

Final Response

June 6, 2019

Dear Applicant:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 - FLR-41-2019

On May 8, 2019, the Department of Fisheries and Land Resources (FLR) received your request for access to the following records:

“DOC/2019/01360 - Meeting note - Arctic surf clam - Clearwater agreement with First Nations”

Please be advised that a decision has been made by the Deputy Minister for FLR to provide full access to the requested information. You will find a copy of responsive material attached.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P.O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference).

Please be advised that this letter will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Office of Public Engagement's website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please contact me by telephone at 709-637-2354 or by email at Lisaneville@gov.nl.ca .

Sincerely,

Lisa Neville
ATIPP Coordinator



Right of access

8. (1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record may be subject to the payment, under section 25 , of the costs of reproduction, shipping and locating a record.

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

- (8) A complaint shall not be filed under this section with respect to
 - (a) a request that is disregarded under section 21 ;
 - (b) a decision respecting an extension of time under section 23 ;
 - (c) a variation of a procedure under section 24 ; or
 - (d) an estimate of costs or a decision not to waive a cost under section 26 .
- (9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42 , the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45 (2).

Meeting Note
Department of Fisheries and Land Resources
Agreement on Arctic surf clam fishery - First Nations and Clearwater
March 13, 2019, at 5:00 p.m.
Premiers Boardroom, 8th Floor East Block

Attendees:

Honourable Dwight Ball, Premier
Honourable Gerry Byrne - Minister Fisheries and Land Resources
Chief Misel Joe - Miawpukek First Nation
Rex Matthews - Mayor of Grand Bank
Christine Penney - Vice President, Sustainability and Public Affairs, Clearwater
Jason Card - Communications, Premier's Office

Purpose of Meeting:

- To discuss the agreement between 14 First Nations and Clearwater on Arctic surf clam.

Background:

- On March 12, 2019, it was announced that Clearwater Seafoods has signed a 50 year agreement with fourteen First Nations communities in this province and Nova Scotia that will protect existing jobs in the Arctic Surf Clam fishery in Grand Bank.
- Arctic surf clams are a long-lived slow growing shellfish species which must be managed in a conservative manner to prevent over exploitation.
- The offshore surf clam fishery was developed in the late 1980s and has been conducted on both the Grand Banks and Banquereau Bank off eastern Nova Scotia. There were originally three separate participants in the offshore surf clam fishery in Atlantic Canada; however, all three licences are now held by Clearwater Seafoods Limited Partnership. Clearwater operates three large factory-freezer vessels that fish year-round, landing to its processing operation in Grand Bank, Newfoundland and Labrador (NL).
- Fishing effort for Arctic surf clam has switched between the Grand Bank and Banquereau Bank areas over time, with effort concentrated on Banquereau during 2006 to 2015; and Clearwater reported catching their full quota for both banks in 2016 and 2017.
- On December 21, 2017, DFO announced the 2018 TAC for Arctic surf clam on the Grand Bank would remain at 14,756 tonnes. However, the TAC for Banquereau Bank would be decreased from 24,000 tonnes to 20,943 tonnes, resulting in a total surf clam TAC of 35,699 tonnes for 2018.
- On February 21, 2018, DFO announced that a new license for Arctic Surf Clam would be issued to the Five Nations Clam Company. The Five Nations Clam Company was a new entity to be comprised of First Nations from Quebec, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and New Brunswick. This entity was planning to partner with Premium

Seafoods to harvest, process and market the catch.

- Minister Byrne wrote Minister Leblanc on February 26, 2018, and asked for an immediate meeting with the Minister, NL government and Indigenous organizations in the Province to discuss the decision to award the Five Nations Clam Company the fourth Arctic Surf Clam licence.
- Minister Byrne met with Minister Leblanc on April 26, 2018, regarding a number of issues including the Arctic surf clam licence decision. Minister Byrne asked that the decision be put on hold and the process for awarding the licence be reviewed.
- On August 8, 2018, Minister Byrne wrote newly appointed Minister Wilkinson asking that he not issue the licence to Five Nations Clam Company and review the issue. The Province was successful in reversing this decision.
- On February 13, 2019, Minister Wilkinson responded to FLR's request for a resource survey and assessment on the Arctic surf clam on the Grand Banks. The federal response indicated that DFO is analyzing this data from the Grand Banks fishery and is working to identify feasible approaches to acquire other key data to support the assessment.

Analysis:

- Minister Wilkinson has not yet approved this Arctic surf clam agreement just announced by fourteen First Nations groups and Clearwater.
- Potential harvest levels of Arctic surf clam were set based on the estimated biomass in the fished areas to increase the likelihood that the areas that have supported a commercial fishery since 1986 are not depleted. Setting potential harvest levels based on an estimated biomass for the full Bank could increase the likelihood that these historically fished areas might be depleted.
- Arctic surf clams are a long-lived slow growing shellfish species, which must be managed in a conservative manner to prevent over exploitation. The Arctic surf clam biomass estimate has declined by 20 per cent since 2010.
- The fishery is Marine Stewardship Council (MSC) certified, so a major deviation from science advice could impact certification going forward.
- The Banquereau Bank surf clam resource is considered to be in the healthy zone; therefore, the socio-economic considerations can, and should be, taken into account in the management decisions associated with this stock.
- There is no conservation concern associated with a TAC of between 21,000t and 24,000t for Banquereau Bank.

- This historic agreement is a great example of reconciliation and is truly a step forward in the Truth and Reconciliation Commission's Call to Action.

Potential Speaking Points:

- We have long advocated for the principle of adjacency and its entrenchment in federal fisheries legislation. In our view, this agreement with Clearwater and 14 First Nations groups from across Atlantic Canada is consistent with adjacency.
- Any future decisions regarding new access to the Arctic surf clam fishery should be linked to an increase in resource availability, so that it will not impact operations in this province.
- The Provincial Government did not support a previous decision to issue a license to the Five Nations Clam Company and successfully advocated to have the decision reversed.
- This province is adjacent to one of the two harvesting areas associated with this fishery, and this must be considered in any new access decisions.

Proposed Action:

- Approval and sign-off by the federal Minister of DFO, Minister Wilkinson.
- FLR will continue to participate as a member of the Offshore Clam Advisory Committee.
- The province should continue to identify the need for a scientific survey on the Grand Bank surf clam resource.

Prepared/Approved by: N.Rowsell/T. Dooley
Ministerial Approval:

March 12, 2019

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.