

From: Meier, Petter <Petter.Meier@mfa.no>
Sent: Wednesday 23 June 2021 16:47
To: Myklebust, Olav <olav.myklebust@mfa.no>
Cc: Royal Norwegian Embassy in Washington <emb.washington@mfa.no>; Seland, Helge <helge.seland@mfa.no>; Jervell, Kristian <kristian.jervell@mfa.no>; Norum, Margrethe <Margrethe.Norum@mfa.no>; Havn, Anne <Anne.Havn@mfa.no>; Opland, Torleiv <Torleiv.Opland@mfa.no>; Furu, Erik <Erik.Furu@mfa.no>
Subject: FW: Canadian management and regulations of snow crab

Hi, Olav

Attached is the Canadian response to our request for information regarding the regulation of the harvesting of snow crab in Canadian territorial waters.

Regards
Petter

Questions

As part of its preparations for the proceedings, Norway is seeking information on the regulation of snow crab harvesting in Canadian jurisdictional areas. Norway would appreciate receiving information on the following topics:

- 1) According to Canadas Fisheries Act and Coastal Fisheries Protection Act it seems clear to us that Canada considers snow crab to be a sedentary species according to UNCLOS art 77 (4).
 - o Are you aware of any discussion in Canada – scientific, legal or otherwise - on the status of snow crab as a sedentary species? Any documentation of such discussions or official statements etc. (could be in any form like reports to Parliament, regulations for harvesting) that could shed light on Canada's position on the status of crabs in general and snow crab in particular as a sedentary species and when Canada took this position would be welcome. If Canada over the years has changed its position with regard to the status of snow crab, when did it change and why?

No. Canada considers that snow crab is a sedentary species and has notified the Northwest Atlantic Fisheries Organization (NAFO) Secretariat of this in 1997 and reiterated it in 2002. (see attached letter to NAFO - The last page of the letter lists the species that Canada considers as sedentary as per UNCLOS).

In R. v. Perry, the Court stated as follows:

In response to support regarding snow crab as a sedentary species, the Crown called Mr. David Taylor, a research biologist. Mr. Taylor is an expert in the field of snow crab who has done extensive study and research and has written numerous learned articles on this species. From his evidence Chionoecetes opilio or snow crab was deemed a sedentary species of fish as contemplated

by the relevant legislation. The definition used was: “A snow crab must be in constant contact with the seabed when it is in the harvestable stage”. Snow crabs cannot exist in the water column except in the larvae stage (when they are non-harvestable). They move along the seabed in such a fashion that some part of their body is in constant contact with it. While they are capable of travel, they are in a lay sense relatively “sedentary”. In a legal sense, they fit all the criteria in the definitions provided in the Oceans Act and the Coastal Fisheries Protection Act. The Crown concluded that the F/V “Mr. B” was fishing a sedentary species before and during the time it was spotted by the fisheries patrol aircraft on September 22, 2001. It is acknowledged that both the accused and his employer seemed to think that crab are not sedentary as they have seen them attempt to jump from storage tanks and crawl up the sides of crab traps to gain entry to the bait. “Sedentary”, in the legal sense does not mean that the species is not “mobile.” The juridical definition contemplates movement of a specific type.

Links to support snow crab as sedentary:

- https://sherloc.unodc.org/cld/uploads/res/case-law-doc/wildlifecrimetype/can/2003/r_v_perry_html/CanLII_-_2003_CanLII_52758_NL_PC.pdf
 - <https://waves-vagues.dfo-mpo.gc.ca/Library/116281.pdf>
- Has Canada’s designation of snow crab as a sedentary species been contested by other States?

Not to our knowledge.

- Has Canada’s right to reserve exploitation of snow crab on its continental shelf for Canadian citizens (cf. Coastal Fisheries Protection Act section 3 and 4) been contested by other States?

To our knowledge, no other state has challenged Canada’s management of snow crab. We are not aware that Canada has ever received a request from a foreign fishing vessel or foreign nationals to fish snow crab in an area under Canada’s jurisdiction. As you know, in the Canada v. Perry case, Mr. Perry had not requested authorization from Canada to fish for snow crab on the slope of Canada’s the continental shelf.

- 2) We understand that the Fisheries Act and Coastal Fisheries Protection Act regulate the harvesting of Canadian snow crab both within and beyond 200nm and that [quotas are issued](#) in areas inside as well as outside 200nm.

This question refers to sections of UNCLOS and the section in the Fisheries Act discussing contexts in which snow crab would be found on the continental shelf but outside of the limits of Canada’s 200 nm boundary. This does not apply in practice to most of our snow crab stocks, as neither the fisheries nor snow crab distribution extend nearly that far offshore. However, Newfoundland and Labrador (NL), in terms

of crab fishing outside the 200 mile limit, does have crab quotas in 3LNO outside 200 miles (see attached map – 3L 200, 3N 200 and 3O 200) since at least the 2000 season. These crab management areas are fished by NL-based Snow crab license holders.

- According to a report from the House of Commons' standing committee on Fisheries and Oceans, snow crab harvesting in Canadian waters started around 1960. It would be of interest to know if this activity started out as unregulated, and if yes, when regulations were introduced, how they were framed and what was their legal basis. (If this becomes too complex to answer in any detail, please advise where further information may be found.)

It appears that the species was first caught as bycatch in the 60's before becoming a regulated fishery in the 70's for most regions: however, there is no indication that there was ever a unregulated fishery.

If harvesting of snow crab started out as unregulated and later became regulated, how did that affect existing snow crabbing activity?

There is no indication that there was ever a unregulated fishery.

- 3) We understand that according to the Fisheries Act and Coastal Fisheries Protection Act the harvesting of snow crab in Canadian jurisdictional areas are as a point of departure closed to foreign flagged vessels, cf. Coastal Fisheries Protection Act section 3 and 4.

L.S. Parsons' Management of Marine Fisheries in Canada and Joseph Gough's Managing Canada's Fisheries: from early days to the year 2000 both contain references to the early management of the snow crab fishery in Canada, and may be useful for your purposes.

- May foreign flagged vessels still participate in harvesting of snow crab on certain conditions? (i.e., foreign vessels may apply for or buy a Canadian permit, foreign flagged vessels may harvest based on agreement between Canada and the flag State or other type of arrangement).

Canada does not provide access to foreigners to a resource that is already fully subscribed. Legally, it would be possible for Canada to license a foreign fishing vessel to harvest snow crab within the 200 nm, however, such an activity is unlikely to be authorized unless the foreign fishing vessel was chartered by Canadian interests. We are also aware of one instance where the harvesting of a sedentary species (for scientific purposes) beyond 200nm was authorized via NAFO.

- If applicable, has the regulation for foreign flagged vessels changed over the years, if "yes" when and why?
The establishment of Canada's Exclusive Economic Zone (the 200nm limit) in 1977 triggered significant changes in the regulatory regime for the licensing of

foreign fishing vessels. The recent amendments to the Coastal Fisheries Protection Act and Coastal Fisheries Protection Regulations, however, did not significantly impact the licensing regime.

- The issue of introduction of new regulations applicable to foreign flagged vessels is of general interest and not only limited to snow crab, although snow crab regulations are of particular interest. If applicable, how did changes in Canada's fishing regulations affect foreign flagged vessels that were already engaged in fishing/catching activities in Canadian jurisdictional areas? (A comprehensive reply is not expected, but any examples would be useful.)

In the years immediately following the establishment of Canada's EEZ, the total foreign allocations shrank, although they still ran up to 350 000 tonnes. Canada allocated some fish, notably northern cod, to other fishing nations in line with the UNCLOS provisions respecting coastal states giving access to fish that were beyond their capacity to harvest or surplus to their needs. Canada allocated quotas to particular countries based on bilateral relationships, taking into account such factors as historical presence. From a legal perspective, Canada entered into certain agreements to reflect historical fishing practices and maintain reciprocal fishing access to waters of neighboring countries for stocks that were fished prior to the establishment of the EEZ (i.e. the Canada-US Pacific Albacore Tuna Treaty and the Canada-France Procès-Verbal). We note that the PV includes Canadian access to French scallops (a sedentary species).

The change in foreign access to Canadian fisheries resource was mainly policy-based. In 1982, the Kirby Task Force advocated for the "Canadianization" of fisheries. The Task Force recommended that "fish within Canada's EEZ be harvested and processed by Canadians in firms owned by Canadians, which had a result of tightening up foreign allocations. As a result of this policy, foreign allocations declined. Canada laid out clear rules for "over-the-side" and "over-the-wharf" sales to foreign interests, and both practices eventually faded away.

- 4) We are aware of the judgement [Canada v. Perry](#) where the captain of a US flagged vessel, Mr. Perry, was found guilty in harvesting snow crab without a valid license on the Canadian continental shelf outside of 200 nm. Are there any other examples where Canadian authorities have arrested or prosecuted foreign flagged vessels for harvesting of snow crab?

Not to our knowledge.

Amber Lindstedt (she/her | elle)

Deputy Director, Pacific & Arctic | Directrice Adjointe, Pacifique & Arctique
International Fisheries Policy | Politiques sur les pêches internationales
Fisheries and Oceans Canada | Pêches et Océans Canada
Government of Canada | Gouvernement du Canada

Amber.Lindstedt@dfo-mpo.gc.ca

613-298-3420