

## **East Coast Environmental Law Association Submission on the Review of the Environmental Goals and Sustainable Prosperity Act**

26 September 2019

Our submission addresses the following key areas:

1. Statute Title and Role of Regulations;
2. Concepts and Guiding Principles;
3. Climate change mitigation and adaptation; and
4. Biodiversity.

### **1.0 Statute Title and Role of Regulations**

#### **1.1 The Act Should Not Be Renamed, but Should Remain the *Environmental Goals and Sustainable Prosperity Act*.**

We fundamentally disagree with re-naming the statute. Continuing a legislated commitment that recognizes that without a healthy environment we have no economy will be lost if the word environment is removed from the title of the Act.

Nova Scotia needs clear and strong environmental goals and this is the only provincial statute that provides that focus. Since 2007, *EGSPA* has been a legal beacon that has demonstrated the provincial government's commitment to protecting current and future generations in this province as we work to mitigate and adapt to significant environmental and climate challenges.

Many Nova Scotians live in relationship with the lands, waters, and multitudinous non-human species of this province, and they value and wish to protect the environment for its own sake as well as theirs. Turning Nova Scotia's *Environmental Goals and Sustainable Prosperity Act* into the *Sustainable Prosperity Act* would erase a powerful expression of our collective understanding that the environment itself needs protection and healing in these troubled times just as we need to change our ways in order to achieve sustainability in the long term.

While it is laudable to recognize the long-term positive vision of 'sustainable prosperity' our current actions and the consequences of those actions consistently demonstrate our failure to appropriately value the environment itself as having worth beyond the use that human beings can make of it to enhance our prosperity. This is not the time to take 'environment' out of the title of the statute. It is, in fact, the time to add the 'environment' to more of our laws.

#### Recommendation 1

***Renew the Environmental Goals and Sustainable Prosperity Act without changing its name.***

## 1.2 Ambitious Goals and Targets Should Be Included within the Act Itself

It has come to our attention that the renewal of *EGSPA* may be without setting new goals and targets within the Act itself, and that the work of setting new goals and targets may be deferred to the later creation of regulations under the Act or amendments to existing related regulations.

As you are aware, the political process to create or amend a statute is very different from the process required to create or amend regulations. Amending *EGSPA* will require debate within the House of Assembly; it will give representatives from all parties the chance to make their voices and the perspectives of their constituents heard; and it may involve further opportunities for public input as the proposed legislation is reviewed by the Law Amendments Committee. By contrast, regulations can be made by the party in power with little input or feedback from others.

We would like to draw your attention to a quote from Bill Lahey, the Deputy Minister of Nova Scotia Environment at the time the *EGSPA* was passed in 2007. Professor Lahey, speaking to the strengths of the statute indicated that one of the strengths was, “the fact that targets are embodied in law, and progress towards them must be accounted for annually by the minister”.<sup>1</sup>

It is clear from Professor Lahey’s comment that the architects of the statute fully understood the rationale for and value of including clear, measurable goals and targets in the statute. This is not that time to back away from that commitment; it is the time to double-down and send a message to Nova Scotians that in order to achieve sustainable prosperity we must set goals and targets in a manner that ensures accountability through the most robust and inclusive political processes available. This should include new goals and updating current goals that have not yet been achieved.

### Recommendation 2

***Include ambitious goals and targets, including updating current goals that have not been met, within the Act itself, and, in doing so, demonstrate accountability and give EGSPA the benefit of a robust and inclusive political process.***

## 2.0 Concepts and Guiding Principles

### 2.1 The Act Should Retain *Netukulimk* as a Guiding Principle

*EGSPA* currently includes the Mi’kmaw principle of *netukulimk* as a guiding principle of the Act. *Netukulimk* is not simply a concept (as the current language of the Act suggests): it is a legal principle that reflects the wisdom of traditional *L’nu* laws for social and ecological governance. *EGSPA*’s current recognition of that principle is significant.

### Recommendation 3

***Retain netukulimk as a guiding principle in the renewed Act.***

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<sup>1</sup> Legislating Sustainability: Nova Scotia’s New Law Marries Environmental Sustainability and Economic Prosperity, John Brazner, Alternatives Journal, On-line: [www.questia.com/magazine/1G1-193250680/legislating-sustainability-nova-scotia-s-new-law](http://www.questia.com/magazine/1G1-193250680/legislating-sustainability-nova-scotia-s-new-law)

## 2.2 Affirm the Constitutional Rights of Indigenous Peoples in Canada

Beyond incorporating *netukulimk* as a guiding principle of the Act, the current *EGSPA* does not recognize the significance of any other Indigenous principles, contributions, or rights.

### Recommendation 4

***Include terms in the renewed Act that affirm the Aboriginal and treaty rights that Indigenous peoples in Canada hold under section 35 of the Constitution Act, 1982.***

## 2.3 Recognize Indigenous Rights that are Asserted in the United Nations Declaration on the Rights of Indigenous Peoples

Although they are important, the Aboriginal and treaty rights that Indigenous peoples in Canada hold under section 35 of the *Constitution Act, 1982*, are limited in many ways. The United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) sets a better standard for Indigenous rights recognition, including, but not limited to, Indigenous peoples’ rights to:

- refuse or give free, prior, and informed consent to proposed activities within their territories;
- refuse or give free, prior, and informed consent to proposed activities that could affect their rights adversely;
- access traditional medicines and conserve vital medicinal plants, animals, and minerals; and,
- maintain and strengthen spiritual relationships with their lands, territories, waters, coastal seas, and other resources, and preserve future generations’ ability to do the same.

### Recommendation 5

***Recognize rights that UNDRIP asserts.***

***We further recommend that EGSPA recognize the value of traditional ecological knowledge in environmental decision-making and provided mechanisms for the inclusion of Mi’kmaq Ecological Knowledge in goal-setting and goal-monitoring under the Act.***

## 3.0 **Climate Change Mitigation and Adaption**

### 3.1 The Act Should Retain 1990 as the Baseline Year for GHG Emissions Reduction Targets

In 2018, East Coast Environmental Law published a research report entitled “[Environmental Goals and Sustainable Prosperity Act: Setting Stringent and Long-Term GHG Emission Reduction Targets in Nova Scotia](#)”. In it, we noted that the Governments of Canada and Nova Scotia have used a number of different baseline years when setting green-house-gas (GHG) emissions reduction targets. For example, *EGSPA* used the year 1990 as the baseline for its goal of reducing GHG emissions by 10% below the province’s emission levels in 1990, while *Toward a Greener Future: Nova Scotia’s Climate Change Action Plan* spoke of reducing GHG emissions by up to 80% below the province’s emission levels in 2009.

Recommendation 6

***Continue to use the year 1990 as the baseline for GHG emissions reduction targets. Using the 1990 baseline consistently will avoid the obscurantism that results when baselines are chosen strategically to make soft emissions reduction targets seem more ambitious than they are.***

3.2 The Act Should Set a GHG Emissions Reduction Target of 50% below 1990 Levels by 2030

East Coast Environmental Law is a member of the Imagining 2030 Network, and we participated actively in the launch of the [2030 Declaration](#) in August 2018. The Imagining 2030 Network is a community of organizations, groups, and individuals from throughout Nova Scotia that have come together to work collaboratively on climate justice issues in this province. The 2030 Declaration encapsulated the Network's shared vision for a just transition away from fossil fuel economies in the coming decade, and it called on the Government of Nova Scotia to set an ambitious new target for GHG emissions reduction. That target was 50% below 1990 levels by 2030.

The Ecology Action Centre has taken a leadership role in demonstrating why a target of 50% below 1990 levels by 2030 represents Nova Scotia's fair share of the GHG emissions reductions that are required under the *Pan-Canadian Framework on Clean Growth and Climate Change* and Canada's international commitments under the Paris Agreement. East Coast Environmental Law wholeheartedly supports the emissions reduction target that the Ecology Action Centre has put forward in its recent report entitled "[Nova Scotia Environmental Goals and Sustainable Prosperity Act: Economic Costs and Benefits for Proposed Goals](#)".

Recommendation 7

***Set a GHG emissions reduction target of 50% below 1990 levels by 2030 in EGSPA.***

3.3 The Act Should Set Increasingly Stringent GHG Emissions Reduction Targets Beyond 2030, with the Goal of Achieving Carbon Neutrality by 2050

In the long term, it will not be enough to reduce our GHG emissions by 50% below 1990 levels by 2030. In order to prevent the worst of the climate change scenarios that our world is currently facing, we must aim to achieve carbon neutrality by 2050. Please read and consider the overwhelming scientific consensus on the critical importance of this target and listen to the message being delivered by those who will bear the consequences of our continued inaction. It is not lost on us that this submission is due on September 27, 2019 – the Global Climate Strike.

Recommendation 8

***Set increasingly stringent GHG emissions reduction targets beyond 2030, with the goal of achieving carbon neutrality by 2050.***

## 4.0 Biodiversity.

### 4.1 Core Habitat Goals for Species at Risk

In our 2019 update report entitled *Protected on Paper Only: An Evaluation of Nova Scotia's Legal Obligations under the Endangered Species Act - 2019 Update* we identified the ongoing chronic failure of the Department of Lands and Forestry to uphold its legal obligations under the *Endangered Species Act*, including a failure to complete multiple mandated recovery plans and the failure to identify areas to be considered for designation as core habitat in recovery plans.

The *Endangered Species Act* (ESA) defines core habitat as the “specific areas of habitat essential for the long-term survival and recovery of endangered or threatened species...”<sup>2</sup> The process to protect core habitat is not simple. Once identified in a recovery plan, the Minister may exercise his authority to designate core habitat (section 17) and then create regulations to control, restrict, or prohibit activities within core habitat (section 16).<sup>3</sup>

In the 20 years since the introduction of the ESA not one parcel of core habitat has been identified and only one species (Peregrine Falcon) has been moved to a lower category as a result of recovery efforts. We know that habitat disturbance and destruction is a key contributor to species loss.

#### Recommendation 9

***Set goals for the identification and protection of core habitat for our most at-risk species.***

### 4.2 Strong Biodiversity Measures

The Minister of Lands and Forestry introduced Bill No.116 the Biodiversity Act in the spring of 2019. Although we support the passage of a provincial law that seeks to enhance and protect biodiversity, the current Bill does not include any goals or targets. 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.

The 2007 *Environmental Goals and Sustainable Prosperity Act* included a commitment 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. Although the 2015-17 Progress Report on EGSPA claims that the goal was met through adoption of the natural resources strategy in 2011-12, the goal of ensuring sustainability of biodiversity has clearly not been met.

In August of 2018, Professor Lahey has more wise words for us in his Independent Review of Forest Practices in Nova Scotia. In the second paragraph of his report he states:

“I have concluded that protecting ecosystems and biodiversity should not be balanced against other objectives and values as if they were of equal weight or importance to those other objectives or values. Instead, protecting and enhancing ecosystems should be the objective (the outcome) of how we balance environmental, social, and economic objectives and values in

<sup>2</sup> *Endangered Species Act*, SNS 1998, c. 11, s. 3.

<sup>3</sup> *Ibid*, s.16

practising forestry in Nova Scotia. A number of reasons are given for this conclusion, but the primary reason is that ecosystems and biodiversity are the foundation on which the other values, including the economic ones, ultimately depend.”

Not only are we in the midst of a climate crisis, we are witnessing the 6<sup>th</sup> mass extinction, and the first directly linked to human population and consumption practices. This is the time to set clear environmental goals that will save our environment, invigorate a new economy and meet the sustainable prosperity goal of healthy and resilient communities.

#### Recommendation 10

***Adopt goals to address the underlying causes of biodiversity by (1) passing a biodiversity statute that includes goals and targets, (2) officially incorporating biodiversity education into the curriculum, and (3) applying a transparent, science-based, precautionary ecological forestry model to all forestry operations in the province.***

## **5.0 Summary of Recommendations**

1. Renew the Environmental Goals and Sustainable Prosperity Act without changing its name.
2. Include ambitious goals and targets, including updating current goals that have not been met, within the Act itself, and, in doing so, demonstrate accountability and give EGSPA the benefit of a robust and inclusive political process.
3. Retain netukulimk as a guiding principle in the renewed Act.
4. Include terms in the renewed Act that affirm the Aboriginal and treaty rights that Indigenous peoples in Canada hold under section 35 of the Constitution Act, 1982.
5. Recognize rights that UNDRIP asserts. Recognize the value of traditional ecological knowledge in environmental decision-making and provided mechanisms for the inclusion of Mi’kmaq Ecological Knowledge in goal-setting and goal-monitoring under the Act.
6. Continue to use the year 1990 as the baseline for GHG emissions reduction targets. Using the 1990 baseline consistently will avoid the obscurantism that results when baselines are chosen strategically to make soft emissions reduction targets seem more ambitious than they are.
7. Set a GHG emissions reduction target of 50% below 1990 levels by 2030 in EGSPA.
8. Set increasingly stringent GHG emissions reduction targets beyond 2030, with the goal of achieving carbon neutrality by 2050.
9. Set goals for the identification and protection of core habitat for our most at-risk species.
10. Adopt goals to address the underlying causes of biodiversity by (1) passing a biodiversity statute that includes goals and targets, (2) officially incorporating biodiversity education into the curriculum, and (3) applying a transparent, science-based, precautionary ecological forestry model to all forestry operations in the province.