

East Coast Environmental Law

Environmental Law for Land and Sea: PEI

Volume 5 of the East Coast Environmental Law Summary Series provides an overview of who controls and protects the coast of Prince Edward Island 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, development of fragile shorelines and beaches, aquaculture and 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 East Coast Environmental Law Summary Series publications and additional 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. 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 of 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.¹ British Columbia and Newfoundland have attempted to gain jurisdiction over certain submarine lands in a number of reference cases against the Federal government.² 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.

There are several provincial departments in PEI which share responsibility for coastal management. The main ones are the Department of Environment, Energy and Forestry, the Department of Fisheries, Aquaculture and Rural Development, and the Department of Finance and Municipal Affairs.

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 official plans, 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 is ongoing debate 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.³ 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.

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 coming from 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. It cannot otherwise use this power to intrude into provincial jurisdiction.⁴ 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 (CEPA, section 6(1)(b)). Under CEPA, regulations are made with regard to these substances. 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.⁵ 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; pollution that is allowed to escape from land may be sufficient. It is sufficient if the substance is deposited in a location where it "may enter" the watercourse frequented by fish.⁶

PEI Environmental Protection Act (EPA)

The EPA prohibits the discharge of a contaminant into the environment, unless a permit has been approved under the *Pesticides Control Act* (see below), the Regulations or with written permission. The prohibition extends to the owner or person having control of a contaminant. The Act does not require intention to release a contaminant in order to be guilty of an offence. An individual applying a pesticide to their fields without meeting the requirements of the *Pesticide Control Act*, for example, may fall within the prohibition.

Some Important Definitions relating to the EPA:

Contaminant includes any solid, liquid, gas, waste, odour, vibration, radiation, sound, or a combination of them which:

- is foreign to or in excess of the natural constituents of the environment into which it is being introduced, or
- will or may adversely affect, either directly or indirectly, the natural, physical, chemical, or biological quality of the environment, or
- is or may be injurious to the health or safety of a person or damaging to property or to plant or animal life, or
- interferes with or is likely to interfere with the comfort, well-being, livelihood, or enjoyment of life of a person, or
- which is declared by the regulations to be a contaminant (section 1(b)).

Discharge includes any drainage, deposit, release, spill, leak or emission (section 1(d)).

Environment includes air, land and water, plant and animal, including human, life, and any feature, part, component, resource or element thereof (section 1(f)).

Approval Process for Undertakings

Section 9 of the EPA provides that no person shall initiate any undertaking unless that person first files a written proposal with the Department and obtains written approval to proceed. In reviewing the proposal, the Minister may require an Environmental Impact Assessment and Report (section 9(2)(b)). Once the Department is satisfied that the potential environmental impacts will be addressed, the proponent must provide the public with an opportunity to review the project and offer comments or raise any concerns that they may have (section 9(2)(c)).

The Minister is granted the authority to stipulate specific conditions or terms of the approval (section 25). For a list of recently approved undertakings visit <http://www.gov.pe.ca/envengfor/index.php3?number=1005874&lang=E> Undertaking includes any construction, industry, operation or other project or any alteration or modification of any existing undertaking which may cause the emission or discharge of any contaminant into the environment.

Duty to Report a Discharge and Take Remedial Action

Section 21 of the EPA stipulates that every person who is responsible for a discharge, or is the owner of the contaminant, or the person in care, management or control of the discharged contaminant must report it to the Prince Edward Island Department of Environment, Energy and Forestry immediately (24-hour emergency line 1-800-565-1633).

The Minister has the power to direct the person responsible for the discharge to take remedial action, including repairing, restoring and remedying the environment or confining or containing the effects of the contaminant (section 21(1)(b)(ii)).

Environmental Protection Order (EPO)

If the Minister, or an environment officer, has reasonable and probable grounds to believe that a contaminant has been, is being, or is going to be, discharged into the environment, or that any other section of the Act has been contravened, the Minister may issue an EPO (section 7 & 7.1). An EPO can direct a person to take a variety of steps (see section 7(3)). An EPO runs with the land and is binding upon the successor or assignee of the person to whom it is directed (section 7(20)). If the person issued an EPO wishes to appeal it, they may do so to the Island Regulatory Appeals Commission within 21 days of the order being issued (section 29.1). Failure to adhere to an EPO or to comply with the provisions of the Act constitutes an offence punishable by summary conviction. Penalties range from fines of \$200 to \$50,000, depending on whether the conviction is of a person or corporation, as well as up to 90 days imprisonment (section 32(1)&(3)).

Contaminated Sites Registry

All contaminated sites in PEI are required to be listed on the a registry that is made accessible to the public and may not be sold without the permission of the Minister. To find out more information about whether a site has been registered, visit: http://www.gov.pe.ca/Contaminated_sites/.

Additional Legislation

The following Acts work in conjunction with the EPA to regulate land-based pollution within the province.

Pesticide Control Act

This Act regulates the sale, distribution, use, application, handling, storage and transport of pesticides within the province. For example, section 7 states that no person shall apply or cause or allow the application of a pesticide or any substance containing a pesticide into, upon or over an open body of water unless the person holds a permit. Violation of the Act can result in a fine ranging from \$1,000 to \$250,000 (section 23).

Agricultural Crop Rotation Act

This Act regulates management practices including soil conservation and nutrient management practices applied to land intended or used for growing. The purposes of this Act are: to maintain and improve surface water quality by reducing runoff and soil erosion; to maintain and improve groundwater quality; to maintain and improve soil quality; and to preserve soil productivity (section 2). A person who contravenes this Act could face fines ranging from \$1,000 to no more than \$50,000.

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. You may report environmental emergencies to the Department of Environment, Energy and Forestry at their office at (902) 368-5000 during normal office hours, or after hours at 1-800-565-1633. The Environmental Emergency Response Team responds to environmental emergencies including pesticide and chemical spills, air quality incidents and fish and other wildlife mortality incidents.

3. Depending on the project, public participation may be required as part of the Environmental Impact Assessment process. Notice is posted on the Department's website at <http://www.gov.pe.ca/eef/> and in the newspaper.

4. 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 the ECELAW publication Summary Series III at www.ecelaw.ca.

5. 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 under 'Aquaculture – What are my options?'

6. 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

7. 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.

8. The Provincial Environment Division administers a wide range of programs, legislation and activities. If you would like additional information on programs, including the Pesticide Program, Environmental Permitting and Legislation, and Watershed Management, or would like to contact someone in relation to the various aspects of environmental management in Prince Edward Island, visit <http://www.gov.pe.ca/eef/env-info/dg.inc.php3> for details.

For more information regarding enforcement options please refer to Environmental Law Summary Series Volumes II and III on our website at www.ecelaw.ca. Environment: Tel: 1-506-453-2696, Env. Emergency 1-800-565-1633, Email: env-info@gnb.ca.

Aquaculture

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

Jurisdiction

Aquaculture operations in Prince Edward Island are regulated by collaboration of provincial and federal governments through Memoranda of Understanding (MOUs) between the Prince Edward Island Department of Fisheries, Aquaculture and Rural Development (Provincial) and the Department of Fisheries and Oceans (Federal), as well as between various other 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.

Federal Jurisdiction

When dealing with provincial territory, certain events will 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 management of aquaculture in Prince Edward Island is unique among the provinces. In 1928, an Agreement was signed between the Dominion of Canada and Prince Edward Island granting the federal government responsibility for aquaculture leasing in Prince Edward Island. The Governments of Canada and the Prince Edward Island reaffirmed this agreement in a 1987 Agreement for Commercial Aquaculture Development.⁸ Based on these Agreements, DFO has adopted management measures designed specifically for the Prince Edward Island aquaculture sector and maintains their jurisdiction over aquaculture leasing. The PEI Aquaculture Division is the division of DFO responsible for the delivery of the leasing program on behalf of the Minister of Fisheries and Oceans Canada. They administer through a number of boards and committees that will be discussed further under the Management section.

The federal government may also 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):

1. If any federal department was conducting the work
2. If they are providing funds or financial assistance
3. If they are providing land or land access
4. 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.

The federal government department that is conducting the work, providing funds or lands or a permit under the *Law List Regulation* is known as the Responsible Authority.

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)) as the Responsible Authority. If any of sections 5(2) 5(3) 16

or 20 are invoked, this will trigger a federal environmental assessment under CEAA. This is the most common trigger for an environmental assessment for an aquaculture project.

Section 35(1) of the Fisheries Act provides 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."⁹ In the event of 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*. In this case DFO is the Responsible Authority.

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*.

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

New The Department of Fisheries, Aquaculture and Rural Development (PEI) in partnership with the PEI Aquaculture Division (DFO) assists in the management and delivery of the Aquaculture Leasing Program. The Department's Aquaculture section also engages in a variety of roles that support the development of the industry. They act as advocates for the aquaculture sector and participate on number of committees with the Federal government and industry associations including the Aquaculture Leasing Management Board and the PEI Aquaculture Leasing Referral Committee. The Department also delivers financial assistance programs which enable research and development in the sector. For more information on the mandate of the Department visit <http://www.gov.pe.ca/fard/>.

The Fisheries Act (PEI) gives the Minister the authority to make regulations in relation to aquaculture including the training of aquaculturists, demonstrating aquaculture techniques and operations, and undertaking development projects for the improvement of aquaculture landing sites (section 5).

Management (Who/What?)

The Prince Edward Island Aquaculture Management Board (the Board) is a partnership between DFO and Prince Edward Island to manage aquaculture leasing in the province. The Board is comprised of both federal and provincial members and plays primarily an advisory role. The PEI Aquaculture Division (DFO) retains jurisdiction over leasing however the Board's recommendations are strongly considered.

The PEI Aquaculture Leasing Referral Committee (the Committee) reviews all application for new leases and transfers of existing leases. The Committee is comprised of members from the following groups: Conservation and Protection

(DFO), Habitat (DFO), Resource Management Section (DFO), Transport Canada – Navigable Waters Protection Branch, PEI Department of Fisheries, Aquaculture & Rural Development, PEI Department of Environment, Energy & Forestry, and Environment Canada – Canadian Wildlife Services. The application for an aquaculture operation lease must comply with all applicable legislation prior to being approved. Each member of the Committee makes a recommendation to either support, support with conditions, or not support the application based on the impact it may have on their respective sectors. The Committee takes the recommendation to the PEI Aquaculture Division (DFO) who make the final decision.

Aquaculture operations that are granted leases are under a continuing obligation to comply with applicable legislation including the *Fisheries Act* (Federal), the *Navigable Waters Protection Act* and the *Canadian Environmental Assessment Act*. For lease applications involving structures in the water, a recommendation by the Committee to grant a licence or lease does not imply approval pursuant to the *Navigable Waters Protection Act*, *Canadian Environmental Assessment Act*. Those applications will be forwarded to the appropriate departments to obtain further approval.

The Prince Edward Island Fisheries Act has provisions applicable to certain aquaculture operations as well. Section 8 states that operations cannot deprive landowners of riparian rights and must allow them reasonable access to the waters adjacent to their land.

The PEI Aquaculture Division has the authority to cancel any lease. Grounds for cancellation include a failure to abide the terms of the lease contract, violation of any government act or regulation, or engaging in conduct that is injurious to marine species.

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 fails 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 <http://www.ec.gc.ca/dd-sd/default.asp?lang=En&n=F93CD795-1#theme2>.

What are my options...

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

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 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.

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.

For a list of Provincial DFO Contacts visit <http://www.glf.dfo-mpo.gc.ca/e0007115>.

... If I have concerns regarding an EXISTING aquaculture operation?

On the Federal level

1. If you have concerns about an aquaculture operation, you may contact either the PEI Aquaculture Division (902) 566-7849 or the Licensing Centre of DFO in Prince Edward Island at (902) 566-7814.

If the terms of an aquaculture license have been violated, the Division has the right to terminate the license. 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.

2. 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, waste or dead fish, contact Environment Canada to issue a complaint. For further details on options that may be available to you see other ECELAW publications including Summary Series II on our website at www.ecelaw.ca.
3. If you are concerned that the habitat of wild fish may be in harm because of an aquaculture operation, 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.

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

A number of provincial departments work in conjunction with one another under a variety of provincial statutes to protect the province's unique and fragile coastline. The *Environmental Protection Act* is integral to coastal protection as it grants the Minister exclusive power to exercise control over all beaches, sand dunes and wetlands within the jurisdiction of the province (section 3). Other, more development oriented statutes enhance protection of the coastline by providing methods for restricting inappropriate development. The *Planning Act* allows provincial Regulations to be made regarding permitted land use and structure within zones in any area except those with an Official Plan and bylaws (section 8) which are within the jurisdiction of municipalities.

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 and zoning by-laws allow a municipality to regulate and designate land use in a manner consistent with objectives set 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?)

Provincial Management

Beaches and sand dunes are addressed directly by the *Environmental Protection Act (EPA)* and the *Recreational Development Act (RDA)*. Development on beaches and shorelines is addressed indirectly through the provisions of the *Planning Act* and the *Lands Protection Act (LPA)*, as well as in various municipal objectives and by-laws. The EPA affords general protection to beaches and explicitly prohibits any person from driving a motor vehicle on a beach or sand dune, or doing anything that will be destructive to the stability of the beach or sand dune (section 22). The RDA provides that beaches can be designated as protected beaches (section 6) and subject to protective restrictions in the Act.

The *Planning Act* plays an integral part in regulating development in coastal areas. The objects of the Act include protecting the unique environment of the province (section 2), and granting the power to make regulations in relation to protection of the natural environment (section 7(1)(c)). Application for development permits issued pursuant to the Act must be made in accordance with the *Subdivision and Development Regulations*. The Minister of Finance and Municipal affairs is responsible for the administration of this Act, however the Minister of Environment may become involved in a variety of different ways if development in an environmentally sensitive area is being proposed. For example, the Minister of Finance and Municipal affairs can require an Environmental Impact Assessment to be undergone prior to granting a development permit. In certain cases, conditions are attached to development permit in order to ensure the development is in compliance with the EPA. The developer may be required enter into an agreement indicating that they will comply with the conditions attached to their permit as a precondition to the permit being issued (section 4(3) of the Regulations).

With regard to coastal areas specifically, the *Subdivision & Development Regulations* provide strict minimum distances required between the nearest exterior portion of a building or structure and a beach, sand dune, wetland or watercourse.¹⁰ These distances are for the protection of all coastal areas, but Regulations provide a further safeguard by stating that notwithstanding the minimum restrictions, if after consultation with the Department of Environment, Energy and Forestry, it is determined that the setbacks listed therein are not sufficient to protect the beach, wetland or watercourse from the adverse impacts of the proposed development, it may be required as a condition of approval that the development be located at a greater distance.

The LPA regulates land ownership in the province. One purpose of the Act is to protect the province's fragile environment and ecology (1.1(1)(c)). This Act is administered largely by the Island Regulatory and Appeals Commission (IRAC) who review all application made under the Act and make recommendations to the Minister. The LPA allows restrictions to be placed land that is purchased. For example, an application to purchase a parcel of land on the coastline could be approved on the condition that the land not be subdivided or used other than for agricultural, forestry or fisheries production, a conservation use pursuant to a designation as a natural area, or a park. It could also be marked for "non-development" use (sectionS 4 & 5) pursuant to the Land Identification Program. It may be even approved on the condition that it be managed in a specific way, or that a buffer be provided and maintained.

Buffer Zones

Buffer zones are protected areas alongside watercourses and wetlands. They serve several protective functions including providing vital habitats for wildlife and shielding water resources from contaminants caused by soil runoff.¹¹ For freshwater streams, Buffer Zones are measured from the edge of the sediment bed. For all tidal areas, including all salt water parts of rivers, bays and the outer coastline, they are measured from the top of the bank. For wetlands, buffer zones are measured from the edge of the wetland vegetation.¹²

Buffer Zones were redesigned in the fall of 2008 and the EPA's new *Watercourse and Wetland Protection Regulations*.¹³ The Regulations cover three main areas: watercourse and wetlands, buffer zones and grass headland, and different requirements are listed for each area. The Regulations

provide that no person shall alter or disturb the ground within 15 metres of a watercourse or wetland boundary without a license or a Buffer Zone Activity Permit (section 3(3)). Other restricted practices include draining, excavating, removing aggregate, dumping or infilling, constructing or removing structures, cutting down live trees or shrubs, cultivating an agricultural crop, and applying pesticides (section 3(4)).

Municipal Management

Section 9 of the *Planning Act* provides that the council of a municipality which has an Official Plan adopted under the Act is responsible for administration of the official plan within the boundaries of the municipality. This allows the municipality the power make bylaws pertaining to the protection, use and development of lands within the municipality. The *Planning Act* states that a municipality must include a statement of economic, physical, social and environmental objectives (section 11). Any bylaws regarding protection of the natural environment must not be less stringent than the environmental Regulations in the Province. Section 7(2) of the *Planning Act* provide that where regulations have been made pursuant the *Planning Act* with regards the protection of the health, safety and natural environment, the council of a municipality must amend its Official Plan and bylaws as are necessary to ensure that the requirements in their plan and bylaws are not less stringent than those in the Regulations. Failure to make these amendments may result in the plan or bylaws being declared null and void, or a declaration that the Regulations apply in the place of the less restrictive bylaws.

Many areas in Prince Edward Island are not covered by an official plan. Development in these areas is regulated solely by provincial statutes.

City of Charlottetown

The City of Charlottetown has the authority to develop bylaws pursuant to the *Charlottetown Area Municipalities Act*. Charlottetown currently has comprehensive zoning and development bylaws in force. Any projects that involve changes to land or buildings require a permit. Applications are reviewed by the City of Charlottetown Planning and Development which then makes recommendations to the council regarding the issuance of a permit.

Various policies in the Official Plan of City of Charlottetown are aimed at the protection of the environment, such as requiring the preparation of an Environmental Impact Statement (EIS) for any new development which could have a significant environmental impact on the land, water, or air and ensuring that any development conserve significant landscapes, vistas, ridgelines, or other natural features of aesthetic importance.

Several development bylaws, read in conjunction with the policies can be used to restrict inappropriate development on shorelines, for example:

4.52.6 An application for a Building Permit May be refused by the Development Officer if the impact of the proposed Development would be detrimental to the environment by reason of noise, dust, drainage, infilling or excavation which affects environmentally sensitive or residential areas;

4.73.2 No permit shall be issued in any zone to any Person for the construction of a Building or Structure closer than 23 m (75 ft.) to a wetland, or watercourse as defined by *Provincial Environment Protection Act* and /or regulations as established from time to time.

4.73.3 In accordance with the Buffer policy of the Province of Prince Edward Island, notwithstanding the foregoing required minimum Building Setback, the Development Officer May approve a lesser Setback to 15.0m or that which is the current minimum required by the Province of Prince Edward Island, if ...construction can be undertaken without undue erosion or surface runoff to the wetland, or watercourse.

4.73.4 The Development Officer shall evaluate any Subdivision proposal that is near a wetland, or watercourse with respect to its impact on the wetland, or watercourse environment, and May consult with the Planning Board, watershed groups, and Shall consult with Provincial Department of Environment, and May ask for a watershed management plan for the lot or area on the imposition of protective measures and any requirement of land dedication of land to the City, and Shall impose such terms and conditions as the Province or Council May direct.

Right of Appeal

Section 28 and 28.1 of the *Planning Act* provides a right of appeal to any person who is not satisfied with a decision of the Minister or of a municipal council to issue a permit for development or subdivision. If the Notice of Appeal is filed within the requisite period of time, the appellant may make submissions before the Island Regulatory and Appeals Commission. This right of appeal is subject to certain conditions listed in the Act. For more information visit <http://www.irac.pe.ca/appeals/planning/>.

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, objectives, policies and by-laws exist in your area. This information is available on your municipality's website. For a list of areas with municipal plans see <http://www.gov.pe.ca/finance/index.php3?number=1010579&lang=EIn>. If you are in Charlottetown this information can be found at <http://www.city.charlottetown.pe.ca/>
2. A municipality has the discretion to allow public input in the planning process. Contact your local municipality to see if there are any upcoming or current public meetings in your area.
3. If you would like to see your municipality develop new by-laws regarding development on the coast, bring this to the attention of your municipal council or your municipal planning committee.
4. If the development is taking place below the ordinary high water mark, the provincial Department of Finance and Municipal Affairs, or the Municipal Council responsible for the area must first issue a permit. To find out if a permit has been administered, you can check the PEI Planning website at <http://bl3.baselinegeo.com/pns/view.aspx>, or contact the Freedom of Information and Protection of Privacy (FOIPOP) Administrator at or by phone at A formal request for information process is also provided by the FOIPOP Act. To submit a formal record request, the application form is available by following the links at <http://www.gov.pe.ca/jps/index.php3?number=1024336&lang=E>
5. 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)566-7839. Other regional contact information may be found at <http://www.glf.dfo-mpo.gc.ca/e0007115>.
6. 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 oep-ep@tc.gc.ca.

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.¹⁴ The Province currently has 145 sites designated as protected areas. This represents 3.12% of the Island's land mass. The Department of Environment, Energy and Forestry indicates that Prince Edward Island's goal is to have 7% of its land mass legally protected.

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 those that relate to an area of federal jurisdiction, such as inland fisheries.

Provincial land is owned by the government of Prince Edward Island. Under the Provisions of the *Public Works Act*, the Department of Transportation and Infrastructure Renewal holds title to all provincial lands.¹⁵

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 accommodate¹⁶, 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 *Natural Areas Protection Act* and the *Recreational Development Act*, the provincial statutes allow for overlapping jurisdiction in relation to protected areas and the responsible Departments work in conjunction with one another to manage the protected areas in accordance with their respective legislative powers. Because a high percentage of land in Prince Edward Island 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 the following Acts, visit our website at www.ecelaw.ca.

Natural Areas Protection Act: The province currently has 119 sites designated as protected areas under this Act. The object of the Act is to provide legal protection to ecologically significant sites including sand dunes, marshes, rivers ponds, bogs, forests, offshore islands, cliffs or marine

areas.¹⁸ Once an area has been designated pursuant to the Act, the Minister may regulate and restrict activity on the protected site. Protected sites may include land that is provincially owned, owned by the non-governmental Island Nature Trust and areas that are held by private landowners. A private landowner may enter into an agreement to either sell or lease the land to the government on terms with which the land is to be managed as a natural area (section 4). Alternatively, a private land owner may enter into a conservation easement with the provincial government for the purposes of protecting, restoring or enhancing their land. The province has set a goal to have 12,750 hectares of the Island designated under this Act.

Wildlife Conservation Act: There are currently 17 Provincial Wildlife Management Areas in Prince Edward Island. This Act gives the Minister of Environment, Energy and Forestry the authority to designate any provincial crown lands, or privately held lands with the consent of the land owner, under this Act. The Act also authorizes regulations prohibiting hunting or trapping wildlife and fishing.

Recreational Development Act: This Act gives the Minister of Tourism and Culture the authority to designate areas of land as provincial parks, protected areas, protected beaches, or a combination thereof (section 6(3)). Beaches that may be designated are defined in the Act as areas of land lying under tidal water or adjacent to such land (section 6(1)(c)). The Minister may designate an area as protected for the purpose of preserving objects of beauty, fossil remains, and other objects, or any unusual combination of elements of the natural environment, of aesthetic, educational, historical or scientific interest. (section 6(1)(b)). Not all designated provincial parks are considered protected parks. Protected Parks also have a NAPA designation, and are managed by the Department of Tourism and Culture with oversight from the Department of Environment, Energy and Forestry.

Lands Protection Act: This Act allows land to be identified for "non-development" use (section 4 & 5) which then cannot be used for commercial or industrial purposes or subdivided unless the owner first receives approval to amend, cancel or suspend the restriction. The purpose of the Act is to protect the province's ecology, environment and lands in light of their fragile nature. (section 1.1(c)). For more information on the LPA, see Development on Fragile Shorelines above.

Forest Management Act: This Act charges the Minister of Environment, Energy and Forestry with the management, renewal and protection of forest lands in the province (section 3), provides for the development of a Forest Policy and places restrictions upon who may cut, harvest or remove any timber from Crown forest lands. The Act allows the Minister to prepare and promote management plans in relation to private owned forest lands.

Federal Management

Ocean side:

At the federal level DFO, Environment Canada and Parks Canada 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, 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).

Basin Head, a shallow coastal lagoon located in the eastern tip of Prince Edward Island, is an example of an MPA in Prince Edward Island. The lagoon is surrounded by an extensive sand dune system designated as a provincial park and agricultural land.¹⁹ The Basin Head Marine Protected Area Regulations list prohibited activities which include disturbing, damaging or destroying, or removing from the Area, any living marine organism or any part of its habitat, or carrying out any activity — including depositing, discharging or dumping any substance, or causing any substance to be deposited, discharged or dumped — that is likely to result in the disturbance, damage, destruction or removal of a living marine organism or any part of its habitat (section 3).

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

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. The Prince Edward Island National Park

includes sand dunes, barrier islands and sandspits, beaches, sandstone cliffs, wetlands and forests. The National Park also includes six kilometers of the Greenwich Peninsula which was added in 1998 .

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. An example of a Migratory Bird Sanctuary in Prince Edward Island is the Black Bond Migratory Bird Sanctuary located in Kings County in the Eastern portion of Prince Edward Island.

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. The Island Nature Trust has a program that aids landowners interested in protecting their land through this method. Benefits include federal and provincial tax incentives, as well as long-term protection of privately owned ecological areas. For more information on private land protection, visit the Island Nature Trust website at www.islandnaturetrust.ca and choose the programs tab.
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.
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 department responsible for the legislation that is being violated and asking the government to investigate the activity. You can find links to specific government departments at www.gov.pe.ca
4. If you have concerns about management of a protected area that comes under federal jurisdiction, you can send a petition to 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).

Relevant Overarching Legislation:

The following is 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

Canadian Environmental Assessment Act
Canada Wildlife Act
Canadian Environmental Protection Act
Fisheries Act
Migratory Birds Convention Act
Oceans Act
Species At Risk Act

Provincial Legislation

Agricultural Crop Rotation Act
Environmental Protection Act
Fisheries Act
Fish Inspection Act
Forest Management Act
Lands Protection Act
Maritime Economic Cooperation Act
National Park Act
Natural Areas Protection Act
Pesticide Control Act
Public Forest Council Act
Planning Act
Recreational Development Act
Trails Act
Wildlife Conservation Act

Key Word Definitions:

Aquaculture: The culture and husbandry of aquatic flora or fauna.²⁰

Beach: Includes that portion of the shoreline land commencing at the base of the bank or slope where the terrestrial land meets the shoreline, or the seaward extremity of a sand dune, as may be relevant in the circumstances and extending seaward a distance of three miles, and containing water, sand, gravel, rock, shale or other earthen material.²¹

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.²² 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.²³

Foreshore: The strip of land lying along tidal water, between ordinary high and low water marks.²⁴

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.²⁵

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.²⁶

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.²⁷

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.

Seabed: The ground under a water source or under the ocean.²⁸

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 water lot adjacent to the Charlottetown Marine Terminal and Confederation Landing. Water lots cannot be established after confederation (1867).

References

- 1 Meinhard Doelle *et al.* "The Regulation of Tidal Energy Development Off Nova Scotia: Navigating Foggy Waters" (2006) 55 U.N.B.L.J.
- 2 *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] 1S.C.R. 86.
- 3 *Haida Nation v. Canada*, 2004SCC 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.
- 4 *R. v. Crown Zellerbach Canada Ltd.* 1988, 1 S.C.R. 401
- 5 *R. v. MacMillan Bloedel (Alberni) Ltd.* (1979), 47 C.C.C. (2d) 118 (B.C.C.A.).
- 6 *R. v. Western Stevedoring Co.*, 1984 13 C.E.L.R. 159.
- 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 Prince Edward Island Aquaculture Leasing Policy
- 9 *Decision Framework for Determination of Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat* (Ottawa: Fisheries and Oceans Canada, 1998).
- 10 www.irac.pe.ca/document.asp?file=legislation/PlanningAct-SubdivisionAndDevelopmentRegulations.asp
- 11 www.gov.pe.ca/envengfor/index.php3?number=1008200
- 12 www.gov.pe.ca/photos/original/eef_buffer_fact.pdf
- 13 *Supra*, note 7.
- 14 www.iucn.org
- 15 www.gov.pe.ca/eef/index.php3?number=17831&lang=E
- 16 *Haida Nation v. British Columbia (Minister of Natural Resources)*, 2004 SCC 73, 245 D.L.R. (4th) 33.
- 17 Parks Canada. www.pc.gc.ca/eng/progs/np-pn/cnpr-cnnp/naatsihchoh/reserve.aspx
- 18 Government of Prince Edward Island. <http://www.gov.pe.ca/envengfor/index.php3?number=1015515&lang=E>
- 19 <http://www.dfo-mpo.gc.ca/oceans/marineareas-zonesmarines/mpa-zpm/atlantic-atlantique/factsheets-feuillets/basinhead-eng.htm>
- 20 *Fisheries Act*, R.S.P.E.I. 1988, c. F-13.01 s. 1(a).
- 21 *Environmental Protection Act*, R.S.P.E.I. 1988, c. E-9 s. 1(a.3).
- 22 *The State of Nova Scotia's Coast Technical Report*, (Nova Scotia: Department of Fisheries and Aquaculture, 2009) at 33.
- 23 *Fisheries Act*, R.S.C. 1985, c. F-14 s. 36(3).
- 24 www-heb.pac.dfo-mpo.gc.ca/water_quality/fish_and_pollution/fish_act_e.htm
- 25 *Flewelling v. Johnston* (1921) 59 D.L.R. 419 at para. 41.
- 26 *Canada (A.G.) v. Kennings*, (1988) 23 F.T.R. 51, 40 L.C.R. 253
- 27 *Oceans Act*, S.C. 1996, c. 31, s. 35(1).
- 28 *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.

The **Environmental Law Students' Society** at Schulich School of Law supported the creation of this volume by providing research assistance.

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>

The Royal Gazette (Queen's Printer) official gazette of Prince Edward Island

Website: <http://www.gov.pe.ca/royalgazette/index.php3>

In Prince Edward Island Community you can contact the PEI Legal Information Association at 1-800-240-9798 or by visiting <http://www.cliapei.ca/>.

On-line resources for frequently asked questions:

Prince Edward Island Department of Justice and Public Safety: www.gov.pe.ca/jps/

Supreme Court of Prince Edward Island: www.gov.pe.ca/courts/supreme/index.php3

Provincial Court of Prince Edward Island: www.gov.pe.ca/courts/provincial/index.php3

Further Reading

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



East Coast Environmental Law
6061 University Avenue
Halifax, Nova Scotia
Canada B3H 4H9
Email: info@ecelaw.ca
Website: www.ecelaw.ca

Funding very generously provided by the Law Foundation of Prince Edward Island

49 Water Street Charlottetown, PE C1A 7K2 902-892-362