

## Environmental Law for the Coast: Nova Scotia

Nova Scotia has approximately 13,000 km of coastal shoreline that borders the Atlantic Ocean, the Bay of Fundy, and the Gulf of St. Lawrence. This varied and diverse environment boasts many unique and important coastal ecosystems like salt marshes, sand dune systems, and eel grass meadows. These coastal ecosystems play an important role for biodiversity and protect the province from the 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 many that are rare or endangered. These 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 Nova Scotia's coast. 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 steward coastal resources, it is important to understand who is responsible and which environmental laws might apply. In Nova Scotia, 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 However, provincial and federal jurisdiction is also informed by pre-Confederation historical documents, international treaties, federal and provincial legislation, and Canadian court decisions.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. It also governs federal Crown lands (lands owned by the federal government), including national parks, land designated under the federal *Indian Act*, and Canadian Forces bases.<sup>1</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 Nova Scotia's coastal waters and other coastal activities are the ***Oceans Act*** and the ***Fisheries Act***, along with their regulations.

## Provincial Jurisdiction

Nova Scotia has control over all the territory that made up the province at the time of Confederation. The wording used in the *Constitution Act, 1867* implies that the authority of a province is limited to its territorial boundaries.<sup>2</sup> The boundaries of Nova Scotia in 1867 are still unclear and disputed today, but there may be evidence that parts of the Bay of Fundy were within the territory of Nova Scotia at the time of Confederation and are therefore under the jurisdiction of the province.<sup>3</sup> However, generally, the provincial government controls coastal lands inland from the ordinary low-water mark.

Sections 92, 92A, and 93 of the *Constitution Act, 1867* give Nova Scotia exclusive authority to make laws about various matters that can affect the coast, including the governance of provincial Crown lands, local works and undertakings, property rights, and matters of a local or private nature.<sup>4</sup> The province also makes laws about natural resources and energy production, including sources of tidal power.<sup>5</sup>

The provincial departments that share primary responsibility for coastal management in Nova Scotia are the Department of Environment and Climate Change, the Department of Fisheries and Aquaculture, and the Department of Natural Resources and Renewables. The primary provincial laws affecting Nova Scotia's coastal waters and other coastal activities are the *Beaches Act*, the *Environment Act*, and the *Fisheries and Coastal Resources Act*, along with their regulations.

## Municipal Government Jurisdiction

Unlike that of the federal and provincial governments, a municipal government's authority is not based in the *Constitution Act, 1867*. Municipal governments, which include regional municipalities, county municipalities, district municipalities, and towns, are granted jurisdiction

by the Government of Nova Scotia through “enabling statutes” that empower municipalities to govern. In Nova Scotia, municipalities’ enabling statutes are the **Municipal Government Act** and the **Halifax Regional Municipality Charter**.

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 by-laws. A by-law is a set of rules that applies to the local area. A by-law can be used to restrict, prohibit, or otherwise regulate coastal developments and activities. A by-law could be used to restrict development near the coast or to designate flood-risk areas. For example, the Municipality of the District of Yarmouth’s land-use by-law creates coastal wetlands and floodplain zones in which activities and development are restricted.<sup>6</sup> There are times when by-laws and provincial laws, which are both aimed at environmental protection, overlap. When a municipality has clear authority to make a by-law and that by-law does not conflict with provincial laws, the by-law may require higher levels of protection than provincial laws.

### 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.<sup>7</sup> “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 the Crown knows about an asserted or established Aboriginal or treaty right and contemplates conduct (considers doing something) that could affect that right adversely (negatively), the Crown has a duty to consult the Indigenous rights holders in question and may also have a corresponding duty to accommodate them.<sup>8</sup> This means that if the Government of Canada or the Government of Nova Scotia 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 governments on reserves. 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 among many is the possibility of establishing Indigenous Protected and Conserved Areas (“IPCAs”), 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. Mi’kmaq groups have taken steps to establish IPCAs in Nova Scotia, and these can include coastal lands.

### [A Note on Private Coastal Property Rights](#)

Private individuals may own property along the coast, up to the high-water mark. In some rare circumstances, certain coastal properties may extend beyond the high-water mark into the water. These “private water lots”, which are sometimes called “pre-Confederate water lots”, were granted to private landowners prior to Confederation and remain in existence. For example, the Halifax Regional Municipality has many private water lots.

In addition, landowners 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 gradual accumulation of sediments).<sup>9</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 Nova Scotia's coastal areas. Examples include many of the province's beaches and salt marshes and rare or endangered species like the Piping Plover that live entirely within or rely on coastal ecosystems.

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, sea level rise, storm surges, and erosion.

Although human development and activities are not generally prohibited in coastal areas, they frequently require government approval. Often, a combination of municipal government by-laws 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 Nova Scotia**. Coastal developments that may require an environmental assessment include a project that involves transferring water between drainage basins if the drainage area to be diverted is more than 1 km<sup>2</sup> or a project that disrupts more than 2 hectares of any wetland.<sup>10</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>11</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>12</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>13</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 **Navigable Waters Protection Act**.<sup>14</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. Examples of minor works include erosion-protection works, aerial cables, submarine cables, buried pipelines, outfall and water intakes, dredging, and watercourse crossing activities.<sup>15</sup> Any “major work” set out in the **Major Works Order** will require approval. Major works are activities that are likely to substantially interfere with navigation. Examples include water control structures, bridges, placement and repair of ferry cables, causeways, and aquaculture facilities.<sup>16</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 in 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>17</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>18</sup> Information about agreements or permits issued under the *Species at Risk Act* is available on the **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>19</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>20</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>21</sup>

### Is a provincial approval or permit required?

There is no dedicated provincial law in Nova Scotia that protects the entire coast, although the province does have a *Coastal Protection Act* that is currently not in force.<sup>22</sup> What follows is a brief description of the key laws, regulations, and policies that govern certain coastal developments and activities. We have also included a discussion of the *Coastal Protection Act*, even though it is not in force. Note: there are many provincial laws that may apply to activities occurring in coastal areas, and this Summary Series cannot review them all.

The ***Environment Act*** applies to many activities that occur on provincial Crown land and on private land. It deals with pesticide use, other contaminants, wetland and watercourse alterations, and other matters. It promotes the sustainable development of water resources, including all fresh and marine waters within its jurisdiction. It also establishes Nova Scotia's environmental assessment regime.

Under the *Environment Act*, the provincial Minister of Environment and Climate Change is authorized to restrict or prohibit the alteration of watercourses and wetlands, establish or adopt water-management goals, and set water-quality guidelines, objectives, and standards.<sup>23</sup> The ***Activities Designation Regulations*** created under the Act require any person wishing to alter a wetland or watercourse to receive an approval from the Minister or an administrator designated by the Minister.<sup>24</sup> The province's ***Wetland Conservation Policy*** guides wetland alteration approvals under this regime. It establishes the overarching government goal of no net loss of wetlands in the province, as well as the goal of no loss in Wetlands of Special Significance and the goal of preventing net loss in area and function for other wetlands.<sup>25</sup> With the aim of accomplishing this goal, the policy prohibits wetland alteration approvals for salt marshes, which are identified as Wetlands of Special Significance.<sup>26</sup>

Where an activity requires an approval, the Minister may issue or refuse to issue an approval.<sup>27</sup> The Minister may decide not to issue an approval if they are of the opinion that it is not in the public interest to do so.<sup>28</sup> In making such a decision, the Minister must consider matters like whether the proposed activity contravenes a policy of the government or the Department of Environment and Climate Change, whether the location of the proposed activity is unacceptable, or whether adverse effects from the proposed activity are unacceptable.<sup>29</sup> This means it can be helpful to alert the Minister to instances of a coastal development if it may contravene government policy, is located in an unacceptable location, or may cause adverse effects. Ultimately, the Minister has discretion to make this final decision based on the factors and information before them.

The *Environment Act* requires the Minister to establish an ***environmental registry***. It must contain approvals, orders, and directives (among other information) that are issued under the Act.<sup>30</sup> The Minister must ensure public access to the information and documents contained in the environmental registry during business hours.<sup>31</sup> There is a cost and application process to access the materials on the environmental registry.

The ***Crown Lands Act*** deals with the management of provincial Crown lands in Nova Scotia, including submerged areas around the province's coast. The Act prohibits the removal of resources from Crown lands unless authorization has been granted.<sup>32</sup> Approval is required before infilling submerged Crown land or constructing a wharf, mooring, or boat launch.<sup>33</sup>

Once the ***Coastal Protection Act*** comes into force, it will create a "Coastal Protection Zone" around the province.<sup>34</sup> Inside this Coastal Protection Zone, no one will be allowed to construct, modify, or locate a structure unless it complies with the Act and future regulations.<sup>35</sup>

Additionally, within the Coastal Protection Zone, no one will be allowed to alter a wetland or to carry on any activity if it interferes with the natural dynamic and shifting nature of the coast (unless the interference or alteration complies with requirements under the Act).<sup>36</sup> Municipalities will not be allowed to issue development or building permits or enter into an agreement to construct or modify a structure inside the Coastal Protection Zone unless the structure is certified by a designated professional.<sup>37</sup> Future regulations created under the Act will set criteria for who qualifies as a designated professional.

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

Municipal governments have powers to regulate development and human activity along the coast by creating by-laws. These are primarily created under the **Municipal Government Act** and the **Halifax Regional Municipality Charter** (which only applies in the Halifax Regional Municipality). Municipal governments can use by-laws to complement or strengthen environmental protection provided by federal or provincial law or to address gaps in protection where there are no federal or provincial laws.

Municipal governments are governed by elected councils.<sup>38</sup> Councils exercise their powers by making resolutions, policies, or by-laws.<sup>39</sup> By-laws can be used provide services, facilities and other things that are necessary or desirable and for “development and maintain safe and viable communities”.<sup>40</sup>

Municipal governments also have jurisdiction over planning and development in their respective jurisdictions.<sup>41</sup> As part of this power, each council must adopt one or more municipal planning strategies, and all land within a municipality must be subject to a municipal planning strategy.<sup>42</sup> Municipal planning strategies provide statements of policy, consistent with minimum planning requirements imposed by the province, to guide development in municipalities, including policies related to development.<sup>43</sup>

By-laws can be used to regulate the location and placement of buildings and structures by establishing minimum setbacks or restricting development near bodies of water. By-laws may also be used to regulate development or activities along the coast. Before carrying out or authorizing development in a municipality, a provincial department must consider the relevant municipal planning documents.<sup>44</sup>

It is useful to note that the Nova Scotia *Environment Act* specifically states that where a municipal by-law, regulation, or authorization is inconsistent with the Act, that by-law, regulation, or authorization has no effect unless it protects the environment or imposes a restriction greater than what is required under the *Environment Act*.<sup>45</sup>



## 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. Some forms of aquaculture can have many potentially harmful impacts on coastal environments and coastal communities. For example, fish reared in open-net pens 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 interfere 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 Nova Scotia is governed primarily by the province under the ***Fisheries and Coastal Resources Act*** and that Act’s regulations and related policies. The term “aquaculture” is broadly defined in the Act and includes commercial farming of any plant or animal.<sup>46</sup> Part V of the Act provides for the management of aquaculture operations in the province and Part VI addresses the harvesting of sea plants. The Act prohibits any person from carrying on aquaculture unless they have a licence from the Minister of Fisheries and Aquaculture.<sup>47</sup> Additionally, aquaculture occurring on Crown land will require an aquaculture lease from the province.<sup>48</sup>

When a person wishes to receive an aquaculture licence or change the conditions of an existing licence or aquaculture site, they must make an application to the Department of Fisheries and Aquaculture. Depending on the nature of the application, one of two kinds of processes (an administrative or an adjudicative process) will be used. In both kinds of application processes, there will be an opportunity for public participation.

Details on the process to obtain a licence or lease are found in the *Aquaculture Licence and Lease Regulations* and *Rock Weed Harvesting Regulations*. Details on the requirements to manage an aquaculture site can be found in the ***Aquaculture Management Regulations***. You can learn more about the opportunities to participate in decisions for aquaculture in our Summary Series volume ***Aquaculture and Public Engagement in Nova Scotia***.

In certain circumstances, aquaculture operations in Nova Scotia may require a watercourse alteration approval under the *Activities Designation Regulations* that are created under the *Environment Act* (discussed above).

The federal government is actively involved in many aspects of aquaculture management under the *Fisheries Act* and through its powers concerning 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>49</sup> The federal *Fisheries Act* generally prohibits the deposit of deleterious substances into waters frequented by fish. The *Aquaculture Activities Regulations* exempts deleterious substances such as drugs, pest control products, and biochemical oxygen demanding matter, when used in the operation of an aquaculture facility, as long as the facility is operated under an aquaculture licence.<sup>50</sup> Any release of such deleterious substances must meet the conditions that are imposed by the *Aquaculture Activities Regulations*.

In the 2009 case of **Morton v British Columbia (Agriculture and Lands)**, the British Columbia Supreme Court determined that the regulation of certain aquaculture practices was outside the provincial government's authority. Following that decision, British Columbia's provincial aquaculture regulations were struck down, and the federal government, through the Department of Fisheries and Oceans, developed a new regulatory scheme for the management of aquaculture in British Columbia. The province retains responsibility for leasing the seabed on which aquaculture operations are traditionally located. To date, the decision in *Morton* has not affected aquaculture management on the East Coast; however, a similar challenge to provincial jurisdiction in the Atlantic provinces is possible.

## Pollution in Coastal Areas

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

It is common for development and human 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.

Pollution can be land-based or marine-based, and the source of pollution will often dictate the appropriate response. As a general rule of thumb, if pollution is coming from provincial Crown land or private land, provincial legislation will apply; if it is coming from federal Crown land, federal legislation will apply. In many cases, regardless of the source of pollution, both a provincial and federal response may be warranted.

Canadian environmental laws generally take a command and control 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 or waste is released into coastal waters, 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 and waste that impact 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>51</sup> The prohibition applies to all bodies of water along Nova Scotia's coast.<sup>52</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>53</sup>

It does not matter whether the deleterious substance causes the water frequented by fish to become deleterious.<sup>54</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>55</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>56</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 enforcement officers are responsible.

Several regulations created under the *Fisheries Act* may be applicable to a given case of coastal pollution. 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 Summary Series, a helpful rule of thumb is that these regulations create exceptions 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>57</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>58</sup>

The federal ***Canadian Environmental Protection Act*** (“*CEPA*”) identifies and regulates “toxic substances” as defined by the Act. A key part of the *CEPA* regime is the **Toxic Substances List**. Following a risk assessment process, certain substances that may be released into the environment will be added to the Toxic Substances List.<sup>59</sup> If a substance on this list is released into the environment, including onto coastal lands or into coastal waters, *CEPA* applies to regulate the substance. 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>60</sup> In addition to the regulation of toxic substances, *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>61</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>62</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>63</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>64</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>65</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>66</sup> This restriction applies to any vessel in Canadian waters, including the nearshore and internal coastal waters of Nova Scotia.
- 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>67</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 or waste 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.

The ***Environment Act*** prohibits the release of substances into the environment if they are in an amount, concentration, or rate of release that causes or may cause an adverse effect.<sup>68</sup> A “release” can mean spilling, discharging, disposing of, spraying, injecting, inoculating, abandoning, depositing, pouring, emitting, emptying, throwing, dumping, placing, draining, or pumping that substance, and it can also refer to letting that substance escape through leaking or seeping, or as exhaust.<sup>69</sup> An “adverse effect” is defined as an effect that impairs or damages the environment, or changes the environment in a manner that negatively affects aspects of human health.<sup>70</sup> A release of this nature may be authorized under the Act or its regulations.

The *Environment Act* requires any person responsible for the release of a substance to report it to the Nova Scotia Department of Environment and Climate Change and to report the release to the owner of the substance, the person in care, management, or control of the substance, and any other person directly affected by the release.<sup>71</sup> A person responsible for a release is also required to take all reasonable measures to prevent, reduce, and remedy the adverse effects of the released substance and rehabilitate the environment.<sup>72</sup>

## Protected Coastal Areas

### What measures can be used to protect coastal land and coastal 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 can apply to provincial and private land as well; for example, as we note further below, 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>73</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 ***Oceans 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>74</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 set the rules for it. Finally, management and advisory committees are formed to monitor and manage the area.

There are currently two *Oceans Act* MPAs in the coastal and marine areas off of Nova Scotia: the Gully MPA, created by the ***Gully Marine Protected Area Regulations***, and the St. Anns Bank MPA, created by the ***St. Anns Bank Marine Protected Area Regulations***. As in all *Oceans Act* MPAs, certain activities are prohibited within these MPAs, including anything that disturbs,

damages, destroys, or removes any living marine organism, habitat, or seabed, as well as dumping, discharge, or deposition of any substance.<sup>75</sup> However, there are exceptions for certain activities. For example, vessel navigation and fishing activities are generally permitted if they meet certain conditions.

The ***National Marine Conservation Areas Act*** allows Parks Canada to protect and conserve representative examples of Canada's natural and cultural marine heritage and provide opportunities for public education and enjoyment.<sup>76</sup> Parks Canada provides these protections by designating National Marine Conservation Areas ("NMCA's"). There are currently no NMCA's in Nova Scotia.

The ***Canada Wildlife Act*** allows the Canada Wildlife Service to protect and conserve habitat for wildlife by establishing National Wildlife Areas ("NWA's"), including NWA's with marine components, and protected marine areas.<sup>77</sup> These areas are designed to preserve habitat for migratory birds and other species, with a focus on endangered species.<sup>78</sup> There are currently eight NWA's in Nova Scotia, with six located along the coast.<sup>79</sup> Three of these NWA's are located on islands (Boot Island, Sea Wolf Island, and Isle Haute), while the Big Glace Bay Lake NWA protects migratory bird habitat in a barrier beach pond, the John Lusby Marsh NWA protects 552 hectares of salt marsh in the Bay of Fundy, and the Wallace Bay NWA protects coastal wetlands in the Northumberland Strait. Within these NWA's, many activities – like fishing, agricultural and industrial activities, recreational activities, operating vehicles, or generally causing damage – are prohibited, except in accordance with a permit.<sup>80</sup>

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>81</sup> Indigenous persons may carry on harvesting of traditional renewable resources in National Park Reserves.<sup>82</sup> There are two National Parks in Nova Scotia – the Cape Breton Highlands National Park and the Kejimikujik National Park – both of which have coastal components.

In addition, there are two important federal laws that protect certain listed species.

The ***Migratory Birds Convention Act*** implements a bilateral treaty with the United States that provides protection for migratory birds that are listed in the Schedule under the Act. The ***Migratory Bird Regulations*** created under the Act prohibit the killing or harming of birds that are listed in the Schedule, as well as the destruction of their nests, without a permit.<sup>83</sup> The Act also allows the federal Minister of Environment and Climate Change to designate Migratory Bird Sanctuaries, which are created by the ***Migratory Bird Sanctuary Regulations***. There are eight Migratory Bird Sanctuaries in Nova Scotia, several of which are located along the coast.

The ***Species at Risk Act*** offers protection to species and habitats of endangered or threatened species on federal land. The Act prohibits anyone from harming, killing, capturing, or taking any species listed as an extirpated, endangered, or threatened species (they are listed in Schedule



1 of the Act).<sup>84</sup> It also prohibits anyone from damaging or destroying the residence of a species that is listed as endangered or threatened, or listed as extirpated if a recovery strategy has recommended reintroduction of that species into the wild.<sup>85</sup> These prohibitions only apply automatically on federal lands, unless the listed species is an aquatic species or an avian species protected by the *Migratory Birds Convention Act*, or an order was made under the Act making the prohibitions apply on provincial or private lands.<sup>86</sup> Additionally, the Act prohibits the destruction of any part of the critical habitat of any listed endangered or threatened species, or any extirpated species if a recovery strategy has recommended reintroduction of that species into the wild, in cases where the critical habitat is on federal lands, or the critical habitat is for an aquatic species or an avian species protected under the *Migratory Birds Convention Act*.<sup>87</sup>

The Act requires that critical habitat be identified for endangered and threatened species in recovery strategies or action plans.<sup>88</sup> The Act further requires timely steps to be taken by government to protect the identified critical habitat where the habitat is within federal jurisdiction.

The Act requires the Minister of Environment and Climate Change to establish a **Species at Risk Public Registry**.<sup>89</sup> The Registry includes the List of Wildlife Species at Risk, status reports, recovery plans, permits issued under the Act, and more.

### 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 protected natural areas, parks, and wildlife refuges.

The **Beaches Act** is designed to protect certain designated beaches and associated dune systems and applies to Crown land and private land.<sup>90</sup> Beaches include the area of land on the coastline to the seaward side of the mean high-water mark and the area landward to the distance set out in a beach's regulation.<sup>91</sup> Not all beaches receive protection under the Act; instead, only those that are designated through regulation receive the protection. There are currently **92 designated beaches in Nova Scotia**, with the most recent designation made over twenty years ago. The provincial Minister of Natural Resources and Renewables may allow leases, licences, or permits that authorize removal of sand, stone, or other material from beaches.<sup>92</sup> The Minister also has authority to allow development on a beach.<sup>93</sup>

The **Crown Lands Act** allows the Minister of Natural Resources and Renewables to set aside special areas on Crown lands, including to protect, manage, and conserve wildlife and wildlife habitats, or for such purposes as the Minister deems "expedient".<sup>94</sup> Regardless of whether the Minister sets aside special areas, they must manage wildlife and wildlife habitats on Crown lands.<sup>95</sup> There are no criteria or definitions for what a "special area" is, but the Governor in Council (the provincial Cabinet) has the authority to create regulations concerning special areas; none have yet been created.<sup>96</sup>

The ***Provincial Parks Act*** is designed to enable the creation, management, and protection of provincial parks and park reserves for residents and future generations. One of its objectives is the preservation of unique, rare, representative, or otherwise significant elements of the natural environment.<sup>97</sup> The Minister of Natural Resources and Renewables has broad powers to deal with the management of flora and fauna in provincial parks created under the Act, while the Governor in Council has broad power to make regulations for the management of provincial parks.<sup>98</sup> The Act prohibits various forms of activity and behaviour, including destruction of natural resources, within provincial parks.<sup>99</sup>

The ***Special Places Protection Act*** is designed to protect and manage archaeological and historical remains and paleontological sites, as well as ecological sites, including sites that are representative of examples of natural ecosystems within the province or contain rare or endangered native plants or animals in their natural habitats.<sup>100</sup> With approval from the Governor in Council, the Minister of Communities, Culture, Tourism and Heritage can designate any land within the province, including land covered with water, as an ecological site.<sup>101</sup> This applies to private land if the owner consents.<sup>102</sup> Ecological sites are protected from disposal or a grant of rights, such as fishing, forestry, and water rights, under any other provincial law.<sup>103</sup>

The ***Wilderness Areas Protection Act*** provides for the establishment, management, and protection of designated wilderness areas in the province to promote maintenance of biodiversity, protect representative landscapes and ecosystems, and protect unique, rare, and vulnerable natural features.<sup>104</sup> The Minister of Environment and Climate Change, with approval from the Governor in Council, may designate an area of Crown land as a wilderness area. Certain Crown activities are prohibited in wilderness areas. For example, the province cannot provide a grant, deed, lease, approval, licence, permit, easement, or an authorization under any other provincial law, for activities inside a protected wilderness area, except as set out by the Act or in its regulations.<sup>105</sup> Furthermore, the Act prohibits activities inside protected wilderness areas, including mining, energy, petroleum, pipeline, forestry, and aquaculture activities or projects.<sup>106</sup> It also prohibits the alteration of the surface of the land, and removal, destruction, or damage of flora or fauna (living or dead) within protected wilderness areas, with some limited exceptions that are set out in the Act.<sup>107</sup>

Decisions about provincial parks and park reserves, nature reserves, and wilderness areas are guided by the province's ***Our Parks and Protected Areas*** plan. That policy identifies factors for how such areas should be chosen and designated and offers guidance about when activities may be allowed within them.<sup>108</sup> It is important to keep in mind that the policy is not legally binding and cannot be used to compel the relevant Minister or the Governor in Council to take specific actions concerning provincial parks or other provincially protected areas.<sup>109</sup>

Nova Scotia also has an ***Endangered Species Act***, which is similar in nature to the federal *Species at Risk Act*. It prohibits any person from killing, injuring, possessing, disturbing, or interfering with an endangered or threatened species or their specific dwelling place or an area they occupy, unless that person has been issued a permit by the Minister of Natural Resources and Renewables.<sup>110</sup> Under the Act, the Minister must ensure a recovery plan is created for every

endangered and threatened species listed under the Act. Among other requirements, the recovery plan for each species must identify habitat of the species, including areas that could be designated as “core habitat”.<sup>111</sup>

### Are there other ways to create protected coastal areas?

In addition to protected areas that are initiated and planned through government processes, there are actions that private landowners can take to protect their local coastal environments. One way to protect coastal land – and the species and habitats on that land – is to establish a conservation easement. These are agreements, created under the **Conservation Easements Act**, between a landowner and an eligible body that grants rights or imposes obligations on the easement holder, landowner, or both, to protect, restore, or enhance land.<sup>112</sup> A conservation easement can be granted to protect, restore, or enhance land for the protection of biodiversity and natural processes.<sup>113</sup> Conservation easements can be temporary or permanent and are attached to the land.<sup>114</sup> This means they can continue to apply to the land even if the land has a new owner.

# Taking Action to Protect the Coast

## What can I do?

There are many ways that you can take action to protect the coast. These may include taking informal steps to resolve an issue or taking formal steps like initiating a legal proceeding in court. A review of all possible options is outside the scope of this document, but 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. A request for information about a provincial process is made under the **Freedom of Information and Protection of Privacy Act**. The Government of Nova Scotia has a **website dedicated to freedom of information requests** where you can learn more. A request for information about a federal process is made under the **Access to Information Act**. The Government of Canada has a **website where access to information requests can be made**.

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 times where you are required to report. For example, under Nova Scotia's *Environment Act*, any person responsible for the release of a substance that causes an adverse effect has a duty to report it to the Department of Environment and Climate Change.<sup>115</sup>

### 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 a community-centered non-profit organization that is committed to sharing our legal skills with those who seek environmental and climate justice for all species and the natural systems that support those species. 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.

## 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 New Brunswick environmental law at [www.ecelaw.ca](http://www.ecelaw.ca).



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Made possible by funding from the Law Foundation of Nova Scotia



## Endnotes

- <sup>1</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5 [*“Constitution Act, 1867”*] at section 91.
- <sup>2</sup> *Ibid* at section 92.
- <sup>3</sup> Gerald V. La Forest, “Canadian Inland Waters of the Atlantic Provinces and the Bay of Fundy Incident” (1963) 1 Can. Y.B. Int’l Law 149 at pages 150 to 156; see also Meinhard Doelle et al, “The Regulation of Tidal Energy Development off Nova Scotia: Navigating Foggy Waters” UNB LJ volume 55 at pages 40-41.
- <sup>4</sup> *Constitution Act, 1867* at section 92.
- <sup>5</sup> *Ibid* at section 92(A).
- <sup>6</sup> Municipality of the District of Yarmouth Land-Use By-Law (July 2022) at sections 23.1 and 23.3.
- <sup>7</sup> For more information and to read the treaties, see: New Brunswick Aboriginal Peoples’ Council, “Historic Treaties” (2022).
- <sup>8</sup> See: *Haida Nation v Canada*, (2004) SCC 73, and *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, (2005) SCC 69.
- <sup>9</sup> Canadian Encyclopedic Digest, Waters and Watercourses (Ontario) III.2. (a) (Ontario) – Riparian Rights 2 – Nature and Basis of Riparian Rights (a) – General. 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>10</sup> See the Schedule of the Environmental Assessment Regulations.
- <sup>11</sup> See *Fisheries Act*, RSC 1985 c F-14 [*“Fisheries Act”*] at subsection 35(1), 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>12</sup> For the prohibition against activities causing death of fish, see *Fisheries Act* at subsection 34.4(1); for the prohibition against the alteration of fish habitat, see *Fisheries Act* at subsection 35(1).
- <sup>13</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>14</sup> For more information about approvals, visit the Transport Canada webpage.
- <sup>15</sup> Minor Works Order, SOR/2021-170 at sections 9 to 39.
- <sup>16</sup> Major Works Order, SOR/2019-320 at sections 1 to 6.
- <sup>17</sup> Migratory Birds Regulations, 2022 SOR/2022-105 at subsections 5(1) and 12(1).
- <sup>18</sup> Species at Risk Act, SC 2002 c 29 at section 73.
- <sup>19</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>20</sup> Fishing and Recreational Harbours Act, RSC 1985 c F-24 at sections 2 and 4.
- <sup>21</sup> *Ibid* at subsections 5(1), 5(2), and 5(3).
- <sup>22</sup> *The Coastal Protection Act* was passed in 2019, but it has not yet been proclaimed “in force”, and so its requirements do not yet apply. The Act will come into force on a future date. Currently, the Nova Scotia Department of Environment and Climate Change is working to create regulations under the Act that will provide the necessary details for the Act to work.
- <sup>23</sup> Environment Act, SNS 1994-95 c 1 [*“Environment Act”*] at section 105.
- <sup>24</sup> Activities Designation Regulations NS Reg. 47/95 amended to Reg. 120/16 at section 5A.
- <sup>25</sup> Government of Nova Scotia, “Wetland Conservation Policy” (September 2011) at page 9.
- <sup>26</sup> *Ibid* at page 12.
- <sup>27</sup> *Environment Act* at subsection 56(1).
- <sup>28</sup> *Ibid* at subsection 52(1).
- <sup>29</sup> *Ibid* at subsection 52(2).
- <sup>30</sup> *Ibid* at subsection 10(1).
- <sup>31</sup> *Ibid* at subsection 10(2).
- <sup>32</sup> Crown Lands Act, RSNS 1989 c 114 [*“Crown Lands Act”*] at section 29.
- <sup>33</sup> Department of Natural Resources and Renewables, “Submerged Crown Land” (2021). See also *Crown Lands Act* at section 15, which does not allow Crown lands to be granted, conveyed, sold, or disposed of in any manner other than provided by the Act, and at section 16, which allows the Minister to issue a grant, deed, lease, licence, or other interest in Crown lands with the approval of the Governor in Council (the provincial Cabinet). See also section 38, which makes it an offence to dump or deposit materials on or over Crown lands.
- <sup>34</sup> Coastal Protection Act, SNS 2019 c 3 at section 8.
- <sup>35</sup> *Ibid* at section 9.
- <sup>36</sup> *Ibid* at sections 10 and 11.

<sup>37</sup> *Ibid* at section 12.

<sup>38</sup> Municipal Government Act, SNS 1998 c 18 [“Municipal Government Act”] at subsections 10(1) and 14(1), and Halifax Regional Municipality Charter, SNS 2008 c 39 [“HRM Charter”] at subsections 8(1) and 11(1).

<sup>39</sup> Municipal Government Act at section 47 and HRM Charter at section 58.

<sup>40</sup> Municipal Government Act at section 9A and HRM Charter at section 7A.

<sup>41</sup> Municipal Government Act at section 190 and HRM Charter at section 208.

<sup>42</sup> Municipal Government Act at section 212 and HRM Charter at section 227.

<sup>43</sup> Municipal Government Act at section 213 and HRM Charter at section 228.

<sup>44</sup> Municipal Government Act at section 197 and HRM Charter at section 213.

<sup>45</sup> Environment Act at section 6.

<sup>46</sup> Fisheries and Coastal Resources Act, SNS 1996 c 25 at section 3(1)(a).

<sup>47</sup> *Ibid* at section 44(1)

<sup>48</sup> *Ibid* at subsection 44(2).

<sup>49</sup> Note: Fisheries and Oceans Canada has proposed a federal Aquaculture Act, but there is currently no indication of when such an Act might be created or if it would apply to Nova Scotia.

<sup>50</sup> Fisheries Act 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>51</sup> Fisheries Act at subsection 36(3).

<sup>52</sup> See the definition of “Canadian fisheries water” in the Fisheries Act at subsection 2(1).

<sup>53</sup> Fisheries Act at subsection 34(1).

<sup>54</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.

<sup>55</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>56</sup> Fisheries Act at subsection 38(5).

<sup>57</sup> For the prohibition against activities causing death of fish, see Fisheries Act at subsection 34.4(1); for the prohibition against the alteration of fish habitat, see Fisheries Act at subsection 35(1).

<sup>58</sup> Fisheries Act at section 36(4).

<sup>59</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>60</sup> CEPA at subsection 95(1).

<sup>61</sup> *Ibid* at subsection 121(1).

<sup>62</sup> *Ibid* at subsection 125(1).

<sup>63</sup> See Schedule 6 of CEPA.

<sup>64</sup> Ballast Water Regulations, SOR/2021-120, at subsection 4(1).

<sup>65</sup> Vessel Pollution and Dangerous Chemicals Regulations, SOR/2012-69 at subsection 131.1(4).

<sup>66</sup> Canada Shipping Act, 2001, SC 2001 c 26 at section 187 and Vessel Pollution and Dangerous Chemicals Regulations at section 4.

<sup>67</sup> Vessel Pollution and Dangerous Chemicals Regulations at section 95.

<sup>68</sup> *Ibid* at sections 67 and 68.

<sup>69</sup> Environment Act at section 3.

<sup>70</sup> *Ibid*.

<sup>71</sup> *Ibid* at section 69.

<sup>72</sup> *Ibid* at section 71.

<sup>73</sup> International Union for the Conservation of Nature, “Guidelines for applying the IUCN protected area management categories to marine protected areas” (2019) 2nd Edition.

<sup>74</sup> Oceans Act, SC 1996 c 31 at subsection 35(1).

<sup>75</sup> *Ibid* at subsection 3(1).

<sup>76</sup> National Marine Conservation Areas Act, SC 2002 c 18 at subsection 4(1).

<sup>77</sup> Canada Wildlife Act, RSC 1985 c W-9 [“Canada Wildlife Act”] at subsections 3 and 4.1(1).

<sup>78</sup> *Ibid* at sections 8 and 9(1).

<sup>79</sup> Government of Canada, “Current national wildlife areas” (22 December 2022).

<sup>80</sup> Canada Wildlife Act at subsection 3(1).



81 Canada National Parks Act, SC 2000 c 32 at section 13 and National Parks General Regulations SOR/78-213 at sections 7 and 7.1.

82 Canada National Parks Act at sections 39 and 40.

83 Migratory Birds Regulations, SOR/2022-105 at section 5.

84 Species at Risk Act, SC 2002 c 29 at section 32.

85 *Ibid* at section 33.

86 *Ibid* at section 34.

87 *Ibid* at section 58.

88 *Ibid* at subsection 49(1).

89 *Ibid* at section 120.

90 Beaches Act, RSNS c 32 s 1 at subsection 2(2).

91 *Ibid* at subsection 3(a).

92 *Ibid* at section 13.

93 Beaches Regulations, NS Reg 70/1989 amended to NS Reg 75/2015 at section 6.

94 Crown Lands Act at subsections 24(e) and 24(f). See also the regulation making power for the Governor in Council in subsection 51(1)(g).

95 *Ibid* at section 25(1).

96 *Ibid* at section 51(1)(g).

97 Provincial Parks Act, RSNS 1989, c 367, at subsection 2(1)(b).

98 *Ibid* at sections 13 and 37.

99 *Ibid* at subsection 33(e).

100 Species Places Protection Act, RSNS 1989, c 438, at section 2.

101 *Ibid* at subsection 14(1).

102 *Ibid*.

103 *Ibid* at section 18.

104 Wilderness Areas Protection Act, SNS 1998, c 27, at section 2.

105 *Ibid* at subsection 13(1).

106 *Ibid* at subsection 17(1).

107 *Ibid* at sections 17(2) and 19.

108 Government of Nova Scotia, “Our Parks and Protected Areas: A Plan for Nova Scotia” (2013).

109 For example, see: Bancroft v Nova Scotia (Lands and Forestry), 2021 NSSC 234 at paragraph 114.

110 Endangered Species Act, SNS 1998 c 11 at sections 13 and 14.

111 *Ibid* at section 15.

112 Conservation Easements Act, SNS 2012 c 18 at section 4.

113 *Ibid* at section 4.

114 *Ibid* at sections 5 and 6.

115 Environment Act at section 69. This duty is also owed to the owner of the substance (where applicable), the person who has care, management, or control of the substance, and any person who may be directly affected.