



East Coast Environmental Law Association

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April 11, 2024

The Honourable Tim Halman, Minister of Environment and Climate Change
Department of Environment and Climate Change
PO Box 442 Halifax, NS B3J 2P8

Sent by Email: minister.environment@novascotia.ca

Dear Minister Halman,

Re: Implement the *Coastal Protection Act*

I am writing on behalf of East Coast Environmental Law (“ECEL”) to express our deep disappointment in your recent decision to abandon the *Coastal Protection Act* in favour of the *status quo* by leaving the protection of our coasts in the hands of private property owners and shifting the burden of legal requirements to municipalities.

Nova Scotia has been grappling with how to protect the coast from coastal erosion and flooding, storm surges, and sea level rise for half a century. The increasing risk of these impacts as a result of climate change have only heightened the collective sense of urgency to protect our coastal environment. In 2019, the *Coastal Protection Act* was celebrated by Nova Scotians when it passed in the Legislative Assembly with all party support because it signaled that Nova Scotia was finally ready to prescribe necessary protections for coastal communities and ecosystems.

It is difficult to understand how your government has moved from full support of the *Coastal Protection Act* in 2019 to full abandonment in 2024, especially given comments by your fellow Minister the Honourable Brad Johns, then a representative of Sackville-Beaver Bank and member of the opposition Progressive Conservative Association of Nova Scotia, now the Minister of Justice. He said:¹

Mr. Speaker, we will be supporting this. We do recognize the good that it will do in regard to global warming and rising sea levels.

I would be remiss if I did not point out the disappointment that we had that our amendment did not go through on this when it was in Committee of the Whole House on Bills. That amendment was to ensure that regulations and mapping were done as soon as possible so that the bill could go into effect. I believe it has been discussed here that it would be almost a year to 18 months before it goes into effect - we would certainly like to see that done sooner.

¹ Nova Scotia, Legislative Assembly, *Hansard*, 63rd Leg, 2nd Sess (April 11, 2019) at page 3252.

Although our amendment did not go forward, we will be supporting it, and we do encourage the government, as well as the department, to try to get that mapping and the regulations done on it as soon as possible.

The opposition parties offered their broad support for the *Coastal Protection Act*. More importantly, there was strong sentiment that the regulations and associated mapping needed to be done as “soon as possible” and that a 12-to-18-month period to implement the regulations and bring the *Coastal Protection Act* into force was too long. That was five years ago.

Now, despite significant government investment and engagement from the public, coastal communities, and municipalities, the *Coastal Protection Act* and its regulations have been dismissed in favour of a coastal “plan” that disregards the long history of failed coastal protection plans in Nova Scotia and ignores the strong support for the *Coastal Protection Act* in the public and the Legislative Assembly.

History has clearly demonstrated that the *status quo* does not work. In 1976, Nova Scotia was one of the first provinces in Canada to begin planning for coastal zone management through the establishment of a coastal zone management issues group.² In the 1990s, the Government of Nova Scotia launched *Coastal 2000*, a provincial coastal planning process that was not pursued because of insufficient support.³ The Government of Nova Scotia tried again when it launched an interdepartmental Provincial Oceans Network (“PON”) whose objective was to develop an integrated approach to coastal zone management.⁴ The PON created a *Coastal Management Framework* between 2006 and 2008, and the Department of Fisheries and Aquaculture commissioned the *State of Nova Scotia’s Coast Technical Report* (the “Technical Report”), which was released in 2009.⁵ The PON produced a draft coastal strategy in 2011, but work was never completed to finalize that strategy.

During the half-century that multiple governments of Nova Scotia failed to follow through on coastal protection, so did most private property owners and developers, government departments and municipalities. Instead, private coastal property owners and developers have continued to build in places that put the structures at risk and threaten coastal ecosystems. Many private coastal property owners will not steward our coastal environments beyond their own benefit. Actions such as infilling, rock walls, and other methods to protect or enhance one property frequently accelerate negative impacts and shift them onto adjacent property owners and public infrastructure. Coastal developers are not incentivized to consider the long-term health of our coasts and communities.

It is notable that the Technical Report in 2009 found that public and non-governmental interest often conflicted with landowner interest and development proposals for Crown land.⁶ It acknowledged that the coastal zone in Nova Scotia must be managed according to the concept of sustainable development, which aims for equity within and between generations.⁷ Furthermore, it identified that a key limitation to effective coastal management was that many municipalities did not have municipal planning strategies in place dealing with coastal protection, and that municipalities lacked capacity and resources to undertake effective planning for coastal areas (while also not receiving provincial support).⁸

² Government of Nova Scotia, “The 2009 State of Nova Scotia’s Coast Technical Report” (2009) [the “**Technical Report**”] at page 3.

³ *Ibid* at page 3.

⁴ *Ibid*.

⁵ *Ibid*.

⁶ *Ibid* at page 111.

⁷ *Ibid* at page 15.

⁸ *Ibid* at page 113.

In addition to failing to address conflicts between public and private interests over coastal lands, the *status quo* perpetuates an approach that ignores that the coast, from the high-water mark to the low-water mark (with a few exceptions for private water lots and federal property), is Crown land that the Government of Nova Scotia has sole responsibility to manage on behalf of the public, including future generations.

In August 2018, ECEL prepared a research report, *Protecting the Coast: A Multi-Jurisdictional Legislative Review*, which reviewed and compared select coastal jurisdictions to identify common elements and best practices of coastal management regimes around the world.⁹ We found that many jurisdictions use integrated coastal management approaches that are guided by best-available science and principles like sustainable management.¹⁰ In all the jurisdictions examined, coastal development is managed by designating and delineating a coastal zone and regulating development in that coastal zone through a series of rules characterized by zoning, setbacks, buffers and variances, permitting and licencing, operational and policy standards, and environmental assessments.¹¹ Legislated coastal protections are a best practice observed in coastal jurisdictions around the world.

The findings of our 2018 Report have been supported by six years of public engagement and consultation on the *Coastal Protection Act* and its regulations – including multiple rounds of public consultation, a multitude of meetings with municipalities, and your recent coastal property owner survey. When the Department of Environment and Climate Change released its consultation document on coastal protection legislation in 2018 and shared its vision of the *Coastal Protection Act*, we engaged with the Department and conducted our jurisdictional review. We also collaborated with the Ecology Action Centre to host a series of coastal community engagement sessions in Antigonish, Baddeck, St. Margaret's Bay, Shelburne, and Wolfville. We had the opportunity to hear feedback about the proposed Act, and to gather ideas and input from people concerned about their coastal communities. What we heard was that, although some coastal property owners had concerns about their ability to manage their properties being reduced and some municipalities had concerns about logistics to manage coastal development permitting, there was overwhelming support (including from coastal property owners and municipalities) for a legislated coastal protection regime led by the province.

When the *Coastal Protection Act* came before the Law Amendments Committee, although we sought amendments to strengthen and augment the provisions of Bill 106 (as it was known then), we also expressed our support for what was then a collaborative and transparent process to develop the Act. And when Bill 106 was put up for third reading, we were present in the Legislative Assembly with our partners to support the Department of Environment and Climate Change and the passage of the *Coastal Protection Act* with all party support.

We continued to work closely and collaboratively with our partners, including the dedicated staff at the Department of Environment and Climate Change, to engage in the long work of producing regulations under the *Coastal Protection Act* that would provide the detail of Canada's first coastal protection regime. Our engagement included multiple meetings with the Department staff to learn and provide input into the process which we continued to support.

⁹ East Coast Environmental Law, "[Protection the Coast: A Multi-Jurisdictional Legislative Review – Final Narrative Report](#)" (August 2018) (the "**Legislative Review Report**").

¹⁰ *Ibid* at page 5.

¹¹ *Ibid*.

In September 2021, when the Department of Environment and Climate Change released its proposal for the regulations under the *Coastal Protection Act*, we provided a detailed submission. The objective of our comments was to ensure the regulations under the *Coastal Protection Act* lived up to the promise of strong coastal protection. After that public consultation period, we continued to recommend that the regulations be completed with urgency in order to implement the *Coastal Protection Act*.

We were hopeful when you, the Minister of Environment and Climate Change, stated in the wake of Hurricane Fiona in September 2022 that the regulations under the *Coastal Protection Act* were almost complete and would be before cabinet early the following year, with the law enacted in the first half of 2023.¹² And, even when you walked back your commitment to enact the regulations under the *Coastal Protection Act* and launched the online survey aimed at coastal property owners in 2023, we continued to support the work, including reaching out to Department officials and providing input into the survey.

Given the overwhelming support for legislated coastal protection and our long history of work on this matter, our concern over the plan you introduced in March 2024 should not be a surprise. The plan that you have created to replace the *Coastal Protection Act* is short-sighted with only a three-year outlook, was developed without any public consultation or engagement, and is silent about the six-years of work on the *Coastal Protection Act*. It has all the hallmarks of another failed attempt at coastal protection in Nova Scotia, marking a footnote in the half-century history of poor provincial leadership at a time when the risks to coastal ecosystems and coastal communities are of grave concern.

We strongly urge you to reconsider and immediately implement the *Coastal Protection Act*.

Regrettably,



Mike Kofahl
Staff Lawyer
East Coast Environmental Law

¹² CBC News, "[Regulations almost complete for Nova Scotia's Coastal Protection Act](#)" (September 19, 2022).