

REPRINTED WITH CHANGES RECOMMENDED TO THE
LAW AMENDMENTS COMMITTEE
BY THE MINISTER OF LANDS AND FORESTRY

**An Act to Provide for the Conservation
and Sustainable Use
of Biodiversity in Nova Scotia**

WHEREAS biodiversity is essential to healthy and productive ecosystems and is therefore essential to human well-being;

AND WHEREAS the conservation and sustainable use of biodiversity is interconnected with sustainable prosperity, a healthy environment, vibrant thriving communities, innovation and a strong competitive economy;

AND WHEREAS biodiversity and its sustainable uses are valued by Nova Scotians as important parts of the environment, heritage and economy of Nova Scotia;

AND WHEREAS an ecosystem approach that involves the integrated management of land, water and living organisms, promotes conservation and sustainable use of biodiversity in consideration of the precautionary principle and recognizes that humans are an integral part of ecosystems will strengthen land-use planning and natural resources management;

AND WHEREAS programs, policies and protective measures for biodiversity enable the Government of Nova Scotia to maintain and restore the diversity of genes, species and ecosystems, ensuring healthy ecosystems and the provision of ecosystem goods and services;

AND WHEREAS the conservation and sustainable use of biodiversity is a complex, cross-cutting imperative that necessitates co-operation and collaboration among all sectors and is therefore a shared responsibility of all levels of government, non-government organizations, the private sector, land trusts and owners of private land, the Mi'kmaq of Nova Scotia and all other Nova Scotians;

AND WHEREAS biodiversity must be managed for the benefit of present and future generations, which is in keeping with the Mi'kmaq concept of *Netukulimk*, defined by the Mi'kmaq as the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic well-being without jeopardizing the integrity, diversity or productivity of the environment;

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

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

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

1 This Act may be cited as the *Biodiversity Act*.

2 The purpose of this Act is to provide for the stewardship, conservation, sustainable use and governance of biodiversity in the Province, as part of an integrated framework of legislation, while recognizing

(a) biodiversity has inherent value;

(b) conservation and sustainable use of biodiversity is a responsibility shared by all Nova Scotians;

(c) the importance of reducing the direct pressures on biodiversity and promoting restoration and sustainable use; and

(d) the importance of implementation of this Act through participatory planning, education, sharing of information and capacity building.

3 In this Act,

~~(a) “adverse effect” means an effect that impairs or damages the conservation status of an organism, species, ecosystem or habitat or causes changes that negatively affects aspects of human health or safety;~~

(ab) “biodiversity” means

(i) living organisms from all sources,

(ii) the ecological complexes of which living organisms are a part, including terrestrial, marine and other aquatic ecosystems, and

(iii) the variability and interdependence among living organisms and ecological complexes,

and includes genetic diversity, diversity within and between species and diversity of ecosystems and ecological processes;

~~(e) “biodiversity emergency order” means an order issued under Section 23;~~

(bd) “biodiversity management zone” means a specified area of land managed, for a period of time, for the purpose of supporting the conservation or sustainable use of specified biodiversity values;

~~(e) “camp” means a temporary residence other than a principal place of residence and includes a tent, vehicle or vessel that may be used for the purpose of a shelter or temporary residence;~~

(cf) “conservation” means the maintenance or sustainable use of the Earth’s resources in a manner that maintains biodiversity and the evolutionary and other processes that result in biodiversity;

~~(g) “conservation officer” means a conservation officer appointed under this Act, the Crown Lands Act, the Forests Act or the Wildlife Act;~~

(dh) “Department” means the Department of Lands and Forestry;

(~~gk~~) “ecosystem” means a dynamic complex of plant, animal or micro-organisms and their non-living environment, interacting as a functional unit;

(~~hf~~) “ecosystem goods and services” means the natural goods provided by ecosystems, their role in regulating and supporting natural processes and the cultural and economic benefits they provide;

(~~gl~~) “habitat” means land, water or air where a plant, animal or other organism lives;

(~~hl~~) “land” includes land covered by water;

(~~im~~) “Minister” means the Minister of Lands and Forestry;

(~~jn~~) “organism” means an active, infective or dormant stage, or form of life, of any biological entity capable of reproducing itself, or of transferring genetic material, and includes plants, animals, fungi, mycoplasmas, micro-organisms, viruses and viroids, cell and tissue cultures, germinal cells, seeds, pollen and spores;

~~(e) “permit” means written approval for an activity under this Act;~~

(~~kp~~) “private land” means lands situate in the Province that are not owned or held by or on behalf of Her Majesty in right of the Province or Canada;

(~~lq~~) “species” means a plant species, animal species or other species of organism, and includes one or more populations of a species, the eggs, larvae or other forms of developmental life of a species and any part of an individual of a species, but does not include a domesticated species;

(~~m#~~) “sustainable use” means, with respect to biodiversity, the use of biodiversity in a way and at a rate that does not lead to the long-term decline of biodiversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

4 This Act binds Her Majesty in right of the Province.

5 The Department is the lead department with respect to the conservation and sustainable use of biodiversity and shall work with the other Government departments within their related mandates to achieve the purpose of this Act.

6 (1) The Minister shall initiate a review of this Act within five years of it coming into force and make a written report respecting the review available to the public.

(2) In conducting the review of this Act, the Minister shall consult with the public, including landowners and stakeholders.

MINISTERIAL POWERS AND DUTIES

~~76~~ The Minister is responsible for the supervision and management of this Act.

~~87~~ The Minister may

(a) develop, co-ordinate, adopt and implement policies, standards, guidelines and programs for the conservation and sustainable use of biodiversity; including for

- (i) the conservation and management of ecosystems and habitats,
 - (ii) the conservation and sustainable use of wild species,
 - (iii) the protection of human health, safety and property as it relates to biodiversity,
 - (iv) the observation, prevention and management of wildlife pathogens and diseases and other pathogens and diseases that impact on biodiversity,
 - (v) the management of organisms under human control, including wildlife as defined by the *Wildlife Act*,
 - (vi) the prevention and management of invasive or alien species, and
 - (vii) incentives for conservation and sustainable use of biodiversity, including a compensation framework for biodiversity conservation activities and a framework for the valuation of, and exchange or payment for, ecological goods and services;
- (b) promote the purpose of this Act through proactive approaches ~~to prevent violations of this Act and the regulations~~ through co-operation, communication, education, incentives and partnerships;
- (c) undertake, promote or recommend measures to allow for public co-operation in the conservation and sustainable use of biodiversity;
- (d) consult and co-ordinate with other departments and agencies of the Province with respect to their work and efforts relating to any matter involving the conservation or sustainable use of biodiversity;
- (e) co-ordinate and implement biodiversity policies and programs in co-operation with the Government of Canada, the government of a province of Canada or a municipality, or with an agency of any of the foregoing;
- ~~(f) implement policies and programs for the observation, prevention and management of wildlife pathogens and diseases and other pathogens or diseases that impact on biodiversity;~~
- ~~(g) develop and implement policies, guidelines and standards for the management of organisms under human control, including wildlife as defined by the *Wildlife Act*;~~
- (fh) establish or adopt goals and targets for biodiversity and indicators of ecosystem health and integrity; and
- ~~(i) goals and targets for biodiversity and indicators of ecosystem health and integrity; and~~
 - ~~(ii) guidelines, objectives and standards for the conservation and sustainable use of biodiversity;~~
- (g†) provide funding and other support for biodiversity-related research, investigation and monitoring, as well as land securement and stewardship.;
- ~~(j) implement policies and programs to establish incentives for conservation and sustainable use, and a framework for the valuation of, and exchange or payment for, ecological goods and services; and~~
- ~~(k) take any measure the Minister considers necessary for~~

- ~~(i) the protection of human health, safety and property as it relates to biodiversity;~~
- ~~(ii) the observation, prevention and management of wildlife pathogens and diseases, and other pathogens or diseases that impact on biodiversity; or~~
- ~~(iii) the conservation of biodiversity in the Province.~~

98 Subject to Section 6 of the *Public Service Act*, the Minister may enter into an agreement with any person, including the Government of Canada, the government of a province of Canada or a municipality, or with an agency of any of the foregoing, for any purpose related to this Act or the regulations, including an agreement respecting

- (a) the conservation and sustainable use of biodiversity;
- (b) co-operation between federal, provincial or municipal governments, or agencies thereof, for the enforcement of laws respecting the conservation and sustainable use of biodiversity;
- (c) the conduct of biodiversity or ecological investigations;
- (d) the development and implementation of collaborative programs for the classification, inventory and assessment of biodiversity;
- (e) the development and implementation of collaborative, informational, educational or training programs respecting biodiversity; and
- (f) research, programs and measures respecting the conservation and sustainable use of biodiversity.

109 The Minister may cause studies to be undertaken and cause research to be carried out to

- (a) identify, evaluate, monitor and study biodiversity and any threats to biodiversity;
- (b) provide for inventories of biodiversity;
- (c) assess the impacts of land-use and resource-use activities on biodiversity;
- (d) establish priorities for the conservation and sustainable use of biodiversity based on consistent evaluation protocols for biodiversity throughout the Province;
- (e) promote the long-term productivity, diversity and functioning of ecosystems;
- (f) assess the value of biodiversity and ecosystem goods and services;
- (g) investigate and establish methods to
 - (i) incorporate the value of biodiversity and ecosystem goods and services into decision-making, and
 - (ii) manage the conservation and sustainable use of biodiversity;
- (h) establish priorities and methods for restoring degraded or impaired biodiversity; and
- (i) investigate any other matter associated with the conservation and sustainable use of biodiversity.

~~11~~¹⁰ The Minister may

- (a) retain experts with expertise in the areas of natural science, traditional knowledge, conservation and sustainable uses to report to the Minister with respect to
 - (i) any matters relating to the conservation and sustainable use of biodiversity,
 - (ii) any policies, programs or other matters under the administration of the Minister under this Act, and
 - (iii) any other matters the Minister, in the Minister's sole discretion, considers advisable to refer to an expert;
- (b) specify the functions that experts are to perform, including the seeking of input from the public, and the manner and period in which those functions are to be performed; and
- (c) provide for the remuneration and defraying of expenses to experts.

~~12~~¹¹ For the purpose of promoting greater public awareness, understanding and shared stewardship of biodiversity, the Minister may

- (a) undertake educational programs respecting the conservation and sustainable use of biodiversity;
- (b) undertake or provide for environmental, educational and natural history interpretation at biodiversity management zones;
- (c) work with private agencies and individuals to achieve the objects of this Act; and
- (d) encourage an exchange of information respecting biodiversity between the public and private sectors.

~~13~~¹² The Minister shall establish and maintain such classification, inventory, status-assessment and monitoring programs as the Minister considers necessary or advisable to assess the state of biodiversity in the Province and to provide information to inform the responsible conservation and sustainable use of biodiversity.

~~14~~¹³ (1) The Minister shall establish mechanisms to share data relating to biodiversity.

(2) The Minister shall begin reporting to the public on the state of the Province's biodiversity within three years of this Act coming into force and shall give regular updates no later than every five years thereafter.

~~14 (1) The Minister may, in accordance with the regulations, issue a permit containing terms and conditions that authorizes a person to engage in an activity that is prescribed by the regulations as a prohibited activity if, in the Minister's opinion, the activity is not likely to cause an adverse effect.~~

~~(2) The Minister may, in accordance with the regulations, issue a permit containing terms and conditions that authorizes a person to engage in an activity in a manner contrary to a restriction prescribed by the regulations if, in the Minister's opinion, the activity is not likely to cause an adverse effect.~~

~~(3) The Minister may, in accordance with the regulations, issue a permit under subsection (1) or (2) if, in the Minister's opinion, the activity or manner of engaging in the activity may cause an adverse effect, only if the activity is necessary to satisfy a compelling public interest.~~

~~(4) When issuing a permit under this Section, the Minister may limit the area to which and the times during which the authorization applies.~~

~~(5) The Minister may vary, cancel, suspend or reinstate any permit issued under this Section.~~

BIODIVERSITY MANAGEMENT ZONES

- 15 (1) The Minister, with the approval of the Governor in Council, may
- (a) establish and administer a biodiversity management zone on any land vested in Her Majesty in right of the Province;
 - (b) alter the boundaries of a biodiversity management zone established under clause (a); and
 - (c) declare any area established under clause (a) to no longer be a biodiversity management zone.
- (2) The Governor in Council may make regulations respecting biodiversity management zones established under this Section, including regulations
- (a) setting out or altering the boundaries of a biodiversity management zone;
 - (b) respecting the management and conservation actions to be undertaken in a biodiversity management zone;
 - (c) respecting ~~restricted or prohibited~~ activities necessary to fulfil the objectives of a biodiversity management zone;
 - (d) respecting monitoring and reporting activities to be undertaken in a biodiversity management zone;
 - (e) respecting the period for which a biodiversity management zone is established, ~~or periods in which any restrictions or prohibitions are in effect or not in effect in a biodiversity management zone;~~
 - (f) respecting any other matter relating to a biodiversity management zone.
- (3) The exercise by the Governor in Council of the authority contained in subsection (2) is a regulation within the meaning of the *Regulations Act*.

16 (1) The Minister may establish a biodiversity management zone on private land with the consent of the owner of the private land by entering into an agreement with the owner.

(2) An agreement entered into pursuant to subsection (1) may contain such terms and conditions as the Minister and the owner of the private land agree to, which may include

- (a) boundaries of the biodiversity management zone;

- (b) specifying management and conservation actions to be undertaken in the biodiversity management zone;
- (c) specifying ~~restricted or prohibited~~ activities necessary to fulfil the objectives of the biodiversity management zone;
- (d) specifying monitoring and reporting activities to be undertaken in the biodiversity management zone;
- (e) specifying the period for which the biodiversity management zone is established, ~~or periods in which any restrictions or prohibitions are in effect or not in effect in the biodiversity management zone~~;
- (f) outlining compensation to be provided to the owner of the private land ~~in accordance with subsection 52(2)~~; and
- (g) providing for any other matter relating to the biodiversity management zone.

17 Where the Minister establishes a biodiversity management zone pursuant to Section 15 or 16, the Minister shall publish a notice containing a description of the biodiversity management zone in the Royal Gazette and on the Department website, and may circulate the notice in any other manner the Minister considers appropriate.

~~CONSERVATION OFFICERS AND OTHER PERSONNEL~~

~~18 (1) Conservation officers and other persons required for the administration and enforcement of this Act and the regulations must be appointed in accordance with the *Civil Service Act*.~~

~~(2) Notwithstanding subsection (1), the Minister may utilize, upon such terms and conditions as the Minister considers appropriate, the services of such persons as the Minister considers necessary for the efficient carrying out of the purpose of this Act and the regulations.~~

~~(3) A conservation officer, upon being appointed, shall swear the oath or make the affirmation prescribed by the regulations.~~

~~(4) A copy of an identification card purporting to be signed by the Minister is, in the absence of evidence to the contrary, proof in any court of law that the individual named on the card is a conservation officer.~~

~~(5) No person, except a conservation officer, shall use or wear a uniform, badge or identification card identifying the person as a conservation officer.~~

~~(6) Subject to such terms and conditions as the Minister considers appropriate, the Minister may, in writing, exempt a conservation officer from any provision of this Act or the regulations while the conservation officer is carrying out an investigation or other enforcement activity under this Act or the regulations.~~

~~19~~ A conservation officer may administer an oath or affirmation to any person swearing or affirming a declaration or affidavit required for the purpose of enforcing this Act and the regulations.

~~20~~ A conservation officer, in carrying out the conservation officer's duties under this Act, has all the powers, authority and immunities of a peace officer under the *Criminal Code* (Canada) and may exercise them in any part of the Province.

~~21~~ A person acting in the discharge of the person's duties under this Act or the regulations, and anyone assisting the person, may enter upon any land without being liable for trespass, but no person is exempted from liability for actual damage caused by such entry.

~~22~~ The protection afforded by this Act or any other enactment to a conservation officer extends to any person while and to the extent that the person is in the course of assisting a conservation officer under the conservation officer's direction.

BIODIVERSITY EMERGENCY ORDERS

~~23~~ Where there are reasonable and probable grounds to believe that a person has contravened or is about to contravene Section 38 in a manner that resulted in, or is likely to result in, serious adverse effects to biodiversity and for which corrective action is needed to prevent, control, eliminate or manage such serious adverse effects, the Minister or an employee of the Government authorized to act on behalf of the Minister may issue a biodiversity emergency order requiring the person to do any or all of the following:

- ~~(a)~~ cease engaging in any activity that resulted in or is likely to result in a contravention of Section 38;
- ~~(b)~~ comply with any instructions set out in the order;
- ~~(c)~~ do all things and take all steps necessary to comply with Section 38 and to remedy any injury or damage, or to control, eliminate or manage any adverse effects to biodiversity, caused by a contravention of Section 38.

~~24~~ In deciding whether to issue a biodiversity emergency order, the Minister or employee of the Government authorized to act on behalf of the Minister shall consider the following, if such information is available:

- ~~(a)~~ whether the potential or actual adverse effects are serious, with consideration of the magnitude, geographic extent, timing, frequency, duration and reversibility of the adverse effects;
- ~~(b)~~ when the activity occurred that resulted in or was likely to result in serious adverse effects;
- ~~(c)~~ the conservation status of any organism, species, ecosystem or habitat affected or potentially affected by the contravention; and
- ~~(d)~~ the potential public health or safety risks associated with the contravention.

~~25~~ A biodiversity emergency order

~~(a) may contain such terms and conditions as the person issuing the order considers appropriate to prevent, mitigate or remedy any serious adverse effects to biodiversity that resulted or may result from the contravention of Section 38; and~~

~~(b) must include~~

~~(i) the name and address of the person to whom the order is issued;~~

~~(ii) a description of the nature and location of the contravention and the serious adverse effects that have resulted or are likely to result from the contravention;~~

~~(iii) a description of the activities that must cease or be modified or that will be permitted only under certain circumstances or conditions; and~~

~~(iv) notice that an appeal of the order may be requested in accordance with Section 28, if the order is made by an employee of the Government, or Section 29, if the order is made by the Minister.~~

~~26 (1) A biodiversity emergency order issued under Section 23 must be in writing and given or served on the person to whom it is issued.~~

~~(2) A biodiversity emergency order is deemed to be sufficiently given or served~~

~~(a) upon a copy being personally given to or served on the person to whom it is issued;~~

~~(b) upon a copy being sent by electronic means to the person to whom it is issued and an acknowledgement or receipt being received;~~

~~(c) five days after a copy is sent by registered mail addressed to the person to whom it is issued at the last known address for that person; or~~

~~(d) in the case of a registered owner of privately owned land, five days after a copy is sent by mail to the address for the registered owner shown on the last revised assessment roll.~~

~~27 (1) When a biodiversity emergency order is given to or served on a person to whom it is issued, that person shall comply with the order forthwith or, where a period for compliance is specified in the order, within the time period specified.~~

~~(2) Where the person to whom a biodiversity emergency order is issued does not comply with the order or part thereof, the Minister may take whatever action the Minister considers necessary to carry out the terms of the order.~~

~~28 (1) A person to whom a biodiversity emergency order is issued by an employee of the Government authorized to act on behalf of the Minister may, within 30 days of the date of the order, appeal to the Minister by notice in writing.~~

~~(2) A notice of appeal must be in a form prescribed by the Minister, state concisely the reasons for the appeal and be accompanied by the fee, if any, prescribed by the Minister.~~

~~(3) The Minister shall notify the appellant, in writing, of the decision within 30 days of receipt of the notice of appeal.~~

~~(4) The Minister may dismiss the appeal, revoke the biodiversity emergency order or issue a new order in substitution for the order issued by the employee of the Government authorized to act on behalf of the Minister.~~

~~(5) The Minister may, in writing, delegate any power conferred or duty imposed on the Minister by this Section to any employee of the Government on such terms and conditions as the Minister considers appropriate.~~

~~29 (1) A person to whom a biodiversity emergency order is issued by the Minister or who is aggrieved by a decision of the Minister made under Section 28 may, within 30 days of the date of the order or decision, appeal the order or decision to the Supreme Court of Nova Scotia.~~

~~(2) An appeal under subsection (1) must be dismissed by the Supreme Court of Nova Scotia if the sole ground for relief established on the appeal is a defect in form or a technical irregularity.~~

ENFORCEMENT

~~30 For the purpose of this Act and the regulations,~~

~~(a) a person is in possession of a thing when it is in that person's personal possession or when that person knowingly~~

~~(i) has it in the actual possession or custody of another person, or~~

~~(ii) has it in any place, whether or not that place belongs to or is occupied by that person, for the use or benefit of that person or of another person; and~~

~~(b) when one of two or more persons, with the knowledge and consent of the rest of those persons has anything in that person's custody or possession, it is in the possession of each of them.~~

~~31 (1) A conservation officer, together with such persons whose assistance the conservation officer considers necessary or advisable, may, for the purpose of ensuring compliance with this Act, the regulations, a biodiversity emergency order or the terms and conditions of a permit,~~

~~(a) at any reasonable hour, enter and inspect any place other than a residence, make any examination and conduct any test that the conservation officer considers necessary or advisable;~~

~~(b) require the production of records or documents in the possession of any person that relate to the conservation, use, damage or destruction of biodiversity in the Province and remove them temporarily for the purpose of making copies;~~

~~(c) take photographs or make recordings of the place, any thing in the place or any activity occurring in the place with respect to biodiversity;~~

~~(d) make any examination, investigation or inquiry that the conservation officer considers necessary to ascertain whether there is compliance with this Act, the regulations, a biodiversity emergency order or the terms and conditions of a permit issued under this Act;~~

~~(e) inspect, take samples and conduct tests of samples, including tests in which a sample is destroyed, of any thing being produced, used or found in the place~~

~~and be responsible therefor, except for a sample that has been destroyed, until the thing is returned to the place;~~

~~(f) examine any person with respect to matters under this Act;~~

~~(g) enter upon any land for the purpose of performing the conservation officer's duties and functions under this Act; and~~

~~(h) exercise any other powers as may be necessary or incidental to the carrying out of the conservation officer's duties and functions under this Act.~~

~~(2) A conservation officer may, for the purpose of any investigation, inquiry or examination made by the conservation officer under this Act, summon an individual to give evidence, and administer an oath or affirmation to an individual.~~

~~**32 (1)** A conservation officer who has reasonable and probable grounds to believe an organism or any other item is being held or possessed in contravention of this Act or the regulations or is being held or possessed in a manner that contravenes this Act or the regulations may, with a search warrant or telewarrant,~~

~~(a) enter and search any residence, camp or other structure; and~~

~~(b) seize such organisms or other items as may be found being held or possessed in contravention of the regulations or being held or possessed in a manner that contravenes this Act or the regulations.~~

~~(2) A conservation officer may not enter a residence except with the consent of the person in charge or control of the residence or under the authority of a warrant or telewarrant.~~

~~**33** A conservation officer who has reasonable and probable grounds to believe an organism or any other item is being held or possessed in contravention of this Act or the regulations or is being held or possessed in a manner that contravenes this Act or the regulations may, without a warrant,~~

~~(a) direct that a vehicle, vessel or conveyance be stopped or moved, by the route and in the manner that the officer may specify, to a place specified by the officer where an inspection may be carried out and the officer may, for a reasonable time, detain a vehicle, vessel or conveyance;~~

~~(b) enter and search any vehicle, vessel or conveyance for evidence of a contravention of this Act or the regulations; and~~

~~(c) open and inspect any box, bag, parcel, barrel or container for evidence of a contravention of this Act or the regulations.~~

~~**34** A conservation officer may seize anything, including an organism, that the conservation officer believes on reasonable and probable grounds may afford evidence of a contravention of this Act or the regulations.~~

~~**35 (1)** Subject to subsection (2), a conservation officer who has seized an item, including an organism, under this Act may detain the item pending disposition of the prosecution.~~

~~(2) A conservation officer may~~

~~(a) return the seized property to the person from whom it was seized or to whom it belongs before it is dealt with in the courts;~~

~~(b) in the case of a dead organism, dispose of the organism or any part of it that is not required as evidence, in accordance with the direction of the Minister; or~~

~~(c) in the case of a live organism, keep it or place it in the care of another person, euthanize it, release it into the wild or otherwise arrange for its disposition, in accordance with the direction of the Minister.~~

~~(3) Where an organism is delivered to another person, the Minister may assess the cost of keeping it to the owner or person in possession, or both, and that cost must be paid on demand by the person assessed and is recoverable by the Minister as a debt due to Her Majesty in right of the Province.~~

~~36 (1) Where any property has been seized under this Act, a person, other than the person accused of an offence resulting in the seizure or the person in whose possession the property was when seized, who claims an interest in the property as an owner, mortgagee, lien holder or holder of any like interest may, within 60 days after the seizure, apply by notice in writing to a judge of the Provincial Court for an order declaring that the person's interest is not affected by the seizure.~~

~~(2) The judge shall fix a day not less than 30 days after the date of the filing of the application for the hearing of the application.~~

~~(3) The claimant shall serve notice of the application and of the hearing upon the Minister at least 15 days before the day fixed for the hearing.~~

~~(4) Where, upon the hearing of an application, the judge is satisfied that~~

~~(a) the claimant is innocent of any complicity in the offence resulting in the seizure or of any collusion with the offender in relation to the offence; and~~

~~(b) the claimant exercised all reasonable care, with respect to the person permitted to obtain the possession of the property, to satisfy the claimant that it was not likely to be used contrary to this Act or the regulations or, where a mortgagee or lien holder, the claimant exercised reasonable care with respect to the mortgagor or person giving the lien;~~

~~the claimant is entitled to an order that the claimant's interest is not affected by the seizure.~~

~~(5) The claimant or the Minister may appeal to the Nova Scotia Court of Appeal from an order of a judge made under this Section and the appeal must be asserted, heard and decided according to the ordinary procedure governing appeals to that Court.~~

~~37 (1) Subject to subsection (2), where a person charged with an offence under this Act is acquitted, any property seized from that person must be returned.~~

~~(2) Where the seized property is an organism, the Minister may return the item if it has not perished or pay such value for the item as the Minister considers appropriate.~~

~~(3) Where anything is seized under this Act and the owner is unknown or cannot be ascertained or cannot be found within three months of the seizure, the Minister may direct that the thing be disposed of in any manner the Minister considers appropriate.~~

OFFENCES AND PENALTIES

- ~~38 (1) No person shall engage in an activity that results in~~
- ~~(a) the consumption, utilization, harvesting, taking or killing of a species in excess of that prescribed by the regulations;~~
 - ~~(b) the introduction, release or spread of an organism or pathogen prescribed by the regulations; or~~
 - ~~(c) the loss of an at-risk habitat or ecosystem prescribed by the regulations.~~

~~(2) No person shall engage in an activity that is prescribed by the regulations as a prohibited activity except in compliance with a permit issued under subsection 14(1).~~

~~(3) No person shall engage in an activity in a manner that contravenes a restriction prescribed by the regulations except in compliance with a permit issued under subsection 14(2).~~

~~39 No person shall interfere with the lawful and sustainable use of biodiversity by another person.~~

~~40 No person shall contravene the terms or conditions of a biodiversity emergency order.~~

- ~~41 (1) No person shall~~
- ~~(a) obstruct;~~
 - ~~(b) cause the obstruction of;~~
 - ~~(c) incite others to obstruct; or~~
 - ~~(d) assault,~~

~~a conservation officer in the exercise of a power or the performance of a duty under this Act or the regulations, or any person assisting the conservation officer.~~

- ~~(2) No person shall make a false statement to a conservation officer respecting~~
- ~~(a) the existence or the place of concealment or storage of any organism; or~~
 - ~~(b) a contravention of this Act or the regulations.~~

~~(3) No person shall refuse or fail to comply with any order, visible signal or direction of a conservation officer in uniform given in the course of carrying out the conservation officer's duties and functions.~~

~~42 (1) Where there are reasonable and probable grounds to believe that a vehicle, a vessel or equipment was used in the contravention of this Act or the regulations, the owner of the vehicle, vessel or equipment shall, upon the request of a conservation officer and within 48 hours~~

of receiving the request, supply the conservation officer with the name and address of the person who was in charge of the vehicle, vessel or equipment at the time of the contravention.

~~(2) Where there are reasonable and probable grounds to believe that a vehicle, vessel or equipment was used in the contravention of this Act or the regulations, the person in charge of the vehicle, vessel or equipment at the time of the alleged contravention shall, upon the request of a conservation officer and within 48 hours of receiving the request, supply the conservation officer with the name and address of the person who was operating the vehicle, vessel or equipment at the time of the contravention.~~

~~(3) A person who refuses, fails, neglects or is unable to comply with subsection (1) or (2) is liable on summary conviction to the penalty prescribed for the offence of the operator.~~

~~(4) In any prosecution of a person under this Section, it is a defence if the person can prove that the vehicle, vessel or equipment was being operated at the time of the contravention without the knowledge or consent, either expressed or implied, of that person.~~

~~43 A conservation officer may arrest without a warrant a person whom~~

~~(a) the conservation officer finds contravening this Act or the regulations; or~~

~~(b) on reasonable and probable grounds the conservation officer believes is contravening or has recently contravened this Act or the regulations.~~

~~44 (1) A person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction~~

~~(a) for a first offence~~

~~(i) in the case of an individual, to a fine of not more than \$500,000 or to imprisonment for a term of not more than six months, or to both, and~~

~~(ii) in the case of a corporation, to a fine of not more than \$1,000,000; and~~

~~(b) for a second or subsequent offence~~

~~(i) in the case of an individual, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than six months, or to both, and~~

~~(ii) in the case of a corporation, to a fine of not more than \$2,000,000.~~

~~(2) No private prosecution of Her Majesty in right of the Province for an offence under this Act may be commenced without the consent of the Attorney General.~~

~~(3) Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.~~

~~(4) Where a corporation commits an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the offence is also guilty of the offence and is liable on summary conviction to the penalties set out in~~

~~subclause 44(1)(a)(i), for a first offence, and subclause 44(1)(b)(i), for a second or subsequent offence, whether or not the corporation has been prosecuted.~~

~~(5) Where a person has been convicted of an offence under this Act and the court is satisfied that monetary benefits accrued to the person as a result of the commission of the offence,~~

~~(a) the court may order the person to pay an additional fine in an amount equal to the court's estimation of the amount of the monetary benefits; and~~

~~(b) the additional fine may exceed the maximum fine set out in subsection (1).~~

~~45 Where a person is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:~~

~~(a) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;~~

~~(b) directing the person to take any action that the court considers appropriate to remedy or to prevent any adverse effects to biodiversity that result or may result from the commission of the offence;~~

~~(c) directing the person to pay to the Minister compensation for the cost, in whole or in part, of any restoration or remedial or preventive action taken by or on behalf of the Minister as a result of the commission of the offence;~~

~~(d) directing the person to post a bond or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this Section.~~

~~46 (1) In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.~~

~~(2) Unless otherwise provided in this Act, no person shall be convicted of an offence under this Act if the person establishes that the person exercised all due diligence to prevent the commission of the offence.~~

~~47 An individual over the age of majority who accompanies or assists another individual at the time when the other individual commits an offence contrary to this Act is a party to the offence and is liable to the penalty prescribed for the offence unless the individual proves that the offence was committed without the individual's knowledge and consent.~~

~~48 (1) In a prosecution or proceeding under this Act in which proof is required with respect to~~

~~(a) the issuance, cancellation, suspension or reinstatement of any permit under this Act;~~

~~(b) the issuance or revocation of a biodiversity emergency order under this Act;~~

- ~~(c) the identity of a person who is the permit holder named in a permit;~~
- ~~(d) the identity of a person to whom a biodiversity emergency order is issued;~~
- ~~(e) the delivery, serving or mailing of any document or notice to be given under this Act;~~
- ~~(f) whether any return required under this Act has been received; or~~
- ~~(g) a previous conviction of a person;~~

~~a certificate purporting to be signed by the Minister certifying with respect to the same is, in the absence of evidence to the contrary, proof of the facts stated in the certificate and of the authority of the person who has signed the certificate, without further proof of appointment or signature.~~

~~(2) For the purpose of this Section, the Minister may designate as an analyst a person who, in the opinion of the Minister, is qualified to be so designated.~~

~~(3) Subject to subsection (5), a certificate purporting to be the certificate of an analyst stating that the analyst has analyzed or examined any organism, whether living or dead, or any other thing and the results of the analysis or examination are admissible in evidence in any prosecution for an offence under this Act and, in the absence of evidence to the contrary, are proof of the statement contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.~~

~~(4) The party against whom a certificate of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.~~

~~(5) No certificate may be received in evidence under this Section unless the party intending to produce it has given, to the party against whom it is intended to be produced, reasonable notice of such intention, together with a copy of the certificate.~~

~~(6) Notice may be served on an accused by registered mail sent to the address given by the accused when that person was charged or, where applicable, the address that appears on that person's permit or on a biodiversity emergency order issued to that person.~~

~~49 (1) Where a person is convicted of an offence under this Act, the court may, in addition to any penalty imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty in right of the Province.~~

~~(2) Where the court does not order a forfeiture under subsection (1), the seized thing, or the proceeds of its disposition, must be returned to its lawful owner or the person lawfully entitled to it if the possession of the thing would be lawful.~~

~~50 Where a fine is imposed on a person convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.~~

~~51 (1) Proceedings by way of summary conviction with respect to an offence under this Act may not be commenced more than two years after the later of~~

- (a) ~~the date on which the offence was committed; and~~
- (b) ~~the date on which evidence of the offence first came to the attention of the Minister.~~

~~(2) A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of evidence of the offence, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified.~~

GENERAL

~~52 (1) No person affected by this Act or the regulations is entitled to compensation for any restriction, encumbrance or use or the lack of use, of any nature or kind whatsoever, that may result or results from the application of this Act or the regulations.~~

- ~~(2) Notwithstanding subsection (1), where~~
 - ~~(a) a particular use of private land is prohibited, restricted or limited as a result of the application of this Act or the regulations; and~~
 - ~~(b) the owner of the private land is actually engaged in that particular use of the land when the use is prohibited, restricted or limited,~~

~~the Minister shall compensate the owner of the private land for the loss of the particular use in the manner prescribed by the regulations.~~

~~(3) Subsection (2) does not apply to the prohibition, restriction or limitation of a particular use of land as a result of a biodiversity emergency order.~~

1853 (1) The Governor in Council may make regulations

- (a) respecting the establishment, control and management of biodiversity management zones on land vested in Her Majesty in right of the Province pursuant to Section 15;
- (b) respecting the establishment of mechanisms by which the Minister reports to the public on matters relating to biodiversity, and the information that must be included in such reports;
- (c) respecting the establishment or adoption of goals and targets for biodiversity and indicators of ecosystem health and integrity;
- ~~(d) respecting the authorization by permit, restriction or prohibition of activities that affect biodiversity and uses of biodiversity;~~
- ~~(e) prescribing the oath to be sworn or affirmed by conservation officers;~~
- ~~(f) respecting the holding or possession of organisms or other items, including, where the holding or possession of an organism or other item is not restricted, the manner in which it is to be held or possessed;~~
- ~~(g) respecting activities that affect biodiversity or the uses of biodiversity as prohibited activities;~~

~~(h) respecting restrictions on activities that affect biodiversity or the uses of biodiversity;~~

~~(i) respecting permits and the permitting process, including applications for permits, the issuance of permits, the suspension or cancellation of permits, the period during which a permit remains valid, the renewal of permits and the transferability of permits;~~

(dj) respecting the conservation and sustainable use of biodiversity;

(ek) respecting the prevention and management of threats to biodiversity and the restoration of biodiversity;

(fl) respecting the prevention and management of invasive or alien species;

(gm) respecting the import and export of organisms in the Province;

(hn) respecting the prevention, management and surveillance of diseases that affect biodiversity;

(io) respecting access to and the sharing of benefits arising from genetic resources;

(jp) respecting the prevention and management of impacts on human health, safety and property from biodiversity;

(kq) respecting the valuation of, and exchange or payment for, ecological goods and services;

(lr) respecting a compensation framework for biodiversity conservation activities~~the purpose of subsection 52(2);~~

(ms) prescribing fees for the purpose of this Act and the regulations;

(nt) defining any word or expression used but not defined in this Act;

(ou) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The Minister shall consult with the public, including landowners and stakeholders, in such manner as the Minister considers appropriate before proposing a new regulation or a substantive amendment to a regulation under subsection (1) for Governor in Council consideration.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

~~54 (1) The Minister may make regulations~~

~~(a) prescribing species for the purpose of clause 38(1)(a);~~

~~(b) prescribing organisms or pathogens for the purpose of clause 38(1)(b);~~

~~(c) prescribing habitats and ecosystems for the purpose of clause 38(1)(c).~~

~~(2) The Minister shall consult with the public, including landowners and stakeholders, in such manner as the Minister considers appropriate before making or substantially amending a regulation under subsection (1).~~

~~(3) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.~~

~~1955~~ This Act has effect on and after October 1, 2021.
