

Submission on Bill No. 116 – Biodiversity Act
Law Amendments, 25 March 2019
Lisa Mitchell, Executive Director, East Coast Environmental Law Association

The East Coast Environmental Law Association is a public interest environmental law charity established in 2007. Based in Halifax, Nova Scotia, we advocate for the fair application of innovative and effective environmental laws in Atlantic Canada through education, collaboration and legal action.

In 2017 we welcomed the commitment of government to create a provincial *Biodiversity Act*. As the first law of its kind in Canada and one of only a handful around the world we saw this as a unique and important opportunity.

Since attending the Department of Lands and Forestry information session in January 2018 we have worked with the Ecology Action Centre to conduct research and outreach to contribute to the creation of a good Biodiversity Act for Nova Scotia. This included a jurisdictional review and legal analysis of similar legislation and three *Biodiversity Act Conversations* to gather input on the key elements of such an Act. Through our research and conversations with legal experts and conservation practitioners we developed an overview and list of key elements of a Biodiversity Act.

We anticipated a public or stakeholder engagement process to be led by the Department prior to the introduction of the Bill, however, when it became clear that consultation would not take place, we shared our full Report and key recommendations with Department. We also made the information available to the public through our websites. The fact of the *Biodiversity Act* is positive, the process of engagement was not and there is much work left to be done. It is with that background that I appear before you today.

In our review of Bill No. 116, I see a strong preamble but a weak purpose section; a long list of ministerial powers that show promise but a very short list of ministerial duties; an incredibly robust enforcement program but little opportunity for engagement.

How the *Biodiversity Act* will facilitate conservation, sustainable use and equitable sharing of resources appears to rest with the Regulations. As Minister Iain Rankin stated in his well-informed presentation to the Legislature on March 15, 2019:

“To complete the tool kit, regulations supporting this new Biodiversity Act will be developed through consultations with the Mi’kmaq, conservation partners and all Nova Scotians.”

As a public interest organization that specializes in environmental law, we looked forward to participating in these consultations. To better position the government and the public for the building of those important regulations and to more fully articulate the purpose of the Biodiversity Act, East Coast Environmental Law recommends the following 5 amendments to Bill No. 116.



Lisa Mitchell, Executive Director
lisa@ecelaw.ca www.ecelaw.ca

Amendment #1: Preamble, Purpose and Principles of the Act

Explanation: A purpose section provides guidance to the public, regulators and the judiciary on the intent of the Act. The key environmental laws in Nova Scotia including the Nova Scotia *Environment Act* (1995), the *Endangered Species Act* (1998), the *Environmental Goals and Sustainable Prosperity Act* (2007) include a purpose section along with goals or principles. None of these statutes include a Preamble.

Suggested Amendments:

[Delete the first 7 paragraphs of the Preamble]

~~AND WHEREAS~~ a number of Government departments and legislation such as the Endangered Species Act, Environment Act, Wilderness Areas Protection Act and the Wildlife Act play key roles in the conservation and sustainable use of biodiversity in Nova Scotia but do not address all aspects of conservation and sustainable use;

AND WHEREAS Nova Scotia is committed to a complete, holistic, integrated legislative framework that provides for all aspects of the conservation and sustainable use of biodiversity;

THEREFORE be it enacted by the Governor and Assembly as follows:

[insert as subsection 2(2)]

This Act is based on the following principles

- (a) ~~WHEREAS~~ biodiversity is essential to healthy and productive ecosystems and is therefore essential to human well-being;
- (b) ~~AND WHEREAS~~ the conservation and sustainable use of biodiversity is interconnected with sustainable prosperity, a healthy environment, vibrant thriving communities and a strong competitive economy;
- (d) ~~AND WHEREAS~~ biodiversity and its sustainable uses are valued by Nova Scotians as important parts of the environment, heritage and economy of Nova Scotia;
- (e) ~~AND WHEREAS~~ an ecosystem approach that involves the integrated management of land, water and living organisms, promotes conservation and sustainable use of biodiversity and recognizes that humans are an integral part of ecosystems will strengthen land-use planning and natural resources management;
- (f) ~~AND WHEREAS~~ programs, policies and protective measures for biodiversity enable the Government of Nova Scotia to maintain and restore the diversity of genes, species and ecosystems, ensuring healthy ecosystems and the provision of ecosystem goods and services;
- (g) ~~AND WHEREAS~~ the conservation and sustainable use of biodiversity is a complex, cross-cutting imperative that necessitates co-operation and collaboration among all sectors and is therefore a shared responsibility of all levels of government, non-government organizations, the private sector, the Mi'kmaq of Nova Scotia and all other Nova Scotians;
- (h) ~~AND WHEREAS~~ biodiversity must be managed for the benefit of present and future generations, which is in keeping with the Mi'kmaq concept of Netukulimk, defined by the Mi'kmaq as the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic well-being without jeopardizing the integrity, diversity or productivity of our environment;

Amendment # 2: Goals and Targets

Explanation: The provisions on Ministerial powers and duties are extensive in the Bill covering sections 6-14. Within these there are 37 powers and 3 duties. We recommend 1 more duty. Setting goals and targets is not only at the core of the Convention on Biological Diversity but is the primary means of moving toward improving our understanding of biodiversity and creating sustainable solutions.

Suggested Amendment: [amend subsection 7(h) and insert as 6A]

The Minister shall establish or adopt

- (i) goals and targets for biodiversity and indicators of ecosystem health and integrity, and
- (ii) guidelines, objectives and standards for the conservation and sustainable use of biodiversity.

Amendment # 3: Sharing Information

Explanation: The Bill commits the Minister to sharing data relating to biodiversity. We recommend that this duty be extended slightly to include access to other information gathered under or relating to the Act. The particulars of what will be shared could be addressed in the Regulations.

Suggested Amendment: [amend subsection 14(1)]

The Minister shall establish mechanisms to share data relating to biodiversity and for the purpose of facilitating access to documents relating to matters under this Act.

Amendment # 4: State of Biodiversity Report

Explanation: Encouraging research and information sharing is an important priority in the area of biodiversity and we were pleased to see the commitment to a state of biodiversity report. Five years however, puts us long past the mandate of the current government. To demonstrate commitment, we recommend the timeframe for completion be shortened, recognizing that the focus of the report is within the Minister's control.

Suggested Amendment: [amend subsection 14(2)]

The Minister shall report to the public on the state of the Province's biodiversity within ~~two~~ five years of this Act coming into force and every ~~three~~ five years thereafter.

Amendment # 5: Public Review of Regulations

Explanation: The Minister and the Department have made public commitments to engage on the development of regulations. We applaud this and see it as a value to the Department and the public. We recommend that this commitment be reflected in the Act, as it is in section 26 of the *Environment Act*.

Suggested Amendment: [insert as section 47]

Any new regulations or any substantive amendment to the regulations becomes law only after the regulations or amendments, as the case may be, have been subjected to such public review as the Minister considers appropriate.