothbay, 633-6054  
Jason Joyce, Swan's Island, 526-4109  
Jack Merrill, Islesford, 244-4187  
Tad Miller, Matinicus, 372-6941  
Mike Sargent, Steuben, 460-1316  
Craig Stewart, Long Island, 829-2109  
John Tripp, Spruce Head, 691-9744  
Chris Welch, Kennebunk, 205-2093  
Thomas Werner, Cape Elizabeth, 807-1048

#### Staff

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Executive Director  
Patrice McCarron  
patrice@mainelobstermen.org

Membership Director  
Andi Pelletier  
andi@mainelobstermen.org

**Maine Lobstermen's Association**  
**2 Storer St., Suite 203**  
**Kennebunk, ME 04043**  
**207.967.4555**  
**www.mainelobstermen.org**

#### BOARD OF DIRECTORS' MEETING SCHEDULE

*In response to the COVID-19 pandemic, the MLA has suspended all in-person meetings.*

## STEAMING AHEAD

In this line of work one thing I can always count on is a phone call from a lobsterman telling me just how things are going to be. The subject may be the lobster price, the price of bait or fuel, or management changes that are coming.

From the conversation, you learn which problems are unique to an individual, which ones are likely to work themselves out, and which ones you need to roll up your sleeves and try to fix. Lobstering has been so good too so many that, honestly, the days when guys would regularly call the office to give me an earful had become few and far between.

That has all changed. Today's circumstances are a stark contrast to the comfortable place many lobstermen and the MLA have enjoyed in recent years. As the director of MLA, my job has always been to work with the MLA Board and members to make sure that the forces that affect the lobster industry — and there are a lot of them — do not undermine our industry, traditions and sustainable fishing practices. To do this requires the MLA to act for the fishery as a whole; that is why MLA's work is often viewed as controversial.

This year is one in which we must navigate uncharted waters. Lobstermen are opening their season in the steepest market decline since the Great Depression. Predictions suggest that the severe constriction of the food service and entertainment sectors will translate directly into a lack of customers for the millions of pounds of lobster we have yet to land. Simple economics dictate that if you have more product than customers, price goes down. Lobster is particularly vulnerable to price deflation due to the tremendous risk in holding and moving live product.

Add to this uncertainty the fact that currently there is not a single person who can tell lobstermen how to prepare for the next round of whale rules. Despite having created one of the most sustainable fisheries in the world, the lobster industry finds itself on the wrong side of the Endangered Species Act (ESA). We know that the outcome of the pending court cases and the long anticipated new Biological Opinion on the lobster fishery will require us to change how we fish. The changes will be significant, but we do not know what they will be or when they will need to be in place.

Bottom line, thousands of owner-operated businesses that sustain our entire coastal economy are flying blind and cannot plan for the next few months and years.

While there is no crystal ball to tell us how this will play out, the MLA is here. We've been here for more than 65 years, through the good and the bad and somehow we, and you, have always made it through. In this time of vast uncertainty, there are three things I know to be true. First, the MLA is not going anywhere. We will put every bit of our more than six decades of knowledge and experience to work to chart a steady course for lobstermen to get through these rough waters. Second, this industry is resilient and we always find a way through. Third, these next

few years will truly test us all.

The MLA has always fought for what is in the best interest of the lobster fishery — the Maine lobster fishery. We do not work for one harbor, or one zone, or one area of the coast. When we take a stand, it is on behalf of the entire fishery. I can assure you that working through a contentious issue at MLA board meeting with 21 lobstermen, each from a different harbor and each with a different perspective, is a lot more difficult than chewing over an issue at the local wharf. The board takes time, listening and debating what is the right thing to do for the industry as a whole. It can be uncomfortable, but true leadership is never easy. It leads to tough decisions. Not surprisingly, our board members are often met with harsh criticism from fellow lobstermen.

Still, when you've been around for more than half a century, you get used to harsh judgement. You cherish those who understand the value of MLA's steady activism on behalf of the industry, year after year and decade after decade. No one can come out swinging every time and expect to find people willing to work with you. It is a credit to our loyal members that the MLA has been successful in ensuring that our lobster fishery has remained as strong as it has been. It is due to you that we are able to stand up to the fierce currents that are setting against us now.

While there are times when you need flexibility, there are also times that require you to stand your ground, times when you are staring down the barrel of a gun. The ESA and the MMPA are a loaded gun held by the environmental community and pointed straight at our fishery. The MLA and our legal team provide a shield to temper the blow from that gun, and we are standing our ground to fight for your future.

Look around your town. The local grocery store is supported by the income from your boat. The local school is paid for by your property taxes. The boatyard, marine electronics store and bait shop are all thriving because of you. If lobstermen are hurt or lose their businesses, others will be hurt too. There is too much at stake for us to let this fishery fail. We cannot let that happen.

We must all work together to keep the ship heading on course through this truly historic year. If you are not yet an MLA member, I urge you to join today. Your membership dues ensure that the MLA has a professional staff in place ready to respond to whatever issue comes next (currently only 2.5 people). And if you have not yet donated to the Legal Defense Fund, please consider supporting us today. It will take all of us joining together to get through this.

I am grateful for the outpouring of support and good will we have received, so thank you.

As always, stay safe on the water.

*Patrice*

#### WHALE UPDATES

##### Legal Defense Fund Launched to #SaveMaineLobstermen

The MLA has launched #SaveMaineLobstermen, an ambitious fundraising campaign to raise \$500,000 to preserve a future for Maine lobstermen and the businesses and communities that depend on their success. There are currently three court cases — in Washington D.C., Boston, and Bangor — each of which could significantly impact the future operation of the Maine lobster fishery. Lobstermen must grapple with several federal laws, including the Endangered Species Act, Marine Mammal Protection Act and the Administrative Procedures Act. Each of these legal mandates will require us to navigate an equally challenging rulemaking process to get across the finish line.

The MLA is extremely grateful for the outpouring of support from the industry. As of May 28, we have raised \$100,000. While we still have a way to go, this is tremendous progress given the difficult economic times facing

our state and our industry. Funds raised for the MLA Legal Defense Fund are dedicated to the legal challenges moving through the courts and for policy experts to ensure our industry can effectively take part in the rulemakings once these legal issues are decided.

MLA cannot guarantee the outcome of these court cases or future rulemakings, but we can promise to do everything possible to save our industry. We can guarantee that lobstermen will lose a lot if we don't keep up the fight to save Maine lobstermen. If you haven't already, please support the MLA Legal Defense Fund and do your part to #SaveMaineLobstermen by visiting the MLA website. If you have already made a contribution, thank you so much! We urge you to encourage others in your area to help us in this fight.

##### Federal Court Case (CBD vs Ross in DC District Court)

Four environmental groups filed suit against the National Marine Fisheries Service (NMFS) early in 2018 seeking more stringent regulation of the American lobster fishery

*Continued on page 8*



## MAINE LOBSTERMEN'S ASSOCIATION UPDATE

MLA continued from page 7

to protect North Atlantic right whales. The MLA intervened in May 2018. The case proceeded in two phases. The first was to decide if NMFS had violated the law in permitting the lobster fishery and the second, if necessary, was to seek a remedy to bring NMFS and, in effect, the lobster fishery back into compliance with the law. In April 2020, the U.S. District Judge ruled that NMFS had violated the Endangered Species Act (ESA) when it issued its 2014 Biological Opinion and permitted the American lobster fishery without an Incidental Take Statement.

The court case has now transitioned to the second phase to identify a remedy to bring NMFS and the lobster fishery into compliance with the law. The court has not yet heard from the fishing industry because Phase 1 dealt strictly with legal issues. The MLA will have a strong presence in Phase 2, which is focused on what mitigation actions will be required of lobstermen and the timeline to comply with the law. The MLA will also correct significant errors in the factual basis for the alleged harm to right whales from lobster fishing gear. The MLA has posted information on our website that summarizes NMFS's most recent data on right whale entanglement.

In late April, the judge set the final schedule for this case:

**May 15:** Plaintiffs (4 environmental groups) file opening motion on remedy

**June 15:** Federal Defendants (Dept. of Justice on behalf of NMFS) file response

**June 18:** Defendant-Intervenors (MLA and Massachusetts Lobstermen's Association) file response

**June 22:** Amicus curiae file its brief (Maine Dept. of Marine Resources)

**July 10:** Plaintiffs (4 environmental groups) file their reply

Since the schedule was set, two lobster industry groups have filed motions to intervene. The Maine Lobstering Union (MLU) filed its Motion to Intervene on May 12 and Little Bay Lobster (Shafmaster) on May 13. As a party to the case, the MLA was consulted on both of these filings and did not object to either group requesting intervenor status. The environmental groups opposed these requests; NMFS did not object to them. The MLA filed a Response to MLU's Motion to Intervene to correct factual information about the MLA on May 15. The Plaintiffs filed a brief opposing the two motions to intervene on May 26. The judge has full discretion on whether or not he will grant intervenor status to these groups.

On May 15, the environmental groups filed its "Plaintiffs Brief on Remedy and an Expert Declaration" in support of their brief. The plaintiffs have asked for an interim remedy to include:

- The Judge vacate the 2014 Biological Opinion but temporarily stay any injunction while the matter is remanded to NMFS with a requirement that NMFS issue a new Biological Opinion and Final Whale Rule by January 31, 2021; and
- NMFS is prohibited from permitting the use of vertical lines in the Southern New England Restricted Area (the area south of Nantucket) until the agency issues a Biological Opinion that includes an Incidental Take Statement for right whales and any necessary mitigation measures are in effect on the water; and
- NMFS provide monthly status updates to the court and that the court retain jurisdiction over this matter pending issuance of the new Biological Opinion and implementation of any necessary mitigation measures on the water.

The good news is that the Plaintiffs have not recommended an interim management action in the Gulf of Maine. We hope that the judge does not stray from this recommendation because it would allow Maine lobstermen to get through the 2020 fishing season at least without additional whale regulations. However, this proposal sets a precedent for the prohibition of buoy lines under certain circumstances and will require NMFS to issue an Incidental Take Statement (ITS) with the new Biological Opinion, which will be a daunting challenge. NMFS has not previously included an ITS with the Biological Opinion because it could not make the case that the lobster fishery would have a "negligible impact" on right whales.

The MLA will file its brief and expert declarations by June 18. The judge will consider all of the briefs filed in the court by the July deadline and will ultimately decide what comes next for the fishery.

### Max Strahan Court Case Against Maine (US District Court in Bangor)

In September 2019, Max Strahan filed a complaint against Maine DMR and NMFS in U.S. District court in Bangor for authorizing the use of vertical buoy lines in Maine's state and federal lobster and gillnet fisheries. NMFS filed a motion to dismiss the case. On May 4, the judge ruled to allow the case to proceed, limiting its scope to right whales.

On May 15, Max Strahan filed a Motion for Preliminary Injunction, asking the judge to prohibit the use of vertical buoy lines in Maine's coastal waters lobster and gillnet fisheries and to require the state to immediately apply to NMFS for an ESA Section 10 Incidental Take Permit to continue to license these fisheries. The MLA's legal team is exploring options on how we can best support the state of Maine in this pending court case.

### Max Strahan Court Case Against Massachusetts (US District Court in Boston)

In February 2018, Max Strahan filed a complaint against Massachusetts Division of Marine Fisheries, NMFS, ASMFC and Massachusetts Lobstermen's Association in U.S. District court in Boston for authorizing the use of vertical buoy ropes in Massachusetts state and federal lobster and gillnet fisheries.

On April 30, the judge ruled in favor of Strahan and issued an order granting partial injunctive relief. Specifically, the judge ordered the state of Massachusetts to "promptly seek an Incidental Take Permit pursuant to Section 10 of the Endangered Species Act" for licensing the use of vertical buoy ropes and "Plaintiff may renew his motion for a preliminary injunction enjoining Defendants from licensing fishing activities that use Vertical Buoy Ropes in Massachusetts state waters if Defendants have not obtained an Incidental Take Permit within ninety (90) days of this Order."

### ASMFC UPDATES

**ASMFC Atlantic Herring Section Days Out Meeting** — The ASMFC's Herring Board members from Maine, New Hampshire, and Massachusetts set effort control measures for the 2020 Area 1A herring fishery for Season 1 (June-September).

The Area 1A sub-annual catch limit (ACL) is 2,957 metric tons (mt) which reflects the research set-aside, 30 mt fixed gear set-aside, and fishery closure when 92% of the sub-ACL is landed. ASMFC previously set seasonal allocations for the 2020 fishery with 72.8% of quota allocated from June-September and 27.2% from October-December. Effort control measures for the 2020 herring fishery:

- The herring fishery opens on July 19 in Maine (July 20 in New Hampshire and Massachusetts).
- Category A permit holders that have declared into the Area 1A fishery may land herring four (4) consecutive days a week, with one landing per 24-hour period. Category A permit holders may harvest up to 240,000 lbs (6 trucks) per harvester vessel, per week.
- Small mesh bottom trawl vessels with an Atlantic herring Limited Access Category C or Open Access D permit that have declared into the fishery may land herring five (5) consecutive days a week.
- Category A permit holders and carrier vessels landing herring caught in Area 1A to a Maine, New Hampshire, or Massachusetts port may transfer herring at-sea to another harvester vessel but may not make any at-sea transfers to a carrier vessel. Carrier vessels may not receive at-sea transfers from a harvester vessel.
- Fishermen are prohibited from landing more than 2,000 pounds of Atlantic herring per trip from Area 1A until the fishery opens. Landings will be closely monitored and the fishery will be adjusted to zero landing days when the seasonal period quota is projected to be reached.

**ASMFC Atlantic Herring Management Board** — The Atlantic Herring Management Board met via webinar in May to review and consider final action on an update to the herring management plan. Addendum III proposes options to better manage the Area 1A (inshore Gulf of Maine) sub-annual catch limit (ACL) under low quota scenarios. This would provide additional tools for allocation distribution and expanding the landing provisions across different permit categories within the days out program.

The Herring Board voted to postpone action on Addendum III due to several pending actions. An assessment update for Atlantic herring will be finalized later this summer that may impact catch limits for the 2021 fishing season. Amendment 8, developed by the New England Fishery Management Council, has not been implemented. Amendment 8 establishes a long-term acceptable biological catch (ABC) control rule which will result in low Atlantic herring quotas should the resource continue to be below its biomass target, and the prohibition of midwater trawl gear inshore of 12 nautical miles from the U.S./Canada border, and a 20 nautical miles off the east coast of Cape Cod.

