

East Coast Environmental Law

Who Owns the Coast?

Volume 4 of the East Coast Environmental Law Summary Series provides an overview of who controls and protects the coast of Nova Scotia by introducing a few frequently asked questions of environmental concern. The goal of this publication is to connect the public with legal resources that will help them address these concerns and ensure better management of our coastal resources over the long term. The topics covered in this publication include an overview of coastal jurisdiction, unique coastal rights, development of fragile shorelines and beaches, aquaculture, land based pollution, protected areas and a table of relevant legislation as well as useful definitions.

This publication is best used in combination with past Summary Series publications and additional coastal information resources available at our website: www.ecelaw.ca

Coastal Jurisdiction: An Overview

Which levels of government manage the coast?

Canadian coastal management is influenced by multiple levels of government: federal, provincial, municipal, international and aboriginal. The division of jurisdictional authority raises many concerns regarding who is best suited to protect and govern the provincial coastline. *The Constitution Act, 1867* provides the framework for the division of powers between federal and provincial governments. Responsibilities over environmental issues are not clearly divided between federal and provincial levels of government and are instead shared (see: Who is in Charge of Making Environmental Legislation - Summary Series Volume I). As an attempt to resolve jurisdictional tension outside of the courts, both levels of government frequently come to political arrangements and agree to disagree.

Federal Jurisdiction

The Federal Government controls coastal waters from the ordinary low watermark seaward to 200 nautical miles (370.4 km). On land, the Federal Government has jurisdiction over all federal crown land, including national parks, land designations under the *Indian Act* and Canadian Forces bases. In addition, the federal government has authority over certain coastal activities, such as navigation and shipping, sea coast and inland fisheries (*Constitution Act, 1867*, section 91). Coastal management at the federal level is split amongst several departments, including the Department of Fisheries and Oceans, Environment Canada, Transport Canada and Parks Canada.

Provincial Jurisdiction

Pre-confederation historical documents, the *Constitution Act, 1867*, international treaties, federal and provincial legislation and Canadian judicial decisions are all sources of law that help define the jurisdiction of a province. The *Oceans Act* (a federal statute) provides that the provinces are responsible for coastal lands inland from the ordinary low water mark.¹ However, provincial jurisdiction is much more complicated than this. Sections 92, 92A and 93 of the *Constitution Act, 1867* outline the subject matters that the provinces have jurisdiction over (for more details about the *Constitution Act, 1867* please refer to Summary Series I). The wording used in the *Constitution Act, 1867* implies that the authority of a province is limited to its territorial boundaries (section 92). Each province joined Confederation with boundaries that are still debated today. For example, Nova Scotia claims that certain marine areas beyond the low water mark are within its territory.² British Columbia and Newfoundland have attempted to gain jurisdiction over certain submarine lands in a number of reference cases against the Federal government.³ This has important implications regarding seabed jurisdiction. Where the territory of a province goes beyond the low water mark, the province will have

jurisdiction that extends below the low water mark. The three provincial departments in Nova Scotia which share responsibility for coastal management are the Department of Natural Resources, Department of Environment and Department of Fisheries and Aquaculture.

Municipal Jurisdiction

Unlike federal and provincial jurisdictions, a municipality's authority is not constitutionally based. Municipal jurisdiction is granted by a province through statute. Municipalities can play a very important role in coastal management especially where there are gaps in federal and provincial activity. Municipalities have primary jurisdiction over land use, although their power is not without limits. Some of the most effective municipal tools include municipal planning strategies, zoning by-laws, subdivision control, site planning control and expropriation powers. Implementation of municipal regulatory power may sometimes conflict with provincial jurisdiction. This potential for operational conflict will be further explored under the topic of development on fragile shorelines below.

Aboriginal Rights, Treaty Rights and Aboriginal Title

Unlike the jurisdictional authority of provincial and federal governments set out in the *Constitution Act, 1867*, Aboriginal groups have unique rights and title regarding coastal resources and lands. Section 35 of the *Constitution Act, 1982* affirms the existence of aboriginal rights and treaty rights in Canada. Aboriginal rights are rights which stem from past practices and occupation of certain territory and/or use of its resources. If such use and occupation is proven to a sufficient level, Aboriginal peoples may also have title to the land, giving them complete ownership. Treaty rights are gained by signing treaties between aboriginal groups and the Crown, sometimes at the expense of previously enjoyed rights. Both aboriginal rights and treaty rights may provide title to coastal lands as well as specific rights to coastal resources, such as the right to hunt, fish and to some extent, trade.

There are few settled aboriginal and treaty rights that are currently recognized and there are ongoing debates concerning their existence and extent. The Supreme Court of Canada has confirmed that any conduct on behalf of the Crown which might adversely affect the exercise of aboriginal and treaty rights triggers a duty to consult and accommodate the Aboriginal peoples affected.⁴ For example, if the Crown had knowledge of the potential existence of Aboriginal rights, title, or treaty rights in an area along the coast and wished to issue a permit or approve a development, it would first have to consult with the Aboriginal peoples affected.

Development on Fragile Shorelines and Beaches

How can I help restrict inappropriate development on a fragile shoreline?

Jurisdiction

Municipal by-laws, provincial and federal legislation create a three-tiered regulatory scheme which enables each level of government to take part in the protection of fragile shorelines.

Federal Jurisdiction

When dealing with provincial territory, certain events will trigger federal government involvement. These triggers include:

- If a development would impact aquatic and marine environments, then federal jurisdiction may be triggered under such acts as the *Fisheries Act*, *Navigable Waters Protection Act* and *Species At Risk Act* (SARA).
- If the development is proposed or funded by the federal government, or is authorized on federal land, a federal environmental assessment may be required before a project is started (*Canadian Environmental Assessment Act* (CEAA), section 5).
- If the development is a harbour, wharf, or any other related facility that is located on or next to water which provides accommodation or services principally for fishing or recreational vessels then federal jurisdiction is also invoked under the *Fishing and Recreational Harbours Act* (section 2).

Provincial Jurisdiction

There is currently no provincial legislation that addresses development and protection of the coast as a whole. The *Beaches Act* along with other provincial protected area legislation does prohibit certain activities that may include development and building. In general, provincial jurisdiction extends to the regulation of land use but does not include zoning power, which is provided to municipalities.

The *Municipal Government Act* (MGA) requires that new municipal planning is "reasonably consistent" with Statements of Provincial Interest (SPI) (section 196). SPI, developed under sections 193 and 194 of the MGA, serve as guiding principles to help provincial governments, municipalities, and individuals make decisions regarding land use. Nova Scotia has five SPI in effect which cover drinking water supplies, flood risk areas, agricultural land, infrastructure, and housing (MGA, Schedule B). Nova Scotia does not currently have a Statement of Provincial Interest regarding the coast. The communication that occurs between the province and municipalities is two-way. Like any developer, Provincial departments who wish to carry out or authorize any development, must consider the planning documents of the municipality (MGA, section 197).⁵

Under the *Environment Act*, the provincial Department of Environment is responsible for promoting the sustainable development of water resources, which includes the coast (section 104). The Minister of Environment is authorized under section 105(3)(a) of the *Environment Act* to restrict or prohibit the alteration of watercourses and wetlands. Certain developments, whether on the coast or not, may trigger a provincial environmental assessment under this Act.

Examples include the construction of a 2-lane highway longer than 10km, disruption of more than 2 hectares of wetlands, or the harnessing of more than 2MW of wave or tidal power (*Environmental Assessment Regulations*, Schedule A).

Municipal Jurisdiction

The power of a municipality can be very useful in advancing the sustainability objectives adopted by federal and provincial governments. For example, municipal by-laws and planning documents allow a municipality to regulate and designate land use in a manner consistent with SPI set out by the province. If proactive, municipalities are sometimes best suited to create an action plan that implements a provincial vision. Municipal planning authority is limited to the power granted by the province. If municipal plans and by-laws cannot coexist with provincial and federal regulations, then the power of the municipality must yield.

Management (Who/What?)

Beaches under the Beaches Act of Nova Scotia

There are many designated Beaches along the coast of Nova Scotia. Section 2(2) of the *Beaches Act* states that these provincial designations are made to "provide for the protection of beaches and associated dune systems as significant and sensitive environmental and recreational resources; provide for the regulation and enforcement of the full range of land use activities on beaches, including aggregate removal, so as to leave them unimpaired for the benefit and enjoyment of future generations; control recreational and other uses of beaches that may cause undesirable impacts on beach and associated dune systems." This Act applies to both Crown and privately owned protected beaches. There is no system of compensation within the Act for private land owners whose land is designated as protected. Designation as a Beach does not guarantee that the land will not be further developed. Development is allowed with written authorization and approval by the Minister of Natural Resources (*Beaches Act* section 6).

A municipality may have the power to further protect designated beaches by passing a no-build by-law, but this has not been tested in Nova Scotia. If a municipality chose to exercise such authority, conflicts may arise with the provincial government. However, if the Minister of Natural Resources has routinely rejected development permits, a municipal by-law could arguably reduce uncertainty and potential conflict in relation to the area that both the province and the municipality wished to protect.

A good example of the above proposition is illustrated in the *Nova Scotia Environment Act*. If a municipal by-law, regulation, or authorization is inconsistent with the *Environment Act*, it has no effect (section 6(4)). However, if the municipal enactment protects the environment or imposes a restriction greater than what the Act requires, it is not deemed to be inconsistent or in conflict with the *Environment Act* (section 6(5)).

Protection of Other Fragile Shorelines

Section 212A of the *Municipal Government Act* gives municipalities the authority to adopt a municipal planning strategy (MPS). This strategy may include the protection, use and development of lands within a municipality. Within an MPS, a municipality may develop policies governing land use (section 214(o)) which include the division of planning areas into zones and a list of permitted or prohibited uses for each designated zone (section 220(1)). A municipality may regulate or prohibit development in a particular zone. However, development may not be totally prohibited, unless the reason for prohibition is covered in the *Municipal Government Act* (section 220(3)). Activities that a municipality may regulate or prohibit include the altering of land levels, the excavation or filling in of land, and the placement of fill or removal of soil, unless the province has already regulated on these matters (section 220(5)(g)). Some examples of other instances that a municipality may prohibit include development on land adjoining a watercourse or on land that is subject to flooding, low-lying, marshy, or has steep slopes (section 220(o)(p)). An MPS becomes enforceable when a municipality enacts a corresponding land use by-law.

Many areas in Nova Scotia are not covered by any municipal land use planning strategy. Development in these areas is only regulated by provincial standards.

Municipal Planning Strategy Examples Coastal Implications

Halifax Regional Municipality Regional MPS

The following outlines a few sections of HRM's Regional MPS that may be used to protect certain areas of the coast from potentially detrimental development.

Section 2.2.2 addresses development on wetlands. The HRM Regional MPS acknowledges that alteration of such land is a matter of provincial jurisdiction; however, the plan intends to prohibit the development of wetlands until they are made suitable for development according to provincial requirements. The plan sets out that a Wetlands Schedule shall be established through a land use by-law to determine the presence of wetlands 2000 m² or greater. It also prohibits development on designated wetlands.

Section 2.2.3 addresses riparian boundaries, acknowledging that the retention of buffers is important for the protection of water quality, wildlife, and protection from flooding. This section requires that applicable land use by-laws should require the retention of a minimum 20 metre wide riparian buffer along all watercourses (including the coast) throughout HRM. The by-law is to prohibit all development within the riparian buffer with some exceptions such as walkways, trails, fences, public road crossings and others. Section 2.2.5 (E-16) outlines that all residential development on the coast within a 2.5 metre elevation above the ordinary high water mark should be prohibited, subject to a few exceptions.

In 2006, individual Municipal Planning Strategies and Land Use By-Laws were amended to implement the Regional Municipal Planning Strategy, of which relevant sections are outlined above.⁶ Existing structures located within the required setbacks may be developed further, provided that the development does not further reduce the existing setback or elevation. To view these amendments visit www.halifax.ca/regionalplanning/documents/MPSandLUBAmdmts.pdf.

Region of Queens Municipality MPS

Section 7 of the Region of Queens Municipality MPS addresses the conservation of wetlands and waterfront and sets out the objective to regulate development in areas that may put people, property and the environment at risk. Section 7.3.4 intends to zone all dune systems, designated beaches, Provincial Wilderness Areas and land owned by conservation organizations, as Conservation land use, which is aimed at encouraging the sustainability of the Region's fragile natural assets (7.3.2).

King's County MPS

The County of Kings MPS strives to ensure the environmental compatibility of development within and adjacent to environmentally sensitive areas (section 1.3.1.2) as well as respond to the growing demand for shoreland residential development (section 1.3.3.5). Other relevant sections of the MPS include section 3.5 which addresses shoreland conservation and recreation, as well as section 4.2 which recognizes that it is the Municipality's responsibility to prohibit or restrict land uses in areas which are potentially hazardous to development, such as floodplains and steep slopes.

What Are My Options?

If you are concerned about a new proposed development on a shoreline, try the following options. For more options and information visit www.ecelaw.ca.

- 1 Determine what, if any, Municipal Planning Strategy and by-laws exist in your area. This information is available on your municipality's website. If you wish to make a complaint about a by-law violation, contact your local municipality. In the HRM concerns may be emailed to bylawcomp@halifax.ca.
- 2 If a municipality is implementing planning documents, they are required to adopt a public participation program (*Municipal Government Act*, 204(1)). Contact your local municipality to see if there are any upcoming or current public participation programs in your area.
- 3 If you would like to see your municipality develop new by-laws or amend its Municipal Planning Strategy regarding development on the coast, bring this to the attention of your municipal council or your municipal planning committee.
- 4 Determine if the coastal area in question is a protected Beach by referring to the list of designated beaches at www.gov.ns.ca/just/regulations/rxaa-l.htm. Look under B for *Beaches Act* and then under the Beaches Designations section. If the area in question is listed, contact your local Department of Natural Resources to look into the matter further www.gov.ns.ca/natr/staffdir/offices.asp. Inquire if a Ministerial permit has been granted.
- 5 If the development is taking place below the ordinary high water mark, the provincial Department of Natural Resources must first issue a permit. To find out if a permit has been issued, contact the Freedom of Information and Protection of Privacy (FOIPOP) Administrator at [dnrroutineaccess@gov.ns.ca](mailto:dnroutineaccess@gov.ns.ca), or by phone at (902) 424-1580. A formal request for information process is also provided by the FOIPOP Act. To submit a formal record request, the application form is available at www.gov.ns.ca/natr/thedepartment/rap/foipop.asp.
For general building specifications regarding development below the ordinary high water mark please visit www.gov.ns.ca/natr/land/policybeforeyoubuild.htm.
For all other general inquiries call (902) 424-5935.

6 Any developments below the ordinary high water mark also need approval from the Department of Fisheries and Oceans (DFO). Such developments will inevitably influence fish habitat and therefore must be considered by the DFO pursuant to the Fisheries Act. The DFO must determine if a Hazardous Alteration, Disruption or Destruction (HADD) is created, and if so, a federal Environmental Assessment may be triggered. The Regional Headquarters Office, Habitat Management can be contacted at (902) 426-8105. Other regional contact information may be found at www.dfo-mpo.gc.ca/habitat/regions/maritimes-eng.asp.

7 If you think that the development will inhibit the public's mobility in the water, contact Transport Canada, Navigable Waters Protection Program at 1-877-842-5606 or oepe-epet@tc.gc.ca.

Aquaculture

How can I help ensure that an aquaculture operation is not having a negative impact on water quality?

Jurisdiction

Aquaculture operations in Nova Scotia are regulated by a collaboration of efforts from all levels of governments. An example of this harmonizing attempt is the existence of various Memoranda of Understanding (MOUs) between the Nova Scotia Department of Fisheries and Aquaculture (Provincial) and the Department of Fisheries and Oceans (Federal), as well as between various Atlantic regional departments. An MOU is a bilateral or multi lateral policy agreement between departments, where parties agree to cooperate according to the provisions set out in the MOU. Although these documents are not legally binding, they are useful to understand the cooperation that exists with respect to fisheries and aquaculture.

Federal Jurisdiction:

Seventeen federal departments and agencies are responsible for aquaculture management, with the DFO as the main federal authority.⁷ There are many pieces of legislation, regulations and policies that guide federal involvement with aquaculture operations.

The federal government may become directly involved in the expansion or designation of an aquaculture operation if a federal environmental assessment under the *Canadian Environmental Assessment Act* (CEAA) is required. Assessments under CEAA are to ensure that projects do not cause significant adverse environmental effects, to promote sustainable development and maintain a healthy environment and to ensure that there are opportunities for meaningful public participation (section 4). For details on the environmental assessment process visit the Canadian Environmental Assessment Agency at www.ceaa.gc.ca.

In general, a federal environmental assessment under *Canadian Environmental Assessment Act* (CEAA) is required if there is a federal trigger (CEAA, section 5):

- If any federal department was conducting the work
 - If they are providing funds or financial assistance
 - If they are providing land or land access
 - If a regulation listed in the "Law List" is to be applied.
- Law List Regulations* are a list of provisions of other Acts and Regulations which trigger an environmental assessment under sections 5(1)(d) and 5(2) of CEAA.

Examples of Federal Environmental Assessment Triggers

- If the location of a proposed aquaculture site is in Navigable Waters, then the site must be approved by the Minister of Transport (*Navigable Waters Protection Act*, section 5(1)). If any of sections 5(2) 5(3) 16 or 20 are invoked, this will trigger a federal environmental assessment under CEAA.
- Section 35(1) of the *Fisheries Act* states that no one is permitted to do anything that results in the harmful alteration, disruption or destruction of fish habitat (HADD). The DFO defines HADD as "any change in fish habitat that reduces its capacity to support one or more life processes of fish."⁸ In the event that something is considered a HADD, authorizations may be issued by the DFO (section 35(2)) to permit the activity. Section 35(2) authorization triggers a federal environmental assessment under section 6 of the *Law List Regulations*.
- If a proposed undertaking does, or is likely to, result in HADD or in the deposit of a deleterious substance (see definition section) in water frequented by fish, the person carrying out the operation must provide the Minister of Fisheries and Oceans with a detailed plan which includes measures to mitigate the effects of the proposal (section 37(1)). After reviewing the information the Minister may require additional modifications to the plan, restrict the operation of the undertaking, or direct the closing of the undertaking (section 37(2)). Section 37(2) authorization triggers a federal environmental assessment under section 6 of the *Law List Regulations*.

The DFO is involved in reviewing aquaculture proposals at the regional level through the Habitat Management division. This review follows the *Policy for the Management of Fish Habitat* as well as section 35(1) of the *Fisheries Act* to determine if the proposal will result in HADD.⁹ Section 36(3) of the *Fisheries Act* may be invoked if an aquaculture operation is found to release deleterious materials into the water column. A deleterious substance may include decaying fish, certain pesticides, or even the erosion of metals.

Provincial Jurisdiction:

Current management of aquaculture operations is delegated to the Minister of Fisheries and Aquaculture under the *Fisheries and Coastal Resources Act*. Under this Act, the Department of Fisheries and Aquaculture (NS DFA) has authority over granting leases and licenses, regulating activities such as waste management and containment, as well as animal health. Leasing and licensing are administered by the province for all near shore aquaculture activities, under MOUs with DFO.

Management (Who/What?)

Law and policy relating to aquaculture is currently in a state of change. To understand where aquaculture governance might be headed, current developments must be considered. Recently, in a case called *Morton v. British Columbia (Agriculture and Lands)*,¹⁰ the British Columbia Supreme Court (BCSC) decided that the regulation of certain aquaculture practices is outside (*ultra vires*) the Provincial Crown's authority. The BCSC's decision in *Morton* could impact how aquaculture is managed on the East Coast. It is also important to consider the recent developments regarding a national aquaculture strategy, which will be explored further below.

Aquaculture in British Columbia

In B.C., the provincial aquaculture regulations regarding the release, escape, inspection and record keeping, cage size and design, and Best Management Practices (BMP) plans were struck down by the BCSC. Other provisions that were struck down include the *Finfish Aquaculture Waste Control Regulations* and certain provisions in the *Farm Practices Protection Act*. The DFO is now developing a regulatory scheme for the management of aquaculture in B.C., while the province retains responsibility for leasing the seabed on which aquaculture operations are traditionally located.

National Aquaculture Strategy

Currently a National Aquaculture Strategic Action Plan Initiative (NASAPI) is under way to make way for the future expansion of aquaculture in Canada by streamlining aquaculture regulations. NASAPI is developed under the direction of the DFO and is an attempt to coordinate aquaculture management between the federal government and the provinces.

Although the national strategy does make use of sustainability language, it may fail to address some basic environmental concerns surrounding aquaculture. These include the sustainability of raising carnivorous fish, sea lice spreading to wild fish, escapees, disease and the option of land based containment. For more information regarding NASAPI visit www.dfo-mpo.gc.ca/aquaculture/lib-bib/nasapi-inpasa/index-eng.htm.

Another national initiative that may affect aquaculture operations is the current development of a Federal Sustainable Development Strategy. Under the Federal Sustainable Development Act (2008), the federal government is required to develop a Federal Sustainable Development Strategy based on the precautionary principle, which focuses on the development of goals and targets with respect to sustainable development in Canada (section 9(1)). The proposed federal strategy sets out specific targets for sustainable fisheries and aquaculture as well as a method to implement the strategy. For more information visit www.ec.gc.ca/dd-sd/default.asp?lang=En&n=F93CD795-1#theme2.

Management in Nova Scotia

None of the Atlantic Canadian jurisdictions have aquaculture regulations as mature as did BC before the *Morton* decision. For example, in Nova Scotia, there is no regulation regarding waste management, nor a description of provincial environmental assessment triggers. The Minister of Fisheries and Aquaculture is responsible for aquaculture projects and

for the improvement of aquaculture landing sites under provincial jurisdiction. All aquaculture operations need to first obtain a license and lease from the Minister. After an application for a license and lease has been made, provincial licensing staff must review the application, coordinate public consultation, a technical review and a network review. The technical review, done by the NS DFA, looks at the technical, biological, environmental and financial feasibility of the project. The network review, performed by several provincial and federal departments, includes such practices as the federal environmental assessment.

In addition to a provincial license, aquaculture operations in Nova Scotia require an approval ("Water Approval: Water Course Alteration"), from Nova Scotia Environment, pursuant the *Environment Act*. For more information on this process please visit www.gov.ns.ca/snsmr/paal/nse/paal181.asp.

What Are My Options?

a) If I have concerns regarding a NEW aquaculture operation?

On the Federal Level

1 To find out if there is a federal environmental assessment (EA) taking place look at the CEAA registry available at www.ceaa.gc.ca/050/index-eng.cfm.

The registry is a notification process that enables you to look up any environmental assessments by location. The web link above also shows a list of assessments that are open to public participation. At the end of each EA description, contact information is provided for further information about the particular EA.

Section 14 of CEAA states that, where applicable, the responsible authority must perform a screening. According to recent amendments made to CEAA by the *Jobs and Economic Growth Act (2010)*, if a higher level of assessment is required through a comprehensive study, it will be conducted by the Canadian Environmental Assessment Agency. An assessment must consider the environmental effects of a proposed project as well as the significance of these effects. It must also consider comments from the public (section 16 (1)(c)).

Screening is the most commonly used EA process. After each screening is conducted, a report must be prepared (section 18(1)(b)). If the responsible authority thinks that public participation in the screening of a project is appropriate, then the public is to be given the opportunity to comment and examine the prepared report (section 18(3)).

In summary, if a proposed project in your area is listed in the CEAA Registry, there are opportunities for you to put your concerns on record. All new project proposals must be publicly advertised to give the public an opportunity to comment. It is important to take this step to ensure that the assessing party takes your concerns into consideration, as CEAA requires.

On the Provincial level

2 After an application is made for an aquaculture license, the Minister of Fisheries and Aquaculture may refer the application to a public hearing (section 48(c) *Fisheries and Coastal Resources Act*). If you have concerns about a proposed project, contact the Minister and ask that a hearing take place. The Act stipulates that the public hearing must be announced at least two weeks prior to the hearing in a daily local newspaper and a weekly paper, if available.

The NS DFA also has a link regarding public consultations available at www.gov.ns.ca/fish/aquaculture. The relevant contact information is listed under each proposed site. It is important to make note of the deadline for written comments.

b) If I have concerns regarding an EXISTING aquaculture operation?

On the Federal level

1 The Department of Environment is the designated authority for the enforcement of section 36(3) of the *Fisheries Act*. This section prohibits the deposit of a deleterious substance in water frequented by fish, unless the deposit is approved. (See deleterious substance in definitions section).

If you are concerned with waste product from an aquaculture operation, whether from pesticides, feed, fish waste or dead fish, contact Environment Canada to issue a complaint. See Summary Series II for details on more options that are available to you.

2 If you are concerned that the habitat of fish may be in harm because of an aquaculture operation, for example if excessive fish waste is causing depletion of the oxygen in the water thereby affecting the health of native fish species, or because of a number of escapees, then contact the DFO. The Regional Headquarters Office, Habitat Management can be contacted at (902) 426-8105. Other regional contact information may be found at www.dfo-mpo.gc.ca/habitat/regions/maritimes-eng.asp. If the response to your concern was inadequate, please refer to Summary Series Volume II for more options.

On the Provincial level

3 If you have concerns about an aquaculture operation, contact your local Ministry of Fisheries and Aquaculture depending on what region of the province you are in. Regional departmental contacts are available at www.gov.ns.ca/fish/contactus/reps/fishreps.shtml.

If the terms of an aquaculture license have been violated, the Minister has the right to terminate the license (*Fisheries and Coastal Resources Act*, section 51(2)). As well, the Minister has the authority to appoint an inspector, who may seize fish, or take any other necessary action, if they believe on reasonable grounds that there has been a violation of the Act or any regulations (section 83).

To find out the specific terms of a license, contact the Coastal Resource Coordinator at (902) 424-0356. You may also write a letter or an email request to your regional office. Regional contact information is available at: www.gov.ns.ca/fish/contactus/reps/fishreps.shtml.

By request, the NS DFA will provide you with water quality data collected at an aquaculture site. The language used is very technical and unless one has a strong scientific background, it may be difficult to understand.

Land Based Pollution

What can I do if I observe a pollutant running from the land into the ocean?

Jurisdiction

If the source of the pollution is on provincial land (including private land), then responsibility over the pollution falls under provincial jurisdiction from the authority to govern 'Property and Civil Rights' (*Constitution Act, 1867*, section 92(13)) and the general ability of the province to regulate such pollution.

Section 91(12) of the *Constitution Act, 1867* provides the federal government legislative authority over 'Sea Coast and Inland Fisheries'. The federal government has the jurisdiction to preserve fish and their habitats and can thus regulate water pollution that affects them. They cannot otherwise use this power to intrude into provincial jurisdiction.¹¹ The federal government also has general authority over the environment and in particular the authority to designate toxic substances, which will be discussed further below.

Management (Who/What?)

Canadian Environmental Protection Act (CEPA)

The preamble of CEPA states that the goal of the Act is to prevent pollution while protecting the environment and human health in order to contribute to sustainable development. The Minister of the Environment (Federal) has the ability under CEPA to establish a National Advisory Committee for the purpose of avoiding duplication among different levels of government and taking cooperative action with other levels of government to allow national action to be carried out (section 6).

Part 5 of the CEPA outlines the Minister's responsibility for creating the Toxic Substances List. One of the aims of the National Advisory Committee is to coordinate an intergovernmental approach to the management of toxic substances (section 6(1)(b)). If a substance on the List is released into the environment, CEPA comes into play. Where there is a release or the likely release of a substance on the

Toxic Substances List and it affects your property, you are required to report the matter to an enforcement officer. An enforcement officer, who is designated under section 217, may also deal with the matter if not reported. A list of Toxic Substances is available in Schedule 1 of CEPA.

Fisheries Act

Section 36(3) of the *Fisheries Act* prohibits anyone from depositing or permitting the deposit of "a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance ... may enter such water". (see Definitions section below)

It does not matter that the water may not be deleterious after the substance is added or that the substance entering the water is in a quantity too minute to actually harm the fish.¹² Even if an individual did not "contribute" enough of the substance to the water body, he/she could still be liable.

An individual could be liable even if he/she did not specifically "deposit" the pollution into the water body. It is sufficient if the substance is deposited in a location where it "may enter" the watercourse frequented by fish.¹³

Nova Scotia Environment Act (NSEA)

Section 67(2) of the NSEA states "No person shall release or permit the release into the environment of a substance... that causes or may cause an adverse effect, unless authorized by an approval or the regulations." It is important to note that an intention to release a substance is not required in order to be found guilty of an offence under the Act. An individual applying a pesticide to their fields, for example, may fall within this definition.

Some Important Definitions relating to NSEA

Release includes to spill, abandon, deposit, leak, seep, pour, dump, drain, and empty (section 3(ar)). This suggests that migration is a release. Thus, the travel of chemicals into a river may constitute a release.

Adverse effect is defined as an effect that impairs or damages the environment including an adverse effect on the health of humans or the reasonable enjoyment of life or property (section 3(c)).

Person responsible may include the owner or previous owner of the substance in question; the owner or occupier of the land; a person who has or had care, management or control of the substance, including control during manufacture, sale, storage, transportation, or disposal; and a successor, assignee, executor, receiver, administrator, etc. of the above persons.

Remediation is required by any person responsible for the release of a substance that has caused, may cause or is causing an adverse effect. He/she must take all reasonable measures to prevent, reduce and remedy the adverse effects of the substance and rehabilitate the environment (section 71).

Approval Process

Ministerial approval for an activity is given after consideration of the location of the proposed activity, relevant policies and potential adverse effects. *The Activities Designation Regulations* lists over 100 activities that require approval. Some of these activities deal with municipal waste, pesticides, water approvals, and dangerous goods/waste. This list is subject to change and operates in association with the Release section of the NSEA. It is also important to note that Ministerial approval may still be required even if the activity is not listed (*Activities Designation Regulation, section 29*). The Minister of Environment has wide discretion to approve or deny an approval request. This includes discretion to deny an approval that is not in the public interest. A person affected by an approval may appeal the decision within 30 days of the decision (NSEA, section 137, 138(4)). If an approval is granted, the Minister has authority to stipulate specific conditions or terms of the approval, such as random inspection. It is an offence to violate the terms of an approval.

Duty to Report a Release

Section 69 of the NSEA stipulates that the **person responsible** for a release, the owner of the substance, the person in care, management or control of the substance and any other person directly affected by the release must report it to the Nova Scotia Department of Environment (24-hour emergency line 1-800-565-1633). An inspector or administrator may take emergency measures when a release may cause an environmental emergency.

The Minister has broad power to order a clean-up of any release. Anyone given a ministerial order must comply unless the order is patently unreasonable.¹⁴ If the person responsible does not remediate, then an order by the Minister may be issued to do so, if there are reasonable and probable grounds (section 125). Liability may fall on the person responsible, employers, directors or officers, lenders or creditors, receivers or trustees, environmental consultants, insurers, and shareholders. Penalties range from small fines (summary offence tickets) to 2 years imprisonment for intentional offences.

What Are My Options?

The Federal and Provincial governments have discretion on whether to enforce the Acts discussed above. With time and money constraints, and the difficulty of collecting evidence, charges are often not laid.

- 1 Under CEPA, if you have knowledge of the commission of an offence, you may report the offence to an enforcement officer (section 16(1)). You may also apply to the Minister for an investigation of the commission of the offence (section 17(1)), at which point the Minister will investigate (section 18). If the Minister does not conduct the investigation within a reasonable amount of time or if the response was unreasonable, you may also bring a private action (section 22). Additionally, an individual who suffers from an offence may seek an injunction or bring an action to recover damages from the person who engaged in the conduct (sections 39 and 40).
- 2 A member of the public can initiate a private prosecution that may result in the government getting involved, or can file a petition that will force the government to examine the issue. Although these do not require the government to lay a charge, they likely result in the examination of the violation. For further information on private prosecutions please refer to Summary Series III.
- 3 If the land based pollution is entering water frequented by fish make a report to Environment Canada and the DFO by calling the Coast Guard Regional Operations Centre at 1-800-565-1633. If no action is taken, you may initiate an investigation under the *Fisheries Act*. The steps to take action under this Act are explored above, under 'Aquaculture – What are my options?'
- 4 If you have knowledge of a release that occurs in waters or areas frequented by migratory birds, contact Environment Canada's Enforcement Branch:
Tel: 1-800-668-6767
Email: environmental.enforcement@ec.gc.ca or wildlife.enforcement@ec.gc.ca

If your employer is requiring you to take an action that may have an effect on migratory birds or their nesting areas, section 5.3 of the Migratory Birds Convention Act protects employees who refuse to do something that they believe might be in contradiction of this Act.

For more information regarding enforcement options please refer to Environmental Law Summary Series Volumes II and III.

Protected Areas

What measures are in place to protect specific areas of the land and marine environments?

The International Union for Conservation of Nature (IUCN) defines 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.¹⁵ Under the *Environmental Goals and Sustainable Prosperity Act* (EGSPA), Nova Scotia's goal is to have 12% of the land mass legally protected by 2015. Although EGSPA does not include the protection of marine areas, in 1992 Canada signed the Convention on Biological Diversity which sets out goals regarding the protection of marine areas.

Jurisdiction

Protected areas can be established by both the federal and provincial governments on both water and land. The province has primary jurisdiction over land in the coastal zone. This includes land-based wilderness protected areas. However, the federal government can legislate certain land-based conservation measures that are of a national concern, such as species at risk and migratory birds, or that relate to an area of federal jurisdiction, such as inland fisheries.

Provincial Crown Lands, as defined in section 3 of the *Crown Lands Act*, include any land under the administration or control of the Minister of Natural Resources. This includes most of submerged lands, or sea beds, and the Nova Scotia coastline, except for federal and privately owned water lots.

The federal government has jurisdiction over federal Crown lands, which include national parks, Indian reserves, and Canadian Armed Forces bases. Marine protected areas not adjoining the shore are also under federal jurisdiction.

If a proposed protected area contains a portion of land subject to Aboriginal rights or title, the government must fulfill its duty to consult and accommodate,¹⁶ which may result in the creation of a national park reserve (*Canada National Parks Act*, section 4(2)) and/or co-management arrangements with the Aboriginal peoples affected.¹⁷

Management (Who/What?)

To assess the management of protected areas, it is necessary to address federal and provincial protective powers both from the land and sea side. Land based protected areas with coastal boundaries stop abruptly where provincial jurisdiction ends, namely at the ordinary low watermark. In some instances, such as under the *Wilderness Areas Protection Act*, the Minister of Environment may be given legislative authority to further protect an area by managing the use of adjacent lands in accordance with the way the protected area is managed (section 16). Because much of the Nova Scotia coastline is privately owned, the following will also address ways in which private land may be protected.

Provincial Management

The following Acts provide various mechanisms for designating provincial protected areas. For more information about the protected areas that are managed under these Acts visit our website at www.ecelaw.ca.

Wilderness Areas Protection Act (WAPA): There are currently 37 designated Wilderness Areas in Nova Scotia. WAPA outlines permitted activities as well as restrictions regarding designated wilderness areas. Some of these restrictions include mining, carrying out any agriculture activity, depositing litter, maintaining a fire (unless permitted in a designated area),

or damaging any natural plant or animal (section 17-25). Permitted activities include sport fishing, traditional patterns of hunting and trapping in accordance with the Act and regulations (section 24(1)), as well as camping and hiking in designated areas (section 23(1)). The amount of protection designated to each particular wilderness area is at the discretion of the Minister of Environment.

Beaches Act: There are currently 92 designated protected beaches in Nova Scotia. This Act regulates the land use and recreational activities on these designated beaches, which are protected as sensitive environmental resources. The Province has the authority to designate privately owned land as "beaches" and thus protected areas.

Special Places Protection Act: There are currently 21 Ecological Site Designations and 5 Protected Site Designations under this Act. The goal of this Act is to preserve, protect, regulate, explore and research important parts of the natural or human heritage of Nova Scotia, to promote understanding and appreciation of educational and cultural values represented by the establishment of special places (section 2). Protected sites may include lands covered in water (section 7) as well as privately owned land (section 7(4)). Although a sign may indicate a designated special place, signage is not mandatory.

Provincial Parks Act: There are currently 96 Provincial Parks designated under this Act. The Act aims to develop and maintain provincial parks across Nova Scotia (section 2). The Minister of Natural Resources is encouraged to co-ordinate provincial park policies and management with federal, provincial and municipal levels of government (section 13(a)). The Minister is also encouraged to come to agreement with owners and occupiers of adjacent lands of a Provincial Park to manage their lands so they complement the Provincial Park (section 18(2)).

Wildlife Act: There are currently 15 designated Wildlife Management Areas and 13 Game Sanctuaries and Wildlife Parks in Nova Scotia. This Act gives the Minister of Natural Resources authority to declare any Crown lands, or privately held lands with the consent of the land owner, as designations under this Act. The Act also authorizes the Minister to make orders prohibiting hunting or trapping wildlife in a designated area, as well as regulating hunting and fishing generally.

Conservation Easements Act: A conservation easement is an agreement between a land owner and an eligible body that grants rights, or imposes obligations on the easement holder, owner or both for the purpose of protecting, restoring or enhancing the land (section 4). This is a useful tool for private land owners who wish to protect land that they own. Examples of eligible bodies include the Ecology Action Center, Nova Scotia Nature Trust, Bras d'Or Preservation Foundation, Nature Conservancy of Canada, a municipality, and a provincial or federal agency (section 8). For a detailed list of eligible bodies, refer to the *Conservation Easement Act* and the Designation of Eligible Bodies Regulations, Schedule "A," available at www.gov.ns.ca/just/regulations/regs/coedesig.htm. A conservation easement must be registered in the appropriate registry and depending on the agreed duration, may last indefinitely, even if the land is sold or inherited (sections 11 and 6).

For more information on Conservation Easements and other private conservation options visit the Nova Scotia Nature Trust website at nsnt.ca/resources/landowner.

Federal Management Ocean side:

On the federal level there are three distinct departments, DFO, Environment Canada and Parks Canada, that all have the ability to designate protected areas at sea. Although the protected areas differ in name, the nature of protection is relatively similar. There is some debate over the continuity between departments regarding the protection of designated areas. In 2005, the DFO published Canada's Federal Marine Protected Areas Strategy, which strives to establish a network of marine protected areas by establishing a more systematic approach to protected area designations as well as increasing collaboration between departments. The strategy is available at: www.dfo-mpo.gc.ca/oceans-habitat/oceans/mpa-zpm/fedmpa-zpmfed/pdf/mpa_e.pdf.

This strategy responds to the federal *Oceans Act*, which requires the Minister of Fisheries and Oceans to develop an oceans management strategy (section 29). A system of **Marine Protected Areas** (MPA) is to be implemented to protect and conserve marine ecosystems, endangered marine species, unique features and areas of high biological productivity or biodiversity (section 35).

The Gully is an example of an MPA in offshore Nova Scotia. The Gully is divided into three zones. The core zone or Zone 1 is a highly restricted deep-water area in which few activities are permitted. Zone 2 and 3 allow more uses, including fishing for halibut, tuna, shark and swordfish. General prohibited practices include: anything that disturbs, damages, destroys or removes any living marine organism, habitat or seabed; dumping, discharge, deposition of any substance; or any activity in the vicinity of the MPA that triggers one of the prohibited practices above.

Regulatory power prohibits damage and disturbance to the MPA by regulating human activity that can take place outside the boundaries. These regulations recognize that activities such as depositing, discharging or dumping of substances outside the MPA can have harmful effects within it.

Similarly, Environment Canada is able to protect and conserve habitat for wildlife by establishing Marine Wildlife Areas, which includes the preservation of habitat for migratory birds and endangered species.

Parks Canada is able to establish National Marine Conservation Areas to protect and conserve representative examples of Canada's natural and cultural marine heritage and to provide opportunities for public education and enjoyment. The focus of these Areas is on harmonizing conservation with human enjoyment.

Migratory bird sanctuaries, national wildlife areas and national parks with a marine component are also important contributions to the marine protected areas network.

Federal Management Land Side:

The following Acts provide various mechanisms for designating federal land based protected areas. For more information about the protected areas that are managed under the following Acts visit our website at www.ecelaw.ca.

Canada National Parks Act: This Act establishes parks within which critical habitat of species at risk are protected. Boundaries for all national parks are determined on a case by case basis. An example of a National Park in Nova Scotia with a coastal component is Kejimikujik National Park, the boundary ending at the low water mark. Cape Breton Highlands National Park also borders the coastline, however, its boundaries end at the high water mark and include no marine component.

Canada Wildlife Act: Allows the federal government to establish National Wildlife Areas (NWA), Marine Wildlife Areas (MWA) and Migratory Bird Sanctuaries, which are all examples of protected areas. The purpose of these designations is to conserve essential and unique habitats while managing the nature of human activity. Some examples of National Wildlife Areas in Nova Scotia include Sea Wolf Island, Wallace Bay, Boot Island and John Lusby.

Species At Risk Act (SARA) and Migratory Birds

Convention Act: These Acts prohibit the destruction of the critical habitat of endangered or threatened species on federal land, a national wildlife area or a migratory bird sanctuary. SARA also prohibits killing, harming, harassing, capturing or taking any species that is listed as an extirpated, endangered or threatened species, or damaging or destroying the residence of a member of a listed species on federal lands. Aquatic species and migratory birds are protected by the federal government even on non-federal lands. The Minister of Environment may also order that federal protection applies to any species on non-federal land if the Minister is of the opinion that the species is not adequately protected by provincial legislation and regulations.

What Are My Options?

- 1 If you wish to protect a portion of your land while maintaining ownership rights, you may wish to look into setting up a conservation easement. The terms of use and duration may be drafted uniquely to suit your use of the land. There are several environmental organizations that will accept a conservation easement. Benefits include federal and provincial tax incentives, as well as long term protection of privately owned ecological areas.
- 2 If there is a significant offshore resource that you and your community are interested in protecting, you may wish to identify an Area of Interest for the possibility of establishing a DFO MPA. Areas of Interest may be identified by community groups, the general public, or by other stakeholders. Some benefits of designating an MPA include the protection and sustainability of fisheries and future income. For an example of an MPA established by local stakeholders visit www.eastportmpa.com.
- 3 Violating the provisions of any of the above Acts is an offence. You may be able to trigger an investigation and prosecution by contacting the government responsible for the legislation that is being violated and asking the government to investigate the activity. (See Summary Series Volume I for department contact information)
- 4 If you have concerns about management of a protected area that comes under federal jurisdiction you can bring a petition the federal Commissioner of the Environment and Sustainable Development who will forward the petition to the relevant minister and require him or her to give you a response (See Summary Series Volume II).

Coastal Rights

Do I have any common law rights?

Common Law rights are created outside of legislation and develop gradually through decisions made by judges in court cases. Some common law rights exist around access to and use of water and therefore apply to the coast.

Riparian Rights: These are unique water access rights for those who own land that runs along a river. They are not to be confused with a strict right of possession like one would enjoy regarding other parts of privately owned land. In the Atlantic Provinces, these rights include the right to access the

water, rights of drainage, rights to the flow of water, rights relating to the quality of water, rights to the use of water and the right of accretion. For more information on riparian rights please visit www.ecelaw.ca.

Right of Navigation: The right to use water for the purpose of navigation is a right that every member of the public may enjoy. This right of way can be compared to the right to walk on a sidewalk or other public road.

Relevant Overarching Legislation:

The following are a list of relevant legislation. For a detailed summary to the purposes and goals of these acts please refer to Environmental Law Summary Series Volume 1, 2007 as well as the ECELAW website at www.ecelaw.ca

Federal Legislation	Provincial Legislation
<i>Canada Wildlife Act</i>	<i>Beaches Act</i>
<i>Canadian Environmental Protection Act</i>	<i>Crown Lands Act</i>
<i>Fisheries Act</i>	<i>Endangered Species Act</i>
<i>Migratory Birds Convention Act</i>	<i>Environmental Goals and Sustainable Prosperity Act</i>
<i>Oceans Act</i>	<i>Fisheries and Coastal Resources Act</i>
<i>Species At Risk Act</i>	<i>Municipal Government Act</i>
<i>Canadian Environmental Assessment Act</i>	<i>Provincial Parks Act</i>

Key Word Definitions:

Aquaculture: Commercial farming of aquatic plants and animals in any water environment including human made containers of water. Aquaculture does not include raising or breeding animals either as aquarium species, in laboratory experiments or by individuals on their own property as food for their own use.¹⁸

Beach: The area of land on the coastline lying to the seaward of the mean high water and that area to landward immediately adjacent thereto to the distance determined by the Governor in Council, including any lakeshore area declared by the Governor in Council to be a beach.¹⁹

Coast: The coast represents the area where the land meets the sea, that area of interface between terrestrial and marine environments, where both the terrestrial and marine influences are important. Several other terms are often used synonymously, e.g., coastal region, coastal area and coastal zone.²⁰ The coastal zone is frequently defined as inland areas which are influenced by, and have an impact on, the sea. Coastal waters similarly are considered as those impacted by land-based processes and activities.

Deleterious substance: A substance is deleterious if it is harmful to fish, if it limits the use of fish by humans (for example contamination of fish by E. coli), or it harms the water quality. Regulations under the *Fisheries Act* also prescribe levels that constitute a substance as deleterious. Deleterious substances include pesticides, petroleum products, cleaning supplies and heavy metals.²¹

Foreshore: The strip of land lying along tidal water, between ordinary high and low water marks.²²

High Water Mark: The medium high tide line between spring and neap. When the law uses these words, the boundary is to be taken to mean the ordinary or mean high water mark.²³

Low Water Mark: The medium low tide line between spring and neap.

Marine Protected Area: An area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated by the *Oceans Act* for special protection for conservation or protection of a specific habitat or area.²⁴

Navigable Waters: Any body of water capable of being navigated by floating vessels of any description for the purpose of transportation, commerce or recreation. This includes both inland and coastal waters.²⁵

Seabed: The ground under a water source or under the ocean.²⁶

Water Lot: A designated parcel of land, underwater. Pre-confederation, a number of water lots were created and still remain in existence today, such as the land under Purdy's Wharf in Halifax. Water lots cannot be established after confederation (1867).

References:

- 1 *The State of Nova Scotia's Coast Technical Report*, (Nova Scotia: Department of Fisheries and Aquaculture, 2009) at 75.
- 2 Meinhard Doelle et al. "The Regulation of Tidal Energy Development Off Nova Scotia: Navigating Foggy Waters" (2006) 55 U.N.B.L.J.
- 3 *Reference Re: Ownership of Off Shore Mineral Rights (British Columbia)*, [1967] S.C.R. 792.; *Reference re: Ownership of the bed of the Strait of Georgia and related areas*, [1984] 1 S.C.R. 338.; *Reference re: Seabed and subsoil of the continental shelf offshore Newfoundland*, [1984] 1 S.C.R. 86.
- 4 *Haida Nation v. Canada*, 2004 SCC 73, 245 D.L.R. (4th) 33. *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69, 259 D.L.R. (4th) 610.
- 5 For more information on Statements of Provincial Interest see the *Local Government Resource Handbook*, (Halifax: Service Nova Scotia and Municipal Relations, 2006) online: <www.gov.ns.ca/snsmr/muns/manuals/lgrh.asp>.
- 6 *By-Laws to Amend the Municipal Planning Strategies and Land Use By-Laws of Halifax Regional Municipality to Implement the Regional Municipal Planning Strategy*, online: <www.halifax.ca/regionalplanning/documents/MPSandLUBAmndmts.pdf>.
- 7 *Focus Area Report on Aquaculture, Introductions and Transfers, and Transgenics. Aquaculture Management Directorate Fisheries and Aquaculture Management*, (Ottawa: Fisheries and Oceans Canada, 2010) at 6.
- 8 *Decision Framework for Determination of Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat* (Ottawa: Fisheries and Oceans Canada, 1998).
- 9 *Ibid*, 12.
- 10 2009 BCCA 481, 47 C.E.L.R. (3d) 1.
- 11 *R. v. Crown Zellerbach Canada Ltd.*, 1988, 1 S.C.R. 401.
- 12 *R. v. MacMillan Bloedel (Alberni) Ltd.* (1979), 47 C.C.C. (2d) 118 (B.C.C.A.).
- 13 *R. v. Western Stevedoring Co.*, 1984 13 C.E.L.R. 159.
- 14 *Pracz v. Nova Scotia (Minister of Environment & Labour)*, 2004 NSSC 61, 6 C.E.L.R. (3d) 142.
- 15 www.iucn.org
- 16 *Haida Nation v. British Columbia (Minister of Natural Resources)*, 2004 SCC 73, 245 D.L.R. (4th) 33.
- 17 Parks Canada, online: <www.pc.gc.ca/eng/progs/np-pn/cnpn-cnnp/naatsihchoh/reserve.aspx>.
- 18 *Fisheries and Coastal Resources Act*, S.N.S. 1996, c. 25, s. 3(a).
- 19 *Beaches Act*, R.S.N.S. 1989, c. 32, s. 3(a).
- 20 *The State of Nova Scotia's Coast Technical Report*, (Nova Scotia: Department of Fisheries and Aquaculture, 2009) at 33.
- 21 *Fisheries Act*, R.S.C. 1985, c. F-14 s. 36(3). Online: <www-heb.pac.dfo-mpo.gc.ca/water_quality/fish_and_pollution/fish_act_e.htm>.
- 22 *Flewelling v. Johnston* (1921), 59 D.L.R. 419 at para. 41.
- 23 *Canada (A.G.) v. Kennings* (1988), 23 F.T.R. 51, 40 L.C.R. 253.
- 24 *Oceans Act*, S.C. 1996, c. 31, s. 35(1).
- 25 Transport Canada, online: <www.tc.gc.ca/eng/marinesafety/oep-nwpp-guide-2053.htm>.
- 26 *Oxford Paperback Dictionary, Thesaurus, and Wordpower Guide*, 2001, s.v. "seabed".

Disclaimer

Please note that this volume cannot cover all coastal environmental issues or all options available to you, nor should it be interpreted as legal advice.

East Coast Environmental Law Association

This guide was developed by East Coast Environmental Law Association (ECELAW), a non-profit organization.

ECELAW envisions a future where innovative and effective environmental laws and the just application of those laws provide Atlantic Canadians with a clean, healthy environment, which will make a positive contribution to the quality of life of its present and future inhabitants and visitors.

ECELAW promotes the development and just application of innovative and effective environmental laws in Atlantic Canada through:

- Awareness & Understanding - increasing public awareness of and access to environmental laws;
- Education - aiding in the education of future environmental law professionals; and
- Collaboration - working with the public, community groups and government to strengthen environmental laws in Atlantic Canada.

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For more information

Please visit www.ecelaw.ca for other legal resources and information library.

To find the full text of the federal and provincial Acts and Regulations, visit:

Canadian Legal Information Institute: www.canlii.ca

Federal Department of Justice: <http://laws.justice.gc.ca>

Nova Scotia House of Assembly: www.gov.ns.ca/legislature/legc/

On-line resources for frequently asked questions:

Nova Scotia Department of Justice: www.gov.ns.ca

Self-Represented Litigants Project: www.gov.ns.ca/just/srl/tips/tips_EN.asp

The Courts of Nova Scotia: www.courts.ns.ca

Further Reading

For past volumes of our Summary Series, please visit our website: www.ecelaw.ca



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