Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (File # NR-45-2016)

On August 5, 2016, the Department of Natural Resources received your request for access to the following records:

All briefing notes this year on the possibility of payments having to be made to the International Seabed authority due to the recent discoveries in the Baie du Nord area of the Flemish Pass Basin.

I am pleased to inform you that a decision has been made by the Department of Natural Resources, confirmed by the Deputy Minister, to provide access to some of the requested information. Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

29 Policy advice and recommendations
(1)(a) The head of a public body may refuse to disclose to an applicant information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.

As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible.

In accordance with your request for a copy of the records, the records have been included with this correspondence.
Right to Request Review/File Appeal

As set out in section 42 of the Act you may ask the Information and Privacy Commissioner to review the department’s decision to provide partial access to the requested information. 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 request should identify your concerns with the department’s response and why you are requesting a review.

The request for review 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

Pursuant to section 52 of the Act, you may also appeal directly to the Supreme Court Trial Division within 15 business days after receiving the department’s decision.

Response to be Made Public

After this response is sent to you, the responsive records will be made public by the department. The records will be posted online within 72 hours of the response being forwarded to you electronically or within five business days of the records being put in the mail to you. The goal is to have the records posted on the Completed Access to Information Requests website within one business day following the applicable period of time.

If you have any further questions, please feel free to contact me by telephone at 729-3214 or by e-mail at andreamarshall@gov.nl.ca. Alternatively, please contact Tanya Noseworthy, the department’s primary access to information coordinator at 729-1466 or tanyanoseworthy@gov.nl.ca.

Sincerely,

Andrea Marshall
Departmental ATIPP Coordinator
Decision / Direction Note  
Department of Natural Resources

Title: Fundamental Decision Nos. 2016.01 to 2016.05

Decision / Direction Required:

- To seek the Minister’s approval for five Fundamental Decisions made by the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB or the Board) respecting the making of a Calls for Bids for thirteen parcels located in the Eastern Newfoundland Region and three parcels located in the Jeanne d’Arc Region; as well as to amend the licence terms and conditions included in the Call for Bids. It is recommended that the Minister approve each fundamental decision.

Fundamental Decisions:

- On March 1, 2016, the C-NLOPB submitted Fundamental Decisions 2016.01 to 2016.05 respecting the making of Calls for Bids for thirteen parcels (NL16-CFB01) located in the Eastern Newfoundland Region and three parcels (NL16-CFB02) located in the Jeanne d’Arc Region; as well as to amend the licence terms and conditions included in the Call for Bids. Schedule A and its associated map are attached to this note.

- The making of any call for bids and changes to any licence term or condition is a fundamental decision and subject to Ministerial approval under the Accord Acts. Ministers are required to approve or disapprove a fundamental decision within 30 days after receipt of notice. The 30 day time period will expire on March 31, 2016.

- NRCan has verbally advised that a recommendation to approve each fundamental decision will be made to their Minister.

Background and Current Status:

**Fundamental Decisions 2016.01 and 2016.02**

- Pursuant to subsection 57(2) of the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act and subsections 58(2) of the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act (Accord Acts), the Board has decided to issue two Calls for Bids; namely, Call for Bids NL16-CFB01 (Eastern Newfoundland region) consisting of thirteen parcels for a total of 2,949,252 hectares and Call for Bids NL16-CFB02 (Jeanne d’Arc region) consisting of three parcels for a total of 354,552 hectares. In addition, under the new scheduled land tenure process, the four unawarded parcels from the 2015 Call for Bids NL15-01EN are offered under Call for Bids NL16-CFB01 (Eastern Newfoundland).

- Both Calls for Bids will close at 12:00 PM, NDT, on November 9, 2016.

**Fundamental Decision 2016.03 - Environmental Studies Research Fund (ESRF)**

- Determined through an established levy rate and size of the EL, the purpose of ESRF levies is to finance environmental and social studies pertaining to the manner in which, and the terms and conditions under which, exploration, development and production activities should be conducted. It is a condition of calls for bids and requires a successful bidder to pay the levy for the year the exploration licence is issued and for the two preceding years (payment required within 15 days of notification of successful bidder for the two preceding years) and for each year thereafter. The change is administrative and will require payments on an annual schedule rather than the current fiscal schedule.
This Fundamental Decision involves amending the call for bids template, the Sample Exploration Licence and the Sample Significant Discovery Licence. These amendments were made in consultation with officials from both governments.

As such, the intent of the proposed amendment is to ensure any future SDL’s that may originate from these Calls would be subject to the terms and conditions agreed to and adopted by government related to future SDL’s.

This Fundamental Decision involves amending Schedule III of the Call for Bids package (Irrevocable Letter of Credit). Specifically, an additional template and instructions have been added to the call for bids to accommodate numerous requests from successful bidders to provide instruments with annual renewal clauses. Such instruments have been included in the Calls for Bids for the Canada-Nova Scotia Offshore Area without any issues respecting implementation.

Analysis:

2014 Eastern Newfoundland Strategic Environmental Assessment (SEA)

Areas covered by both Calls for Bids were included within the scope of the 2014 SEA. This SEA was an update of the 2013 Orphan Basin SEA and was expanded to capture areas to the south and east. A SEA is a broad-based approach to environmental assessment that examines the environmental effects which may be associated with a plan, program or policy proposal and that allows for the incorporation of environmental considerations at the earliest stages of program planning. SEA typically involves a broader-scale environmental assessment that considers the larger ecological setting, rather than a project-specific environmental assessment that focuses on site-specific issues with defined boundaries. The 2014 SEA provided information on the existing environment in the study area and identified key environmental features and considerations which may be associated with future oil and gas activities in the Eastern Newfoundland region.

The 2014 SEA identified a number of "sensitive or special" areas near or overlapping certain parcels under the Calls; namely coral and sponge areas and Ecologically and Biologically Significant Areas (EBSA). An EBSA is an area of especially high ecological or biological significance where greater risk aversion is required in the management of activities. Furthermore, it is expected that if such an area were severely perturbed, it would sustain greater ecological consequences than would most other areas given an equal perturbation.

Parcel 13 (Call for Bids 16-CFB01) has been identified as an important coral and sponge area with closures to certain activities, most notably fishing, to help conserve benthic species, habitats and biodiversity. The southeastern portion of the Northeast Shelf and Slope EBSA, an important marine mammal feeding area, overlaps most of Parcel 12 (Call for Bids 16-CFB01) and a small portion of Parcel 01 (16-CFB02). The Orphan Spur EBSA, an area of high densities of species of conservation concern overlap with Parcels 01, 03, 07 and 08 (16-CFB01).
• The Board has advised that being labeled as “sensitive or special” does not automatically imply that the area will require the application of special or non-typical mitigations or restrictions. Many factors will be examined during the project-specific environmental assessment and regulatory approval processes which will determine the level of additional restriction or mitigation that may be required. However, the Board states there are no environmental concerns at this time that would limit proceeding with the Call for Bids.

• In addition, the Calls for Bid stipulate that any further work or activity on a parcel, in addition to the EA requirements to be addressed in accordance with the issuance of an authorization for a work or activity, must also take action to ensure the mitigative measures identified in the 2014 SEA are implemented.

**UNCLOS – Exclusive Economic Zone (EEZ)**

• The Board has also identified the parcels that are partially or completely outside Canada’s 200 nautical EEZ. Within 16-CFB01 (Eastern Newfoundland), Parcels 2, 6, 9, and 12 are partially outside with Parcels 10, 11, and 13 completely outside. 16CFB02 (Jeanne d’Arc) has a portion of Parcel 1 outside the EEZ. The Board, through the Calls for Bids document, informs prospective bidders that any parcel entirely or partially beyond the 200 nautical EEZ may be subject “to additional terms and conditions applied through legislation, regulation, amendments to licences or otherwise” to meet Canada’s international obligations arising under Article 82 of the **United Nations Convention on the Law of the Sea**. Article 82 requires a coastal state to make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles. The rate of payment or contribution shall be 1% commencing on the sixth year of production at the site and increasing by 1% for each year until the twelfth year and remain at 7% thereafter.

• Currently, there are no producing projects beyond 200 nm, however, there has been exploration activity and two significant discoveries declared - North Dana 1-43 (1987) and Mizzen O-16 (2010). The Bay du Nord Exploration Licence is also outside the 200 nm limit.

**Recommendations:**

• It is recommended that the Minister approve Fundamental Decision Nos. 2016.01 to 2016.05 respecting Calls for Bids for thirteen parcels located in the Eastern Newfoundland Region and three parcels located in the Jeanne d’Arc Region; as well as amendments to the licence terms and conditions included in the Call for Bids.

• If approved, a letter is attached for signature.

**Prepared/Approved by:** F. Allen/R. Montague/W. Foote/T. English

**Ministerial Approval:**

**March 17, 2016**

**Attachments (4)**
SCHEDULE A

FUNDAMENTAL DECISIONS

A. ISSUANCE OF CALLS

Fundamental Decision 2016.01

Pursuant to section 58 of the Canada-Newfoundland Atlantic Accord Implementation Act and section 57 of the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act, the Board has decided to proceed with the issuance of a Call for Bids No. NL16-CFB01 (Eastern Newfoundland), as annexed hereto, subject to Ministerial Approval.

Fundamental Decision 2016.02

Pursuant to section 58 of the Canada-Newfoundland Atlantic Accord Implementation Act and section 57 of the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act, the Board has decided to proceed with the issuance of a Call for Bids No. NL16-CFB02 (Jeanne d'Arc), as annexed hereto, subject to Ministerial Approval.

B. AMENDMENTS TO LICENCE TERMS AND CONDITIONS

(i) Fundamental Decision 2016.03

The text of Paragraph 3.9 of the call for bids template has been repealed and replaced with the following text:

Environmental Studies Research Fund (ESRF)

(a) The successful bidder must pay Environmental Studies Research Fund (ESRF) levies under Part VII of the Canada Petroleum Resources Act, R.S.C. 1985, c.36 (2”d Supp.), for the year in which the Exploration Licence is issued and retroactive levies for the two preceding years. Thereafter, ESRF levies as fixed from time to time by the federal Minister of Natural Resources will be payable unless the Interest Owner surrenders the Exploration Licence prior to the payment due date.

(b) ESRF matters are not administered by the Board and are the responsibility of the federal Minister of Natural Resources. ESRF levies are determined by multiplying the number of hectares of land included in the Exploration Licence by the ESRF levy rate for the applicable region. Rates are provided on the ESRF website: www.esrfunds.org.

<table>
<thead>
<tr>
<th>Parcel #</th>
<th>Hectares Region XX</th>
<th>Hectares Region XX</th>
<th>Hectares Region XX</th>
<th>Hectares Region XX</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(c) ESRF levies must be submitted to the ESRF Secretariat within 15 days of notification of being the successful bidder.

(ii) **Fundamental Decision 2016.04**

Paragraph 3.12 (b) has been added to the call for bids template:

*Any resulting Significant Discovery Licence respecting the lands of any Exploration Licence resulting from the offer of a parcel in this Call for Bids NL16-CFB01 will be subject to the terms and conditions for Significant Discovery Licences existing at the time a Significant Discovery Licence is requested pursuant to the Act. A sample Significant Discovery Licence can be found as a Schedule to the Sample Exploration Licence.*

Term and Conditions 2(2) of the Sample Exploration Licence has been repealed and replaced with the following text:

*Any resulting Significant Discovery Licence respecting the lands of this Licence will be subject to the terms and conditions for Significant Discovery Licences existing at the time a Significant Discovery Licence as requested pursuant to the Act.*

Term and Condition 6 of the Sample Significant Discovery Licence has been amended to include the following text:

*The rental rates are to be determined by the Board at the time of Significant Discovery Licence issuance. The 2016 rentals rates provided below in 6(a) and 6(b) are an example of rentals that could apply to a Significant Discovery Licence issued in 2016.*

(iii) **Fundamental Decision 2016.05**

Schedule III – Forms for Promissory Notes and Bank Letters of Guarantee or Irrevocable Standby Letters of Credit of the call for bids template has been amended to add Part E and Part F to provide for the filing of a security deposit in the form of an irrevocable letter of credit with an annual renewal clause.
Potential copyright material

If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or atippoffice@gov.nl.ca.
Mr. Scott Tessier  
Chairman and CEO  
Canada-Newfoundland and Labrador Offshore Petroleum Board  
5th Floor, TD Place  
140 Water Street  
St. John's, NL  
A1C 6H6  

Dear Mr. Tessier:

RE: Fundamental Decisions 2016.01 to 2016.05  
2016 Calls for Bids  

With reference to your letter dated March 1, 2016, please be advised that I approve the above-referenced fundamental decisions, pursuant to the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act and the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act.

Following a successful 2015 Call for Bids, I look forward to the results of these two Calls for Bids and a successful announcement in November which will further highlight the geological potential of the NL offshore.

Sincerely,

SIOBHAN COADY, MHA  
St. John’s West  
Minister  

---

c. Honourable James Carr, Minister  
Natural Resources Canada