

## Environmental Law for the Coast: Newfoundland and Labrador

Newfoundland and Labrador has over 29,000 km of coastal shoreline that borders the Atlantic Ocean, Gulf of St. Lawrence, and Labrador Sea. Its coastal waters boast an array of unique and important coastal ecosystems that provide habitat and feeding grounds for a variety of seabirds and serve as a migratory destination for marine mammals like humpback whales.<sup>1</sup> Newfoundland and Labrador's coastal ecosystems play an important role for biodiversity and protect the province from increased risks of storm surges, coastal erosion and flooding, and sea level rise that are made more severe by climate change. The coastal interface between the land and sea is also home to a diverse mix of birds, fish, plants, and terrestrial animals, including some that are rare or endangered and unique to the province. These ecosystems and species are often impacted by human development and activities along the coast.

This volume of the East Coast Environmental Law Summary Series provides an overview of the environmental laws and policies that are relevant to Newfoundland and Labrador's coasts. It is intended to be a resource that can help members of the public protect and manage coastal resources, both on land and in the sea. This publication is best used in combination with other East Coast Environmental Law Summary Series publications and additional resources available on our website at [www.ecelaw.ca](http://www.ecelaw.ca).

### Coastal Authorities and Jurisdiction

#### Who is responsible for managing the coast?

To address an environmental concern along the coast or take steps to protect and manage coastal resources, it is important to understand who is responsible and which environmental laws might apply. In Newfoundland and Labrador, like in other provinces and territories, multiple levels of government are responsible for the coastal environment, including federal, provincial, municipal, and Indigenous governments. Often, multiple levels of government are responsible at the same time.

The **Constitution Act, 1867** divides responsibilities over different matters between the federal and provincial governments; however, provincial and federal jurisdiction is also informed by pre-Confederation historical documents, international treaties, federal and provincial legislation, and Canadian court decisions. Ultimately, responsibilities over the coastal environment and associated matters are not clearly divided, and, therefore, the federal and provincial governments share responsibility. To resolve jurisdictional tensions outside of the courts, both levels of government frequently come to political arrangements.

## Federal Jurisdiction

The federal government has control over the marine territory that extends from the ordinary low-water mark along the coast to up to 200 nautical miles (370.4 km) out to sea.

Section 91 of the *Constitution Act, 1867* gives the federal government exclusive authority to make laws about several matters, including coastal and marine activities like fisheries, maritime navigation, and shipping, as well as the governance of federal Crown lands, which are lands owned by the federal government. Federal Crown lands include national parks, land designations under the federal *Indian Act*, and Canadian Forces bases.<sup>2</sup>

Coastal management at the federal level is split amongst several departments, including Environment and Climate Change Canada, Fisheries and Oceans Canada, Transport Canada, and Parks Canada. The primary federal laws affecting Newfoundland and Labrador's coastal waters and other coastal activities are the **Oceans Act** and the **Fisheries Act**, along with their regulations.

## Provincial Jurisdiction

Newfoundland and Labrador has control over most of the territory that made up the province at the time of its incorporation into Canada on March 31, 1949 under the *Newfoundland Act*<sup>3</sup>, which ratified the *Terms of Union of Newfoundland with Canada*, with Labrador Inuit having control over Labrador Inuit Lands recognized under the *Labrador Inuit Land Claims Agreement* (read more below). The wording used in the *Constitution Act, 1867* implies that the authority of a province, including Newfoundland and Labrador, is limited to its territorial boundaries.<sup>4</sup> The provincial government generally controls coastal lands inland from the ordinary low-water mark, except for lands controlled or owned by the federal government, like public harbours.

Sections 92, 92A, and 93 of the *Constitution Act, 1867* give Newfoundland and Labrador exclusive authority to make laws about various matters that can affect provincial coasts, including the governance of provincial Crown lands, local works and undertakings, property rights, and matters of a local or private nature.<sup>5</sup> The province also makes laws about natural resources and energy production, which can include tidal power.<sup>6</sup>

The provincial departments that share primary responsibility for coastal management in Newfoundland and Labrador are the Department of Environment and Climate Change, Department of Fisheries, Forestry and Agriculture, the Department of Industry, Energy and Technology, and the Department of Tourism, Culture, Arts and Recreation. The primary provincial laws affecting Newfoundland and Labrador's coastal waters and other coastal activities are the **Environmental Protection Act** and the **Water Resources Act**, along with their regulations.

## Indigenous Jurisdiction

Indigenous peoples in Canada have unique rights and jurisdiction that may apply to coastal territories and resources. Indigenous peoples assert inherent rights under their own laws and legal orders and under international law regimes such as the global human rights regime that produced the *United Nations Declaration on the Rights of Indigenous Peoples*. In addition to their inherent rights, Indigenous peoples in Canada also have unique rights that have been established under Canadian law and are protected by Canada's Constitution. Specifically, section 35 of the ***Constitution Act, 1982*** recognizes and affirms the Aboriginal and treaty rights of the Indigenous peoples of Canada.

As Canadian law defines these terms, "Aboriginal rights" are rights that flow from the distinctive cultural practices that First Nation and Inuit communities engaged in before contact with Europeans and that Métis communities engaged in before Europeans gained effective legal and political control in relevant areas. "Aboriginal title" is a category of Aboriginal right that deals specifically with ownership of land. "Treaty rights" are rights that flow from solemn treaty promises made to Indigenous nations by the British Crown or, more recently, the Crown as represented by Canadian governments. Aboriginal and treaty rights may include Aboriginal title to coastal lands as well as activity-specific rights to access coastal resources, such as rights to harvest and potentially even sell resources that are found along the coasts.

The Supreme Court of Canada has determined that when a provincial or federal Crown knows about an asserted or established Aboriginal or treaty right and considers conduct that could affect that right adversely, the Crown has a duty to consult the Indigenous rights holders in question and may also have a corresponding duty to accommodate them.<sup>7</sup> This means that if the Government of Canada or the Government of Newfoundland and Labrador knows about an asserted or established Aboriginal or treaty right in a coastal area and wishes to approve a proposed development that could affect that right adversely, the government must first consult with the Indigenous rights holders and accommodate them if necessary. Crown consultation processes can play important roles in protecting Aboriginal and treaty rights in coastal areas, but they seldom lead to meaningful recognition of Indigenous jurisdiction within the lands or waters in question.

Canadian recognition of Indigenous jurisdiction may arise through rights-recognition negotiation, development of co-management agreements, and Canadian land-management regimes that return more land-management powers to First Nation (in Newfoundland and Labrador, Mi'kmaq and Innu) governments on reserve. Litigation in court is another method that can advance Indigenous jurisdiction, although it is costly, time-consuming, and has been discouraged repeatedly by courts because it is such a difficult way to achieve rights recognition.

Indigenous peoples also have laws and legal orders of their own, which are not based on Canadian laws and legal doctrines. Indigenous laws can be implemented in coastal areas in numerous ways. One example is the possibility of establishing Indigenous Protected and Conserved Areas

(“IPCA”), which are areas in which protection and conservation measures are Indigenous-led and shaped by Indigenous laws. The manner of establishing IPCAs varies case by case and is shaped by Indigenous needs and objectives.

Indigenous laws can also be implemented through modern treaties. In 2005, the Nunatsiavut Government, the Government of Newfoundland and Labrador, and the Government of Canada finalized the *Labrador Inuit Land Claims Agreement* (“the *LILCA*” or “the Agreement”), which is a modern treaty established through the Government of Canada’s Comprehensive Land Claims process. The *LILCA* establishes the Labrador Inuit Settlement Area in which various Labrador Inuit rights are recognized. Within the Labrador Inuit Settlement Area are specific lands called “Labrador Inuit Lands”. The *LILCA* recognizes Labrador Inuit ownership (in fee simple) of the Labrador Inuit Lands and also recognizes extensive, but not unlimited, jurisdiction of the Labrador Inuit to govern Labrador Inuit Lands in accordance with Inuit governance structures and laws.

The Labrador Inuit Settlement Area includes extensive coastal territories and tidal waters, and the Labrador Inuit Lands which Labrador Inuit own and govern under the *LILCA* are also predominantly coastal. The intricacies of the Agreement establish several intersections between the respective jurisdictions that the Government of Canada, the Government of Newfoundland and Labrador, and the Nunatsiavut Government can exercise in coastal and marine ecosystems in areas covered by the treaty. The Nunatsiavut Government’s ability, under the *LILCA*, to exercise considerable jurisdiction over coastal Labrador Inuit Lands presents opportunities for Inuit stewardship of coastal lands in accordance with Inuit laws. Although Inuit governance powers are less extensive in the portions of the Inuit Settlement Area that are not Labrador Inuit Lands, Inuit rights under the *LILCA* that apply throughout the Labrador Inuit Settlement Area also offer opportunities for collaborative, multi-jurisdictional management of significant coastal areas.

For example, Chapter 6 of the *LILCA*, which addresses Ocean Management, requires consultation with the Nunatsiavut Government before a federal or provincial Minister finalizes a strategy for the management of estuarine, coastal, or marine areas that would apply directly to such areas within the Labrador Inuit Settlement Area.<sup>8</sup> Likewise, if a Minister who is empowered to develop and manage Marine Protected Areas (“MPAs”) proposes to develop a system of MPAs that would apply to estuarine, coastal, or marine areas within the Labrador Inuit Settlement Area, or, alternatively, proposes to disestablish or change the boundaries of a MPA within the Labrador Inuit Settlement Area, the Minister must consult the Nunatsiavut Government first.<sup>9</sup>

## Municipal Jurisdiction

Unlike federal and provincial governments, municipal authority is not based in Canada’s Constitution. Cities and municipalities are granted jurisdiction by Newfoundland and Labrador through law, primarily by the *Municipalities Act, 1999* and the *Urban and Rural Planning Act*. The cities of St. John, Mount Pearl and Corner Brook are empowered by three separate statutes.

Municipal governments can play a very important role in coastal management, especially where there are gaps in federal and provincial activity. Some legal tools that municipal governments can use to govern the coastal environment and coastal matters include municipal plans and development regulations. In Newfoundland and Labrador, a development regulation is a set of rules that applies to the local area (analogous to a by-law). These powers can be used to restrict, prohibit, or otherwise regulate coastal developments and activities. For example, a development regulation could be used to restrict development near the coast or to designate flood-risk areas. The *Urban and Rural Planning Act* requires proposed land use plans and associated development regulations to be submitted to the Department of Municipal and Provincial Affairs for review before they are adopted, and also requires the Minister to review plans and development regulations after they have been adopted, “to determine if they are contrary to law or a policy of the government”.<sup>10</sup> There are times when development regulations and provincial laws, which are both aimed at environmental protection, overlap. If they do not conflict with provincial laws, development regulations may require higher levels of protection than provincial laws.

### A Note on Private Coastal Property Rights

Landowners may have riparian rights, which are a set of limited rights to water that is immediately adjacent to owned property. These rights include the right to access the water, the right of drainage, the right to the flow of water, the right to quality of water, the right to use the water, and the right of accretion (the right to any additional land that results from natural accretion).<sup>11</sup>

## Coastal Development

### How can I protect the coast against adverse impacts caused by development?

The coast is home to many important and sometimes vulnerable coastal ecosystems and species, some of which are found exclusively within Newfoundland and Labrador's coastal areas. Examples include rare or endangered species like the Long's Braya, Fernald's Braya, and Barrens Willow, which are all only found on the Island of Newfoundland's northwest coast.<sup>12</sup>

Human development and activity can adversely impact coastal ecosystems and species and can sometimes help to protect or restore them. Human development can also be more vulnerable in coastal areas; for example, building too close to the ocean may allow salt water to contaminate well water or make buildings more susceptible to coastal flooding and erosion.

Although human development and activities are not generally prohibited in coastal areas, they often require government approval. Often, a combination of municipal regulations and provincial and federal laws will apply, and multiple approvals from different levels of government will be required. In some cases, large developments may also require an approval after undergoing a provincial environmental assessment or a federal impact assessment. You can learn more about these processes in our Summary Series volume ***Environmental Impact Assessment: A Legal Toolkit for Newfoundland & Labrador***. Coastal developments that may require an environmental assessment include aquaculture operations, peat extraction activities for areas over 2 hectares, electricity-producing projects like hydroelectric dams, breakwaters more than 100 metres long, canals or waterways, projects involving infilling in an estuary or infilling of more than 5 hectares of an underwater area, and marinas.<sup>13</sup>

If you are considering building or undertaking an activity in a coastal area, you should seek the appropriate permits and approvals that are required by law. If you are concerned about someone else's activity, you can inquire about whether the appropriate permits and approvals were issued. This section provides an overview of the kinds of permits and approvals that may be necessary prior to engaging in development or other activities in a coastal area.

### Is a federal approval or permit required?

Certain activities, highlighted below, will trigger federal government involvement.

If the activity impacts fish or fish habitat, an approval will be required under the ***Fisheries Act***.<sup>14</sup> Specifically, if an activity may cause the death of fish or cause harmful alteration, disruption, or destruction of fish habitat, an approval is required.<sup>15</sup> These activities may be approved by the Minister of Fisheries, Oceans, and the Canadian Coast Guard on a case-by-case basis. There is a ***Fisheries Act registry*** that allows the public to access records related to fish and fish habitat protection and pollution prevention, including authorizations and permits issued under the Act.<sup>16</sup>

If the development or activity takes place on the water and may impair maritime navigation or shipping, an approval from Transport Canada may be required under the Canadian **Navigable Waters Act**.<sup>17</sup>

There are varying requirements for different types of activities that require approval under the *Navigable Waters Protection Act*. Any “minor work”, which is any activity that is specifically set out in the **Minor Works Order**, will not require review or approval, but public notice will be required for erosion-protection works, aerial cables, submarine cables, buried pipelines, outfall and water intakes, dredging, and watercourse crossing activities.<sup>18</sup> Any “major work”, which is any activity specifically set out in the **Major Works Order**, will require approval. Major works are activities that are likely to substantially interfere with navigation, and they include water control structures, bridges, placement and repair of ferry cables, causeways, and aquaculture facilities.<sup>19</sup> Additionally, any development that is in, on, over, under, through, or across any “navigable water” and would interfere with navigation and is listed in the **Schedule** to the *Navigable Waters Protection Act* will also require approval. Information about authorizations issued under the *Navigable Waters Protection Act* is available on an **online public registry**.

If a coastal development or activity may impact migratory birds or their eggs and nests, it will require approval under the **Migratory Birds Convention Act**. Under the Act, any development or activity that injures, harasses, or kills a migratory bird, or that destroys or damages a migratory bird egg or their nest, is prohibited, except where a permit has been issued by the Minister of Environment and Climate Change.<sup>20</sup>

If a coastal development or activity may impact a species that is listed as threatened or endangered under the federal **Species at Risk Act** or may impact the habitat of a listed species, that development or activity will require an agreement or permit from the Minister responsible for the Act.<sup>21</sup> Information about agreements or permits issued under the *Species at Risk Act* is available on the dedicated **Species at Risk Public Registry**.

If an activity involves accommodations or services for fishing or recreational vessels, then a lease or licence may be required under the **Fishing and Recreational Harbours Act**.<sup>22</sup> Under the Act, the Minister of Fisheries, Oceans, and the Canadian Coast Guard is responsible for the management and maintenance of scheduled harbours, which are fishing or recreational harbours that are listed in regulations created under the Act.<sup>23</sup> The Minister may enter into an agreement with a province or any person to undertake activities like acquiring, developing, constructing, improving, or repairing a scheduled harbour.<sup>24</sup>

### Is a provincial approval or permit required?

There is no dedicated provincial law in Newfoundland and Labrador that deals specifically with coastal development or protects the entire coast. What follows is a brief description of the key laws, regulations, and policies that govern certain coastal developments and activities. Note: there are many provincial laws that may apply to activities occurring in coastal areas, and this Summary Series cannot review them all.



The **Environmental Protection Act** applies to many activities that occur on provincial Crown land and on private land. It deals with matters like pesticide use, contaminants, solid waste, and environmental assessments. Under the **Environmental Assessment Regulations**, certain kinds of projects must undergo an environmental assessment process and receive approval before proceeding. Coastal activities that require an environmental assessment approval include aquaculture operations with shore-based facilities, construction of breakwaters longer than 100 metres, construction of dykes, levees or other flood control structures, construction of canals or artificial waterways wider than 3 metres, infilling of underwater areas where a portion is in an estuary or the area is larger than 5 hectares, and any project modifying more than 1km of a watercourse.

The **Lands Act** deals with the management of provincial Crown lands. Under the Act, a grant, lease, or licence is required for activities that occur on provincial Crown lands. Even where a grant, lease, or licence has been issued, a minimum of 15 metres of land is reserved as shoreline area, including seashore, foreshore, lake, pond, or river. A grant, lease, or licence does not apply in that area.<sup>25</sup>

Under the *Lands Act*, a person wishing to undertake certain projects (like industrial activities that require the use of that land, aquaculture operations, or the construction of boat houses, wharves, slipways, airplane hangers, recreational trails, or recreational structures) within the reserved shoreline area can apply for a separate grant, lease or licence.<sup>26</sup> The Department of Fisheries, Forestry and Agriculture must publish a notice about the application within 5 days of receipt, and the applicant must publish a “Notice of Intent” in the **Newfoundland and Labrador Gazette** within 21 days of submitting the application. Any person wishing to object to the application can file a written objection, with reasons, with the Minister within 30 days of the date the notice is posted.<sup>27</sup> Notifications are available to be viewed by the public on the Department’s dedicated **Shoreline Development Applications and Notifications webpage**.

The **Water Resources Act** deals with control and management of water resources, and it requires a permit for all “undertakings”, which are defined in the Act and include any activities or works that develop, transport, transmit, distribute, or utilize water, or effect the flow of water.<sup>28</sup> The Minister, in deciding whether to approve a permit, may consider the following: the potential adverse environmental and water use effects of the undertaking; the effectiveness and benefits of the undertaking; and, whether the proposed undertaking is contrary to provincial policy.<sup>29</sup>

Several policy directives have been created under the authority of the *Water Resources Act*, including the *Policy for Development in Shore Water Zones* and the *Policy for Development in Wetlands*, which both establish criteria for permits for undertakings that are issued under the Act.

Under the **Policy for Development in Shore Water Zones**, various kinds of activities are either restricted or prohibited in the Shore Water Zone, which means the “land that is intermittently occupied by water as a result of the naturally fluctuating surface water level in a body of water which can be either a fresh or salt water body and, in either case, the low water mark and high water mark of the water body defining the edges of the shore water zone”.<sup>30</sup> Activities that are prohibited in this coastal zone include the infilling, dredging, drainage, channelization, or remov-



al of surface or underwater vegetation on or along shore water zones which could cause one of the following issues: aggravate flooding problems; have unmitigable adverse water quality impacts; or, have significant impacts on water circulation patterns or on sediment deposition or accretion or removal rates. The construction of extensive paved surfaces that change the fundamental character of the shore water zone are also not permitted.<sup>31</sup> Activities that are allowed but which require written permission from the Minister of Environment and Climate Change include construction of marinas, boathouses, jetties, wharves, mooring, and other docking facilities, expansion or upgrading of existing infrastructure in the shore water zone areas, and development of recreational activities.<sup>32</sup>

The ***Policy for Development in Wetlands*** establishes criteria for development activities affecting wetlands, including salt marshes and other coastal wetlands.<sup>33</sup> It prohibits activities that could aggravate flooding or have unmitigable adverse impacts on water quality or hydrologic features, development of wetlands within groundwater well recharge zones, and dumping of materials with the potential to impair water quality.<sup>34</sup> Activities that are allowed but require written permission from the Minister include removal of surface vegetation or drainage peat harvesting, agricultural or forestry activities, construction of roads, bridges, culverts or pipelines, construction of residential, commercial or industrial buildings, recreational activities, and construction of flow control structures.<sup>35</sup>

Permits, approvals, and licences issued under the *Water Resources Act* can be found on the Department of Environment and Climate Change's **dedicated webpage**.

### Is a local government approval or permit required?

Under the ***Municipalities Act, 1999*** a regional council or a town council may be given powers related to sewage disposal systems, drainage systems, regional area planning, and other municipal function undertakings.<sup>36</sup> A council may make regulations controlling the construction, alteration and demolition of buildings.<sup>37</sup>

Newfoundland and Labrador has three cities, which are governed by elected councils: they are incorporated under three separate laws: the ***City of Corner Brook Act***, the ***City of Mount Pearl Act*** and the ***City of St. John's Act***.

Under the ***Urban and Rural Planning Act***, a council (including the elected council of a town, city, or region) is given powers to prepare a municipal plan and development regulations for a municipal planning area.<sup>38</sup> Development regulations set out zones for various kinds of land-use, including requirements and restrictions in each zone, and prescribe appropriate development permitting.<sup>39</sup> For example, the St. John's Development Regulations prohibits development in a waterway, wetland, pond, or lake, as well as a 15-metre buffer around such water bodies.<sup>40</sup>

A council or regional authority also has authority to make development regulations that require applications requesting a subdivision to dedicate a portion of the subdivision or land to be developed for park land or other public use.<sup>41</sup>

A **full online directory of municipal plans and development regulations** registered under the *Urban and Rural Planning Act* is publicly accessible.

## Aquaculture

### How is aquaculture managed along the coast?

Aquaculture involves the rearing of fish, shellfish, or marine plant species. Often, fish species are reared using “open-net” pens in coastal waters. Aquaculture can have many potentially harmful impacts on coastal environments and coastal communities. The reared fish may escape, leading to interbreeding with wild fish and the exposure of wild fish to disease. The use of medication, drugs, and chemicals may cause unwanted interactions with marine species. The large concentration of fish can result in fish feces and offal creating dead zones on the seabed or may otherwise alter, disrupt, or destroy nearby marine habitats. The open-net pens often attract birds and other animals, resulting in injury and death to these species. Finally, the physical infrastructure can cause interference with navigation, prevent other uses of the water, and cause nuisances to nearby neighbors because of the associated lights and noise.

### How are the impacts of aquaculture managed?

Aquaculture in Newfoundland and Labrador is governed primarily by the province under the *Aquaculture Act* and the Act’s regulations and related policies. The federal government is involved in many aspects of aquaculture management under the *Fisheries Act* and through its powers that are relevant to navigable waters. The relationship between the province and the federal government is managed under the **Atlantic Memorandum of Understanding for the Development and Management of the Aquaculture Industry**, which was signed in 2021.

The primary way that the federal government is involved in regulating aquaculture is through the federal **Aquaculture Activities Regulations**, which apply to operations that cultivate fish.<sup>42</sup> Although the federal *Fisheries Act* generally prohibits the deposit of deleterious substances into waters frequented by fish, drugs, pest control products, and biochemical oxygen demanding matter used in the operation of an aquaculture facility are exempted if the facility is operated under an aquaculture licence.<sup>43</sup> Any release of such deleterious substances must meet the conditions that are imposed by the *Aquaculture Activities Regulations*.

Newfoundland and Labrador’s **Aquaculture Act** details licencing, aquaculture standards, disease prevention, and land designation. No person may carry out aquaculture unless they have received an aquaculture licence.<sup>44</sup> Licence applications must include a site description, the species intended to be cultivated, and information relating to the health and safety of the environment.<sup>45</sup> The Minister of Fisheries, Forestry and Agriculture may impose terms and conditions on an aquaculture licence. The Minister must also approve any introduction or transfer of live aquatic organisms into any body of water or aquaculture facility in the province.<sup>46</sup> Any aquaculture operation taking place on provincial Crown lands will also require appropriate leases or grants under the *Lands Act*.

The province's **Aquaculture Policy and Procedures Manual** provides guidance to “promote the orderly development of an environmentally sustainable aquaculture industry”.<sup>47</sup> The manual contains procedures and process for all aspects of aquaculture, including matters like aquaculture licencing process requirements, reporting requirements, public consultation requirements, inspections, transfer and transport permitting, buying and selling licence applications, sanitation, fish health surveillance and reporting requirements, and fish disposal. Applications for aquaculture licences must demonstrate consideration of environmental impacts and contain plans to address environmental monitoring, waste management, and plans to respond to incident events.<sup>48</sup> Disease and escape events must be reported to the provincial government and the public within 24 hours of detection. The **Aquaculture Operator Incident Reporting Guidelines** provide further details on reporting requirements.<sup>49</sup>

In addition to the authorizations required under the *Aquaculture Act*, aquaculture projects may be required to undergo a provincial environmental assessment. Under the *Environmental Assessment Regulations*, any undertaking that will engage in fish or shellfish farming, breeding, or propagating in salt or fresh water, or that will include the construction of shore-based facilities other than wharves and storage buildings, must be registered for an environmental assessment.<sup>50</sup>

A Registrar keeps records about aquaculture operations, such as licences, environmental assessment preview reports, and impact statements. These are public (except for information that meets the definition of “confidential information” set out in regulation).<sup>51</sup>

## Pollution in Coastal Areas

### What can I do about land-based or marine-based pollution along the coast?

It is common for land-based and marine-based developments or activities to release pollution into the coastal environment. Pollution can damage coastal ecosystems by interfering with natural processes and harming or killing plant and animal species. It can also negatively impact human health: in particular, the health of vulnerable groups of people like children and the elderly.

The source of pollution will often dictate the relevant laws and responsible government. Generally, if pollution is coming from provincial Crown land or private land, then provincial legislation will apply. If it is coming from federal Crown land, then federal legislation will apply. Labrador Inuit laws may also apply on Labrador Inuit lands. In many cases, regardless of the source of pollution, a multi-government response may be warranted.

Canadian environmental laws generally take a regulatory approach to managing pollution. This means that both provincial and federal law generally prohibit the release of pollution into the environment unless permission is given. Even with permission, there are usually restrictions on the volume, location, and toxicity of the pollution, usually in the form of conditions on an approval.

### Is the pollution the responsibility of the federal government?

If pollution is released into coastal waters or pollution comes from a marine-based activity, it is almost certain that the federal government will be involved. In particular, the federal *Fisheries Act*, *Canadian Environmental Protection Act*, and *Canada Shipping Act* will apply.

The ***Fisheries Act*** has broad application over pollution that impacts coastal waters because of the extent and reach of the federal government's authority over fisheries, and, by extension, fish and fish habitat. The federal power applies directly to fish and fish habitat in coastal waters, and it applies indirectly to the inland waters – such as streams, rivers, and estuaries – that feed into coastal waters.

Subsection 36(3) of the *Fisheries Act* is particularly important because it prohibits everyone from depositing a deleterious substance into any water that is frequented by fish, or under any conditions where the deleterious substance may enter such water.<sup>52</sup> The prohibition applies to all bodies of water along New Brunswick's coast.<sup>53</sup> A deleterious substance is defined as:

- a. any substance that, if added to any water, would degrade, or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water; or

- b. any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade, or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water.<sup>54</sup>

It does not matter whether the deleterious substance causes the water frequented by fish to become deleterious.<sup>55</sup> It also does not matter if a person did not release the deleterious substance into an actual water body. If pollution is allowed to escape and ultimately makes its way into water, that may be sufficient to trigger liability under subsection 36(3).<sup>56</sup>

There is a corresponding duty in the *Fisheries Act* to notify a government authority of the deposit, or reasonably expected deposit, of a deleterious substance. This duty is owed by every person who owns, or has charge, management, or control, of the deleterious substance or the work, undertaking, or activity that results or may result in a deposit.<sup>57</sup> Although Fisheries and Oceans Canada has general authority over the *Fisheries Act*, Environment and Climate Change Canada is responsible for this part of the Act, and so its officers are responsible.

Several regulations created under the *Fisheries Act* may be applicable to a given case of coastal pollution or waste. For example, the *Pulp and Paper Effluent Regulations* may apply to a pulp and paper mill located in a coastal area, and the *Wastewater Systems Effluent Regulations* may apply to a wastewater system located in a coastal area. While a detailed examination of all the regulations is beyond the scope of this volume, a helpful rule of thumb is that these regulations create exemptions to what is otherwise a general prohibition against depositing deleterious substances into waters frequented by fish.

The prohibition against depositing deleterious substances is distinct from other provisions in the *Fisheries Act* that prohibit activities causing death of fish or the harmful alteration, disruption, or destruction of fish habitat.<sup>58</sup> While those activities may be approved by the Minister of Fisheries, Oceans, and the Canadian Coast Guard on a case-by-case basis, only regulations made under the *Fisheries Act* can exempt activities that cause a deposit of a deleterious substance.<sup>59</sup>

The federal ***Canadian Environmental Protection Act*** (“*CEPA*”) deals with toxic substances and contaminants. A key part of the *CEPA* regime is the ***Toxic Substances List***.<sup>60</sup> If a substance on this list is released into the environment, including onto coastal lands or into coastal waters, *CEPA* applies. There is a legal duty to report such a release to an enforcement officer, as well as to take measures to prevent or mitigate the release and to notify the public about the release.<sup>61</sup> *CEPA* has several provisions dealing specifically with land-based pollution affecting the marine environment. It allows the Minister of Environment and Climate Change to issue environmental objectives, guidelines, and codes of practice to prevent and reduce marine pollution from land-based sources, following consultation with any other affected minister.<sup>62</sup>

*CEPA* is also one of the key federal laws dealing with marine-based pollution. The Act prohibits any person or ship from disposing of a substance in Canada's internal waters (excluding rivers, lakes, or other fresh waters), territorial sea, or exclusive economic zone unless the substance is a "waste or other matter" (which are substances listed in Schedule 5 of the Act) and the disposal is done in accordance with a Canadian permit.<sup>63</sup> The Minister of Environment and Climate Change may issue a permit in accordance with regulations created under *CEPA*, following an assessment of the "waste or other matter" being proposed for disposal at sea.<sup>64</sup>

The ***Canada Shipping Act*** is the other key federal law that deals with marine-based pollution. It implements most of the international shipping requirements for pollution prevention, primarily through its ***Vessel Pollution and Dangerous Chemicals Regulations***. The *Canada Shipping Act* and its regulations govern and regulate various kinds of vessel pollution, including the following:

- Ballast water: Canadian vessels and all vessels that are in Canada's internal waters or its territorial sea must use an approved ballast water management system to clean their ballast water of organisms to an international performance standard before release.<sup>65</sup>
- Garbage: The discharge of garbage from ships is banned in internal waters.
- Greywater: Any discharge of drainage water from sinks, bathtubs, showers, and dishwashers must not result in deposit of solids or leave a sheen on the water.<sup>66</sup>
- Noxious substances and dangerous chemicals: Every person or vessel is prohibited from discharging a noxious liquid substance carried in bulk, except in accordance with requirements established by regulation. These prohibitions are specific to chemical tankers.
- Oil and Oily Discharges: Every person or vessel is prohibited from discharging a prescribed pollutant – which includes oil and any oily mixture – unless the discharge is conducted in accordance with a permit issued under the *Canada Shipping Act* or *CEPA*.<sup>67</sup> This restriction applies to any vessel in Canadian waters, including the nearshore and internal coastal waters of New Brunswick.
- Sewage: Every person or vessel is prohibited from discharging sewage or sewage sludge, except in accordance with fecal coliform counts and other conditions imposed by section 96 of the *Vessel Pollution and Dangerous Chemicals Regulations*.<sup>68</sup> Discharge of untreated sewage from a vessel within 3 nautical miles of the shoreline is prohibited with few exemptions.

Any such pollution or waste coming from a ship will fall within the authority of the Canadian Coast Guard.

### Is the pollution or waste the responsibility of the provincial government?

If pollution is being released into a coastal area and it is coming from provincial Crown land or private land, then responsibility falls to the provincial government. This stems from the provincial government's constitutional authority over provincial Crown lands, local works and undertakings, property rights, and matters of a local or private nature.

Newfoundland and Labrador's ***Environmental Protection Act*** prohibits the release of any substance into the environment in an amount, concentration, level, or rate of release that would or may (in the opinion of the Minister) cause an adverse effect, unless the release is authorized.<sup>69</sup> The prohibition applies to water or land covered in water, including coastal ponds, lagoons, wetlands, or canals, and it also applies to water above the bed of the sea within the province's jurisdiction.<sup>70</sup>

Any person responsible for a release of a substance into the environment that has caused, is causing, or may cause an adverse effect has a legal obligation to report it to the Department of Environment and Climate Change or other appropriate agencies, the owner of the substance, the person who has care, management or control of the substance, and any other person who may be directly affected by the release.<sup>71</sup> Where an inspector believes a release of a substance is an environmental emergency, they are authorized to take emergency measures.<sup>72</sup>

The ***Water Resources Act*** also deals with substances affecting water and water quality. One of the ways it does this is by regulating the approval of sewage works and waterworks, primarily through its ***Environmental Control Water and Sewage Regulations***. The regulations create standards and conditions on the release of sewage and effluent into bodies of water (including bodies of fresh and salt water). Schedules A and B of the regulations prescribe the maximum potency of listed compounds that may be discharged into bodies of water.

As noted above, the *Policy for Development in Shore Water Zones* establishes permitting criteria for activities affecting the shore water zone. Placing, depositing, or discharging any materials, such as sewage or pesticides, which impair or have the potential to impair water quality, is not permitted under the policy.<sup>73</sup>



## Protected Coastal Areas

### What measures can be used to protect coastal land, species, or their habitats?

One way to protect the coastal environment is to identify, create, and manage protected areas. There are multiple laws that can be used to protect coastal land and the species that live in coastal habitats, and each offers different kinds and degrees of protection. Some laws prohibit or limit human activities in an area; some encourage the restoration of species, species habitats, or ecosystems; and some encourage people to interact with their environment by facilitating recreational opportunities.

### Which federal laws can be used to create protected coastal areas?

The federal government can make laws that protect federal Crown land and areas below the low-water mark. It can also make laws that protect specific species, and these laws apply to provincial and private land as well; for example, we have already noted above that the *Species at Risk Act* and the *Migratory Birds Convention Act* may offer protection to certain designated species and their coastal habitats.

Two ways that coastal land can be protected federally is through the designation of marine protected areas and national parks.

The phrase “marine protected area” (“MPA”) is used generally to describe a protected area that has a marine component or that is entirely in a marine environment. The International Union for Conservation of Nature defines a protected area as a “clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values”.<sup>74</sup> There are many different ways that marine protected areas can be created, but the most common types are *Oceans Act* MPAs, National Marine Conservation Areas created under the *National Marine Conservation Areas Act*, or *Wildlife Areas* created under the *Canada Wildlife Act*.

Canada’s ***Ocean Act*** defines an MPA as a part of the internal waters, territorial sea, or exclusive economic zone that is designated to conserve or protect species, habitats, or biodiversity.<sup>75</sup> *Oceans Act* MPAs are designated by regulations created under the Act. These MPAs can take many years to establish in a process that involves input from multiple government departments, stakeholders, scientists, and the public to identify an initial “area of interest”. Next, regulations are drafted that identify the area for the MPA and sets the rules for it. Finally, management and advisory committees are formed to monitor and manage the area.

There are several *Oceans Act* MPAs in Newfoundland and Labrador. Some are found offshore, while others are located in coastal areas. Both the Gilbert Bay MPA and the Eastport MPA are found in coastal regions of the province, and their respective regulations prohibit any activities that disturb, damage, destroy, or remove any living marine organism, habitat, or seabed, including dumping, discharge, or deposition of substances.<sup>76</sup> However, there are exceptions for certain

activities. For example, the Gilbert Bay MPA is divided into zones, and certain recreational and commercial fishing activities may occur in the MPA depending on the zone. Additionally, both MPAs allow for fishing carried out in accordance with the *Aboriginal Communal Fishing Licences Regulations* created under the *Fisheries Act*, as well as any activity carried out for public safety, national defence, or emergency response.

The ***National Marine Conservation Areas Act*** allows Parks Canada to protect and conserve representative examples of Canada's natural and cultural marine heritage and to provide opportunities for public education and enjoyment.<sup>77</sup> Parks Canada provides these protections by designating National Marine Conservation Areas ("NMCAs"); however, there are currently no existing or planned NMCAs in Newfoundland and Labrador.

The ***Canada Wildlife Act*** allows the Canada Wildlife Service to protect and conserve habitat for wildlife by establishing National Wildlife Areas ("NWA"), including NWAs with marine components, and protected marine areas.<sup>78</sup> These areas are designed to preserve habitat for migratory birds and other species, with a focus on endangered species.<sup>79</sup> Newfoundland and Labrador is one of two provinces (the other being Prince Edward Island) that does not have a NWA.

The ***Canada National Parks Act*** allows for the establishment of national parks or national park reserves in which critical habitat is protected. No person may use or occupy public lands within a national park, except with a permit or other approval granted under the Act or its regulations.<sup>80</sup> Indigenous persons may carry on harvesting of traditional renewable resources in national park reserves.<sup>81</sup> Each national park or national park reserve is divided into multiple zones, with differing conservation objectives in each zone.

There are four national parks in Newfoundland and Labrador, and three of them – the Terra Nova National Park, the Gros Morne National Park, and the Akami-Uapishk<sup>U</sup>-KakKasuak-Mealy Mountains National Park Reserve – have coastal components.

A total of 93% of the Terra Nova National Park is "Zone II" and contains areas that represent the national region, including intertidal areas along the coastline and several islands. These areas are conserved in a wilderness state.

In the Gros Morne National Park, "Zone I", which makes up approximately 6% of the park, preserves areas of the park that contain or support unique, threatened, or endangered national or cultural features. Ecosystems protected in Zone I include Shallow Bay, which is a sandy beach and dune system, the Stearin Island and White Rock Islets, which are coastal islands used for breeding by seabirds such as common and Arctic terns, and Heather Pond, which contains the only eastern North American colony of the rare mountain fern.

The Akami-Uapishk<sup>U</sup>-KakKasuak-Mealy Mountains National Park Reserve is co-operatively managed between the Innu Nation under a Park Impacts and Benefits Agreement, the Nunatsiavut Government under the Labrador Inuit Land Claims Agreement and a Park Impacts and Benefits Agreement, the NunatuKavut Community Council under a Shared Understanding Agreement, and the Innu of the North Shore of Quebec.<sup>82</sup>

## Which provincial laws can be used to create protected coastal areas?

The provincial government can use its laws to protect provincial Crown lands, including bodies of water along the coast and any submerged land or seabed that is above the low-water mark. However, like the federal government, the province has laws that allow it to create protected areas like special management areas, provincial parks, wildlife parks and reserves, and wilderness and ecological reserves.

Under the ***Lands Act***, the Minister of Fisheries, Forestry and Agriculture has broad authority and discretion to reserve and set aside provincial Crown lands for a “purpose and period” to be determined in the order setting aside the land. The size of this land may exceed 100 hectares with the approval of the Lieutenant-Governor in Council.<sup>83</sup> The Lieutenant-Governor in Council may also designate a “special management area”.<sup>84</sup> There are no specific criteria for setting aside provincial Crown lands or designating a special management area, but the Lieutenant-Governor in Council may create regulations that prohibit or impose conditions on any activities within these areas.

There are currently four special management areas in the province: Main River, Marble Mountain, Sunnyside (Bull Arm), and Torngat Mountains. As an example, the purpose of the Main River Special Management Area is to maintain the ecological and viewshed integrity of the area and to maintain the natural and recreational values of the Main River Canadian Heritage River. The regulations prohibit mining but allow activities like hunting and fishing.

Newfoundland and Labrador can create provincial parks under its ***Provincial Parks Act***. The parks are designated by the Minister of Tourism, Culture, Arts and Recreation through regulation. The ***Provincial Parks Regulations*** contain most of the substantive protections for provincial parks, and they prohibit certain activities, including mineral exploration, mining, logging, hydroelectric development, and construction of private dwellings.<sup>85</sup> Additionally, removing, harming, hunting, chasing, destroying, and causing damage within park boundaries is prohibited. Introducing a plant or animal species into a provincial park is also prohibited. Some management and scientific activities are allowed with a permit.<sup>86</sup> At the time of publication there are 32 provincial parks in Newfoundland and Labrador, 10 of which are provincial park reserves and are not open to camping or day use. Coastal parks include Gooseberry Cove Provincial Park, Bellevue Beach Provincial Park, and Blow Me Down Provincial Park.<sup>87</sup>

Since the *Provincial Parks Act* and its regulation do not specify any objectives or goals, or define what a park is meant to achieve, this conservation tool can be broadly applied to stewardship efforts in coastal areas.

Under the province’s ***Wild Life Act***, the Minister can establish a wild life park or wild life reserve. The ***Wild Life Park Regulations*** set out the rules in wild life parks and wild life reserves. No person may enter a wild life park unless they are responsible for park maintenance or administration or hold a permit.<sup>88</sup> There are currently three wild life reserves in the province. The Big Barasway Wild Life Reserve is the only coastal wild life reserve and protects the habitat of the endangered piping plover.<sup>89</sup>

Under the province's ***Wilderness and Ecological Reserves Act***, the Lieutenant-Governor in Council may designate wilderness reserves or ecological reserves. Wilderness reserves are areas where little or no human activity is allowed, while ecological reserves are areas that contain a representative or unique ecosystem, species, or natural phenomena.<sup>90</sup> The *Wilderness Reserve Regulations* and the *Botanical Ecological Reserve Regulations* (among others) create further prohibitions on activities within their respective reserves. The responsible minister may also establish an endangered area as an emergency reserve when a significant area has not yet been designated as a reserve but is in danger of imminent damage from an activity or event.<sup>91</sup>

There are 18 ecological reserves in Newfoundland and Labrador. Burnt Cape Ecological Reserve, Mistaken Point Ecological Reserve, and Cape St. Mary's Ecological Reserve are examples of coastal botanical, fossil, and seabird ecological reserves, respectively. The Funk Island Seabird Sanctuary, the Hare Bay Seabird Sanctuary, and the Gannet Islands Seabird Sanctuary are also considered reserves under this Act, including the water surrounding the sanctuaries.<sup>92</sup>

# Taking Action to Protect the Coast

## What can I do?

There are many ways that you can take action to protect the coast. This may include taking informal steps to resolve an issue to taking formal steps like initiating a legal proceeding in court. A review of all possible options is outside the scope of this document. What follows are some considerations.

### Gather Information

If you are concerned about a proposed development or activity along the coast or want to develop in an environmentally responsible manner, you can gather information about the development or activity. Ask the following questions to help you determine what level of government is responsible and which laws apply.

- Is the development or activity located above or below the ordinary high-water mark?
- Do legally protected species or migratory birds live in the area?
- Does the development or activity involve or impact navigation?
- Does the development or activity impact fish or fish habitat?
- Is there a coastal wetland or watercourse?
- How big is the development or the footprint of the activity that may occur?
- Will the development or activity be on privately-owned coastal land, or will it be located on provincial or federal Crown land?

### Contact the Appropriate Authority

You can contact the appropriate authority or department and request more information about any approvals, permits, licences, or other authorizations that may be required or have been issued for the coastal land. This includes contacting your local municipality for information about possible municipal requirements. You may need to request information through a freedom of information request. For more information, see the provincial **Access to Information and Protection of Privacy Act** and the federal **Access to Information Act**. The *Municipalities Act, 1999* also requires town councils and regional councils to make certain kinds of information available for public inspection, including minutes and tabled documents.

If you believe that an offence has been committed or may be committed, you can report the suspected offence to the enforcement division of the appropriate government department(s). There may be instances where you are required to report.

### Take Court Action

Sometimes, private property rights may be impacted because of environmental degradation. If you believe that the use or enjoyment of your private coastal property has been affected negatively or that environmental degradation has impacted you or may impact you, you can contact a lawyer to discuss your concerns and explore your options.

## Disclaimer

Please note that this volume cannot cover all legal issues or all options available to you, nor should it be interpreted as legal advice. While East Coast Environmental Law works hard to update its materials, some information contained in this Summary Series may become outdated as statutes, regulations, and policies are updated and amended.

## East Coast Environmental Law Association

East Coast Environmental Law is an environmental law charity that provides public-interest environmental law services throughout Atlantic Canada. We advocate for progressive environmental laws and policies for Atlantic Canada, provide public legal education, and share our legal skills to support individuals, communities, and organizations that are working to prevent or redress environmental harms. We do our work by responding to community inquiries, carrying out legal and policy research, and producing materials on public-interest environmental law issues in Atlantic Canada.

Research assistance was provided by law student Clare Henderson.

## The Environmental Law Summary Series

The Environmental Law Summary Series was one of the first public legal education activities undertaken by East Coast Environmental Law. Each volume of the Summary Series serves as a quick reference resource. The volumes are topical and generally address an area of interest or concern raised by communities or organizations.

You can find more Summary Series volumes and other resources that cover areas of Newfoundland and Labrador environmental law at [www.ecelaw.ca](http://www.ecelaw.ca).



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## Endnotes

- <sup>1</sup> Government of Newfoundland and Labrador, “Discover our National Landscapes” (accessed autumn 2022), online: <<https://www.newfoundlandlabrador.com/about-this-place/natural-landscape>>.
- <sup>2</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5 at section 91 [“*Constitution Act, 1867*”].
- <sup>3</sup> *Newfoundland Act* (UK), 12-13 Geo. VI, c 22.
- <sup>4</sup> *Constitution Act, 1867* (see footnote 2 for full citation) at section 92.
- <sup>5</sup> *Ibid* at section 92.
- <sup>6</sup> *Ibid* at section 92(A).
- <sup>7</sup> See *Haida Nation v Canada*, (2004) SCC 73 and *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, (2005) SCC 69.
- <sup>8</sup> *Land Claims Agreement Between the Inuit of Labrador and Her Majesty the Queen in Right of Newfoundland and Labrador and Her Majesty the Queen in Right of Canada*, at section 6.3.1 [“*Labrador Inuit Land Claims Agreement*”].
- <sup>9</sup> *Ibid* at sections 6.4.1 and 6.4.2.
- <sup>10</sup> *Urban and Rural Planning Act*, 2000, SN 2000, c U-8 at subsections 15(2) and 24(1).
- <sup>11</sup> For authorities in New Brunswick, see: *Saint John (City) v Baker* (1906) 3 NB Eq 358 and *Byron v Stimpson* (1878) 17 NBR 697, recently considered and affirmed on this point in *Erik v McDonald* (2019) ABCA 217.
- <sup>12</sup> For more information about species at risk that live in coastal areas of Newfoundland and Labrador, see the province’s *Endangered Species Act* or visit the dedicated Department of Fisheries, Forestry and Agriculture [website](#).
- <sup>13</sup> See sections 27 to 52 of the *Environmental Assessment Regulations*.
- <sup>14</sup> See *Fisheries Act*, RSC 1985 c F-14 at subsection 35(1) [“*Fisheries Act*”], which provides an exception for activities that are authorized by the Minister of Fisheries, Oceans, and Canadian Coast Guard or exempted by regulations made under the Act.
- <sup>15</sup> For the prohibition against activities causing death of fish, see the *Fisheries Act* (see footnote 13 for full citation) at subsection 34.4(1); for the prohibition against the alteration of fish habitat, see the *Fisheries Act* at subsection 35(1).
- <sup>16</sup> This is part of amendments to the *Fisheries Act* in 2019 that are not yet in force. See *An Act to amend the Fisheries Act and other Acts in consequence*, SC 2019 c 14 at section 30.
- <sup>17</sup> For more information about approvals, visit the [Transport Canada webpage](#).
- <sup>18</sup> *Minor Works Order*, SOR/2021-170 at sections 9 to 39.
- <sup>19</sup> *Major Works Order*, SOR/2019-320 at sections 1 to 6.
- <sup>20</sup> *Migratory Birds Regulations*, 2022 SOR/2022-105 at subsections 5(1) and 12(1).
- <sup>21</sup> *Species at Risk Act*, SC 2002 c 29 at section 73.
- <sup>22</sup> More information about the types of leases and licences required can be found in the *Fishing and Recreational Harbours Regulations*, SOR/78-767, which are created under the statute.
- <sup>23</sup> *Fishing and Recreational Harbours Act*, RSC 1985 c F-24 at sections 2 and 4.
- <sup>24</sup> *Ibid* at subsections 5(1), 5(2), and 5(3).
- <sup>25</sup> *Lands Act*, SNL 1991, c 36 at section 7(1).
- <sup>26</sup> *Ibid* at subsection 7(2).
- <sup>27</sup> *Ibid* at subsection 7(5).
- <sup>28</sup> *Ibid*, at subsection 2(1)(x).
- <sup>29</sup> *Water Resources Act*, SNL 2002 c W-4.01 at section 48.
- <sup>30</sup> Newfoundland and Labrador Environment and Climate Change, “Policy for Development in Shore Water Zones” (January 2001) at section 4.0, online: <<https://www.gov.nl.ca/ecc/waterres/regulations/policies/shore-water/>>.
- <sup>31</sup> *Ibid* at sections 5.2 and 5.3.
- <sup>32</sup> *Ibid* at subsection 5.3.
- <sup>33</sup> Newfoundland and Labrador Environment and Climate Change, “Policy for Development in Wetlands” (January 2001), online: <<https://www.gov.nl.ca/ecc/waterres/regulations/policies/wetlands/>> Wetlands include bogs, fens, marshes, swamps, and other shallow open water areas.
- <sup>34</sup> Under the *Quarry Materials Act* SNL 1998, c Q-1.1 and its *Quarry Materials Regulations*, Consolidated Newfoundland and Labrador Reg 804/96, quarrying, excavating, removing, and disposing of quarry material from a beach requires a permit. Excavating, digging, removing, or carrying away quarry material from Crown land without a lease or permit is prohibited. The responsible minister may also designate areas as environmentally sensitive, where no leasing or permitting may occur. See: *Quarry Materials Act* at subsections 5(1), 8(1), and 22(1), and section 7; *Quarry Materials Regulations* at subsection 5(1)(a).
- <sup>35</sup> *Ibid*, at section 5.1.



<sup>36</sup> *Municipalities Act*, SNL 1999, c M-24 at subsection 2(1)(f) and sections 34 and 35.

<sup>37</sup> *Ibid*, at subsection 414(1)(d).

<sup>38</sup> *Urban and Rural Planning Act* at section 10.

<sup>39</sup> *Ibid* at subsection 35(1).

<sup>40</sup> *St. John's Development Regulations*, at subsections 4.10(1) and 4.10(2).

<sup>41</sup> *Ibid* at subsection 37(1).

<sup>42</sup> Note: Fisheries and Oceans Canada has proposed a federal Aquaculture Act, but there is currently no indication on when such an Act might be created or if it would apply to Newfoundland and Labrador.

<sup>43</sup> See *Fisheries Act* (see footnote 13 for full citation) at subsection 36(4)(c) and *Aquaculture Activities Regulations*, SOR/2015-177 at sections 2 and 3. An aquaculture licence may include an authorization or licence issued by the provincial government.

<sup>44</sup> *Aquaculture Act*, RSNL 1990, c A-13 at subsection 4(1).

<sup>45</sup> *Ibid* at subsection 4(3).

<sup>46</sup> *Ibid* at subsection 8(1).

<sup>47</sup> Government of Newfoundland and Labrador, "Aquaculture Policy and Procedures Manual" (September 2019), online: <<https://www.gov.nl.ca/ffa/files/licensing-pdf-aquaculture-policy-procedures-manual.pdf>> at page 5.

<sup>48</sup> "Incident events" are defined in the *Aquaculture Policy and Procedures Manual* as any events that caused or could have caused abnormal mortality (three per cent or higher), harm, or an imminent threat to farmed finfish or shellfish, or to a structure or vessel on an aquaculture site, including any event that impairs any equipment required to sustain fish health and escape prevention, and any other event considered to be reportable by the department.

<sup>49</sup> Government of Newfoundland and Labrador, "Aquaculture Operator Incident Reporting Guidelines" (undated), online: <<https://www.gov.nl.ca/ffa/files/21055-Aquaculture-Incident-Reporting-March-25.pdf>>

<sup>50</sup> *Ibid* at section 30.

<sup>51</sup> *Aquaculture Act* at section 9.

<sup>52</sup> *Fisheries Act* (see footnote 13 for full citation) at subsection 36(3).

<sup>53</sup> See the definition of "Canadian fisheries water" in the *Fisheries Act* (see footnote 13 for full citation) at subsection 2(1).

<sup>54</sup> *Ibid* at subsection 34(1).

<sup>55</sup> See: *R v MacMillan Bloedel (Alberni) Ltd* [1979] 4 WWR, 654, 47 CCC (2d) 118 (BCCA), which was affirmed recently in *R v University of British Columbia*, (2020) BCSC 1126, 165 WCB (2d) 254, and in New Brunswick in *R v Gemtec Limited*, (2007) NBQB 199.

<sup>56</sup> See: *R v Western Stevedoring Co.* (1984) 13 CELR 159, recently affirmed in *R v Gibson Energy ULC*, (2019) ABPC 191 and in *R v 3853942 Canada Inc et al dba Saputo Dairy Products Canada*, (2017) BCPC 298.

<sup>57</sup> *Fisheries Act* (see footnote 13 for full citation) at subsection 38(5).

<sup>58</sup> For the prohibition against activities causing death of fish, see the *Fisheries Act* (see footnote 13 for full citation) at subsection 34.4(1); for the prohibition against the alteration of fish habitat, see the *Fisheries Act* at subsection 35(1).

<sup>59</sup> *Ibid* at section 36(4).

<sup>60</sup> For the full list of toxic substances listed, see Schedule 1 of the *Canadian Environmental Protection Act, 1999*, SC 1999 c 33 ["CEPA"].

<sup>61</sup> *Ibid* at subsection 95(1).

<sup>62</sup> *Ibid* at subsection 121(1).

<sup>63</sup> *Ibid* at subsection 125(1).

<sup>64</sup> *Ibid* at Schedule 6.

<sup>65</sup> *Ballast Water Regulations*, SOR/2021-120 at subsection 4(1).

<sup>66</sup> *Vessel Pollution and Dangerous Chemicals Regulations*, SOR/2012-69 at subsection 131.1(4).

<sup>67</sup> *Canada Shipping Act, 2001*, SC 2001 c 26 at section 187 and *Vessel Pollution and Dangerous Chemicals Regulations* at section 4.

<sup>68</sup> *Vessel Pollution and Dangerous Chemicals Regulations* at section 95.

<sup>69</sup> *Environmental Protection Act* SNL 2002, c E-142 at section 7.

<sup>70</sup> *Ibid* at subsection 2(qq).

<sup>71</sup> *Ibid* at section 8.

<sup>72</sup> *Ibid*, at section 11.

<sup>73</sup> Newfoundland and Labrador Environment and Climate Change, "Policy for Development in Shore Water Zones" at sections 1.0, 2.0, and 5.2.

<sup>74</sup> International Union for the Conservation of Nature, "Guidelines for applying the IUCN protected area management categories to marine protected areas" (2019) 2nd Edition, online: <<https://portals.iucn.org/library/node/48887>>.

- <sup>75</sup> *Oceans Act*, SC 1996 c 31 at subsection 35(1).
- <sup>76</sup> See: *Gilbert Bay Marine Protected Area Regulations*, SOR/2005-295 at subsection 3(1) and *Eastport Marine Protected Areas Regulations*, SOR/2005-294 at subsection 4(1).
- <sup>77</sup> *National Marine Conservation Areas Act*, SC 2002 c 18 at subsection 4(1).
- <sup>78</sup> *Canada Wildlife Act*, RSC 1985 c W-9 at subsections 3 and 4.1(1).
- <sup>79</sup> *Ibid* at sections 8 and 9(1).
- <sup>80</sup> *Canada National Parks Act*, SC 2000 c 32 at section 13 [“*Canada National Parks Act*”] and *National Parks General Regulations* SOR/78-213 at sections 7 and 7.1.
- <sup>81</sup> *Canada National Parks Act* [see footnote 79 for full citation] at sections 39 and 40.
- <sup>82</sup> Parks Canada, “Park Management: Akami-Uapishk<sup>u</sup>-KakKasuak-Mealy Mountains National Park Reserve” (Date modified November 19, 2022; accessed autumn 2022), online: <<https://parks.canada.ca/pn-np/nl/mealy/info/index>>
- <sup>83</sup> *Lands Act* at section 8.
- <sup>84</sup> *Ibid* at subsection 57(1).
- <sup>85</sup> *Provincial Parks Act*, RSNL 1990, c P-32, at sections 4 and 5. The Newfoundland and Labrador T’Railway Provincial Park is an exception to these prohibitions.
- <sup>86</sup> *Provincial Park Regulations*, NL Reg 91/97 at sections 3 and 4.
- <sup>87</sup> See: Parks Newfoundland and Labrador, “Parks” (accessed autumn 2022), online: <<https://www.parksnl.ca/parks/>>.
- <sup>88</sup> *Wild Life Park Regulations*, Consolidated Newfoundland and Labrador Regulation 977/96 at section 3.
- <sup>89</sup> See the *Wild Life Reserve Big Barasway, Burgeo Regulations*, Consolidated Newfoundland and Labrador Regulation 770/96.
- <sup>90</sup> *Wilderness and Ecological Reserves Act*, RSNL 1990, c W-9 at sections 4 and 5.
- <sup>91</sup> *Ibid* at section 22.
- <sup>92</sup> *Ibid* at section 19 and the Schedule.