



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.

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BOARD OF DIRECTORS' MEETING SCHEDULE

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

STEAMING AHEAD

There is so much facing the lobster industry these days that it is almost surreal. The government response to the pandemic has hit the restaurant and entertainment industries particularly hard, resulting in the loss of a huge portion of our traditional lobster market. While dealers and processors are innovating new ways to move more lobster through retail and direct-to-consumer outlets, a significant volume of lobster will need to find new customers. Not surprisingly, the lobster industry is split on what, if anything, should be done about this, so it is highly likely that this season will simply run its course. The looming fear is that this will lead to a steep deflation of the lobster price, which will require several years to recover.

We also learned in June that the new herring stock assessment is devoid of good news. Both herring biomass and recruitment to the herring stock remain extremely low. This is a result of recruitment failure and not due to overfishing. Herring quotas have been cut significantly this year, with the commercial fishing quota set at just over 11,000 metric tons. This is down from more than 100,000 metric tons in 2017, and just under 50,000 tons in 2018. The sustained loss of such a huge portion of the bait supply has caused bait prices to skyrocket over the past few years.

These two facts pose significant challenges and will threaten the survival of many lobstering businesses. But truthfully, they are not the most significant obstacles that we face. In my view, the mandate to save right whales is the issue that threatens to dismantle our fishery as we know it.

The MLA is expected to tackle all of these issues of course, plus more, for instance, the push for offshore wind development off the Maine coast. Yet, keep in mind that the MLA is a membership organization funded voluntarily by lobstermen and other industry members through dues. This model has worked for us for more than 65 years, allowing the MLA to successfully steer many of the policies and laws that are now the pillars of lobster conservation and stewardship practices. Based on the present day demands faced by lobstermen, the MLA is no longer funded or staffed adequately to meet this vast array of complex challenges.

But we are not giving up! In order to address the whale issue, the MLA is raising money for the Legal Defense Fund. The whale issue is so broad and complicated that the MLA has needed to bring in reinforcements to represent the lobster industry's interests. Much of the MLA's call to action for the Legal Defense Fund has been focused on raising the money necessary for the legal services to represent MLA members in the federal court case involving the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA). I cannot underscore the importance of the lobster industry having talented lawyers to represent us in these legal challenges. The court's judgement will clarify how the laws apply to the lobster fishery, and will dictate the legal and regulatory standards that must be met.

In the federal court case, the MLA has been able to provide information about how the lobster industry operates and interacts with right whales. We have urged the court to limit its reach to the legal issues and to leave the management decisions which dictate how the fishery will operate to the regulatory agencies. We do not want a judge deciding how we fish.

If — and it is still an “if” — we are successful in convincing the court to leave the management decisions to the regulatory agencies, we still face an uphill battle. The real threat

to how the lobster fishery will operate in the future will be decided through rulemaking.

The environmental community has been effective in creating a narrative making the lobster fishery out to be the “bad guy” when it comes to threats to right whales because it is the largest fishery on the East Coast. They cleverly cite statistics on the recent spate of right whale deaths and entanglement in commercial fishing gear but omit the details about where and how those right whales died and which fisheries were involved. They are silent on the consequences of right whales' shift in recent years away from the area where the majority of the Maine lobster fishery takes place into the Gulf of St. Lawrence.



Maine's wharves could become quiet places if court cases underway bring a halt or severe disruption to Maine's lobster fishery. MLA photo.

Based on their story, how many people would guess that of the 30 right whales that have died since 2017, 77% are attributed to Canada? Based on their story, who would guess that Canadian vessel strikes have been the primary source of these deaths, followed by entanglement in Canadian fishing gear? I would bet money that the stories spun by the environmental community make no mention of the fact that the Maine lobster fishery has never been implicated in the death or serious injury of a right whale.

While dealing with environmental organizations is frustrating, the entity I have been most disappointed in is the National Marine Fisheries Service (NMFS). The agency simply refuses to base its decisions on the best available data. In the federal court's April ruling, the judge references a previous litigation over a gillnet closure and writes, “the Service's own expert claimed that “[t]he risk of entanglement mortality to right whales is much higher in trap/pot gear, particularly lobster gear, because lobster fishing accounts for over 97% of the vertical lines on the east coast.” NMFS expert Mike Asaro made this statement with full knowledge that there has been only one documented mortality or serious injury in US trap/pot gear since 2010 (which was not attributed to the lobster fishery), and three documented mortalities or serious injuries in gillnet gear during that time. It would seem to me that the agency would reach the opposite conclusion given those facts.

But, reality check. The MLA is not the federal government. NMFS is responsible for promulgating rules for the lobster fishery that meet the standards of the MMPA and ESA. Whether we are happy with how they are handling things or not, the Maine lobster fishery must have an effective working relationship with the agency.

It goes without saying that the MLA will continue to demand that NMFS be required to use the best available data to guide regulatory decisions and that the agency be held accountable for its actions. But we must recognize that NMFS eventually will issue a biological opinion, new whale rules, an Incidental Take Statement on right whales for the federal waters fishery, and possible an Incidental Take Permit for Maine's state waters lobster fishery. If Maine lobstermen are not represented in court and when NMFS creates those rules, who knows what may happen? That is why your support for the Legal Defense Fund is critical. The fund allows the MLA to engage a powerful legal team and other experts to help us through what will surely be a difficult and controversial process.

The MLA Legal Defense Fund also will allow the MLA to fill data gaps related to lobster fishing and whales, conduct related analyses and potentially generate new research. One

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of the realities of the current situation is that the very people who are doing the majority of research on right whales are also some of the most vocal advocates for fishery closures, ropeless fishing, trap reductions and transitioning to weak rope. The universe of research is no longer balanced. There is a clear need to engage members of the scientific community who are more objective on this issue and ensure that the published literature provides a balanced perspective on the impacts of a multitude of commercial fisheries and other human activities on right whales.

Finally, in addition to addressing the legal, regulatory and scientific issues posed by the right whale situation, the Legal Defense Fund will enable the MLA to challenge the outcome of the federal court case, if the outcome threatens the survival of the industry, and also to identify potential opportunities for the MLA to launch its own legal challenge to this process.

We are in a truly perilous time, not simply because an invisible virus has turned the world upside down, but because two federal laws may force the government to transform the operation of the lobster fishery, or worse, shut it down. There's that old saying, "Put your money where your mouth is." I can't urge you strongly enough to do that, now, today. If you are a Maine lobstermen, or depend on the lobster industry, your livelihood and certainly the fishing prospects of your children are at stake. Please contribute as generously as you can to the MLA Legal Defense Fund.

As always, stay safe on the water.

Patrice

WHALE UPDATES

MLA's staff and legal team have been putting in overtime to stay on top of all the whale cases. Much of June was spent preparing to file our brief on remedy in federal court, but there have been other developments as well.

With regard to the federal whale court case pending in Washington, D.C. district court, the MLA and other intervenors filed briefs on June 18. The defendants (NMFS) filed on June 15, the plaintiffs (eNGO's) filed on May 15, and DMR filed an *amicus* brief on June 22. The plaintiffs have a final opportunity to respond by July 10. From there, the judge will review all the filings and make his decision.

Due to generous contributions to the MLA Legal Defense Fund, MLA was able to engage experts to provide critical information to the court. It is important to understand that you do not have carte blanche to put information on the record in a court case. Instead, you have to work from the information that is on the record, presented by the plaintiffs and defendant. Due to the excellent work of our legal team, MLA was able to get much of our position on the record in our brief, but also expanded the record significantly by filing six expert declarations in support of our brief. Here's a brief summary of the declarations that MLA included in our filing:

Glenn Salvador — a former commercial lobsterman with a 20-year career at NMFS as a gear specialist, Salvador reviewed data on the gear removed from right whales and showed that entanglement in lobster gear has declined by 90% since 2010 and the majority of unknown rope removed from whales since then is characteristic of that fished in the Canadian snow crab fishery.

James Lecky — former director of NMFS Office of Protected Resources in Washington, D.C., Lecky reviewed the literature on the shift in right whale distribution away from the Maine coast and acknowledged the lack of evidence linking the lobster fishery to right whale deaths and serious injuries. He determined that rope in the water, in and of itself, does not present a threat to whales unless the whales and fishing gear co-occur.

Noah Oppenheim — a lobster researcher and former director of the Pacific Coast Federation of Fishermen's Associations, Oppenheim provided an analysis of the safety, environmental, operational, enforcement and economic challenges posed by line-less or ropeless fishing.

Patrice McCarron — director of the Maine Lobstermen's Association, McCarron provided data on the economic importance of the Maine lobster fishery, and measures adopted by lobstermen to protect right whales.

Beth Casoni — director of the Massachusetts Lobstermen's Association, Casoni provided data on the economic importance of the Massachusetts lobster fishery, and measures adopted by lobstermen to protect right whales.

David Borden — a former director of the Rhode Island Department of Environmental Management and director of Atlantic Offshore Lobstermen's Association, he discussed recent changes in the lobster fishery to reduce effort and explains that implementation of a vertical line closure could increase risk to right whales as gear is shifted to nearby waters.

NMFS revealed an updated timeline for the release of the draft biological opinion and whale rules, stating that the release date for the draft will be delayed until late summer or early fall and the final rule is not expected to be published before May 31, 2021.

On June 17, the MLA filed for intervenor status in the court case brought against NMFS and DMR in Bangor District court by Max Strahan. We are waiting to hear from the court whether our request has been granted. This case was filed in September, 2019 against DMR and NMFS for authorizing the use of vertical lines in Maine state waters' lobster and gillnet fisheries. The Maine Lobstering Union has been granted intervenor status in this case. A similar court case was filed in Massachusetts, where the judge ruled that the state of Massachusetts is required to get an incidental take permit within 90 days to continue to permit buoy lines in its state waters fishery.

Finally, the Pew Charitable Trust sent a petition to NMFS, also on June 18, requesting emergency rules to protect whales by instituting four closures to include a massive year-round vertical line closure below Nantucket in Massachusetts, a seasonal vertical line closure offshore of Mount Desert Island (August to October), a seasonal vertical line closure off Jeffreys (May to July), and a massive offshore seasonal closure in Area 3 along the Area1/Area 3 line (Oct to May). Maine has strongly opposed these proposals for closure over the past couple of years, and they were soundly rejected by the TRT because they show little conservation benefit

LEGAL DEFENSE FUND REACHES \$175,000

The Legal Defense Fund fundraising is going well. We have raised approximately \$175,000 of our \$500,000 goal. MLA is grateful for the tremendous outpouring of support dedicated to Save Maine Lobstermen. We still have a way to go to reach our goal of \$500,000, but we will get there. There is no doubt that Pew and the other environmental organizations are spending far more than that to try to shut the Maine lobster fishery down. Please know that we would not be able to engage on these whale issues effectively without this support.

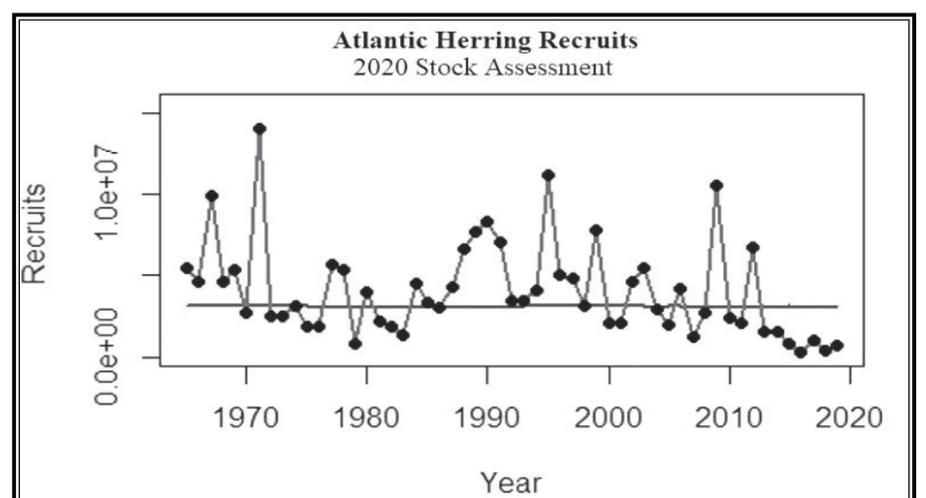
HERRING UPDATES

Area	Quota 2020	% 2019 Quota Landed YTD
1A*	3,214	0%
1B	483	6.6%
2	3,120	36%
3	4,378	89.7%
Total	11,195	45.4%

Area 3 — NOAA Fisheries announced the closure of the Area 3 directed herring fishery from June 6 through January 31, 2021. Under the Atlantic Herring Fishery Management Plan, when 92 percent of the an area's catch limit is projected to be harvested, the directed fishery is closed.

Area 1 — The Area 1A 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. 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.

Herring Stock Assessment — The Northeast Fisheries Science Center has provided a preview of the 2020 herring stock assessment. The results are very similar to what was observed in the 2018 herring stock assessment. Atlantic herring continue to experience poor recruitment so the stock level remains very low. The NEFSC held a peer review on June 22. Once the peer review is complete, this stock assessment will be finalized.





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MENHADEN QUOTA HARVESTED; MAINE APPLIES FOR EPISODIC QUOTA

Atlantic menhaden are managed by the Atlantic States Marine Fisheries Commission (ASMFC). The menhaden management plan maintains a suite of commercial management measures including allocation, quota transfers, quota rollovers, incidental catch, the episodic events set aside program, and the Chesapeake Bay reduction fishery cap.

The ASMFC's Atlantic Menhaden Board set the total allowable catch for the 2020 fishing seasons at 216,000 metric tons. Maine's allocation of Atlantic menhaden quota is 0.52% of the available 216,000 metric tons, or 2,438,677 pounds. Maine is also able to participate in the Episodic Events Fishery Set Aside program; the set aside quota is 1% of the total allowable catch and is approximately 4.7 million pounds for the 2020 fishing year.

On June 19, Maine's reached its allocated quota and closed the state directed fishery. DMR requested participation in the Episodic Event Set Aside program (EESA) from ASMFC and is awaiting the determination of that request. If granted, DMR intends to reopen the menhaden fishery on June 29, but the fishery will be limited to Mondays and Thursdays only and landings must be reported in the same day. The daily landing limit (120,000 lbs) and the weekly cap (160,000 lbs) will remain the same for both harvester and carrier vessels along with one landing allowed per calendar day.

PRESIDENT TRUMP VISITS MAINE; MLA RAISES RIGHT WHALE ISSUE



Photo courtesy of National Fisherman.

On June 5, President Donald Trump met with a small group of representatives from Maine's fishing industry to announce the opening of the Northeast Canyons and Seamounts National Monument to fishing. Industry members were invited to support the President's announcement and had limited opportunity to highlight other issues. It was an honor for MLA's president, Kristan Porter, to meet the President of the United States. Porter provided a statement to the President thanking him for opening the Northeast Canyons and Seamounts, and highlight the extreme challenges facing the Maine lobster fishery to further protect right whales.

The MLA has been in communication with White House staff over the past year. In the weeks leading up to the President's visit and in the weeks following, these conversations have become more frequent and focused on how the White House can support Maine's lobster industry on the right whale issue. MLA has stressed our industry's commitment to do its part to save the species, but we cannot solve this problem alone. We have highlighted several important facts such as:

- of the 30 right whales that have died since 2017, 23 died in Canada, more than half as a result of entanglement and vessel strikes;
- since 2010, entanglement in U.S. lobster gear has declined by 90%; the last known entanglement in Maine lobster gear occurred in 2002 and that whale is currently alive and healthy;
- right whales have shifted away from the coast of Maine to other habitats including the Gulf of St. Lawrence.

On June 24, President Trump signed an executive order to support the lobster industry dealing with trade issues. The MLA has communicated its appreciation to the White House for this level of support, but stressed that the largest threat to Maine's lobster industry is the right whale issue. The President's staff has informed us that they continue to work on the right whale issue and that the trade announcement is in addition to that.

Some excerpts from Kristan Porter's statement to President Trump:

"Mr. President, on behalf of Maine's 5,000 commercial lobstermen, I welcome you to Maine... Maine's lobster fleet supports more than 10,000 jobs and the shoreside sector employs an additional 5,500 workers. If fishing were to go away, so would my town of Cutler, and most of our coastal communities....

Keeping our nation's commercial fisheries strong is something that I am very passionate about. I appreciate the opportunity to speak to you today about how the government failed the commercial fishing industry when it created the Northeast Canyons and Seamounts Marine National Monument. Rather than work with the very constituents who are most knowledgeable about this issue, and whose very livelihoods depend on its proper management and stewardship, the government instead created this monument behind closed doors with special interests.... We are very concerned about setting a precedent that closes areas to fishing and forces fishermen into smaller and smaller boxes....

Mr. President, fishermen are practical people. We want the opportunity to work hard, make an honest living and be a part of something we can be proud of. Maine lobstermen are proud of our long-standing stewardship practices through which we have developed one of the most sustainable fisheries in the world.

Despite our tremendous success, we find our industry at risk being shut down due to a rare population of North Atlantic right whales which is in decline. The MLA has been in communication with your staff about this, and you heard from the Maine delegation about this last summer. This is yet another example where the process of government has broken down. There has been a deliberate campaign of misinformation led by special interests and a lack of transparency from the government. Maine lobstermen want to be treated fairly. We want decisions to be based on the best data that is out there, and we want our voices and expertise to be respected and heard. The government has refused to acknowledge our voice and our expertise, and our livelihoods hang in the balance.

PPP LOAN FORGIVENESS

Applications for the Paycheck Protection Program closed on June 30, 2020. If you have received a PPP loan, it is time to start thinking about applying for loan forgiveness. The forgivable portions of a PPP loan include payroll costs. The SBA announced on June 25 that fishing boat captains can now use proceeds of the PPP loan to pay their sternmen as crew. The SBA's previous advice was that sternmen were independent contractors and could not be covered as a forgivable expense under the Captain's PPP loan. The SBA has changed the amount of the PPP loan that must be used to pay employees, lowering it to 60% from the previous requirement of 75%. Other forgivable expenses include mortgage interest payments (but not any pre-payments), lease payments, and utility payments for electricity, gas, water, transportation, telephone, or internet access. These must be existing expenses and cannot be new liabilities.

To maximize forgiveness:

- At least 60% must be spent on payroll costs, and no more than 40% of the forgivable loan amount can be spent on mortgage interest, rent, and utilities related to the business and entered into before February 15, 2020.
- Proceeds from any advance up to \$10,000 on an EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- Forgiveness will be reduced if full-time employee headcount declines.
- Sternmen are now considered employees for the purposes of the PPP.
- Forgiveness is based on maintaining salary levels and will be reduced if salaries decrease by more than 25% for an employee.

The borrower must submit a loan forgiveness application to its within 10 months after the end of its loan forgiveness covered period or December 31, 2020, whichever is earlier. You can find the PPP loan forgiveness application on the SBA website: www.sba.gov/document/sba-form-paycheck-protection-program-loan-forgiveness-application-revised-6-16-2020

If you are self-employed and have no employees, you can file the EZ Loan Forgiveness Application which is a shortened version with fewer calculations and documentation requirements. A business is eligible for the EZ form if it meets at least one of the following 3 requirements: 1) the borrower is self-employed and has no employees; or 2) the borrower did not reduce the salaries or wages of their employees by more than 25% and did not reduce the number or hours of their employees; or 3) the borrower experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%. The PPP EZ Loan Forgiveness Application can be found at: <https://www.sba.gov/document/sba-form-paycheck-protection-program-ez-loan-forgiveness-application-6-16-2020>.

The review process for loan forgiveness may take up to five months. Once a borrower submits an application for loan forgiveness, a lender has 60 days to review the application and forward it to the SBA; the SBA then has 90 days to review the application.