

# **BILL NO. 65**

**(as amended)**



*1st Session, 57th General Assembly  
Nova Scotia  
47 Elizabeth II, 1998*

Government Bill

## **Endangered Species Act**

CHAPTER 11 OF THE ACTS OF 1998

The Honourable Kenneth MacAskill  
Minister of Natural Resources

**First Reading:** November 5, 1998

**Second Reading:** November 12, 1998

**Third Reading:** December 3, 1998 (WITH COMMITTEE AMENDMENTS)

**Royal Assent:** December 3, 1998

**An Act Respecting Endangered Species**

Be it enacted by the Governor and Assembly as follows:

**1** This Act may be cited as the *Endangered Species Act*.

**2 (1)** The purpose of this Act is to provide for the protection, designation, recovery and other relevant aspects of conservation of species at risk in the Province, including habitat protection, while recognizing the following:

- (a) the goal of preventing any species in the Province from becoming extirpated or extinct as a consequence of human activities;
- (b) the conservation of species at risk is a key component of a broader strategy to maintain biodiversity and to use biological resources in a sustainable manner;
- (c) the commitment of Government to a national co-operative approach for the conservation of species at risk, as agreed to in the National Accord for the Protection of Species at Risk;
- (d) all Nova Scotians share responsibility for the conservation of species at risk and governments have a leadership role to play in this regard;
- (e) Nova Scotians be provided with the opportunity for meaningful participation in relation to conservation of species at risk;
- (f) the aboriginal peoples of the Province have an important role in conserving species at risk;
- (g) the importance of promoting the purposes of this Act primarily through non-regulatory means such as co-operation, stewardship, education and partnerships instead of punitive measures, including such preventative actions as education, incentives, sustainable management practices and integrated resource management; and
- (h) the precautionary principle that a lack of full scientific certainty must not be used as a reason for postponing measures to avoid or minimize the threat of a species at risk in the Province.

**(2)** For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

**3** In this Act,

- (a) "conservation officer" means a conservation officer within the meaning of the *Wildlife Act* and a person designated or appointed as a conservation officer pursuant to this Act;
- (b) "core habitat" means specific areas of habitat essential for the long-term survival and recovery of endangered or threatened species and that are designated as core habitat pursuant to Section 16 or identified in an order made pursuant to Section 18;
- (c) "Department" means the Department of Natural Resources;
- (d) "endangered species" means a species that faces imminent extinction or extirpation and is listed as an endangered species pursuant to Section 12;
- (e) "extinct species" means a species that no longer exists and is listed as an extinct species pursuant to Section 12;
- (f) "extirpated species" means a species that no longer exists in the wild in the Province but exists in the wild outside the Province and is listed as an extirpated species pursuant to Section 12;
- (g) "Fund" means the Species-at-risk Conservation Fund established pursuant to this Act;

- (h) "Group" means the Species-at-risk Working Group established pursuant to this Act;
- (i) "habitat" means land, water or air where a plant, animal or other organism lives;
- (j) "management plan" means a statement of needs and actions to be undertaken to keep a vulnerable species from becoming at increased risk;
- (k) "Minister" means the Minister of Natural Resources;
- (l) "private lands" means lands situate in the Province that are not public lands;
- (m) "public lands" means lands situate in the Province that are owned or held by or on behalf of Her Majesty in right of the Province or Canada;
- (n) "recovery plan" means a statement of needs and actions to be undertaken for the recovery of an endangered or threatened species;
- (o) "registered owner" means a person, department or agency that owns land or owns an interest in lands pursuant to a document recorded at the registry of deeds for the registration district in which the land is situate;
- (p) "species" means a plant, animal or other organism, and includes one or more populations of a species, and 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;
- (q) "species at risk" means a species that is determined to be extinct, extirpated, vulnerable, threatened or endangered and is listed pursuant to Section 12;
- (r) "threatened species" means a species that is likely to become endangered if the factors affecting its vulnerability are not reversed and is listed as a threatened species pursuant to Section 12;
- (s) "vulnerable species" means a species of special concern due to characteristics that make it particularly sensitive to human activities or natural events and that is listed as a vulnerable species pursuant to Section 12.

**4 (1)** This Act binds Her Majesty in right of the Province, Her Majesty's corporations, agents, administrators, servants and employees and Government agencies.

**(2)** This Act binds Her Majesty in right of Canada and Her Majesty's corporations, agents, administrators, servants and employees and Government agencies.

**5** Where there is a conflict or inconsistency between this Act and regulations made pursuant to this Act, and any other enactment or a municipal by-law, regulation or authorization, this Act and the regulations prevail.

**6 (1)** The Minister is responsible for the general supervision and management of this Act.

**(2)** The Minister may, in writing, delegate to any person any power or duty conferred or imposed on the Minister pursuant to this Act.

**(3)** The Minister may enter into agreements relating to any matter coming within this Act.

**7 (1)** Conservation officers are responsible for the enforcement of this Act and the regulations.

**(2)** A conservation officer in carrying out duties pursuant to this Act and the regulations, has the powers, authorities and protections of a conservation officer under the *Wildlife Act* and, for greater certainty, Sections 88 to 100 of that Act apply *mutatis mutandis*.

**(3)** The Minister may designate any person or class of persons with suitable qualifications and experience to act as conservation officers for the purpose of this Act and the regulations.

**(4)** The Minister may not designate a person or class of persons employed by the Government of Canada unless the Government of Canada agrees.

**(5)** The protection afforded to a conservation officer by the *Wildlife Act* or any other enactment extends to any other person while and to the extent that that person is in the course of assisting a conservation officer under the conservation officer's direction.

**(6)** A conservation officer or employee of the Department, acting in the discharge of the persons duties pursuant to this Act or the regulations, and any person assisting the conservation officer or employee, may enter upon any lands without being liable for trespass, but the person is not exempted from liability for actual damage caused by such entry.

**8 (1)** There is hereby established a fund to be known as the Species-at-risk Conservation Fund.

**(2)** The Fund consists of

(a) real or personal property acquired by the Minister, on behalf of the Fund, by agreement, gift, donation, bequest or devise;

(b) income accruing to the Fund;

(c) where the Minister disposes of real or personal property of the Fund, the proceeds from the disposition; and

(d) penalties received by the Her Majesty in right of the Province with respect to any matter under the administration of the Minister pursuant to this Act.

**(3)** The Minister may expend, in accordance with the *Provincial Finance Act*, money from the Fund for

(a) the preparation of scientific status reports on species at risk;

(b) activities for the recovery of species at risk in the Province;

(c) activities including education and research, to prevent species from becoming at risk in the Province;

(d) the acquisition of land for the maintenance and restoration of species at risk and species-at-risk habitats and ecosystems;

(e) any other purpose related to species at risk.

**9 (1)** There is hereby established a committee to be known as the Species-at-risk Working Group consisting of six members appointed by the Minister.

**(2)** The membership of the Group shall include

(a) one person employed by the Department who shall be a non-voting member and who shall be the chair of the Group; and

(b) five additional members.

**(3)** The Department shall appoint an employee of the Department to act as secretary to the Group.

**(4)** The members appointed to the Group shall be persons who are recognized scientific experts in the status and population biology of plants, animals, other organisms and their habitats or in the conservation biology, ecology and geography of plants, animals and other organisms.

**(5)** A member of the Group may be paid such remuneration as the Minister determines and may be reimbursed, as the Minister determines, for reasonable travel and other expenses necessarily incurred in carrying out that member's duties.

**(6)** A member of the Group holds office for such term as the Minister determines and may be re-appointed.

**(7)** A decision of the Group respecting the listing of species at risk shall be made on the basis of a four-fifths majority.

**10 (1)** The Group shall

(a) provide the Minister with a categorized list of the species at risk in the Province, which list shall include those species native to the Province that are listed nationally as species at risk;

(b) advise the Minister annually of any addition or deletion of a species to or from the list referred to in clause (a) or of any changes in the status of a listed species;

(c) provide the Minister with a written summary of the rationale for listing, adding, deleting or changing the status of a species;

(d) make recommendations to the Minister regarding the content and implementation of recovery plans; and

(e) provide advice respecting the conservation and management of species at risk, and their habitats, in the Province.

**(2)** The Group shall base its decisions to list species pursuant to clause (1)(a) and to add or delete species or to change the status of a listed species pursuant to clause (1)(b) upon scientific information and traditional knowledge as documented in peer reviewed status reports.

**11 (1)** Notwithstanding Section 10, the Minister may on a precautionary basis, regardless of whether the scientific information is available, list endangered or threatened species where, in the opinion of the Minister, there is threat to the survival of the species.

**(2)** A listing made by the Minister expires and be ineffective one year from the date of such listing.

**(3)** The Group shall, during the time a listing made by the Minister is in effect, make a determination as to whether the species listed by the Minister should be added to the list of endangered or threatened species pursuant to Section 10.

**12 (1)** Where the Group provides the Minister with a categorized list of species at risk in the Province, with any additions to or deletions from the list or with any changes in the status of a listed species or where the Minister lists endangered or threatened species pursuant to Section 11, the species listed from time to time are deemed to be the listed species at risk for the purpose of this Act.

**(2)** The exercise of authority by the Group or the Minister in listing the species at risk in the Province is regulations within the meaning of the *Regulations Act*.

**13 (1)** No person shall

(a) kill, injure, possess, disturb, take or interfere with or attempt to kill, injure, possess, disturb, take or interfere with an endangered or threatened species or any part or product thereof;

(b) possess for sale, offer for sale, sell, buy, trade or barter an endangered or threatened species or any part or product thereof;

(c) destroy, disturb or interfere with or attempt to destroy, disturb or interfere with the specific dwelling place or area occupied or habitually occupied by one or more individuals or populations of an

endangered or threatened species, including the nest, nest shelter, hibernaculum or den of an endangered or threatened species;

(d) contravene any regulation made with respect to a core habitat; or

(e) contravene an order made pursuant to Section 18.

(2) Subsection (1) does not apply to a person who is the holder of a permit issued pursuant to Section 14 to the extent that the permit authorizes activities that would otherwise be prohibited by subsection (1).

(3) A person in possession of an endangered or threatened species does not violate clause (1)(a) if the person was in lawful possession of the species at the time the species was listed or if the person subsequently lawfully acquired the species.

**14 (1)** The Minister may, upon application, issue a permit to a person authorizing the person to possess, disturb, take or interfere with an endangered or threatened species for

(a) scientific purposes related to the conservation of the endangered or threatened species; or

(b) the protection of human health or safety.

(2) Where the Minister is in possession of a dead specimen of an endangered or threatened species, or any part thereof, as a result of the issuance of a permit or a seizure for enforcement purposes or any other reason, the Minister may, upon application, issue a permit to a person authorizing the person to possess such species or part for:

(a) aboriginal social or ceremonial purposes;

(b) scientific or educational purposes.

(3) A person who makes an application for a permit pursuant to subsection (1) or (2) shall supply the Minister with any information the Minister may require for the purpose of determining whether a permit may be issued.

(4) A permit issued pursuant to subsection (1) or (2) may be issued subject to such terms and conditions as the Minister considers appropriate.

(5) The holder of a permit shall comply with the terms and conditions of the permit.

**15 (1)** The Minister shall

(a) within one year of the listing of an endangered species; and

(b) within two years of the listing of a threatened species,

appoint a recovery team and prepare a recovery plan for the species.

(2) The Minister may appoint to a recovery team any person whom the Minister considers to be interested in the recovery of the particular species for which the recovery team is appointed and the team shall include an appropriate diversity of expertise.

(3) The recovery team shall assist the Minister in developing and implementing the recovery plan.

(4) A recovery plan prepared pursuant to subsection (1) shall

(a) identify the needs of and threats to an endangered or threatened species;

(b) identify the viable status needed for recovery;

(c) identify options for the recovery of the endangered or threatened species;

(d) identify the costs and benefits of the options referred to in clause (c);

(e) recommend a course of action or a combination of actions for the recovery of an endangered or threatened species;

(f) recommend a schedule for implementation of the recovery plan including a prioritized listing of recommended actions;

(g) identify habitat of the endangered or threatened species; and

(h) identify areas to be considered for designation as core habitat.

(5) A recovery plan may include provisions respecting one or more endangered or threatened species and may, where the Minister considers it appropriate, include ecosystem management in the recovery plan.

(6) The Minister may determine the feasibility of implementing any recovery plan or any portion of a recovery plan.

(7) With the advice of the Group, the Minister may, in determining the feasibility of implementing a recovery plan or any portion of a recovery plan, take the following factors into consideration:

(a) whether scientific evidence indicates that the species referred to in the recovery plan is naturally becoming extinct;

(b) biological, technical and economic factors affecting the recovery of the species; and

(c) the status of the species elsewhere.

(8) The Minister may, to the extent possible, prepare a recovery plan in co-operation with other jurisdictions where the endangered or threatened species is also found.

(9) Where a recovery plan is in existence before the coming into force of this Act or where a recovery plan has been prepared in another jurisdiction for the endangered or threatened species, the Minister may adopt that recovery plan in lieu of the requirements of subsection (1).

(10) The Minister may appoint a management team and shall, within three years of the listing of a vulnerable species, prepare a management plan for the species.

(11) Recovery plans and management plans shall be reviewed every five years to determine the progress of the recovery of the species and whether any changes or modifications are required.

(12) The Minister shall ensure the implementation of the portions of the recovery or management plan which are provincial responsibilities and which, in the Minister's discretion, are considered feasible.

**16 (1)** The Minister may enter into agreements, co-operative arrangements or working relationships with any person who owns, or has an interest in, lands that have been identified in a recovery or management plan as habitat or core habitat of an endangered, threatened or vulnerable species for purposes of encouraging and assisting in the stewardship and management of the habitat or the core habitat for the recovery or maintenance of the species.

(2) In addition to subsection (1), where the Minister considers it necessary for the purpose of implementing a recovery plan, the Minister may designate specific physical areas or landforms of the Province as core habitat.

(3) Core habitat shall not include the entire geographical range that can be occupied by the threatened or endangered species unless inclusion is considered essential for the survival of the species.

(4) The Minister may designate core habitat on private lands only where the Minister is satisfied that the core habitat of the endangered or threatened species on public lands is not sufficient to meet the recovery needs of the species.

(5) The Minister may make regulations respecting all or any specific core habitat for the purpose of controlling, restricting or prohibiting any use of, access to, activity on or the release of any substances on or in the core habitat for such period as considered necessary.

(6) The exercise by the Minister of the authority contained in subsection (2) or (5) is regulations within the meaning of the *Regulations Act*.

(7) Where

(a) private lands are designated as core habitat pursuant to Section 16 or private lands are subject to an order of the Minister made pursuant to Section 18;

(b) a particular use of the private lands is prohibited by regulations made pursuant to Section 16 or by the provisions of the order of the Minister made pursuant to Section 18; and

(c) the owner of the private lands is actually making that particular use of the lands when the use is prohibited,

the Minister shall compensate the owner of the private lands for the loss imposed upon that use.

(8) Compensation under subsection (7) may be in any form agreed to by the Minister and the owner.

(9) Where the Minister and the owner cannot agree on the value of compensation, the question of value may, at the option of the owner, be referred to the Utility and Review Board and the provisions of Chapter 156 of the Revised Statutes, 1989, the *Expropriation Act*, shall apply *mutatis mutandis* to the question of value.

(10) A decision of the Utility and Review Board made in accordance with subsection (9) shall be binding on the parties.

(11) Except as provided in this Section, no compensation is payable to any person for any listing, designation, order, prohibition or other action provided by or taken pursuant to this Act or regulations and it is conclusively deemed for all purposes, including for the purposes of the *Expropriation Act*, that land is not taken or injuriously affected by reason of any listing, designation, order, prohibition or other action provided by or taken pursuant to this Act or regulations.

17 (1) Where the Minister proposes to designate core habitat, the Minister shall publish a notice in the Royal Gazette and provide a notice to each registered owner of the lands.

(2) The notice referred to in subsection (1) shall

(a) contain a description of the lands sufficient to identify the proposed core habitat;

(b) contain a copy of the regulations proposed to be applicable to the lands; and

(c) provide an opportunity for registered owners of land to comment on the proposed designation within sixty days of the date set out in the notice.

(3) The Minister shall not designate core habitat until after the expiry of the time referred to in clause (2)(c).

(4) No person shall destroy, disturb or interfere with or attempt to destroy, disturb or interfere with lands proposed to be designated as core habitat during the time referred to in clause (2)(c) and for a period of thirty days thereafter.



**18 (1)** Where an endangered or threatened species is listed on a precautionary basis pursuant to Section 11, the Minister may make such order as, in the opinion of the Minister, with the advice of the Group, is necessary to control, restrict or prohibit activities that may adversely affect the endangered or threatened species, including activities that may adversely affect the core habitat of the endangered or threatened species.

**(2)** Where the Minister makes an order pursuant to subsection (1) relating to core habitat,

(a) subsections 16 (3) and (4) apply *mutatis mutandis*; and

(b) Section 17 does not apply but the Minister shall give the registered owner a copy of the order made pursuant to subsection (1) within fifteen days of the making of the order.

**(3)** The Minister shall revoke an order made pursuant to subsection (1) where the Minister is satisfied that adequate measures have been implemented in response to the listing.

**(4)** Notwithstanding subsection (3), where the listing of an endangered or threatened species by the Minister expires pursuant to Section 11, any order made pursuant to subsection (1) respecting that endangered or threatened species shall have no force or effect on and after the date of such expiry.

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

**19 (1)** Where core habitat has been designated pursuant to Section 16 or the Minister makes an order pursuant to Section 18, the Minister shall record a copy of the designation or order in the registry of deeds for the registration district where the land is situate and shall provide a copy of the designation and accompanying regulations or order to

(a) each registered owner of the lands; and

(b) the clerk of the municipality in which the core habitat is situated.

**(2)** Where any notice, order or other document is required to be given or provided pursuant to this Act, it is or is deemed to be sufficiently given or provided

(a) upon a copy being personally given or provided to the person to whom it is directed;

(b) upon a copy being given or provided by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt being received; or

(c) ten days after a copy is sent by mail to the address for the registered owner shown on the last revised assessment roll.

**20** Where a regulation made pursuant to Section 16 or an order of the Minister made pursuant to Section 18 controls, restricts or prohibits a use or activity on private lands, the regulation or order that provides for the control, restriction or prohibition shall not in itself

(a) be considered a change in the use of the lands for the purposes of the *Assessment Act*; or

(b) affect any exemption provided by the *Assessment Act* to which the lands are subject at the time of the making of the regulation or order.

**21 (1)** Subject to subsection (2), the following information is available to a person upon request:

(a) a copy of a status report, recovery plan or management plan;

(b) a copy of the written summary provided to the Minister pursuant to clause 10(1)(c);

(c) the basis upon which the Minister has made a listing or order pursuant to Section 11 or Section 18;

(d) the basis upon which the Minister has determined the feasibility of implementing a recovery plan or any portion of a recovery plan.

(2) The Minister may refuse to disclose information if the disclosure could reasonably be expected to result in damage to, or interfere with the conservation of, an endangered, threatened or vulnerable species.

**22 (1)** Every person who contravenes this Act or the regulations is guilty of an offence and is liable on summary conviction

(a) in the case of a corporation, to a fine not exceeding one million dollars; or

(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term of not more than six months, or to both.

(2) Notwithstanding subsection (1), where a person is convicted of an offence under this Act or the regulations a second or subsequent time, the person is liable to a fine not exceeding double the amount set out in that subsection.

(3) Where an offence under this Act or the regulations 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) A fine imposed for an offence involving more than one species or specimen may be calculated in respect of each one as though it had been the subject of a separate information.

(5) Where a person has been convicted of an offence under this Act or the regulations 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 amount of any fine that may otherwise be imposed pursuant to this Act.

**23 (1)** In a prosecution for an offence under this Act or the regulations, 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) Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted.

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

**24 (1)** Where a person is convicted of an offence, the court may, in addition to any punishment 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 pursuant to subsection (1), the seized thing, or the proceeds of its disposition, shall be returned to its lawful owner or the person lawfully entitled to it if the possession of the thing would be lawful.

**25** 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.

**26** 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 any endangered or threatened species, habitat or core habitat that results or may result from the commission of the offence;

(c) directing the person to pay to the Minister compensation in whole or in part, for the cost of any 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 pursuant to this Section.

**27** Proceedings by way of summary conviction in respect of an offence may be commenced at any time within, but not later than, two years after the day on which evidence of the offence first came to the attention of a conservation officer or the Minister, whichever occurs first.

**28 (1)** The Governor in Council may make regulations

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

(b) respecting any other matter deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

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

**29 (1)** Section 19 of Chapter 504 of the Revised Statutes, 1989, the *Wildlife Act*, is repealed.

**(2)** Clause 113(1)(g) of Chapter 504 is repealed.

**30** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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