November 2, 2017

Dear Applicant:

Re:  Your request for access to information under Part II of the Access to Information and Protection of Privacy Act FLR/51/2017

On October 5, 2017, The Department of Fisheries and Land Resources (FLR) received your request for access to the following records:

“"A copy of the following briefing materials DOC-2017-03117 DOC-2017-04113.""

Please be advised that a decision has been made by the Deputy Minister for FLR to provide partial access to the requested information. Please note that access to specific information contained within the records has been refused in accordance with Sections 36 (b) Personal Privacy and Section 29 Policy Advice or Recommendations. A full list of relevant legislation is attached. As required by 8(2) of the Act, we have severed information that is exempt from disclosure and have provided you with as much information as possible.

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 responsive records 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 709-729-3730 or by email at hollyphilpott@gov.nl.ca

Sincerely,

Holly Philpott
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.

Disclosure harmful to personal privacy

36. The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to, or interfere with the conservation of

   (a) fossil sites, natural sites or sites that have an anthropological or heritage value;

   (b) an endangered, threatened or vulnerable species, sub-species or a population of a species; or

   (c) a rare or endangered living resource.

Policy advice or recommendations

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

   (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;

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).
Decision Note
Department of Fisheries and Land Resources

Title: Protecting the Endangered Piping Plover from All Terrain Vehicle (ATV) use on beaches in Newfoundland.

Decision Required:
- Whether to seek authority from the Minister of Service NL to put ‘no vehicle use’ signs on known Piping Plover beaches during the breeding season to prevent further harm to the species.

Background and Current Status:
- The use of vehicles (i.e. ATVs, dirt bikes) on beaches used for breeding, chick-rearing and feeding by the Endangered Piping Plover in Newfoundland has been documented to result in destruction and/or abandonment of nests and eggs and has possibly caused the death of chicks and adult birds. The Province's Endangered Species Act prohibits activities that disturb, kill, or injure a listed species. However this aspect of the Act has proven extremely difficult to enforce. In spite of an extensive public education program, adequate signage, and enhanced patrols, use of off road vehicles continues to increase on some plover beaches. These activities pose a significant impediment to recovery of Piping Plovers in Newfoundland.

- The Piping Plover is a small shorebird endemic to North America. It is designated as an Endangered species in Newfoundland and Labrador under the Provinces’ Endangered Species Act and under the Federal Species at Risk Act.

- In 2005 Critical habitat was identified (but not yet formally protected) for Piping Plover beaches in Newfoundland. When occupancy and habitat attributes were assessed for all areas in which Piping Plover had been documented from 1991 to 2005, fifteen beaches met the criteria (Appendix A). Since that time Piping Plover have been seen on several other beaches which will likely be considered critical habitat in the future.

- All known Piping Plover beaches are surveyed annually to identify and count Piping Plover (individuals and territorial pairs). Any beach with Piping Plover observed is monitored thereafter for the duration of the breeding season to determine the number of adults, nests, chicks and the number of fledged chicks (productivity).

- Direct field observations and monitoring throughout the breeding season suggest that currently six of these beaches (Appendix A) are particularly at risk from off-road recreational vehicle activity.

- Nest productivity appears to be higher for beaches in which ATV activity is not permitted. For example, in 2008 1.40 chicks/pair were fledged over the six beaches in which ATV activity was prevalent versus 2.9 chicks/pair at beaches where ATV use was forbidden (but where significant recreational activities still occur).

- Several explicit examples of the impact of ATV's on nests, chicks and adults have been documented. It is highly likely that other similar events have gone on undetected. For example:
o At ______________________, a chick was found nearly dead in an ATV track outside an area of symbolic fencing (fencing placed around nests in areas of high traffic) on June 28, 2007. It was placed back inside the fenced area but later perished.

o A dead chick was found in an ATV track on _____________________ in July 2006.

o On July 27, 2005 two individuals operating an ATV within ______________________________ were charged with 'disturbing a residence' under the Provincial ESA after ignoring requests to restrict their activities to the ATV trail nearby. They were later convicted.

o In 2016 a chick was found dead in __________________________ again the death appeared to be caused by off road vehicle use.

- Signs signifying the presence of Piping Plovers and referencing protection under the Act were erected at entry and exit points each year on all beaches that are confirmed to have nesting birds from 2009-2014.

Analysis:

- The Federal Species at Risk Act states that any site with suitable habitat occupied by at least one nesting pair of Piping Plovers in at least one year since 1991 (the year of first complete survey coverage) is critical habitat. Beaches that meet these criteria and are listed in the Federal Recovery Strategy for the Piping Plover in Canada, are included (Appendix A). Posting no ATV signs on these and other beaches known to have plover will help support the position that the Province is providing effective protection of these areas.

- Signs have not been placed on beaches since 2015 due to the change in government and a need to seek permission from the new Minister of Service NL and new Registrar of Motor Vehicles.
  o Signs are removed yearly following the breeding season when plovers are no longer present on beaches.
  o Most beaches presented in Appendix A have had signs posted prior to 2015 (Authority had been provided by Service NL to post No ATV signs). There are a few where plovers have been observed or nested in the last 2 years and would benefit from the placement of signs, Deadman’s Bay, Lumsden South.
  o Wildlife officials discussed posting additional signs on new beaches with officials from Service NL in the spring of 2015, at that time they were notified that authority to post signs on existing plover beaches and new plover beaches would have to be reestablished given the change in government.
  o Section 14 of the Motorized Snow Vehicle and All-Terrain Vehicle (MSVATV) Regulations states that "the minister (Service NL) may cause to have erected warning, cautionary, directional, limiting or prohibiting signs respecting the operation of vehicles and the operator of a vehicle who fails to obey the signs is guilty of an offence under the Act".
• If approval to post is given, signs will be posted on beaches where Piping Plovers have been consistently observed nesting, staging and feeding as well as areas where only recently recorded, in order to provide more secure areas for Piping Plover to re-establish without disturbance. In the future this could include more beaches than those listed in Appendix A. As Plovers recover they will expand their use of sandy beaches in the province. To meet federal expectations the province will need to show effective protection of these areas.

Alternatives:
A: To seek authority from the Minister of Service NL to put ‘no vehicle use’ signs on known Piping Plover beaches during the breeding season to prevent further harm to the species (recommended).
Pros:
• Will provide additional enforcement tools for the Department of Fisheries and Land Resources (FLR) enforcement officials and support the patrol efforts of Environment and Climate Change Canada Officials.
Cons:
• Cost of deploying the signs (manpower comes from regional Forestry & Wildlife Offices.

B: Not proceed with seeking authority for posting of ‘no vehicle use’ signage.
Pros
• No capacity required to develop or post the signage.
Cons
• If this action is not approved, inappropriate use of off road vehicles will continue to negatively impact on the recovery of the endangered Piping Plover.
• Will not address ongoing and continued harassment of the animals or the loss of nests and chicks.
• Environment and Climate Change Canada will not view NL as effectively protecting Plover Critical Habitat.

Prepared/Approved by: S. Garland/S. Moores/B. Adams/S. Balsom
Ministerial Approval: Honourable Steve Crocker

June 12, 2017
Attachments:
Appendix A: List of beaches where signage has previously posted for nesting Piping Plovers in Newfoundland.

Appendix B: Draft letter to Minister Trimper for consideration COR/2017/02474
Appendix A: List of beaches where signage has previously posted for nesting Piping Plovers in Newfoundland.

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<th>Recorded ATV impacts</th>
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<td>Chick and Nest</td>
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Title: Recreational Groundfish (Food) Fishery

Decision/Direction Required:
- Whether to provide a position to Fisheries and Oceans Canada (DFO) regarding its proposed licence regime for the recreational groundfish fishery.

Background and Current Status:
- In 2001, DFO introduced the Atlantic Recreational Fishing License Program for NL and the lower north shore of Quebec, which extended the recreational groundfish fishery to eight weeks and included the introduction of licenses, tags, and fees. A license, along with 30 tags for cod, was available to anyone over sixteen at a cost of $10.00.
- In 2003, DFO closed the directed commercial and recreational fisheries for northern cod (2J3KL) and Gulf of St. Lawrence cod (4RS3Pn). On the south coast (3Ps), the recreational pilot program continued through 2005 with the issuance of 15 tags per licence.
- In 2006, a recreational fishery for cod and other groundfish was permitted in all areas of the province with no requirement for tags or licenses. DFO instead permitted a daily bag limit of 5 fish per individual and a five week season (August to September).
- From 2007 to 2015, the recreational fishery was open in all areas of the province for three weeks during the summer and a one week period in September. Recreational fishers were limited to 5 groundfish per day and a maximum boat limit of 15 groundfish per day.
- DFO Science has raised the significant uncertainty regarding annual catches from the recreational fishery, which affects its ability to assess the impact of fishing on the northern cod stock. This was also raised as an issue in the Marine Stewardship Council (MSC) pre-assessment of the northern cod fishery.
- In 2016, DFO expanded the recreational fishing season from a total of 32 days to 46 days. The fishery was open for a three week period from July to August, as well as every weekend from July to September. In the fall it was open for 1 week during September/October. Daily individual and boat limits remained the same as in 2015. Tour boat operators were also permitted to apply for a licence to seek an increased trip limit.
- DFO announced this plan as a transitional measure in advance of implementation of a license and tag regime for the recreational fishery in 2017. In fall 2016, DFO held public consultations throughout the province to discuss the Federal Government's proposed approach and some NL-based Members of Parliament (MPs) also held public meetings.
- Members of the public expressed strong opposition, particularly regarding the use of tags, noting concerns such as costs to participants, potential environmental impacts, and the inconsistent approach across the Atlantic provinces. Many supported the 2016 management approach.
- The Province also received public petitions against a licence and tag regime. In March 2017, Minister Crocker wrote Minister LeBlanc requesting that DFO consider alternatives to licences and tags, while still achieving a mechanism for reliable catch estimates.
Following the consultations, DFO announced it would not establish a licence and tag system for the 2017 NL recreational fishery; instead measures would remain the same as in 2016.

DFO has also proposed a new marine recreational licensing system, which would apply to the four Atlantic Provinces and Quebec. While there would be no requirement to purchase tags, an annual licence would be required that would initially apply to groundfish, mackerel, and striped bass. The licence would be available online and initially may be offered at no cost to participants.

DFO is seeking comments on the proposed approach from the public, indigenous groups, charter boat operators, and provincial representatives. Feedback is requested on the following questions, which can be submitted through email.

1. If a fee is eventually applied for a licence, what should this entail in terms of levels of fees, categories of licences, timing of implementation or other areas of interest?
2. Are there other marine species that should be included? Any concerns about mandatory catch reporting?
3. What type of support would be needed for an online licence system? What management conditions should be included on the licence?
4. Are there any other issues that should be considered?

**Analysis:**

**Alternatives:**

1.

2.

3.

Prepared/approved by: S. Dwyer/T. Dooley/W. Wiseman

Ministerial Approval: July 20, 2017