



A Biodiversity Act for Nova Scotia

AN OVERVIEW AND KEY RECOMMENDATIONS

This document was developed by Ecology Action Centre and East Coast Environmental Law, with input from colleagues in the biodiversity conservation and environmental law communities

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1.0 BACKGROUND

The United Nations Convention on Biological Diversity (CBD) serves as the foundation for biodiversity law and policy among its 196 parties. The Convention has been in force since 1993, with Canada as one of the first countries to ratify. A key objective of the CBD is the conservation of biological diversity. In response to the CBD, Canada prepared the *Canadian Biodiversity Strategy: Canada's Response to the Convention on Biological Diversity* in 1995,¹ followed by the 2016 publication of the *2020 Biodiversity Goals and Targets for Canada*.²

The *Environmental Goals and Sustainable Prosperity Act (EGSPA)* was passed in Nova Scotia in 2007. Included among the 21 goals in the *EGSPA* was a commitment by the Province to adopt strategies to ensure the sustainability of the Province's natural capital in the areas of forestry, geological resources, parks, and biodiversity by the year 2010.³

To address the *EGSPA* strategy goal, the government of Nova Scotia engaged in a multi-year research and consultation process leading to publication of, *The Path We Share: A Natural Resources Strategy for Nova Scotia (2011-2020)* ('Natural Resources Strategy').⁴ Among many other biodiversity-related commitments, the Natural Resources Strategy includes a commitment to "implement new laws and update existing laws to support biodiversity."⁵ This Natural Resources Strategy commitment to action followed a key recommendation of the 2010 expert panel report to, "develop, adopt, and implement a biodiversity act."⁶

The 2016 five year progress report on the Natural Resources Strategy noted only that the department developed a legislation review plan and commenced reviews of several pieces of legislation in the winter of 2013. The progress report states that, "the review process is collaborative, engaging multiple stakeholders both internal and external to government."⁷

The McNeil Liberals committed to the creation of a Nova Scotia Biodiversity Act as part of their platform in the 2017 provincial election. The Premier's mandate letter to the Minister of Natural Resources (September 21, 2017) included "pass a Biodiversity Act" and "create a new Nova Scotia Biodiversity Council" as ministerial priorities.⁸

In January, 2018 the Department of Natural Resources (now Department of Lands and Forestry) held two invitation-only information sessions that included a slide presentation on the proposed Biodiversity Act. The sessions were short on detail on the proposed legislation or process for consultation. The presentation indicated, but did not confirm, that the Department would rely on the 2008 Natural Resources Strategy public consultations and 2013 consultations on legislation (referenced in the five year progress report) as the basis for public engagement on the proposed Act. Participants at the session clearly articulated that more information and engagement would be important in the development of the Act.⁹

On May 22, 2018 the Minister appointed four members to the Biodiversity Council. The appointees were Donna Hurlburt, Kate Sherren, Graham Forbes, and Peter Oram. Short

member biographies can be found on-line.¹⁰ The Council members were selected as experts to “help craft new legislation and recommend new actions to promote biodiversity in Nova Scotia.”¹¹ There is no public information available on the terms of reference for the Council, current status of the Council, meeting agendas or meeting minutes.

We anticipate that a Bill introducing the Biodiversity Act will be presented to the provincial legislature in spring 2019.

Ecology Action Centre and East Coast Environmental Law have been actively engaged in biodiversity-related work and issues for many years, and welcomed a commitment by government to create law and policy tools that will assist in biodiversity protection and conservation. In June 2018, our organizations completed a biodiversity legislative review and analysis that explored three overarching questions:

- What biodiversity legislation and policy currently exists?
- What are the key components of the legislation or policy?
- What concepts can be drawn from the legislation or policy that may be relevant to Nova Scotia?

The goal of the research and analysis was to provide tools and information to our organizations and others advocating for comprehensive biodiversity legislation in Nova Scotia, and the research was used to inform this brief. The purpose of this brief is to facilitate and inform discussion on the process for and content of a provincial biodiversity law in Nova Scotia.

2.0 CONSULTATION PROCESS

In our opinion, a law that is meant to address biodiversity loss and preservation in Nova Scotia must be inclusive and ambitious. Without adequate consultation and involvement of stakeholders, Mi’kmaw people and communities, the general public, and those working on the ground with biodiversity, the Act will not be understood or supported in a way that will lead to effective implementation.

Public consultation on the Natural Resources Strategy as the primary basis for engagement on the Biodiversity Act is not satisfactory. Not only has almost a decade passed since those consultations, but the nature and scope of the proposed legislation requires a more in-depth understanding of biodiversity conservation, and thus requires a broader range of expertise. There are many groups, organizations and individuals working on biodiversity conservation, in both terrestrial and aquatic environments, that must be consulted to provide an accurate basis for the current state of the province’s biodiversity and strategies for its conservation, protection and recovery.

Perhaps even more vital to the statute’s development is meaningful Mi’kmaw involvement. Mi’kmaw people, Traditional Knowledge, communities, stories, songs, teachings and beliefs are rich sources of information and values that are essential to

understanding biodiversity and how to protect and maintain biodiversity in Mi'kma'ki. We believe a Biodiversity Act that is not informed by Mi'kmaw knowledge and worldview would again fall short of these goals.

The diversity needed in the information collection and consultation phase should also be reflected in inclusive representation on the Biodiversity Council, and the process for selecting its members should be more transparent.

3.0 CONSIDERATIONS

Laws to protect the environment have evolved significantly over the past few decades. Early environmental law and policy focused on pollution abatement and control, along with basic environmental impact assessment processes for large, resource intensive projects. In more recent years, the law has been used increasingly to tackle complex and integrated environmental challenges including nature and wildlife conservation.

“Given the development and population pressures on both terrestrial and marine environments, there is an urgent need for improved legal frameworks for biodiversity conservation planning at the international, regional and national levels.”¹²

Despite a growing consensus among experts that biodiversity management regimes require careful and systematic planning that depends on a comprehensive framework of laws that define procedures, responsibilities and obligations, there are few examples of provincial or state biodiversity legislation to draw upon for the development of a Nova Scotia Biodiversity Act.¹³ There is no federal or provincial biodiversity legislation in Canada.

4.0 KEY ELEMENTS OF AN ACT

The CBD and Canada's Biodiversity Strategy provide core principles, goals and targets that can be reflected in provincial law, including the five strategic goals included in the Aichi Targets:¹⁴

- Strategic Goal A: Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society.
- Strategic Goal B: Reduce the direct pressures on biodiversity and promote sustainable use.
- Strategic Goal C: To improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity.
- Strategic Goal D: Enhance the benefits to all from biodiversity and ecosystem services.
- Strategic Goal E: Enhance implementation through participatory planning, knowledge management and capacity building.

Based on our research, experience, and discussion with biodiversity conservation practitioners, we have determined that the following key elements should be included in a provincial Biodiversity Act:

- **Purpose Section:** A purpose section that recognizes the respect for all living things and the inherent value of biodiversity, and incorporates a vision for biodiversity protection in Nova Scotia in line with national and international commitments. Key principles to be included in the purpose section: public participation, transparency, accountability, precautionary approach, intergenerational equity, ecosystem management, recognition of Aboriginal Rights, and the value of the Mi'kmaw perspective.
- **Clarification on Application of the Act:** Statute extends to terrestrial and aquatic ecosystems.
- **Identify the Minister responsible** for the legislation and clarify roles and responsibilities of related departments.
- **Definitions:** including biological diversity or biodiversity that is in line with the CBD definitions and includes genetic diversity, species diversity and ecosystem diversity. Additional terms and definitions as required by the statute including genetic diversity, species diversity, ecosystem diversity, alien or invasive species, ecological community and the Mi'kmaw principle of *netukulimk* or *Msit No'kmaq*.
- **A Biodiversity Council** that is open and transparent, led by the responsible Ministers and includes other relevant Ministers, Indigenous organizations, NGOs, industry, and experts.
- **Time-bound goals:** Specific biodiversity outcomes, goals and targets with timelines that reflect Canada's biodiversity goals and targets.
- **Annual state of biodiversity report** on status of forest, wetland, aquatic, and coastal ecosystems, and specific species.
- **Mandatory coordinated inventorying and monitoring** necessary for assessing the state of biodiversity and evaluating progress toward meeting goals and outcomes.
- **Identify critical biodiversity areas** in the province **and develop integrated and coordinated biodiversity planning.** Incorporate climate change considerations into planning.
- **Mandate development of industry sustainability plans** that use an ecosystem-based approach. Incorporate climate change considerations, and cumulative effects.
- **Biodiversity education** added to curricula, as per 2020 biodiversity targets for Canada.
- **Prohibitions** with associated penalties to ensure habitat and species protection, including addressing invasive species.
- **Enforcement powers:** Designated enforcement officers with authorities for inspection and enforcement tools.
- **Mandatory public information registry:** must be accessible online, must be maintained in a timely manner, must include specific items.

- **Regulation making authority** to address specific concerns such as invasive species.
- **Include consequential amendments** to related statutes such as the *Environmental Goals and Sustainable Prosperity Act* (new biodiversity goals), *Endangered Species Act* (broader habitat protection) or *Environment Act* (incorporating biodiversity assessments into EIA), etc.

It will also be important for government to **clarify the relationship of the Biodiversity Act** with other related statutes, such as:

- *Agriculture Marshlands Conservation Act*
- *Agricultural Weed Control Act*
- *Beaches Act*
- *Conservation Easements Act*
- *Crown Lands Act*
- *Environment Act*
- *Fisheries and Coastal Resources Act*
- *Forests Act*
- *Mineral Resources Act*
- *Special Places Protection Act*
- *Wilderness Areas Protection Act*
- *Wildlife Act*

5.0 CONCLUSION

There are two key concepts that should be taken from this document. First, these recommendations, although essential, are certainly non-exhaustive. There is substantial room for further knowledge development that could support innovative approaches to protect Nova Scotia's biodiversity through conservation agreements, accreditation, credits and offset schemes or conservations investment strategies. Second, the knowledge development essential to creating an effective Biodiversity Act for Nova Scotia, is impossible without the government changing its current consultation and engagement processes to better reflect the depth of knowledge available.

ENDNOTES

¹ Canadian Biodiversity Strategy: Canada's Response to the Convention on Biological Diversity, Biodiversity Convention Office Environment Canada, at p.2. Online: https://biodivcanada.chm-cbd.net/sites/biodivcanada/files/2017-12/CBS_e.pdf

² 2020 Biodiversity Goals & Targets for Canada, [Ottawa]: Environment and Climate Change Canada, c2016, at p.3. Online: http://publications.gc.ca/collections/collection_2016/eccc/CW66-524-2016-eng.pdf

³ *Environmental Goals and Sustainable Prosperity Act*, SNS 2007, c.7, s. 4(2)(y), as am.

⁴ The Path We Share: A Natural Resources Strategy for Nova Scotia (2011-2020).

⁵ The Path We Share: A Natural Resources Strategy for Nova Scotia (2011-2020) at 28.

⁶ Biodiversity: The Foundation for Environmental, Social and Economic Prosperity in Nova Scotia. A Panel of Expertise Report on Biodiversity to the Steering Panel, February 2010 at 24. Online: <https://novascotia.ca/natr/strategy2010/pdf/phase2-reports/Biodiversity.pdf>

⁷ The Path We Share: A Natural Resources Strategy for Nova Scotia 2011-2020 Five-year Progress Report Appendix 2, at p. 4. On-line: www.novascotia.ca/natr/strategy/pdf/PathWeShareBioDiversity.pdf

⁸ Premier Stephen McNeil, Mandate Letter to Minister of Natural Resources (2017). Online: www.novascotia.ca/exec_council/PDF/letters/2017MinDNR.pdf

⁹ The authors, Karen McKendry and Lisa Mitchell, participated in an information session held on January 24, 2018.

¹⁰ Government of Nova Scotia, News Release, Biodiversity council members appointed (May 28, 2018). Online: www.novascotia.ca/news/release/?id=20180522004

¹¹ *Ibid*

¹² Boer, Ben. Chapter 20 Biodiversity Planning Law International and national at p. 531

¹³ Boer, Ben. Chapter 20 Biodiversity Planning Law International and national at p. 535.

¹⁴ COP 10 Decision X/2. Strategic Plan for Biodiversity 2011-2020. Online: <https://www.cbd.int/decision/cop/?id=12268>. Interpretation and list of targets, online: <https://www.cbd.int/sp/targets/>