

TRANSPARENCY IN THE ARTICLE 76 PROCESS: A SURVEY OF STATE PRACTICE IN THE SHARING OF TECHNICAL INFORMATION PERTAINING TO THE DEVELOPMENT OF THE OUTER CONTINENTAL SHELF.

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The Danish Continental Shelf Project

Following the ratification of the United Nations Convention on the Law of the Sea (UNCLOS from 1982) on November 16, 2004; Denmark, Greenland and the Faroe Islands have a period of maximum 10 years to make claims beyond 200 nautical miles (NM) in five potential areas off Greenland and the Faroe Islands (Fig. 1). In order to provide the necessary database, the Danish Continental Shelf Project has been launched by the Ministry for Science, Technology and Innovation in cooperation with the Faroese and Greenland Home Rule governments. Several institutions are participating in this project, with the Geological Survey of Denmark and Greenland (GEUS) as the coordinator of the technical work for the Greenland part of the project, and sharing the responsibility for coordination of the Faroese part with the Faroese Geological Survey (JFS).

Areas of interest around Greenland

There are three potential claim areas off Greenland. One south of Greenland is outlined by the 200 NM limit, a yet to be established boundary towards Canada, and the new outer limit. The second north-east of Greenland is outlined by the 200 NM line from Greenland, Jan Mayen (Norway) and Svalbard (Norway) and the new outer limit. The third is north of Greenland, outlined by the 200 NM limit and yet to be established boundaries towards Canada and possibly also towards Russia and/or Norway, and a new outer limit. All three areas are situated along margins of mixed rifted and strike-slip nature, and contain significant successions of volcanics and sediments

Areas of interest around the Faroe Islands

The Faroe Islands consist of basaltic rocks with a cumulative stratigraphic thickness of more than 6.5 km resting on top of presumed Precambrian basement. During the initial phases of continental break-up between Europe and Greenland, the Faroe Islands and the Hatton–Rockall area (the Faroe–Rockall Plateau) were partly isolated from the main European continent. Subsequent shift of the break-up axis to the west of the plateau resulted in extensive (basaltic) volcanism, seafloor spreading and the creation of the North-East Atlantic Ocean between Europe and Greenland. The two potential claim areas off the Faroe Islands are an area north-east of the islands, and the Hatton – Rockall area to the southwest.

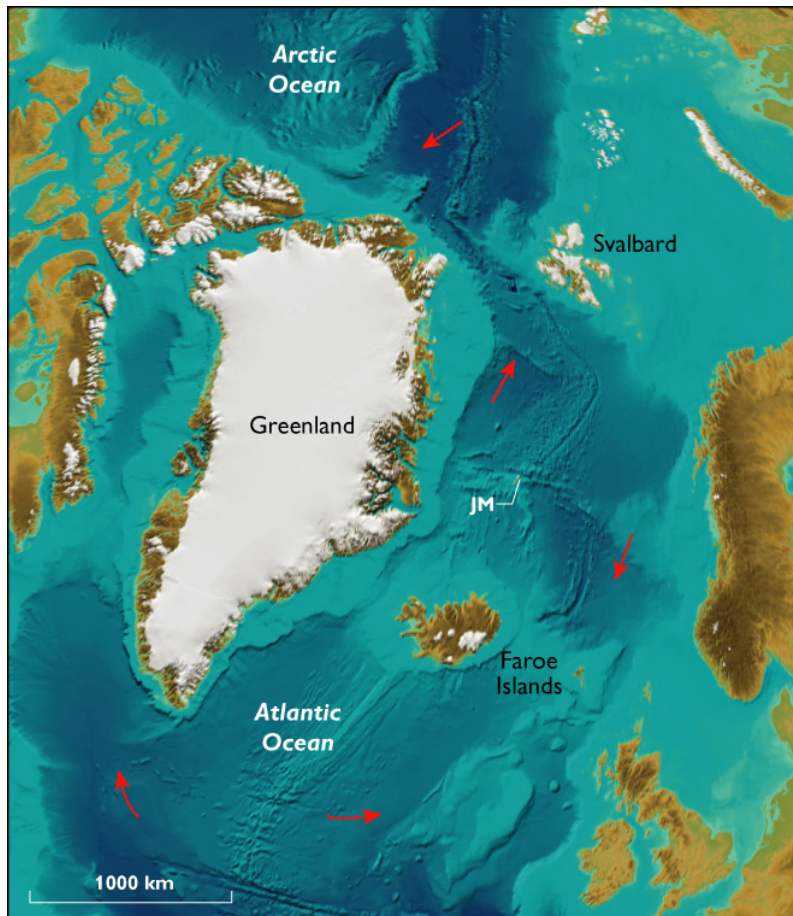


Fig. 1 Map of the North Atlantic region. Arrows indicate the five areas of interest.

Formulating a policy for information sharing

At an early stage of the Danish continental shelf program, it was recognized that internal guidelines would be needed to ensure that information concerning the conduct of that program was released in a manner that was both orderly and appropriate. Accordingly, it was decided to conduct an informal survey among selected wide margin states, with a view to learning about their policies and practices concerning the release of data and information that pertain to the implementation of UNCLOS Article 76. The purpose of obtaining this information was to create a body of knowledge that could be considered in the development of an official Danish policy concerning the release of data germane to the delimitation of the outer continental shelf (OCS). The geographical position of the five potential claim areas suggests that information sharing with other countries will be very beneficial for the Danish project.

Survey methodology

Twelve potential respondent states were identified. These were selected to include states at different stages of the Article 76 implementation cycle. For instance, some states were well advanced in the preparation of their continental shelf submissions while one state had yet to ratify UNCLOS, although it was engaged in preliminary Article 76 operations. In addition, the UN's Division of Ocean Affairs and the Law of the Sea (DOALOS) was informed of the activity.

In light of time constraints, it was decided not to seek official pronouncements of state policy and practice, in order to bypass the lengthy internal consulting process that such a request would likely initiate within each respondent state. Accordingly within each state an individual was identified as a prospective respondent to the survey questionnaire. Specialists were targeted who were known to be familiar with Article 76, and who were considered to be reliable sources of information concerning their respective states' policies and practices. Where official policy and practice were not already clearly articulated, respondents were asked to report their personal perceptions of their national situations.

A questionnaire was designed and prepared for distribution to prospective respondents. It consisted of thirteen questions and one page of instructions, divided into four Parts:

- Part A: Information about respondents and their States' OCS programs
- Part B: Mechanisms for release of OCS data and information, and degrees of disclosure
- Part C: Nature and extent of cooperation with other States
- Part D: General comments concerning data release

The questionnaire is presented in Appendix A of this report. It was distributed to respondents by email in early June 2004. Completed questionnaires were received from eleven of the twelve identified respondents (Table 1). Contents were compiled in an interim report which was circulated to respondents for review and comment. Two respondents replied with revisions or clarifications.

Table 1. Survey respondents by State	
Argentina	New Zealand
Australia	Norway
Canada	South Africa
Denmark*	United Kingdom
Iceland	United States
Ireland	* Responded last, after seeing other States' replies

Survey responses

Final responses are outlined in a series of tables presented below, which are accompanied by capsule commentaries on their significance. Trends are identified where discernible, but before drawing conclusions, the reader is advised to bear two caveats in mind:

1. Survey responses do not necessarily describe official government positions concerning the release of OCS data and information. While all survey responses were

prepared by knowledgeable individuals who were familiar with the conditions within their respective states, these responses are not to be interpreted as formal pronouncements of state policy and practice.

2. The information tabulated here represents a snapshot of conditions that prevailed in all respondents' states during the third quarter of 2004 - except in three states (including Denmark) where revised or new responses were submitted during the second quarter of 2005.

Part A: Information about respondents and their States' OCS programs

Question A3 – Respondent's main function in state's OCS program. Table 2 confirms that respondents occupied positions where they could be expected to have a reasonably clear understanding of their respective national situations. Note: two respondents reported dual functions.

Table 2. Respondent's main function in state's OCS program										
Program manager or administrator										
Legal or technical specialist										
Other										

Question A4 – Current status of state's OCS program. Table 3 suggests that the majority of states have reached an advanced stage of Article 76 implementation, with most activities under way or completed. Two states are still planning certain aspects of their implementation, while a third is assembling data sets, but has yet to ratify.

Table 3. Current status of state's OCS program										
<i>Activity</i>	<i>Status</i>									
Program definition										
Assembly of existing data										
Preliminary analysis										
Collection of new data										
Final analysis and interpretation										
Preparation of submission										
<i>Legend</i>										
	<i>In planning</i>		<i>Under way</i>		<i>Completed</i>					

Part B: Mechanisms for release of OCS data and information, and degrees of disclosure

Question B1 - Does state have a release policy or practice? Table 4 shows that all but two States have a policy or practice – but additional information provided with the responses indicated that these two states were preparing their respective policies.

Table 4. Does state have a release policy or practice?										
Yes										
No										

Question B2 - Character of release policy or practice. In Table 5, the nine respondents with established policies or practices indicate a variety of approaches that define a middle-of-the-road trend which is neither highly restrictive nor totally unreserved.

Table 5. Character of release policy or practice										
<i>Aspect</i>	<i>more restrictive</i> ◀ ▶ <i>less restrictive</i>									
Scope of authority					FORMAL				INFORMAL	
Level of documentation					DETAILED				GENERAL	
Consistency of application					UNIFORM				CASE-BY-CASE	
Basis of release					EXCHANGE				FREE	

Question B3 - Data release to other parties. Table 6 indicates an overall willingness on the part of most respondents to release at least some data to selected recipients. One state distinguishes itself with a national policy of placing all government data into unrestricted circulation. Among other states, there appears to be a tendency to withhold data from private survey and resource companies, and a countervailing tendency to share some or all data with neighbouring states. This question did not seek to differentiate accessibility levels according to the potential sensitivities of various data types - for instance, bathymetric observations might be more amenable to release than multichannel seismic reflection measurements.

Table 6. Data release to other parties										
<i>Type of organization</i>	<i>Release policy</i>									
Research institutions										
Private survey companies										
Private resource companies										
Data centres										
Neighbouring states										
Non-neighbouring states										
Other										
<i>Legend</i>										
	<i>Don't know</i>		<i>Full release</i>		<i>Partial release</i>		<i>No release</i>			

Question B4 - Data release from other parties. As shown in Table 7, responses to this question were mixed, presumably reflecting an assortment of release policies particular to external organizations that are not subject to state control. All respondents but one reported that they had received information from a variety of sources. As in Question B3 above, there was no attempt to differentiate differences in policy that might be due to varying sensitivity levels of diverse data types.

Table 7. Data release from other parties											
Type of organization	Release policy										
Research institutions	Blue	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	
Private survey companies	Blue	Blue	Yellow	Yellow	Yellow	Yellow	Red	Red	Red	Red	
Private resource companies	Blue	Blue	Blue	Yellow	Yellow	Yellow	Yellow	Red	Red	Red	
Data centres	Blue	Blue	Blue	Yellow	Yellow	Yellow	Yellow	Yellow	Red	Red	
Neighbouring states	Grey	Grey	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	
Non-neighbouring states	Grey	Grey	Yellow	Yellow	Yellow	Yellow	Red	Red	Red	Red	
Other											
<i>Legend</i>											
	Grey	Blue	Yellow	Red							
	<i>Don't know</i>	<i>Full release</i>	<i>Partial release</i>	<i>No release</i>							

Question B5 - Data release mechanisms. These are shown in Table 8. States that were more advanced in their implementation programs tended to report a greater variety of mechanisms for publicity and data release. Other states reported using fewer release channels, with some responding only to individual requests for information.

Table 8. Data release mechanisms											
Website	Green	Green	Green	Green	Green						
In-house reports	Green	Green	Green	Green							
Peer-reviewed reports	Green	Green	Green	Green							
Individual responses	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	
Data centre	Green	Green	Green	Green	Green						
Press releases	Green	Green	Green	Green	Green						
Other	Green	Green									

Question B6 - Policy on disclosure of submission and exchanges with CLCS. As shown in Table 9, this question elicited the most uncertainty, with several respondents unwilling or unable to articulate policy at this stage. Two states will not disclose the contents of their submission, three will opt for partial disclosure, and the remaining states don't know. Four states will maintain the confidentiality of their exchanges with the CLCS, with the others unable to indicate what action will be adopted. Two states will not disclose the

recommendations of the CLCS, one will opt for partial disclosure, and the others don't know.

Table 9. Policy on disclosure of submission and exchanges with CLCS											
Nature of information	Release policy										
Contents of submission	Grey	Grey	Grey	Grey	Grey	Grey	Yellow	Yellow	Yellow	Red	Red
Exchanges with CLCS	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Red	Red	Red	Red
CLCS recommendations	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Yellow	Red	Red	
<i>Legend</i>											
	Grey	Blue	Yellow	Red							
	<i>Don't know</i>	<i>Full disclosure</i>	<i>Partial disclosure</i>	<i>No disclosure</i>							

Part C: Nature and extent of cooperation with other States

Question C1 - Present cooperation with other states. As seen in Table 10, all states with the exception of one (where official intentions were not known) indicated they were cooperating with other states.

Table 10. Present cooperation with other states										
Yes	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
No										
Don't know	Green									

Question C2 - Nature of Present Cooperation. Table 11 shows that most states are engaged to some extent in a range of cooperative activities, or that they anticipate various forms of collaboration with other states.

Table 11. Nature of present cooperation										
Exploratory discussions	Green	Green	Green	Green	Green					
Occasional meetings, exchanges	Green	Green	Green	Green	Green	Green				
Regular meetings, exchanges	Green	Green	Green	Green	Green	Green				
Coordinated desktop studies	Green	Green								
Joint field work	Green	Green	Green	Green	Green	Green				
Joint analysis and interpretation	Green	Green	Green	Green	Green					
Joint or coordinated submissions	Green									
Other	Green									

Questions C3 and C4 concerning future Cooperation with Other States. Responses to these questions were not required from the ten states that had previously reported cooperation with

other states. The official intentions of the eleventh state (the USA) were unknown.

Part D: General comments concerning data release

Three respondents offered brief elaborations of their national policies. A fourth contributed general remarks concerning the factors that affect levels of cooperation between neighbouring states, plus specific comments that applied to a regional situation.

CONCLUSIONS

Responses from eleven coastal states indicate a general willingness to share OCS information on a partial or selective basis, and to cooperate with neighbour states in the acquisition and analysis of data sets for delimitation purposes.

Expressed policies and practices are much less clear-cut on the sharing of information concerning the three levels of state interaction with the Commission on the Limits of the Continental Shelf, i.e. the contents of OCS submissions, exchanges with members of the CLCS, and recommendations of the CLCS. This question elicited more “Don’t know” replies than all other questions combined, suggesting that states have yet to address the issue.

As a result of the survey a Danish policy on data access has been developed (see Appendix B for a complete version of the policy). The main principle is that data acquired within the project shall be released to the public domain. However the following restrictions apply:

- Data will only be released when the project has analysed, interpreted and published the data
- Release of data to neighbouring countries will depend on reciprocity
- Data of commercial relevance can be used for marketing purposes and can be sold to commercial companies
- Data that are considered critical to a submission can be kept confidential

The project web site www.a76.dk will list the nature of the data (type and location) acquired by the project. In case of submission(s), the technical and scientific basis for claims will be made publicly available.

APPENDIX A: SURVEY QUESTIONNAIRE WITH INSTRUCTION PAGE

SURVEY OF STATE POLICY AND PRACTICE RELATING TO THE UN CONVENTION ON THE LAW OF THE SEA (UNCLOS): THE RELEASE OF DATA AND INFORMATION RELEVANT TO OUTER CONTINENTAL SHELF DELIMITATION

Note to Respondent

Introduction

Denmark will soon ratify the UN Convention on the Law of the Sea (UNCLOS). In anticipation of that event, the Geological Survey of Denmark and Greenland is helping formulate a national policy for the release of data and information that pertain to the delimitation of the Outer Continental Shelf (OCS) beyond 200 nautical miles, in accordance with the provisions of Article 76 of UNCLOS.

In developing a national policy, it is helpful to consider how other States deal with the sharing of data and information. Therefore it has been decided to begin the process by querying knowledgeable individuals such as yourself who are known to be involved in the development of the OCS limits of their respective States. It would be appreciated if you took a moment to consider the accompanying questionnaire, and to provide answers that describe your understanding of the policies and practices of your own State concerning the sharing of OCS data and information with external organizations, defined here as non-governmental institutions and other States. We hope that you are able to complete the full questionnaire on your own, but for the sake of accuracy and completeness, we understand that you may decide to seek input from others within your organization.

Definitions

In the following questionnaire, the term “data” means geographically referenced descriptions such as:

- Coordinates of the territorial sea baseline
- Bathymetry derived from acoustic observations
- Sedimentary characteristics derived from seismic observations
- Evidence to the contrary
- Seabed resources
- Other relevant measurements and observations

The term “information” refers to the following facets of your State’s OCS program:

- Administration, e.g. the program’s organizational framework
- Planning, e.g. timetables and operational work plans
- Technology, e.g. procedures employed in data collection and analysis
- Interpretation, e.g. results of data analysis

Instructions for completing the form

The questionnaire is in Microsoft Word format, and consists of a four-part form with fourteen questions. Answers are to be entered in the shaded areas. Most questions allow for the insertion of optional comments in cases where replies need qualification, or where nuances require explanation. The questionnaire may be completed in digital form and submitted as an email attachment to the Survey Coordinator, who is acting on behalf of the Geological Survey of Denmark and Greenland. Alternatively, it may be completed in hardcopy form and transmitted by post or facsimile. The Coordinator’s contact information is shown below.

Thank you for your assistance and cooperation.

Ron Macnab, Survey Coordinator
11 Lyngby Avenue
Dartmouth NS, B3A 3T6, Canada

Email: ron.macnab@ns.sympatico.ca
Tel: +1(902)463-3963
Fax: +1(902)463-0908

PART A: GENERAL

This Part solicits information about the Primary Respondent (the person completing the form) and the State's OCS program.

Question A1

Please enter your contact information in case follow-up communication proves necessary:

Name	
Alternate contact	
Organization	
Postal address	
Email	
Telephone	
Fax	

Question A2

If and when the results of this survey are published, would you prefer:

Please select one:

<input type="checkbox"/>	To be identified by name?
<input type="checkbox"/>	To remain anonymous?

Optional comment:

Question A3

What is your main function in your State's OCS program?

Please select the one that best applies to you:

<input type="checkbox"/>	Program manager/administrator
<input type="checkbox"/>	Legal/technical specialist
<input type="checkbox"/>	Other, please specify

Optional comment:

Question A4

What is the current status of your State's OCS program?

Please check one column for each line:

	In planning	Under way	Completed
General program definition			
Assembly of existing data			
Preliminary analysis of existing data			
Collection of new data			
Final analysis and interpretation			
Preparation of submission			

Optional comment:

PART B: RELEASE OF DATA AND/OR INFORMATION

This Part examines mechanisms for release of OCS data and information, and degrees of disclosure.

Question B1

Does your State have a policy or practice governing the release of OCS data and information?

Please check one box:

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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Optional comment:

Question B2

If the answer to Question B1 is 'Yes', please describe the character of that policy or practice.

For each line, please check the appropriate column:

Scope of authority	Formal policy	<input type="checkbox"/>	or	Informal practice	<input type="checkbox"/>
Level of documentation*	Detailed, prescriptive	<input type="checkbox"/>	or	General, advisory	<input type="checkbox"/>
Consistency of application	Uniform	<input type="checkbox"/>	or	Case-by-case	<input type="checkbox"/>
Basis of release	Free	<input type="checkbox"/>	or	Reciprocal exchange	<input type="checkbox"/>

* If documentation exists, please indicate how to obtain a copy

Optional comment:

Question B3

How much OCS data and information does your State release to non-governmental institutions and to other States?

Please check one column for each line:

	Don't know	Full release	Partial release	No release
Research institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private survey companies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private resource companies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Data centres	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Neighbouring States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-neighbouring States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Optional comment:

Question B4

Conversely, how much OCS data and information do non-governmental institutions and other States release to your State?

Please check one column for each line:

	Don't know	Full release	Partial release	No release
Research institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private survey companies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private resource companies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Data centres	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Neighbouring States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-neighbouring States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Optional comment:

Question B5

What mechanism(s) does your State use for releasing OCS data and information?

Please select all that apply in your case:

<input type="checkbox"/>	Website
<input type="checkbox"/>	In-house reports
<input type="checkbox"/>	Peer-reviewed reports
<input type="checkbox"/>	Response to individual requests
<input type="checkbox"/>	Data centre
<input type="checkbox"/>	Press releases
<input type="checkbox"/>	Others, please specify

Optional comment:

Question B6

What policy is your State likely to adopt concerning public disclosure of its OCS Submission and its exchanges with the Commission on the Limits of the Continental Shelf (CLCS)?

For each line, please check one column:

	Don't know	Full disclosure	Part disclosure	No disclosure
Contents of Submission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchanges with CLCS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLCS Recommendations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Optional comment:

PART C: COOPERATION WITH OTHER STATES

This Part examines the nature and extent of cooperation with neighbouring and other States.

Question C1

Beyond the exchange of data and information, is your State actively cooperating with other States that are engaged in an OCS program?

Please check one box:

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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Optional comment:

Question C2

If the answer to Question C1 is 'Yes', what is the nature of that cooperation?

Please select all that apply in your case:

<input type="checkbox"/>	Exploratory discussions
<input type="checkbox"/>	Occasional meetings and exchanges
<input type="checkbox"/>	Regular meetings and exchanges
<input type="checkbox"/>	Coordinated desktop studies
<input type="checkbox"/>	Joint field work
<input type="checkbox"/>	Joint analysis and interpretation
<input type="checkbox"/>	Joint or coordinated submissions
<input type="checkbox"/>	Other, please specify

Optional comment:

Question C3

If the answer to Question C1 is 'No', are there plans to cooperate in the future?

Please check one box:

Yes	<input type="checkbox"/>
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No	<input type="checkbox"/>
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Don't know	<input type="checkbox"/>
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Optional comment:

Question C4

If the answer to Question C3 is 'Yes', can you outline the nature of that prospective cooperation?

Please reply in narrative form:

PART D: GENERAL COMMENTS

This Part is for registering general observations that concern restrictions on the exchange of OCS data and information.

APPENDIX B: DATA POLICY IN THE DANISH CONTINENTAL SHELF PROJECT

The overall governing body of the Danish Continental Shelf Project, the Contact Committee, at its meeting on January 24, 2005 adopted the following general principles concerning data acquired by the project in its preparation for the investigations aimed at submission(s) in accordance with article 76 of the United Nations Convention on the Law of the Sea (UNCLOS).

The Contact Committee is chaired by the Danish Ministry of Science, Technology and Innovation with representatives from a number of Danish ministries and the Greenland and Faroe Islands home rule governments.

The Contact Committee decided in general to adopt a data policy based on openness so that data are to be released as soon as this is considered not to be detrimental to the overall aims of the project.

It was furthermore decided that the data policy should be differentiated in line with the policy expressed by the majority of countries which responded to the Macnab survey on "State policy and practice governing the release of information related to the delimitation of the outer continental shelf" (final Project Report dated June 26, 2005).

Main data policy principles:

- Depending on data type, data shall be released to the public domain following assessment of the question as to whether non release can be considered advantageous to the overall aims of the project
- If relevant, data will only be released when the project has analysed, interpreted and published the data
- Release of data to neighbouring countries will depend on reciprocity
- Data of commercial relevance, for example with respect to hydrocarbon exploration, can be used for marketing purposes and can be sold to commercial companies, if necessary with attendant confidentiality agreements
- Data that are considered critical to a submission and which might be used by neighbouring countries in a way detrimental to the project can be kept confidential
- In case of submission(s), the technical and scientific basis for claims will be made publicly available.

Administration of the principles:

The technical work in the project is overseen by two "Steering Committees": one for areas adjacent to the Faroe Islands, and one for areas adjacent to Greenland.

- The project web site www.a76.dk will list the nature of the data (type and location) acquired by the project
- The status of the data will be presented on the web site together with information on expected date of release of the data
- Questions concerning data handling and access will be referred by the working groups to the Steering Committees

Similarly, questions concerning how and when the data should be published will be referred to the Steering Committees.