

Rohan Currey
Marine Stewardship Council
1 Snow Hill
London, UK
EC1A 2DH

January 16th, 2019

Dear Mr Currey,

As stakeholders in the certification assessment of the Eastern Canada Offshore Lobster Fishery, we are writing to request MSC call for an immediate and expedited audit on this fishery. The certificate holder, Clearwater Seafoods Limited Partnership (made up of general partner CS Manpar, who holds the license and now the conviction, and Clearwater Seafoods as limited partner) has been charged and convicted of 'gross violation' of Section 115.2 of the Canadian Atlantic Fisheries Regulations, also known as the '72 hour rule'. The company pleaded guilty and was convicted on September 20, 2018 in Nova Scotia provincial court.

Given the long term and egregious nature of the illegal fishing detailed below and in the court record, we submit to MSC that an expedited audit should be required and the certificate immediately suspended until Clearwater can provide evidence they have indeed changed their fishing practice to be within the law. A verbal verification by the company should not be seen as sufficient evidence to keep their certification at this point.

The '72 hour rule' requires traps to be checked every 72 hours at least, however court documents show that Clearwater has left their traps unattended at sea for weeks, sometimes months, at a time. This is illegal fishing. Department of Fisheries and Oceans (DFO) enforcement officers found evidence that more than 8,500 traps were left unattended on the ocean floor for 68 days in 2014 and carried out an at-sea boarding later in the year, again confirming weeks of unattended traps. Further enforcement monitoring led to official warnings to the Clearwater management in June and August of 2016. Enforcement officer analysis of fishing practice and trap hauls in 2015 and 2016 (revealed in court documents) showed a consistent lack of gear tending, an average of 48% of traps going unhailed during trips, as well as misreporting in the log book.

Ongoing enforcement monitoring confirmed the company ignored the 2016 official warnings and continued the practice resulting in a charge for violations committed between September and November of 2017. The court documents show the fishery has been operating illegally over a span of at least four years and ignored multiple warnings and discussions with DFO. Throughout

this time they have held their MSC certification. A CBC news article published details on January 10th, 2019¹ with several other outlets following up. Neither DFO nor Clearwater have issued statements confirming the company is now in legal compliance with the regulation.

We also note that Christine Penny, VP of Sustainability and Public Relations for Clearwater, is the current co-chair of MSC's Stakeholder Advisory Council. Court documents show that Enforcement Officers from Canada's Department of Fisheries and Oceans (DFO) spoke with company officials as far back as 2014 and in 2016 gave the company official warnings to cease the practice of leaving traps unattended. The Crown prosecutor specified that these warnings were given to Christine Penny in a letter but were never passed on to the captain of the boat, nor acted on in any way by the company. Enforcement officers court presentation also specifically note discrepancies between the MSC certification report portrayal of the fishery and actual observed fishing practice.

We submitted concerns to the CAB, Acoura, about this very practice requesting the assessment team provide evidence the fishery was able to fish within the 72 hour law during both the [2016](#) and [2017](#) certification audits for this fishery (see links). The assessment team dismissed our concerns and detailed suggestions for ways to confirm this. Instead our 2017 letter was given to the client to answer. Clearwater's answer is noted on page 12 of the 2017 audit report: 'the client confirmed they do not store traps on the sea bed and that gear is tended.'

It appears this statement was given to Acoura at the same time Clearwater was being investigated for this exact violation. The initial court date to hear charges was July 12, 2018 and the most recent audit by Acoura started in June 2018 and was published in August 2018. It appears the client was not fully transparent with Acoura about the ongoing court procedure. Since this 2018 audit was a shortened version of the audit procedure – a 'review of information audit' – no letter from DFO was sought, as would be usual, to confirm infractions or changes to the fishery. Acoura sought only the verification of the client.

We have many concerns about the lack of rigorous auditing process that this case demonstrates. The credibility of the MSC certification system rests largely on having 'independent third-party verification' procedures together with stakeholder information and expertise included in assessments. Both of these fail safes seem to have been circumvented leading to a situation where a certified fishery has been shown to have long-term illegal practices.

¹ <https://www.cbc.ca/news/canada/nova-scotia/seafood-giant-clearwater-convicted-of-gross-violation-in-lobster-fishery-1.4971558>

We would also note that while the '72 hour' gear tending regulation may be reviewed with possible amendments in the future – it is and has been the law throughout Clearwater's certification. They were breaking it knowingly and have now been convicted of that. Legal fishing is the very minimum a fishery should need to demonstrate in order to be even considered for MSC assessment.

In closing, we request an expedited audit and suspension of the Clearwater certification until they can prove, through trap haul electronic data and VMS records, that their fishing is completely legal. We further expect a public statement of actions MSC intends to take to ensure the rigour and credibility of its certification processes are upheld, particularly considering the position Christine Penny holds within the MSC structure.

Sincerely,



Shannon Arnold
Marine Program Senior Coordinator, Ecology Action Centre
Steering Committee, SeaChoice

Also on behalf of the other members of the SeaChoice Steering Committee:
Scott Wallace, David Suzuki Foundation
Karen Wristen, Living Oceans Society

Cc:

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