

**Submission from East Coast Environmental Law to Nova Scotia Lands and Forestry**

Biodiversity Act Consultation (Bill 116).

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Submitted via email to [StratPolPlanning@novascotia.ca](mailto:StratPolPlanning@novascotia.ca)

On March 14, 2019, the Minister of Lands and Forestry introduced Bill 116, the Biodiversity Act. Many stakeholders, including those who advocate for biodiversity conservation and those concerned about the impact of the law on their property rights and economic interests were caught off-guard. Following presentations to the Law Amendments Committee, Minister Rankin made the decision to take a pause and have his staff consult on the Bill.

The Department of Lands and Forestry completed 5 sessions around the province to discuss the Bill and the regulations that will follow. Representing East Coast Environmental Law I attended a 3 hour session in Bible Hill on July 24, 2019.

We agree with the Minister of Lands and Forestry that this Bill is important and has the potential, if passed, to provide a valuable contribution to the protection of biodiversity in Nova Scotia. The laws that we have in place in Nova Scotia today provide some protection to species that exist in protected areas and those that are legally defined as endangered or threatened, but there are big gaps. Bill 116 creates tools that could facilitate biodiversity conservation. We need this law because globally we are facing a biodiversity crisis.

We understand that a large portion of the law will provide the Minister with some useful authorities to undertake research, engage experts, collaborate, promote awareness, and establish goals, policies, programs and guidelines on biodiversity (sections 5-14). Although these tools have no legal implications, they have the potential to facilitate knowledge and improved protections over time.

The law includes a long and detailed set of provisions on enforcement and penalties. Steps could be taken to clarify and consolidate some of these provisions alleviating concerns that the Bill is too onerous in this area (sections 16 to 44). Section 21 creates the biodiversity protection order that can be issued by the Minister where there are reasonable and probable grounds to believe that a person has or will violate the Act or regulations. Other statutes, including the *Environment Act* have similar order powers (see section 125 NSEA). In our opinion, this is not an unusual or onerous enforcement tool and it should remain as part of the Bill.

There was particular focus during the session I attended on the Biodiversity Management Zone (section 12). Based on our reading of the Bill, we understand that the Biodiversity Management Zone (BMZ) is an area of land that is managed for a period of time to support biodiversity. The BMZ is created by the Minister but only with approval of Cabinet and only on crown land. The Minister may create a BMZ on private land with the approval of Cabinet AND the CONSENT of the landowner. Given the limitations created by Cabinet approval and landowner consent there would appear to be little foundation for concerns that this tool will impede the rights of private landowners.

East Coast Environmental Law presented to the Law Amendments Committee on March 25, 2019. In addition to the comments provided in this submission, I have attached our written submission to Law Amendments. In that submission we recommended 5 amendments to the Bill covering the Preamble and Purpose sections, Goals and Targets, Sharing Information, State of Biodiversity

Reporting, and Public Review of Regulations. We continue to support those recommended amendments and ask that they be included as part of this submission.

A participant in the session I attended on July 24 raised a very insightful question regarding the use of the term ‘biodiversity’ in the Bill. He suggested that given the definition of ‘biodiversity’ (the variability of living organisms) the phrase ‘use of biodiversity’ does not make sense. His question was not answered during the session. In considering his question I looked to the language used in the Convention on Biological Diversity and Canada’s response to the Convention.

Referencing Article 1 of the Convention on Biological Diversity provides some clarification. The CBD has three main objectives:

1. The conservation of biological diversity;
2. The sustainable use of the components of biodiversity; and
3. The fair and equitable sharing of the benefits arising out of the utilization of genetic resources. (*Emphasis is mine.*)

Further the Canadian Biodiversity Strategy uses the following phrases: “conserve biodiversity” and “sustainably use biological resources”.

To ensure appropriate and consistent use of terminology, we recommend that all references in the Bill to “use of biodiversity” should be amended to “use of biological resources” or “use of the components of biodiversity”.

During the breakout group I participated in there was a meaningful conversation around biodiversity education. East Coast Environmental Law has long advocated for greater information sharing, public engagement and education in the Bill as fundamental to achieving its purpose. We encourage the Minister to enhance the provisions in the Bill that pertain to biodiversity awareness and education.

Finally, we believe that a few simple changes to the Bill could be made to make it easier to follow and understand. As an example, placing titles such as: Purpose, Interpretation, Lead Agency, Public Information, Biodiversity Protection Order, Appeal, etc. This may seem immaterial but it is not. A role of government is to facilitate compliance with the law and this requires clarity, education, communication and engagement. A law that is not clear and challenging to interpret is difficult to follow.

The East Coast Environmental Law Association wishes to be kept informed of the progress of the Bill. Along with our colleagues at the Ecology Action Centre we would welcome the opportunity for further engagement on the Bill and the development of regulations authorized by the Biodiversity Act. Additionally we are interested in the opportunity to engage with the Biodiversity Council, including discussions about the ways in which the Council might evolve.

Sincerely,



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