



MAINE

Lobstermen's Association, Inc.

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Maine Lobstermen's Association

In Support of

LD 710 An Act to Fund the Lobster Legal Defense Fund

March 23, 2023

Senator Reny, Representative Hepler, and members of the Marine Resources Committee, my name is Patrice McCarron, and I am the policy director for the Maine Lobstermen's Association (MLA). The MLA strongly supports LD 710 to invest \$1 million from the state's General Fund to reimburse statewide industry associations for the legal costs incurred in defense of our state's economically critical lobster industry.

As a result of a 10-year whale plan released by the National Marine Fisheries Services (NMFS) in 2021, the Maine lobster fishery must reduce its already minimal risk to right whales by 98 percent. This is an unachievable goal that will devastate Maine's lobster industry and the families, businesses and communities that depend on it.

The MLA has been actively engaged in efforts to protect endangered right whales since the first federal whale plan was drafted in 1997. In the years leading to the release of the 10-year whale plan in 2021, the association exhausted all options to avoid the situation that we now face: a whale plan that will eliminate the Maine lobster fishery and fail to reverse the right whale population decline.

The MLA, the state of Maine and other industry groups have had no choice but to fight this plan through the courts. In September 2021, the MLA took the bold step of suing NMFS over the 10-year whale plan in the United States District Court for the District of Columbia.

MLA argued that NMFS failed to implement the Endangered Species Act (ESA) as Congress intended by basing its plan on "worst-case scenarios" which overestimate the lobster industry's risk to right whales. MLA argued that NMFS cherry-picked the science and used unsupported assumptions and to justify its mandate for Maine's lobster fishery to reduce its already minimal risk to right whales by 98% by 2030.

In September 2022, the Court ruled against the MLA in an opinion that deferred to NMFS on all counts without disputing the validity of MLA's concerns. The MLA immediately appealed this decision and was granted an expedited appeal before the DC Court of Appeals. Opening briefs were filed in November 2022, oral arguments were heard in February 2023, and supplemental briefs were filed in March. A decision is expected as soon as April.

The MLA is also an intervenor in a case filed in DC District Court against NMFS by several non-governmental organizations (NGOs) which claim that NMFS has not done enough to protect the right whale. In July 2022, the Court ruled in favor of the NGO's on several of its claims resulting in an expedited rulemaking schedule for the lobster industry to achieve a 90% risk reduction in 2024 as an interim phase of the 10-year whale plan. Fortunately, with strong support from Maine's governor and entire congressional delegation, Congress intervened in December 2022 with a law pausing any new whale rules for 6 years (until 2028) and providing \$50 million in new funding to conduct research to understand the actual cause of the right whale decline.

It is important to understand that, to be successful, this fight requires a coordinated, multi-faceted strategy between lobster industry groups and the state of Maine. The MLA is nimble and has been able to act quickly in executing an aggressive legal strategy in pursuit of our goal to save Maine's lobster industry. The state of Maine provides essential expertise through its science and policy staff, as well as critical credibility to the lobster industry's claims against NMFS given the state's public trust obligation to manage the lobster fishery and protect marine wildlife. This means that both the lobster industry groups and Maine DMR must have adequate financial resources to hire expert legal teams.

These legal battles are extremely expensive, but without a legal challenge, the lobster industry as we know it will cease to exist. That is guaranteed. At each phase of this legal fight, the MLA has sought the best attorneys to represent Maine's iconic lobster industry. The MLA is currently working with two of the best law firms in the nation.

The MLA launched a three-year, \$10 million Save Maine Lobstermen fundraising campaign in 2021 to support this effort. While the MLA has received tremendous financial contributions from Maine lobstermen, businesses, municipalities, the state of Maine, and many community members, our small organization still faces an extraordinary challenge to raise the funds needed to continue to lead this fight.

A \$1 million investment from the state's General Fund to reimburse industry associations for the legal costs incurred in defense of the lobster industry is a sound investment for the state of Maine. The Maine lobster industry is the most valuable fishery in the nation, and critical to the economy of Maine. Lobster dollars are the first dollars earned and spent in most coastal communities. This money supports not only lobstermen, but also their families, local businesses, schools, non-profit organizations, and the town. If the lobster industry fails as a result of this onerous whale plan, the economic impact on the people, businesses, and communities that depend on it will be harsh.

Investing General Fund dollars in the Lobster Legal Defense Fund would help the MLA achieve its fundraising goals and ensure that the association is able to continue to lead this fight to save Maine's lobster industry. The MLA does not support diverting funds from other important programs to support the industry's legal defense.

The lobster industry will not go down without a fight – we have too much worth fighting for. The MLA urges you to strongly support LD 710 to help us save Maine's lobster industry and our way of life.

Patrice McCarron
Maine Lobstermen's Association
LD 710

MLA is not able to attend the public hearing in person today. We are happy to provide any additional information at the request of the committee.