

July 26, 2016

## RE: Surveillance Audit of Eastern Canada Offshore Lobster Fishery

Though we have not input as a stakeholder into this fishery certification in the past, we felt it important to forward some information we have received recently about the fishery that is important for the assessment team to consider. In our recent review of IFMPs across all fisheries in Atlantic Canada we were concerned to note a change in the latest version of the IFMP for the Eastern Canada Offshore Lobster Fishery (please note that the IFMP is still not available online and we were only able to obtain it at a recent meeting with the DFO manager).

The latest IFMP, revised in 2014, has a sentence inserted in Section 7.3 Gear reading:

“DFO has agreed to amend the regulatory provision regarding the tending of traps within a 72 hour period”

The '72 hour period' referred to in this IFMP amendment is a blanket regulation that applies to all fisheries under the law *Atlantic Fisheries Regulations, 1985*, part XI Miscellaneous Provisions, section 115.2 Tending Gear<sup>1</sup>:

**115.2** No person shall leave fishing gear unattended in the water for more than 72 consecutive hours.

SOR/93-61, s. 36; SOR/94-45, s. 4(F); SOR/2003-137, s. 12(F).

There is reasonable accommodation granted by enforcement officers of a few days, if need be, for unsafe weather or other events that prevent fishers from checking their gear with 72 hours, however, aside from specific incidents the rule is strictly enforced.

This '72 hour rule' is in place primarily due to potential for gear conflict between fisheries and for bycatch mitigation/'ghost fishing' reasons. Of particular concern is the potential for increased bycatch and entanglement incidents when gear is not checked frequently.

For the Offshore Lobster Fishery, it would be very concerning if the gear was left soaking for extended periods for a few key reasons:

1. Bycatch of species that have been assessed by COSEWIC (but not yet listed in SARA as they are still under consultation). This includes cusk, which is considered a main bycatch species in the ECOLF MSC report, along with Atlantic cod, white hake, and redfish. Longer soak times mean more of these species could be getting trapped and eaten by the lobsters before the trap is hauled. This would mean the reported numbers do not reflect actual mortality.

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<sup>1</sup> This full legal text can be found at <http://laws-lois.justice.gc.ca/eng/regulations/sor-86-21/index.html>

2. Bycatch of northern and spotted wolffish, a SARA listed ETP species, could also be increased and not documented for the same reason as above.
3. Increased risk of fatal entanglement of Atlantic Right whale and other whales as well as sea turtles is of concern if the traps are soaking for longer than regulations allow. If the entangled animal is not discovered for days or weeks the chance of survival is very low.
4. Longer soak times also mean increased lobster cannibalization. Lobster catches have continued to increase and by all accounts fishers are having no trouble filling their traps. The longer traps are left in the water the more lobsters are killed and eaten by other lobsters or weakened. This increased mortality cannot be documented once the traps are hauled as the lobsters are already gone. Lobsters that are weakened or injured due to overcrowding may be discarded and again full mortality accounting would not be noted.

The implications are concerning if the Off Shore Lobster Fishery is not fishing responsibly and checking their gear within the 72 hour timeframe required by law, especially given the 1000s of traps this fishery has in the water year round. According to the MSC Public Certification Report, this a management requirement they follow and it would a significant change to the prosecution of the fishery if that was not the case.

This change to the IFMP is not noted in the fishery's advisory committee minutes and the current DFO manager for the fishery cannot confirm the process that was followed to include the new text in the IFMP that states the DFO 'has agreed to amend' the 72 hour rule. Including this line in the IFMP, may be interpreted to exempt the Offshore Lobster Fishery from enforcement of this law. We were informed that the fishery has recently requested a review of this regulation and a possible exemption. We have also heard concerns expressed that the fishery may be regularly soaking its traps for more than 72 hours.

We must stress that this 72 hour regulation is in law and cannot not be changed without a legislative process, including publication in the Canadian Gazette and public consultation on proposed amendments to the Atlantic Fisheries Regulations. It cannot be changed in an IFMP without previous amendment to the law.

Consideration to change this section of the Atlantic Fisheries Regulation or exempt this fishery from the law, would have significant implications, not only for the species impacted by this fishery (as outlined above), but also since it may set a precedent to question this important provision that mitigates impact of all fisheries that set gear.

The audit under the MSC process is an opportune time to discuss this with the fishery client and DFO management as well as Conservation and Protection. We hope the assessment team will consider this new information on in this year's audit.

The ECOLF is a leader in using electronic monitoring technology in their fishery. A review of their electronic logbook, which is not publically available, would give the assessment team the necessary information on gear tending and soak times for their sets and to ensure the fishery is being carried out responsibly.

Thank you for considering this information in your upcoming Audit. Please don't hesitate to contact us with any questions at 902 446 4840 or [sarnold@ecologyaction.ca](mailto:sarnold@ecologyaction.ca)

We request to be added to the stakeholder list for this fishery to ensure we receive any further announcements.

Sincerely

A handwritten signature in black ink, appearing to read "Sarnold".

Shannon Arnold  
Ecology Action Centre  
Marine Policy Coordinator