



2022

NSARB-2022-001
NSARB 2022-002
NSARB-2022-003

Nova Scotia Aquaculture Review Board

IN THE MATTER OF: Applications made by TOWN POINT CONSULTING INC. for NEW MARINE SHELLFISH LICENCES/LEASES in ANTIGONISH HARBOUR, ANTIGONISH COUNTY for the SUSPENDED CULTIVATION OF AMERICAN OYSTERS

Town Point Consulting Inc.

APPLICANT

-and-

Minister of Fisheries and Aquaculture

PARTY

-and-

Mary Jo MacDonald, Patrick MacDonald, Lucy MacDonald, Richard Wilgenhof, Alena Wilgenhof, Sian Newman-Smith, Rick Turner, Rowan McLean, Peter Bowler, Colleen Bowler, Friends of Antigonish Harbour, Sheila MacKinnon Hudon, William Hudon, May Goring, Manfred Goring, Antigonish Harbour Watershed Association, Rod Brady, Mike MacDonald, Bill Brophy, Tim Brophy, Duncan Brophy, Daryl Beaton, and Brendon Doyle

INTERVENOR GROUPS ONE AND TWO

-and-

Mark Genuist, Stephen Feist, and the Community Liaison Committee

INTERVENOR GROUP THREE

Second Supplementary Affidavit of Nathaniel Feindel

I, Nathaniel Feindel, of Shelburne, Nova Scotia, affirm and give evidence as follows:

1. Upon filing my Supplementary Affidavit on September 11, 2023, Marc Genuist, part of the Intervenor Group 3, advised the Board and parties that he believed the missing ADCP device had been in the possession of a witness for Intervenor Groups 1 and 2. A copy of Mr. Genuist's email is attached to this Affidavit as **Exhibit A**.

2. Subsequently, on September 15, 2023, the Board sent an email to all parties directing counsel for the Department to file an affidavit including particulars of the finding/relocating of the ADCP device. A copy of the Board's email is attached to this Affidavit as **Exhibit B**.
3. The Board's directions were further clarified in an email dated September 19, 2023. A copy of the Board's email dated September 19, 2023 is attached to this Affidavit as **Exhibit C**.
4. I do not know the identity of the person who removed the ADCP device from Antigonish Harbour.
5. On September 15, 2023, I sent an email to Dr. Jeffrey Barrell at the Federal Department of Fisheries and Oceans (DFO). Dr. Barrell is the person who originally contacted me on July 7, 2023 to report that the missing ADCP device had been located. Attached to this Affidavit as **Exhibit D** is my email dated September 15, 2023 to Dr. Barrell.
6. On September 18, 2023, I had not heard from Dr. Barrell, so I sent a follow up email. Attached to this Affidavit as **Exhibit E** is my email dated September 18, 2023.
7. That same day, I received a short response from Dr. Barrell. Attached to this Affidavit as **Exhibit F** is the email I received from Dr. Barrell on September 18, 2023.
8. The following day, I received an email from Dr. Barrell detailing how the ADCP device was recovered. Attached to this Affidavit as **Exhibit G** is the email I received from Dr. Barrell on September 19, 2023.
9. I noted that Dr. Barrell's email referred to a "local fisher", but did not contain the identity of the individual who had taken possession of the ADCP device. I sent another email to Dr. Barrell asking if he knew the identity of the local fisher, and, if he did know, whether he could provide me with that information. Attached to this Affidavit as **Exhibit H** is the email I sent to Dr. Barrell on September 19, 2023.

10. Dr. Barrell responded stating that he had been told the identity of the local fisher, but could not provide the name for privacy reasons. However, he did confirm the individual is a member of one of the Intervenor Groups. Attached to this Affidavit as **Exhibit I** is the second email I received from Dr. Barrell on September 19, 2023.

Affirmed before me on September ,
2023, at Halifax, Nova Scotia

Alison W. Campbell
A Barrister of the Supreme Court
of Nova Scotia

Nathaniel Feindel

2022

NSARB-2022-001

NSARB-2022-002

NSARB-2022-003

This is Exhibit "A" referred to in the Second
Supplementary Affidavit of Nathaniel Feindel
affirmed before me this day of September,
2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

From: Marc Genuist [REDACTED]
Sent: September 14, 2023 8:51 PM
To: Campbell, Alison W
Cc: Aquaculture Review Board; Menczel-O'Neill, Caitlin; natasha.puka@mcinnescooper.com; [REDACTED] peter.rogers@mcinnescooper.com; sarah@cslegal.ca
Subject: Re: Letter to ARB re Town Point Consulting application [IWOV-Active.FID4244245]

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Hello Ms. Campbell: On reflection, I now believe there would be a lot of benefit in hearing from Mr. Feindel. It has come to my attention that the missing current profiler device may have been found in a building belonging to one of the witnesses for Intevenor groups 1 and 2. This is quite troublesome for me as someone who has a lot of faith in the administration of justice. I think, in the interests of full disclosure, and to reassure the public that no deals are being made in secret, that Mr. Feindel should come before the Board to clear this matter up.

Thanks

Marc Genuist

Le mar. 5 sept. 2023 à 12:07, Campbell, Alison W <Alison.Campbell@novascotia.ca> a écrit :

Good Morning,

I am writing to advise the Board, and parties, that the Province intends to file a Supplementary Affidavit of Nathaniel Feindel.

As you may recall, during Mr. Feindel's testimony he referred to a current profiler device that had gone missing during its deployment. Shortly after the hearing, the profiler was returned to DFO by a fisherman who had removed it from the Harbour.

Mr. Feindel's supplemental affidavit will present the data retrieved from the device. This will take the form of a paragraph explaining the length of the deployment before it was removed from the Harbour, and an updated version of the chart beneath para 41 of Mr. Feindel's original affidavit. We will also include an updated map (Exhibit B to Mr. Feindel's original affidavit) showing the location of the retrieved device.

Please advise if the Board will allow this evidence to be admitted.

If the Board permits the Province to file this evidence, I ask counsel for the other parties to advise whether Mr. Feindel will be required for further cross examination.

If the Board allows the admission of the Supplemental Affidavit, I hope to be able to file it early next week.

Sincerely,
Alison Campbell

Alison Campbell (she/her)
Solicitor

Nova Scotia Department of Justice
1690 Hollis Street
Joseph Howe Building - Floor 8
Halifax, NS B3J 1V7
(902) 221-2546

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From: Aquaculture Review Board [mailto:/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CE53C0DCE6943349179E0C61DCA6FA1-AQUACULTURE]
Sent: Friday, September 1, 2023 10:03 AM
To: Sarah Shiels
CC : Rogers, Peter; Marc Genuist; Campbell, Alison W; Stephen Feist; Menczel-ONEill, Caitlin; Puka, Natasha
Subject : RE: Letter to ARB re Town Point Consulting application [IWOV-Active.FID4244245]

NSARB-2022-CORR-067

SENT ON BEHALF OF THE CHAIR:

Further to item 2 in your correspondence of August 18th, 2023, it appears that you want to introduce a new expert report.

If indeed that is what the new CMAR material is, then it is too late to present it. We agree with Mr. Roger's correspondence of August 30th, 2023.

If it simply represents new data, that might be admissible.

Until we see the material, we can't respond to any request for a witness subpoena.

Thank you,

Stacy Bruce (he/him), EP

Clerk, Nova Scotia Aquaculture Review Board

Please post/mail all correspondence to:

Nova Scotia Aquaculture Review Board

60 Research Drive

Bacon Building

Bible Hill, NS

B6L 2R2

Phone mailbox (**for voicemail only**): 902-722-1426

E-mail: aquaculture.board@novascotia.ca <<mailto:aquaculture.board@novascotia.ca>>

<https://arb.novascotia.ca>

<<https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Farb.novascotia.ca%2F&data=05%7C01%7CAlison.Campbell%40novascotia.ca%7Cc986d1db3b914e29043808dbaaebc6cb%7C8eb23313ce754345a56a297a2412b4db%7C0%7C0%7C638291701838802214%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=C9%2FBf%2B5NGhzusU346LZQSqzbnRTt5DIht4TocOYoM0c%3D&reserved=0>>

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2022

NSARB-2022-001

NSARB-2022-002

NSARB-2022-003

This is Exhibit "B" referred to in the Second
Supplementary Affidavit of Nathaniel Feindel
affirmed before me this day of September,
2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

From: Aquaculture Review Board
Sent: September 15, 2023 6:10 PM
To: Campbell, Alison W; Menczel-O'Neill, Caitlin
Cc: Rogers, Peter; 'Puka, Natasha'; [REDACTED]; [REDACTED]
sarah@cslegal.ca
Subject: RE: Supplementary affidavit from N Feindel

NSARB-2022-CORR-069

Dear Ms Campbell,

The Board is requesting that be included in the supplementary affidavit for Nathaniel Feindel, the particulars of the finding/relocating of the device.

Thank you,

Stacy Bruce (he/him), EP
Clerk, Nova Scotia Aquaculture Review Board

Please post/mail all correspondence to:

Nova Scotia Aquaculture Review Board
60 Research Drive
Bacon Building
Bible Hill, NS
B6L 2R2

Phone mailbox (**for voicemail only**): 902-722-1426
E-mail: aquaculture.board@novascotia.ca
<https://arb.novascotia.ca>

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2022

NSARB-2022-001

NSARB-2022-002

NSARB-2022-003

This is Exhibit "C" referred to in the Second
Supplementary Affidavit of Nathaniel Feindel
affirmed before me this day of September,
2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

From: Aquaculture Review Board
Sent: September 19, 2023 9:18 AM
To: 'peter.rogers@mcinnescooper.com'; 'natasha.puka@mcinnescooper.com'; 'Marc Genuist'; 'Stephen Feist'; Campbell, Alison W; Menczel-O'Neill, Caitlin
Subject: Feindel supplementary affidavit
Attachments: NSARB-2022- CORR-069 M Genuist comment on relocation of device.pdf

NSARB-2022-AFF-001

The Chair has requested that the Feindel supplementary affidavit address the concerns expressed in Mr. Genuist's email of September 14 (NSARB-2022-CORR-069) , ie. the identity of the individuals involved in the discovery of the device.

Thank you,

Stacy Bruce (he/him), EP
Clerk, Nova Scotia Aquaculture Review Board

Please post/mail all correspondence to:

Nova Scotia Aquaculture Review Board
60 Research Drive
Bacon Building
Bible Hill, NS
B6L 2R2

Phone mailbox (**for voicemail only**): 902-722-1426

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2022

NSARB-2022-001

NSARB-2022-002

NSARB-2022-003

This is Exhibit "D" referred to in the Second
Supplementary Affidavit of Nathaniel Feindel
affirmed before me this day of September,
2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

From: Feindel, Nathaniel J
Sent: September 15, 2023 4:00 PM
To: Barrell, Jeffrey
Subject: Antigonish ADCP Retrieval Sequence of Events

Hey Jeff,

So part two of the oyster aquaculture application hearing is coming up on September 26-29 in Antigonish for Town Point Consulting Ltd. I have summarized the current information that was salvaged from your ADCP, which you provided in support of the FINS project being conducted in various bays in Nova Scotia and in this case, Antigonish. Essentially I summarized 10 days of data and I submitted in the form of an affidavit, following the procedures of the Aquaculture Review Board hearing process. Literally added one line to the table that is in my original affidavit that summarizes the three other current meters that were deployed in Antigonish for the FINS project and some dates when you (DFO) contacted me and when you sent DFA staff the raw data. So, we wanted to be transparent and provide the information, because if we didn't, it may be questioned as to why we didn't because a resident of the area did return it to DFO and that may be raised at the hearing. They may be expecting it to be provided, or maybe not but we are being transparent about it all.

That being said, I would anticipate being questioned on this and wondering if you can provide specific details on who had the meter, and how it came back into possession of DFO and when, etc... Can you share the individuals name and any info as to how they came into possession of it?

I'll just reiterate that if you are able to share the info it will be presented to the Nova Scotia Aquaculture Review Board outlining "chain of custody" supporting how I obtained the data which I have submitted to the board.

Let me know.

If you have any questions please let me know.

Thanks, Nathaniel

Nathaniel Feindel

Aquaculture Development and Marine Plants Harvesting- Manager
N.S. Dept. Fisheries & Aquaculture
1575A Lake Rd., Sandy Point, N.S., B0T1W0
T: (902) 875-7450
F: (902) 875-7429
E: Nathaniel.Feindel@novascotia.ca

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2022

NSARB-2022-001

NSARB-2022-002

NSARB-2022-003

This is Exhibit "E" referred to in the Second
Supplementary Affidavit of Nathaniel Feindel
affirmed before me this day of September,
2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

From: Feindel, Nathaniel J
Sent: September 18, 2023 1:30 PM
To: Barrell, Jeffrey
Cc: Campbell, Alison W
Subject: RE: Antigonish ADCP Retrieval Sequence of Events
Attachments: FW: Supplementary affidavit from N Feindel

Hi Jeff,

Just following up on this. I have also attached the ARB request for the info and they would like me to put it in an affidavit. Just including this for your internal discussions. If you have any questions I can try and answer them but I have included DFAs litigator on the thread as well (Alison Campbell).

Hoping you may have some direction soon as the hearing is next week.

Thanks, Nathaniel

From: Feindel, Nathaniel J
Sent: Friday, September 15, 2023 4:00 PM
To: Barrell, Jeffrey <Jeffrey.Barrell@dfo-mpo.gc.ca>
Subject: Antigonish ADCP Retrieval Sequence of Events

Hey Jeff,

So part two of the oyster aquaculture application hearing is coming up on September 26-29 in Antigonish for Town Point Consulting Ltd. I have summarized the current information that was salvaged from your ADCP, which you provided in support of the FINS project being conducted in various bays in Nova Scotia and in this case, Antigonish. Essentially I summarized 10 days of data and I submitted in the form of an affidavit, following the procedures of the Aquaculture Review Board hearing process. Literally added one line to the table that is in my original affidavit that summarizes the three other current meters that were deployed in Antigonish for the FINS project and some dates when you (DFO) contacted me and when you sent DFA staff the raw data. So, we wanted to be transparent and provide the information, because if we didn't, it may be questioned as to why we didn't because a resident of the area did return it to DFO and that may be raised at the hearing. They may be expecting it to be provided, or maybe not but we are being transparent about it all.

That being said, I would anticipate being questioned on this and wondering if you can provide specific details on who had the meter, and how it came back into possession of DFO and when, etc... Can you share the individuals name and any info as to how they came into possession of it?

I'll just reiterate that if you are able to share the info it will be presented to the Nova Scotia Aquaculture Review Board outlining "chain of custody" supporting how I obtained the data which I have submitted to the board.

Let me know.

If you have any questions please let me know.

Thanks, Nathaniel

Nathaniel Feindel

Aquaculture Development and Marine Plants Harvesting- Manager

N.S. Dept. Fisheries & Aquaculture

1575A Lake Rd., Sandy Point, N.S., B0T1W0

T: (902) 875-7450

F: (902) 875-7429

E: Nathaniel.Feindel@novascotia.ca

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Campbell, Alison W

From: Campbell, Alison W
Sent: September 15, 2023 7:51 PM
To: Feindel, Nathaniel J; Buchan, Carla M
Cc: Menczel-O'Neill, Caitlin
Subject: FW: Supplementary affidavit from N Feindel

FYI – see Board's request below. Let's touch base on Monday to put together a revised affidavit.

A

Alison Campbell (she/her)

Solicitor

Nova Scotia Department of Justice

1690 Hollis Street

Joseph Howe Building - Floor 8

Halifax, NS B3J 1V7

(902) 221-2546

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From: Aquaculture Review Board [mailto:/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CE53C0DCE6943349179E0C61DCA6FA1-AQUACULTURE]

Sent: Friday, September 15, 2023 06:09 PM

To: Campbell, Alison W; Menczel-O'Neill, Caitlin

CC : Rogers, Peter; Puka, Natasha; [REDACTED] [REDACTED] sarah@cslegal.ca

Subject : RE: Supplementary affidavit from N Feindel

NSARB-2022-CORR-069

Dear Ms Campbell,

The Board is requesting that be included in the supplementary affidavit for Nathaniel Feindel, the particulars of the finding/relocating of the device.

Thank you,

--

Stacy Bruce (he/him), EP

Clerk, Nova Scotia Aquaculture Review Board

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60 Research Drive

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Bible Hill, NS

B6L 2R2

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NSARB-2022-003

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affirmed before me this day of September,
2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

From: Barrell, Jeffrey <Jeffrey.Barrell@dfo-mpo.gc.ca>
Sent: September 18, 2023 4:00 PM
To: Feindel, Nathaniel J
Cc: Campbell, Alison W
Subject: RE: Antigonish ADCP Retrieval Sequence of Events

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Hi Nathaniel,

Thanks, I'll send you as much information as I can ASAP, most likely tomorrow,

Cheers,
Jeff

From: Feindel, Nathaniel J <Nathaniel.Feindel@novascotia.ca>
Sent: Monday, September 18, 2023 1:30 PM
To: Barrell, Jeffrey <Jeffrey.Barrell@dfo-mpo.gc.ca>
Cc: Campbell, Alison W <Alison.Campbell@novascotia.ca>
Subject: RE: Antigonish ADCP Retrieval Sequence of Events

Hi Jeff,

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Hoping you may have some direction soon as the hearing is next week.

Thanks, Nathaniel

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Sent: Friday, September 15, 2023 4:00 PM
To: Barrell, Jeffrey <Jeffrey.Barrell@dfo-mpo.gc.ca>
Subject: Antigonish ADCP Retrieval Sequence of Events

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summarized 10 days of data and I submitted in the form of an affidavit, following the procedures of the Aquaculture Review Board hearing process. Literally added one line to the table that is in my original affidavit that summarizes the three other current meters that were deployed in Antigonish for the FINS project and some dates when you (DFO) contacted me and when you sent DFA staff the raw data. So, we wanted to be transparent and provide the information, because if we didn't, it may be questioned as to why we didn't because a resident of the area did return it to DFO and that may be raised at the hearing. They may be expecting it to be provided, or maybe not but we are being transparent about it all.

That being said, I would anticipate being questioned on this and wondering if you can provide specific details on who had the meter, and how it came back into position of DFO and when, etc... Can you share the individuals name and any info as to how they came into possession of it?

I'll just reiterate that if you are able to share the info it will be presented to the Nova Scotia Aquaculture Review Board outlining "chain of custody" supporting how I obtained the data which I have submitted to the board.

Let me know.

If you have any questions please let me know.

Thanks, Nathaniel

Nathaniel Feindel

Aquaculture Development and Marine Plants Harvesting- Manager

N.S. Dept. Fisheries & Aquaculture

1575A Lake Rd., Sandy Point, N.S., B0T1W0

T: (902) 875-7450

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NSARB-2022-003

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2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

From: Barrell, Jeffrey <Jeffrey.Barrell@dfo-mpo.gc.ca>
Sent: September 19, 2023 3:17 PM
To: Feindel, Nathaniel J
Cc: Campbell, Alison W
Subject: RE: Antigonish ADCP Retrieval Sequence of Events

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Hi Nathaniel,

I'll share as much information as I can, though note that I didn't coordinate the recovery of the ADCP, it was dropped off at the Antigonish area office and later delivered to me here in Moncton.

After the first week of the ARB hearing for Antigonish (7-10 June 2023) I spoke with DFO staff from the Resource Management sector based at the Antigonish Area Office. During that conversation, I mentioned that the lost ADCP discussed during the hearing belonged to our section of DFO Science. Resource Management offered to help locate the lost ADCP; I provided some pictures of the equipment that were circulated to Conservation and Protection via email on 23 June.

I received an email on 26 June that the ADCP had been located, though I was on vacation on that date and didn't receive the message until 4 July. I notified the Province (i.e. you) also on 4 July that it had been found. After that Resource Management communicated with the individual who recovered the ADCP; it was ultimately dropped off at the Antigonish area office on 17 July and delivered to me at the Gulf Fisheries Center in Moncton on 21 July. The screws securing it to its tripod were stripped, and it took me a few days to remove it from the tripod and access the data that had been collected. I was able to download the data on 26 July and arranged to send it via FTP to your team shortly afterwards. It has been in my office ever since, waiting for a replacement part until it can be placed back into service.

As far as the instrument recovery is concerned, I was told that it was recovered by a local fisher who believed it to be a hazard to navigation; it was apparently located in the navigation channel with a partially submerged buoy that was at risk of entanglement. It had been removed "last spring" (data indicated it was pulled out on 17 June 2022) and had been at the fisher's residence until it was returned to DFO. From first review of the data, it collected about 10 days of valid data before being removed. I have no concerns about the quality of data collected while it was deployed.

Hopefully this is helpful to you,

Jeff

Jeffrey Barrell, PhD

Physical Scientist | Spécialiste des Sciences Physiques
Science Branch, Gulf Region | Direction des Sciences, Région du Golfe
Fisheries and Oceans Canada | Pêches et Océans Canada
Tél: (506) 874-3593
Jeffrey.Barrell@dfo-mpo.gc.ca

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Sent: Tuesday, September 19, 2023 8:11 AM
To: Barrell, Jeffrey <Jeffrey.Barrell@dfo-mpo.gc.ca>
Cc: Campbell, Alison W <Alison.Campbell@novascotia.ca>
Subject: Re: Antigonish ADCP Retrieval Sequence of Events

Thanks Jeff.

Nathaniel

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Sent: Monday, September 18, 2023 4:00:28 PM
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Subject: RE: Antigonish ADCP Retrieval Sequence of Events

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Nathaniel Feindel

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F: (902) 875-7429
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2022

NSARB-2022-001

NSARB-2022-002

NSARB-2022-003

This is Exhibit "H" referred to in the Second
Supplementary Affidavit of Nathaniel Feindel
affirmed before me this day of September,
2023.

Alison W. Campbell
A Barrister of the Supreme Court of Nova Scotia

Campbell, Alison W

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Jeffrey Barrell, PhD

Physical Scientist | Spécialiste des Sciences Physiques
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2022

NSARB-2022-001

NSARB-2022-002

NSARB-2022-003

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To: Feindel, Nathaniel J
Cc: Campbell, Alison W
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You don't often get email from jeffrey.barrell@dfo-mpo.gc.ca. [Learn why this is important](#)

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Hi Nathaniel,

I was given a name by Resource Management, though as far as I understand it I'm not able to share that information due to privacy reasons without their consent or without meeting some other criteria (e.g subpoena), particularly if that information would be made public. Also, I didn't directly receive the ADCP from this individual, so I am personally not certain about their identity.

I will however say that the name I was given is listed as a member of one of the intervenor groups for this ARB hearing, and I suspect that counsel for that group would be in a better position to share.

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