

Constraints placed on projects through legislation are those relating to the design or construction or the carrying out of a watercourse or wetland alteration by specific clauses in various Acts and Regulations of the Legislature of Prince Edward Island and the Parliament of Canada. **Note: Permits for Watercourse, Wetland and Buffer Zone Activities may be refused for non-compliance with the following Acts, and any other applicable Acts of the Legislature of Prince Edward Island of the Parliament of Canada.**

A. Provincial Legislation

The following are a list of provincial Acts and Regulations that may apply to the design, construction and/or carrying out of a watercourse, wetland or buffer zone activity. Electronic copies of these Acts and Regulations may be downloaded from the provincial government website (<http://www.gov.pe.ca>).

Engineering Profession Act

The Engineering Profession Act, administered by *The Association of Professional Engineers of Prince Edward Island*, is intended to regulate and govern the profession of engineering to protect and serve the public interest. The Act places restrictions on who can design engineering works and systems. Copies of the Engineering Profession Act may be attained from your local *Access PEI* office or downloaded from the provincial government website listed above.

Environmental Protection Act

Watercourse, wetland and buffer zone activities are, in part, controlled by the Watercourse and Wetland Protection Regulations of the Prince Edward Island Environmental Protection Act, R.S.P.E.I. 1988, Cap. E-9. It is administered by the *Prince Edward Island Department of Environment, Labour and Justice*. A copy of the Watercourse and Wetland Protection Regulations can be found in Appendix G of this document, may be attained from your local *Access PEI* office or downloaded from the provincial government website listed above. The legal requirements for various project activities can be found in the following sections of the Watercourse and Wetland Protection Regulations:

- Sections 2, 3 and 6 - requirement that a permit be obtained before commencing a project;
- Section 2 – requirements for watercourses and wetlands;
- Section 3 – requirements for buffer zones;
- Section 11 - outlines who may enforce the Regulations.

Planning Act

Planning Act Regulations are controlled by the Planning Act R.S.P.E.I. 1988, Cap. P-8 and are administered by the *Prince Edward Island Department of Environment, Labour and Justice*. Assistance in sustainable development is available for public and private individuals and organizations. For most areas in the Province, decisions on the approval or denial of subdivision applications or building permits are made by the Provincial Government, specifically the *Department of Environment, Labour and Justice*. Copies of the Planning Act may be attained from your local *Access PEI* office or downloaded from the provincial government website listed above.

Trespass to Property Act

The Trespass to Property Act outlines prohibitions of entry or certain activity on premises and is administered by the *Office of the Attorney General*. Copies of the Trespass to Property Act may be attained from your local *Access PEI* office or downloaded from the provincial government website listed above.

Wildlife Conservation Act

The Wildlife Conservation Act replaces the Fish and Game Protection Act which has been repealed. The Act is administered by the *Prince Edward Island Department of Environment, Labour and Justice* and provides for the protection, management and conservation of wildlife and wildlife habitat in the province. Copies of the Wildlife Conservation Act may be attained from your local *Access PEI* office or downloaded from the provincial government website listed above.

B. Federal Legislation**Fisheries Act**

The Fisheries Act enables *Fisheries and Oceans Canada* to protect fish and the natural environment systems that support fish. The Fisheries Act defines Fish to include all phases of life as,

- (a) parts of fish
- (b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
- (c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, hellfish, crustaceans and marine animals.

It is a requirement to provide fish passage facilities at obstructions where the need is determined by the Minister of Fisheries under the authority of the Canadian Fisheries Act. *Fisheries and Oceans Canada* is prepared to provide engineering advice and assistance in the design and construction of fishways. In planning a watercourse or wetland activity, applicants should acquaint themselves with the requirements under the Fisheries Act. A copy of the Fisheries Act can be found in Appendix C of this document and is available on request from any office of *Fisheries and Oceans Canada*.

The legal requirements for various project activities can be found in the following sections of the Fisheries Act:

- Section 20 and 21 relates to fish passage.
- Section 21 and 22 covers the minimum flow requirement.
- Section 30 of the covers fish guards and screens.
- Section 35 of the covers the protection of fish habitat.
- Section 36 of the covers the deposit of deleterious substances.

Navigable Waters Protection Act

Transport Canada administers the Navigable Waters Protection Act. This act was developed to protect navigable waters for the purposes of navigation. The Minister of Transport must approve of any project involving the construction or placement of any structure, in, upon, over, under, through, or across any navigable water. A copy of this Act may be attained upon request from any *Transport Canada* office.

Species at Risk Act

Fisheries and Oceans Canada is also responsible for protecting aquatic species at risk under the Species at Risk Act. Once a species is listed under the Species at Risk Act, it becomes illegal to kill, harass, capture or harm it in any way. Critical habitats are also protected from destruction. The Act also requires that recovery strategies, action plans and management plans be developed for all listed species.

The Species at Risk Act (SARA) is designed as a key tool to prevent wildlife species from becoming extinct and to ensure actions for their recovery. The Act complements existing federal, provincial and territorial legislation protecting wildlife. Fisheries and Oceans Canada is required to protect listed aquatic species at risk on the List of Wildlife Species at Risk (Schedule 1) under SARA and their critical habitat.

Applicants need to be aware that their activities in or near a watercourse/wetland could have an impact on a species at risk or its critical habitat. The presence of species at risk should be considered during the planning stages to ensure that the proposed activities will not result in a contravention of the SARA prohibitions for aquatic species at risk. It is a requirement to comply with the following SARA prohibitions, that apply to species designated Threatened, Endangered and Extirpated on the List of Wildlife Species at Risk (Schedule 1) of SARA (<http://laws.justice.gc.ca/eng/S-15.3/page-11.html>).

Section 32: prohibitions against the killing, harming, harassing, capturing, taking, possessing, collecting, buying, selling or trading of individuals.

Section 33: prohibition against the damage or destruction of their residences (e.g. nest).

Section 58: prohibition against the destruction of a species at risk's critical habitat.

SARA is integrated during DFO's Fisheries Act referral review process and during the federal environmental assessment process under the Canadian Environmental Assessment Act (CEAA). This will ensure that the proposed activities will not contravene the SARA prohibitions and are consistent with recovery objectives for the species or its critical habitat. It is the applicant's responsibility to contact Environment Canada should they have concerns about terrestrial species at risk.

Applicants can undertake the following steps to ensure compliance with SARA: understand your responsibilities under the Act; determine if species at risk are found on or near the proposed activity; take action to comply with the Act; and protect species at risk and their habitat.

For further information, contact the Department of Fisheries and Oceans: Telephone:506-851-6253; e-mail: GLF-SARA-LEP@dfo-mpo.gc.ca or visit the SARA registry website: http://www.sararegistry.gc.ca/default_e.cfm

Oceans Act

Fisheries and Oceans Canada administers the Oceans Act.

Agenda 21, Chapter 17 (***Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources***) in essence, is the informing document of the Canada's *Oceans Act*.

The four major Canadian legislative and policy initiatives of the past decade are the *Oceans Act* (1996), *Canada's Oceans Strategy* (2002), *Policy and Operational Framework for Integrated Management in Estuarine, Coastal and Marine Environments in Canada* (2002) and the *Oceans Action Plan* (2005). The act provides the intent and legislative requirement and the policy statements, along with the Oceans Action Plan, form the basis under which the Government of Canada will implement the Act.

The Oceans Act states that the Minister of Fisheries and Oceans: "*in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial*

governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law". The key elements from this article are the requirement to collaborate and the broad scope of the actors whose participation is expected and encouraged within the process.

The three main program components of the *Oceans Act* are 1) the establishment of marine environmental quality guidelines, objectives and criteria respecting estuaries, coastal waters and marine waters. 2) the establishment of marine protected areas, including the instruction to lead and coordinate the development and implementation of a national system of marine protected areas on behalf of the Government of Canada and 3) implementing plans for the integrated management of estuaries, coastal waters and marine waters in Canada.

The applicable sections and subsections are as follows:

31. The Minister, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law.

Implementation of integrated management plans

32. For the purpose of the implementation of integrated management plans, the Minister (a) shall develop and implement policies and programs with respect to matters assigned by law to the Minister;

(b) shall coordinate with other ministers, boards and agencies of the Government of Canada the implementation of policies and programs of the Government with respect to all activities or measures in or affecting coastal waters and marine waters;

(c) may, on his or her own or jointly with another person or body or with another minister, board or agency of the Government of Canada, and taking into consideration the views of other ministers, boards and agencies of the Government of Canada, provincial and territorial governments and affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements,

(i) establish advisory or management bodies and appoint or designate, as appropriate, members of those bodies, and

(ii) recognize established advisory or management bodies; and

(d) may, in consultation with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, establish marine environmental quality guidelines, objectives and criteria respecting estuaries, coastal waters and marine waters.

Marine protected areas

35. (1) A marine protected area is 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 under this section for special protection for one or more of the following reasons:

- (a) the conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitats;
- (b) the conservation and protection of endangered or threatened marine species, and their habitats;
- (c) the conservation and protection of unique habitats;
- (d) the conservation and protection of marine areas of high biodiversity or biological productivity; and
- (e) the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister.

Marine protected areas

(2) For the purposes of integrated management plans referred to in sections 31 and 32, the Minister will lead and coordinate the development and implementation of a national system of marine protected areas on behalf of the Government of Canada.

Regulations

(3) The Governor in Council, on the recommendation of the Minister, may make regulations

- (a) designating marine protected areas; and
- (b) prescribing measures that may include but not be limited to
 - (i) the zoning of marine protected areas,
 - (ii) the prohibition of classes of activities within marine protected areas, and
 - (iii) any other matter consistent with the purpose of the designation.