

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE CITY OF NEW BEDFORD,)	
MASSACHUSETTS, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civ. No. 1:10-cv-10789-RWZ
)	
THE HONORABLE GARY W. LOCKE, et al.,)	
)	
<i>Defendants; and</i>)	
)	
CONSERVATION LAW FOUNDATION, INC.,)	
)	
<i>Intervenor-Defendant.</i>)	

DECLARATION OF DAVID MARCIANO

I, David C. Marciano, declare as follows:

1. I have reviewed the Fishery Management Plan Amendment and the regulations that are the subject of the above-captioned lawsuit.

2. I am a current, dues-paying member of Food & Water Watch (FWW). I became a member because I share Food & Water Watch's goals, particularly ensuring safe and sustainable seafood for consumers, protecting the environment and the long-term well-being of coastal and fishing communities, and ensuring the accessibility and viability of the ocean and its resources. I support their views on fishery management, particularly on individualized fishing quotas.

3. I currently reside at 18 Trask St., Beverly, Massachusetts, 01915. I live there with my wife and three children. We have lived at this residence for three years.

4. I am 45 years old. I graduated from Gloucester High School in 1984. I have never attended college. I bought my first fishing boat in 1996. Before owning my own boat, I ran

boats as a skipper. I support my three children, ages 17, 14 and 6, through commercial fishing along with the income my wife earns as a hairdresser. I have been involved in commercial fishing for 35 years. For the most part, my only job has been from commercial fishing.

5. I currently fish out of the Gloucester port. I fish as often as possible, weather permitting. I have a federal license, which means that I can fish highly migratory species, including tuna, anywhere in the Atlantic Ocean as long as it is three miles from the shore, which are considered state waters. But I have a landing permit in Massachusetts. I pay \$290 per year for this, which allows me to sell any fish in Massachusetts that I catch in federal water.

6. I currently have one employee, who has been with me for five years. When I first started my business I had three, but have had to reduce that number to save costs.

7. My employee and I earn a percentage of the catch. In the 1990s I was making around \$55,000-60,000 per year. But in the last few years my salary has been reduced to one third of that, or approximately \$18,000-20,000. I don't have any benefits from this work such as health insurance and neither does anyone who works for me.

8. Before the finalization of the New England Fishery Management Council's Amendment 16, and corresponding regulations ("Amendment 16"), I was primarily a groundfish fisherman. Groundfish accounted for 80% of my revenues. I had a multispecies permit and would catch between 120,000-200,000 pounds per year of mixed groundfish, including cod, haddock and Pollock, using gillnets and longlines.

9. For the four years prior to Amendment 16, I used to sell my groundfish at the Gloucester Seafood Display Auction where buyers from all over the world would come to purchase fish.

10. Under the old system, I could fish for 100 days. On average, the allocation of the “days at sea” approach was 52 days a year. But the allocation worked in hours and minutes. This means that that you could go out for a day but it would only cost you 12 or so hours. On a small boat like mine you could make 100 trips a years. You could also lease more days, which were affordable. I could lease days in blocks of five or ten from other fishermen. Doing this, I could fish every day except four months of the year.

11. Under Amendment 16, I was allocated a total quota, also known as a potential sector contribution (“PSC” or “quota”), of roughly 61,000 pounds for all species, or, broken down, 26,000 pounds of cod, 17,000 pounds of Gulf of Maine Haddock, 19,000 pounds of Georges Haddock and 16,000 pounds of Pollock. I joined a sector, which, in theory, would enable me to gain more of an allocation by buying up a greater part of the total sector’s allotment of fish. Under the old system, permits were tied to specific boats, but after Amendment 16, you can “stack” permits within a sector, meaning that one boat can own many permits and, consequently the right to fish the PSC allocations of fish associated with it. This buying and selling of permits and PSC is only allowed within the sector, which prohibits you from going outside to sell your allocation to the highest bidder outside the sector.

12. My time in the sector was a short one. I was in the sector from in early 2008, and I sold my permit in April 2010. I decided to sell when I realized that I could no longer afford to fish groundfish. PSC allocations are based on the average of your landings for each year between 1996 and 2006. I had a boat sink in 2003, and it took me a year to get back to speed. Also, these allocations are a determined by looking at the amount of fish that I caught as a percentage of landings compared to other permit holders. Smaller fishermen like me get a

smaller share because the size of our boats prevents us from going out on the water four months of the year.

13. Under the PSC allocations, I was only allocated less than a half of what I was fishing before. So, for cod, for example, if I landed 80,000lbs in a season before Amendment 16, I would gross approximately \$160,000, assuming I was selling the fish at an average of \$2 per pound. Under Amendment 16, I could only gross \$52,000 for the 26,000 pounds of cod that I was allocated, if I sold it at the same price. It would have cost me \$300,000 to half a million dollars to buy the amount of quota that would allow me to fish at levels I could before Amendment 16. With the other payments I had to make, such as for my boat and rent, I could not afford to take a risk and spend money to buy or lease the additional quota associated with other permits.

14. Since I could neither afford to buy or lease additional quota, and could not afford to fish at the levels under my PSC and still pay for expenses such as the loan on my boat (as discussed below), I had to sell my multispecies permit and leave the sector. I sold my permit to a 100-foot long boat, a steel dragger. I feel guilty because I do not believe this type of boat to be the most ecologically friendly. This type of boat's gear can cause damage to seabed habitat. But I had to sell it to the owner of this boat because she was the only one able to give me a good price for it. Other smaller scale fishermen like me were also attempting to sell their permits, and were not in the market to purchase my permit and PSC.

15. Almost all of my income since Amendment 16's finalization has come from fishing tuna. I made \$20,000 dollars gross over the last two months, which is about average for fishing tuna. The season will last approximately another month. Assuming the season continues as it

has, I will gross approximately \$30,000 fishing tuna and will not have the groundfish to make up what is usually the bulk of my sales.

16. Since I use rods and reels in my tuna fishing, I no longer need the approximately \$50,000 in equipment that I used for fishing groundfish. I would like to sell this equipment but the only offer I have received is 30 cents on the dollar. I'm paying a \$135 monthly storage fee on the equipment. So if I don't sell the equipment soon, the cost of storage will be more than the money I can sell it for. I believe that this is because the quota allocated as part of Amendment 16 is more valuable to fishermen than the gear because of the ability of fishermen to stack permits (as discussed above). This means that fishermen are much more interested in buying permits and quota that allow them to maximize the amount of fishing that can do with the gear that they already have than they are in buying more equipment. This means that there is a lot of unused equipment that fishermen are unwilling to buy.

17. I also own a forty-foot boat, named "Hard Merchandise," which is worth \$70,000. I was able to take out a loan from the bank to purchase it. Prior to Amendment 16, I was making \$1,800 payments per month. After Amendment 16, I could no longer fish enough to afford making these payments. So, I had to sell all of my quota to pay off my loan in full. This means that I now own the boat but cannot fish groundfish with it. I would like to sell it but have had trouble finding a purchaser. Again, I believe that this is because the quota allocated as part of Amendment 16 is more valuable to fishermen than the gear because of the ability of fishermen to stack quota. The boat now costs \$30,000-35,000 a year to maintain. That includes repairs, insurance, and dockage fees.

18. The loss in income from not being able to fish groundfish has harmed me and my family. I make less money selling tuna than I could selling groundfish than before Amendment

16. Plus, I have the added expenses of being able to maintain equipment that I cannot use. And I cannot sell my boat, but still have to maintain it. I have also resorted to running other fishermen's boats. I do not know of other options such as going back to school or changing occupations.

19. I would have supported having a referendum to determine whether Amendment 16 was a good idea. Because I am dependent on groundfish, I should have been eligible to vote in such a referendum, if the Defendants had initiated one – as I believe that they were required to do. I would have voted against the amendment. I have talked to many other fishermen that told me that they would have voted against the amendment. I would have liked to encourage other fishermen that told me that they opposed Amendment 16 to vote against it.

20. Because of Amendment 16, my personal and economic livelihood has been harmed and my future livelihood is at risk. If the Defendants would have disapproved of the Amendment, I would not have been forced to sell my multispecies permit and leave the fishery. At the very least, the failure of the Defendants in the case to initiate a referendum on Amendment 16 has prevented me from being able to have my say by voting against it. The lack of a referendum also limited my ability to work with other fishermen who also opposed the amendment in order to get it defeated. If the Defendants were to perform their full legal responsibilities and initiate referendum, this would have preserved my ability to vote on the amendment.

21. For all the reasons set forth in this document, Defendants' failure to disapprove Amendment 16 directly harms my economic interests. Its failure to initiate a referendum harms my interests in participating in the referendum.

22. Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this day of September 15 2010.

A handwritten signature in black ink, appearing to read "David C. Marciano", with a long horizontal flourish extending to the right.

David C. Marciano