

# Mass. Lobstermen Win Case Fighting Feds' Fishing Closure

By [Brian Dowling](#) · [Listen to article](#)

Law360 (March 14, 2024, 7:27 PM EDT) -- A Massachusetts federal judge ruled Thursday that the [National Marine Fisheries Service](#) illegally closed a 200-square-mile swath of ocean to protect the endangered North Atlantic Right Whales, backing a legal challenge by a lobster fishing industry group.

In a ruling from the bench, U.S. District Judge William G. Young said the agency's permanent seasonal closure of the so-called wedge area to lobster fishing in February 2023 to avoid whale entanglements with fishing gear was contrary to a federal budget law passed the previous December that hit pause on new regulations for the lobster industry until the end of 2028.

"This court is convinced that the Consolidated Appropriations Act of 2023 is clear on its face, and it clearly applies to bar the final wedge closure rule," Judge Young said.

The budget law established that a 2021 plan to reduce whale deaths in the Atlantic was enough to keep the American lobster and Jonah crab fisheries in compliance with the Endangered Species Act and the Marine Mammal Protection Act until Dec. 31, 2028. Congress wrote in a loophole allowing the agency to extend or make final any emergency rules that were currently in place.

The judge's ruling explained that because the agency's emergency closure of the wedge area in 2023 was only in effect from February to the end of April and not at the time of the budget law's passage, the carve-out provision for extensions and finalizations of existing closures didn't apply.

Beth Casoni of the Massachusetts Lobsterman's Association, which brought the suit, told Law360 that the group's members "can go back to work and know that they are not going to be shut out again next year and that no new rules can be implemented until 2028."

Fishermen working in the wedge zone to remove gear Thursday went back to fishing after learning of the ruling, Casoni said.

Representatives for the National Marine Fisheries Service were not immediately available for comment on Thursday.

The [lawsuit](#), filed in February, raced to a quick final resolution due to Judge Young's decision to merge the lobstermen's request for a preliminary injunction with a trial on the merits — one of the senior judge's favorite moves under the federal rules.

The trial started and ended Thursday, and the court focused the parties' arguments on whether the budget law blocked the government's action — a dispositive legal issue that required neither witnesses nor discovery.

The National Marine Fisheries Service, represented by Taylor A. Mayhall of the [U.S. Department of Justice's](#) Wildlife and Marine Resources Section, argued that the budget law's exemption applied to the agency's finalization of its earlier emergency rule that had closed the wedge area in previous years.

Her gloss on the exemption for emergency rules turned on the prior year's emergency rules being still "in place," as the law provided, despite no longer being in effect because the seasonal closure for that year had ended.

The government failed to persuade Judge Young that the closure was one of the emergency closures envisioned

by the law.

"I do not accept this idea that 'in effect' has some markedly different intent, as I parse the words, from the phrase 'in place' in context and in light of the legislative history," the judge said. "The plain and ordinary meaning of the words intended a pause. I don't have a pause here."

The court declined to issue a separate injunction officially blocking enforcement of the agency's rule, with the judge explaining that he believed the executive branch agency would obey his order without one.

"I was brought up in the courts of the [Commonwealth of Massachusetts](#), which have a gentler and more respectful interaction between the branches than I find is the case at the federal level," the judge said. "I was taught that once a court clearly declares the law, the responsible agencies of the executive branch are presumed to follow the law as it is declared."

The judge explained that the government would have the ability to appeal the ruling once the judgment is entered.

The Massachusetts Lobsterman's Association is represented by Samuel P. Blatchley, Daniel J. Cragg and Robert T. Dube Jr. of [Eckland & Blando LLP](#).

The fisheries service is represented in-house by Sam Duggan and Taylor A. Mayhall and J. Brett Grosko of the U.S. Department of Justice's Environment and Natural Resources Division's Wildlife and Marine Resources Section.

The case is Massachusetts Lobsterman's Association Inc. v. Gina Raimondo et al., case number [1:24-cv-10332](#), in the [U.S. District Court for the District of Massachusetts](#).

--Editing by Dave Trumbore.

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