

SNL2001 CHAPTER E-10.1

ENDANGERED SPECIES ACT

Amended:

2004 cL-3.1 s27; 2004 c36 s11

CHAPTER E-10.1

AN ACT RESPECTING THE PROTECTION OF ENDANGERED SPECIES

(Assented to December 13, 2001)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

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

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Definitions

2. In this Act

(a) "conservation officer" means a person appointed by the minister under section 31 and a person appointed under the Wild Life Act or the Forestry Act to administer and enforce those Acts;

(b) "COSEWIC" means the Committee on the Status of Endangered Wildlife in Canada and includes its successor;

(c) "critical habitat" means habitat that is critical to the survival of a species;

(d) "designated" means the designation of a species under section 7;

(e) "designated species" means a species that has been designated under section 7;

(f) "land" means land and all waters on and airspace above that land;

(g) "land owner" means the owner of an interest in land;

(h) "management plan" means a management plan within the meaning of section 24;

(i) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(j) "recovery habitat" means habitat that is necessary for the recovery of a species;

(k) "recovery plan" means a recovery plan within the meaning of section 23;

(l) "residence" means a specific dwelling-place, such as a den, nest or other similar place, that is occupied or habitually occupied by one or more individuals during all or part of their life cycles, including breeding, rearing young or hibernating;

(m) "species" means a species that is wild by nature;

(n) "specimen" means an individual of a species, subspecies or population, whether it is alive or dead; and

(o) "SSAC" means the Species Status Advisory Committee established under section 6.

2001 cE-10.1 s2

PART I WHEN THE ACT APPLIES

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Not all species can be designated

3. (1) A species that is native to the province may be designated as well as a species that came to the province without human intervention and meets at least one of the following requirements:

(a) it has existed in the province for at least 50 years;

(b) it has been designated as vulnerable, threatened, endangered, extirpated or an equivalent in another jurisdiction under an Act about the protection of species; or

(c) it has undergone significant genetic variation since it came to the province.

(2) Notwithstanding subsection (1), a species that came to the province with human intervention may be designated if it has been designated as endangered, extirpated or in a similar category in another jurisdiction under an Act about the protection of species.

(3) A designation under this Act may apply to

(a) a species;

(b) a subspecies; and

(c) a population of a species or subspecies that is geographically or genetically distinct,

and a reference in this Act to "species" shall be considered to include a subspecies and a population referred to in paragraph (c).

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When the Act does not apply

4. This Act does not apply to

- (a) fish, other than freshwater fish and fish which run up from the sea into inland water; or
- (b) bacteria and viruses.

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Crown is bound

5. (1) This Act binds the Crown.

(2) Where there is a conflict between this Act or a regulation made under this Act and another Act or regulation enacted before or after the coming into force of this Act, this Act or the regulation made under it shall prevail.

2001 cE-10.1 s5

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Labrador Inuit rights

5.1 This Act and regulations made under this Act shall be read and applied in conjunction with the Labrador Inuit Land Claims Agreement Act and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the Labrador Inuit Land Claims Agreement Act, the provision, term or condition of the Labrador Inuit Land Claims Agreement Act shall have precedence over the provision of this Act or a regulation made under this Act.

2004 cL-3.1 s27

PART II

HOW A SPECIES IS DETERMINED TO BE AT RISK

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Species status advisory committee

6. (1) A species status advisory committee is established to review and recommend to the minister designations and re-designations of species.

(2) The SSAC shall base its decisions on the best scientific knowledge available to it and on traditional ecological and local ecological knowledge about a species.

(3) The minister shall appoint a maximum of 9 members of the committee on terms and conditions that the minister considers appropriate.

(4) The minimum qualifications to be a member of the SSAC shall be prescribed in regulations made under subsection 44(1).

(5) A member of the SSAC shall be paid his or her travel and other expenses reasonably incurred in relation to meetings and the work of the SSAC out of the Consolidated Revenue Fund in accordance with guidelines prescribed by the Lieutenant-Governor in Council.

(6) The SSAC shall administer its own affairs subject to the regulations that may be made about the administration of the committee under subsection 44(1).

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Designation by minister

7. The minister may, with the approval of the Lieutenant-Governor in Council, upon the release of an assessment of the status of a species by COSEWIC or on the recommendation of SSAC, designate or re-designate a species, subspecies or a population of a species to be

(a) vulnerable, if it has characteristics which make it particularly sensitive to human activities or natural events;

(b) threatened, if it is likely to become endangered if nothing is done to reverse the factors limiting its survival;

(c) endangered, if it faces imminent extirpation or extinction;

(d) extirpated, if it no longer exists in the wild in the province, but exists elsewhere; or

(e) extinct, if it no longer exists,

by publishing the name of the species in the appropriate appendix in the regulations made under subsection 44(1).

2001 cE-10.1 s7

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Response to recommendation

8. The Lieutenant-Governor in Council shall within 90 days of the minister receiving a written recommendation from SSAC to designate a species or an assessment by COSEWIC of the status of a species described in section 3, give the minister approval to do one of the following:

(a) designate the species under section 7 in the recommended or an equivalent category;

(b) designate the species under section 7 in a different category and release to the public the reason for using a different category; or

(c) make no designation and release to the public the reason there will be no designation.

2001 cE-10.1 s8

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Emergency designation

9. (1) Where in the opinion of the minister a designation must be made to prevent further harm to a species that faces imminent extirpation or extinction, or to its habitat, the minister may make an emergency designation of the species under paragraph 7(c).

(2) A designation under subsection (1) may be made by publishing the name of the species in the appropriate appendix in the regulations made under subsection 44(2).

(3) The SSAC shall review an emergency designation and make a recommendation about the status of the species to the minister.

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Removal of designation

10. The minister may, with the approval of the Lieutenant-Governor in Council remove the designation of a species where it is recommended by the SSAC, or by COSEWIC in its assessment of the status of the species, by deleting the name of the species from the appendix in the regulations made under subsection 44(2).

2001 cE-10.1 s10

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Committee responsibilities

11. (1) The SSAC shall

(a) develop, and submit to the minister, criteria for the designation of a species under sections 7 and 9;

(b) develop criteria for species status reports which facilitate a review of the status of a species;

(c) commission and receive species status reports;

(d) make recommendations to the minister about designating species and the protection of critical and recovery habitat;

(e) refer concerns about the status of a species to COSEWIC where the species is of national importance;

(f) maintain a list of species for future review of their status;

(g) conduct periodic reviews of the status of designated species, at least once every 10 years after the designation;

(h) submit a report to the minister on its activities in the preceding calendar year, before April 15 of each year; and

(i) perform other duties that may be prescribed in the regulations made under subsection 44(1).

(2) The SSAC shall make the following documents available to the public:

(a) species status reports;

(b) criteria for the designation of species; and

(c) annual reports submitted under paragraph 11(1)(h) within 30 days after the report is released to the minister.

2001 cE-10.1 s11

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Ecological knowledge

12. (1) The SSAC shall consult with groups or individuals that have traditional ecological and local ecological knowledge about a species and its habitat.

(2) Traditional ecological and local ecological knowledge shall be considered by the SSAC in evaluating the status of a species.

2001 cE-10.1 s12

PART III

WHAT HAPPENS AFTER A SPECIES IS DESIGNATED

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Vulnerable

13. (1) The minister shall release a management plan for a species to the public within 3 years from the time that the species is designated as vulnerable under paragraph 7(a).

(2) If the minister cannot release the management plan within 3 years, he or she may delay the release of the management plan for up to one year and notify the public of the reason for the delay.

(3) The minister may make an order under section 28 to protect the habitat of a species designated as vulnerable.

(4) The minister may make regulations under subsection 44(2) to provide for the protection of a species designated as vulnerable.

2001 cE-10.1 s13

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Threatened or endangered

14. (1) The minister shall establish a recovery team for a species that is designated as threatened or endangered.

(2) The minister shall release a recovery plan for a species to the public within one year from the date that a species is designated as endangered and within 2 years from the date that a species is designated as threatened, unless the minister determines that the recovery of the species is not feasible in which case he or she shall release a statement to that effect within the same time period.

(3) If the minister cannot release the recovery plan within the time specified in subsection (2), he or she may delay the release of the recovery plan for up to 6 months in the case of an endangered species and one year in the case of a threatened species and shall notify the public of the reason for the delay.

(4) The minister may make an order under section 28 to protect the habitat of a species designated as threatened or endangered.

2001 cE-10.1 s14

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Extirpated or extinct

15. (1) The minister shall establish a recovery team for a species that is designated as extirpated.

(2) The minister shall release a recovery plan for a species to the public within 3 years from the time that the species is designated as extirpated, unless the minister determines that the recovery of the species is not feasible in which case he or she shall release a statement to that effect within the 3 year time period.

(3) If the minister cannot release the recovery plan within 3 years, he or she may delay the release of the recovery plan for up to one year and shall notify the public of the reason for the delay.

(4) The minister may make an order under section 28 to protect the habitat of a species designated as extirpated.

(5) Where a species is designated as extinct, the minister shall notify the public of the extinction.

2001 cE-10.1 s15

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Prohibition

16. (1) A person shall not disturb, harass, injure, or kill an individual of a species designated as threatened, endangered or extirpated.

(2) A person shall not capture, possess, buy, sell or trade a specimen of a species designated as threatened, endangered or extirpated or part of it or anything derived from it.

(3) A person shall not disturb or destroy the residence of an individual of a species designated as threatened, endangered or extirpated.

(4) A person shall not attempt to do any of the things prohibited in subsections (1) to (3).

(5) A person shall not commission another person to do any of the things prohibited in subsections (1) to (3).

2001 cE-10.1 s16

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Defence

17. (1) A person who disturbs, harasses, injures or kills an individual of a species designated as threatened, endangered or extirpated is justified if the offence is committed in the belief, on reasonable grounds, that the person cannot otherwise preserve himself or herself from death or grievous bodily harm.

(2) Notwithstanding subsection (1), if the recklessness of the person seeking to establish the defence contributed to the creation of the risk of death or grievous bodily harm, the defence is not established.

2001 cE-10.1 s17

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Permits

18. (1) The minister may issue a permit to a person to capture, kill, or possess a specimen of a species designated as threatened, endangered, or extirpated if

(a) the applicant, or a predecessor in title, legally possessed the specimen before its designation under this Act;

(b) the applicant is a member of a group that traditionally uses a specimen for religious or ceremonial purposes;

(c) the specimen is required for scientific research, education or species recovery; or

(d) the specimen is required for another activity the minister considers to be appropriate,

and in the opinion of the minister there is no reasonable alternative and the capture, killing and possession of the specimen will not put the species at further risk.

(2) The minister may attach conditions to a permit, including

(a) a limitation or prohibition of the transportation, transfer and sale of the specimen;

(b) a requirement to provide reports to the minister on the care and use of the specimen;

(c) the deposit of a monetary bond in a form and in an amount satisfactory to the minister to ensure compliance with the permit and conditions and to enable the minister to repair any damage caused by non compliance; and

(d) a requirement for the disposition of a specimen in a particular manner.

(3) The minister may revoke a permit issued under subsection (1) if in the opinion of the minister the conditions of the permit have not been met or will not be met.

(4) The minister may amend or revoke a permit if in the opinion of the minister the amendment or revocation is necessary to ensure the survival or recovery of a designated species.

2001 cE-10.1 s18

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Economic activity

19. (1) The minister may, with the approval of the Lieutenant-Governor in Council, issue a permit to a person to engage in an activity affecting a designated species, the residence of a specimen of a designated species or critical or recovery habitat, where, in the opinion of the minister,

(a) the impact on the designated species is incidental to the carrying out of an activity that is economically beneficial to the province;

(b) there is no reasonable alternative; and

(c) the activity will not prevent the recovery or survival of the designated species.

(2) The minister may, with the approval of the Lieutenant-Governor in Council, attach conditions to a permit which may include

(a) the deposit of a monetary bond in a form and in an amount satisfactory to the minister to ensure compliance with the permit and conditions and to enable the minister to repair any damage caused by non compliance; and

(b) requiring the permit holder to restore habitat or individuals of a designated species affected by the activity.

(3) The minister may, with the approval of the Lieutenant-Governor in Council, revoke a permit issued under subsection (1) if in the opinion of the minister the conditions of the permit have not been met or will not be met.

(4) The minister may, with the approval of the Lieutenant-Governor in Council, amend or revoke a permit issued under subsection (1) if in the opinion of the minister it is necessary to ensure the survival or recovery of a designated species.

2001 cE-10.1 s19

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Annual report

20. The minister shall, before April 15 of each year, release to the public a written report about permits issued under sections 18 and 19, containing:

(a) the number and nature of permits issued in the preceding year and the number and nature of ongoing permits;

(b) the number of individuals and the designated species affected or likely to be affected by each permit; and

(c) statistics on compliance and non-compliance with permits and the conditions under which they were issued.

2001 cE-10.1 s20

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Exemptions

21. Section 16 and orders made under section 28 do not apply to

(a) a person engaged in activities related to public safety or health that are authorized under another Act of the province; and

(b) an employee or agent of the province engaged in activities related to the administration of this Act or other activities related to conservation, management or recovery of a species.

2001 cE-10.1 s21

PART IV

HOW THE PLAN TO RECOVER OR MANAGE A SPECIES IS DEVELOPED

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Recovery team

22. (1) A recovery team established under section 14 or 15 shall

(a) develop a recovery plan and submit it to the minister;

(b) monitor and advise the minister on the implementation of a recovery plan; and

(c) perform other duties that may be assigned to it in regulations made under subsection 44(2).

(2) The minister may prescribe in regulations made under subsection 44(2) the composition of a recovery team and the minimum qualifications of team members.

2001 cE-10.1 s22

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Recovery plan

23. A recovery plan shall

(a) identify measures for the recovery of a designated species;

(b) identify critical habitat, where appropriate;

(c) identify recovery habitat, where appropriate;

(d) contain a schedule for implementation of the plan; and

(e) include the information that may be prescribed in regulations made under subsection 44(2).

2001 cE-10.1 s23

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Management plan

24. A management plan shall

- (a) identify measures for the conservation of a species; and
- (b) include the information that may be prescribed in regulations made under subsection 44(2).

2001 cE-10.1 s24

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Implementation

25. Where a management or recovery plan identifies critical or recovery habitat, the minister shall release to the public a statement outlining how the habitat will be protected.

2001 cE-10.1 s25

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Shared jurisdiction

26. (1) When preparing a recovery or management plan for a species, the minister shall consult with the government of a province or territory or of Canada if that government shares jurisdiction for the management of the species.

(2) Where a plan for the recovery or management of a species has been prepared together with the government of a province or territory or of Canada , the minister may release that plan as a recovery or management plan under this Act.

(3) Where a recovery team is established by the government of another province or a territory or of Canada for a species designated under this Act, the minister is not required to appoint a recovery team under this Act if that recovery team has a member who represents this province.

2001 cE-10.1 s26

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Agreement

27. (1) The minister may enter into an agreement or other arrangement with the government of a province or territory or of Canada or a person, to provide for the conservation of a species designated under this Act.

(2) The agreement may provide for measures for the conservation of a species designated under this Act, including

- (a) education and public awareness programs;
- (b) research and monitoring;
- (c) habitat protection; and
- (d) other management and recovery strategies.

(3) Notwithstanding section 5, an agreement made under subsection (1) with the government of a province or territory or of Canada is subject to the Intergovernmental Affairs Act .

2001 cE-10.1 s27

PART V

HOW THE HABITAT OF A DESIGNATED SPECIES IS PROTECTED

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Critical and recovery habitat

28. (1) When a species is designated as vulnerable, threatened, endangered or extirpated, the minister may, by order, set aside for the period set out in the order

- (a) an area of land to be protected as recovery habitat; and
- (b) an area of land to be protected as critical habitat.

(2) The boundaries of the area shall be set out in the order by publishing a description of the area.

(3) The minister shall, in an order made under subsection (1), specify

- (a) the activities that are prohibited within
 - (i) recovery habitat, and
 - (ii) critical habitat; and
- (b) the activities that are prohibited without a permit within
 - (i) recovery habitat, and
 - (ii) critical habitat.

(4) The minister may issue a permit for activities under paragraph (3)(b) and may attach conditions to the permit, including the deposit of a monetary bond to ensure compliance with the permit in a form and in an amount satisfactory to the minister.

2001 cE-10.1 s28

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Conservation management agreements

29. (1) The minister may enter into a conservation management agreement with a landowner within an area set aside as recovery habitat or critical habitat.

(2) A conservation management agreement may exempt a land owner from one or more of the provisions of a habitat order under section 28.

(3) In a conservation management agreement the minister may, with the approval of the Lieutenant-Governor in Council, provide for monetary or another form of compensation to a land owner who is detrimentally affected by an order under section 28.

(4) The minister shall release to the public a written report before April 15 of each year about conservation management agreements entered into in the preceding calendar year, including:

- (a) the number and nature of conservation management agreements;
- (b) the amount of land affected by those agreements; and
- (c) statistics about the species affected by those agreements.

2001 cE-10.1 s29

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Expropriation

30. (1) The Lieutenant-Governor in Council may authorize the minister to expropriate an interest in land within an area set aside as recovery habitat or critical habitat.

(2) For the purposes of an expropriation under this section, the minister is an authority for the purposes of the Expropriation Act , and the provisions of that Act in relation to the manner of expropriation, assessment of compensation and rights and manner of appeal apply, with the necessary changes.

2001 cE-10.1 s30

PART VI HOW THIS ACT IS ENFORCED

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Appointment

31. The minister may appoint conservation officers to administer and enforce this Act.

2001 cE-10.1 s31

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Powers of inspection

32. A person shall permit a conservation officer to enter upon a premises, place, property, vehicle, aircraft, vessel, boat or raft at reasonable times and inspect those places and documents or things upon or in those places if it is reasonably necessary to determine compliance with this Act.

2001 cE-10.1 s32

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Powers of Investigation

33. (1) A conservation officer may investigate an alleged contravention of this Act or the regulations.

(2) A conservation officer has the powers of and protection given to a peace officer under the Criminal Code for the purpose of enforcing this Act and the regulations.

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Search warrant

34. (1) Where a conservation officer believes on reasonable grounds that a person has contravened this Act or regulations, a conservation officer may, with a warrant issued under subsection (2), at a reasonable time enter upon a building, receptacle or place and may investigate, inquire into and examine anything in respect of which the investigation is being made.

(2) A Provincial Court judge who is satisfied by information upon oath or affirmation that there are reasonable grounds to believe that there is in a building, receptacle or place

(a) anything on or in respect of which an offence under this Act or the regulations has been, or is suspected to have been, committed;

(b) anything that there are reasonable grounds to believe will give evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, under this Act or the regulations; or

(c) property related to an offence,

may at any time issue a warrant authorizing a conservation officer to search the building, receptacle, or place for that thing and to seize it.

(3) The owner or person in charge of the building, receptacle or place referred to in this section and persons found there shall give a conservation officer reasonable help to enable the conservation officer to carry out his or her duties and functions under this section and shall provide the information that the conservation officer may reasonably require.

(4) Notwithstanding subsection (1), a conservation officer may exercise the power of search referred to in that subsection without a warrant issued under subsection (2) where the conditions for obtaining the warrant exist but because of urgent circumstances it would not be practical to obtain the warrant.

(5) In subsection (4), urgent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

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Arrest without warrant

35. A conservation officer may arrest without a warrant a person who has committed an offence under this Act or the regulations or who, on reasonable grounds, he or she believes has committed or is about to commit an offence

(a) where the conservation officer needs to establish the identity of the person;

(b) to secure or preserve evidence of or relating to the offence;

(c) to prevent the continuation or repetition of the offence or the commission of another offence; or

(d) where he or she has reasonable grounds to believe that, if the person is not arrested, the person will fail to attend in court in order to be dealt with according to law.

2001 cE-10.1 s35

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Seizure and confiscation

36. (1) A conservation officer who has reasonable grounds to suspect that a

(a) material, implement, appliance or thing has been used; or

(b) specimen of a designated species has been taken, killed or possessed,

in violation of this Act or the regulations may, on view, seize it and a paper, document or record in the possession of the person concerned at the time of the seizure if, in the officer's opinion, it might give evidence of the commission of an offence under this Act or the regulations and other material, implement, appliance or thing in the possession of the person concerned at the time of seizure and capable of use in taking, killing, possessing, storing or transporting the specimen with which the suspected use, taking, killing or possessing is connected, including a gun or firearm, silencer, trap, decoy, snare, light, team, wagon, automobile, motor truck or vehicle, boat, skiff, canoe, vessel, airplane, refrigerator, storage locker or container.

(2) Anything seized under subsection (1), in this section referred to as the "forfeited item", shall be retained in the custody of the conservation officer making the seizure or shall be delivered into the custody of the person that the minister may direct.

(3) Where, in the opinion of the person having custody of a specimen or other perishable thing seized under subsection (1), that specimen or other perishable thing will rot, spoil or otherwise perish, that person may sell the specimen or other perishable thing in the manner and for the price that may be determined by the minister or other person designated by the minister generally or specially for the purpose.

(4) The proceeds of a sale referred to in subsection (3), less expenses involved in the sale, shall be paid to the minister for credit to the Consolidated Revenue Fund and the proceeds not forfeited under subsection (5) or (6) or applied under subsection (13) may be paid from the Consolidated Revenue Fund to the person entitled to them.

(5) Where a person is convicted of an offence in which a specimen has been taken, killed or possessed contrary to this Act or the regulations, or where the charge for an offence in which a specimen has been taken, killed or possessed contrary to this Act or the regulations is proved but, as a result of the application of section 731 of the Criminal Code, the passing of a sentence has been suspended, the Provincial Court judge hearing the charge, irrespective of another penalty imposed,

(a) shall order that a specimen, firearms and ammunition seized under subsection (1), when a specimen has been taken, killed or possessed contrary to this Act or the regulations, and the whole or a part of the proceeds of the sale, less expenses involved in the sale, of the specimen under subsection (3), be forfeited; and

(b) may order that other things seized under subsection (1) or the cash deposit in respect of it made under subsection (9), be forfeited.

(6) Where a person is convicted of an offence under this Act or the regulations other than the offence referred to in subsection (5) or where the charge for an offence under this Act or the regulations other than the offence referred to in subsection (5) is proved but, as a result of the application of section 731 of the Criminal Code, the passing of a sentence has been suspended, the Provincial Court judge hearing the charge, irrespective of another penalty imposed, may order a thing seized under subsection (1), or the cash deposit in respect of it made under subsection (9), be forfeited.

(7) Upon an order made under subsection (5) or (6), the specimen, firearms, ammunition or anything referred to in subsections (5) and (6) that is ordered to be forfeited is forfeited to the Crown and may be disposed of as the minister directs and the proceeds or cash deposit that is ordered to be forfeited be paid into the Consolidated Revenue Fund.

(8) Notwithstanding subsection (5) or (6), where, at the time anything mentioned in subsection (1) is seized under that subsection, the conservation officer making the seizure is unable to ascertain that a person is the rightful owner of it then it is upon its seizure forfeited to the Crown and may be disposed of as the minister directs.

(9) Where anything mentioned in subsection (1) has been seized under that subsection, a Provincial Court judge or justices may, except in the case of a specimen or anything forfeited under subsection (8), order redelivery of it to the person from whom it was seized upon security of a cash deposit or bond, in an amount satisfactory to the minister, being given to the Crown.

(10) A specimen, firearm and ammunition not delivered under subsection (9) shall be retained in the custody of the conservation officer who made the seizure under subsection (1), or of the court, as the Provincial Court judge hearing the charges made in respect of it may order, until the final disposition of the charge, including an appeal.

(11) A forfeited item seized under subsection (1), or the cash deposit in respect of it made under subsection (9), or the proceeds realized, less expenses involved in the sale, from a sale under subsection (3), except a forfeited item forfeited under subsection (8), shall be returned or paid to the person from whom the forfeited item or cash deposit was taken where no prosecution in respect of the alleged offence is instituted, and shall be returned or paid upon the expiration of 3 months from the day of the seizure unless before that time proceedings in respect of the alleged offence are instituted.

(12) Except as provided in section 37, a forfeited item forfeited under subsection (5), (6) or (8) shall, after the expiration of 90 days from the date of the forfeiture, be disposed of as the minister directs.

(13) Where a forfeited item has been seized under subsection (1), or a cash deposit or bond in respect of it has been made under subsection (9), and the proceedings in respect of the offence have been instituted, but the forfeited item or cash deposit or bond or proceeds realized from a sale under subsection (3) are not at the conclusion of the proceedings ordered to be forfeited under subsection (5) and have not been forfeited under subsection (8), the forfeited item or cash deposit, or bond or proceeds of sale, less expenses involved in the sale, shall be returned or paid to the person from whom the forfeited item was taken, or cash deposit received, unless there has been a conviction and a fine imposed, in which case the forfeited item may be detained until the fine is paid, or the cash deposit or bond made under subsection (9) or the proceeds realized from a sale of a specimen or other perishable thing under subsection (3), less expenses involved in the sale, may be applied in or towards payment of the fine, and the cash deposit or bond not so applied may be paid to the person entitled to it out of the Consolidated Revenue Fund.

(14) Notwithstanding anything contained in this section, a conservation officer may, at the time of seizure, return to its habitat a specimen seized under subsection (1) that the conservation officer believes to be alive.

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Application by person claiming interest

37. (1) Where a specimen, paper, document, record, material, implement, appliance or thing is forfeited to the Crown under subsection 36(5), (6), (7) or (8), in this section referred to as the "forfeited item", a person, other than a person convicted of the offence that resulted in the forfeiture or a person in whose possession the forfeited item was when seized, who claims an interest in the forfeited item as owner, mortgagee, lien holder or holder of a life interest may, within 30 days after the forfeiture, apply by written notice to a Provincial Court judge for an order under subsection (4) of this section.

(2) The Provincial Court judge to whom an application is made under subsection (1) shall fix a day not less than 10 days after the date of filing of the application for the hearing of it.

(3) The applicant shall serve a notice of the application and of the hearing upon the minister at least 5 days before the day fixed for the hearing.

(4) Where, upon the hearing of an application, it is made to appear to the satisfaction of the Provincial Court judge

(a) in the case of a forfeiture under subsection 36(5) or (6), that the applicant is innocent of complicity in the offence that resulted in the forfeiture and of collusion in relation to that offence with the person who was convicted of the offence;

(b) in the case of a forfeiture under subsection 36(8), that the applicant is innocent of complicity in the alleged offence that resulted in the forfeiture and of collusion in relation to that offence with a person who may have committed the offence; and

(c) that the applicant exercised reasonable care in respect of the person permitted to obtain the possession of the forfeited item to satisfy himself or herself that it was not likely to be used contrary to this Act or the regulations, or, in the case of a mortgagee or lien holder, that he or she exercised that care with respect to the mortgagor or the lien giver, the applicant is entitled to an order declaring the nature, extent, and, considering the then actual value of the forfeited item, value of his or her interest.

(5) Section 14 of the Small Claims Act with respect to an appeal to the Trial Division shall, with the necessary changes, apply to an order made under subsection (4).

(6) The minister shall, upon application made to him or her by a person who has obtained a final order under this section

(a) except in the case of a specimen or other perishable thing disposed of under subsection 36(3) or a specimen or other perishable thing redelivered under subsection 36(9), direct that the forfeited item to which the interest of the applicant relates be handed over to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, or a lesser amount that the Lieutenant-Governor in Council may direct, be paid to him or her.

(7) This section does not apply to a specimen that has been returned to its habitat under subsection 36(14).

(8) A payment directed to be made under paragraph (6)(b) shall be paid out of the Consolidated Revenue Fund.

(9) Notwithstanding that the value of the property involved exceeds his or her usual jurisdiction and notwithstanding another Act or law,

(a) a Provincial Court judge shall, for the purposes of subsections (1), (2) and (4) of this section; and

(b) a judge of the Trial Division shall, for the purposes of subsection (5) of this section, have jurisdiction for the purposes of this section, and

(c) the procedure in a hearing conducted by a Provincial Court judge under this section respecting the subpoenaing of witnesses and compelling them to attend, the taking and hearing of evidence and other matters not specifically provided by this section shall be governed by the Small Claims Act .

2001 cE-10.1 s37

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Offences

38. (1) A person who

(a) contravenes this Act or the regulations;

(b) fails to comply with an order or a term of an order under section 28;

(c) fails to comply with a permit or a condition of a permit issued under this Act or the regulations, or

(d) is a party to and fails to comply with a conservation management agreement under section 29,

is guilty of an offence.

(2) Where a person, other than a corporation, is convicted of an offence under subsection (1), that person is liable

(a) for the first conviction, to a fine of not less than \$1,000 and not more than \$50,000, or to imprisonment for a term of not more than 3 months, or to both;

(b) for a second conviction, to a fine of not less than \$2,000 and not more than \$100,000, or to imprisonment for a term of not more than 6 months, or to both; and

(c) for a third and subsequent conviction, to a fine of not less than \$4,000 and not more than \$200,000, or to imprisonment for a term of not more than 12 months, or to both.

(3) Where a corporation is convicted of an offence under subsection (1), the corporation is liable

(a) for the first conviction, to a fine of not less than \$2,000 and not more than \$100,000;

(b) for a second conviction, to a fine of not less than \$4,000 and not more than \$200,000; and

(c) for a third and subsequent conviction, to a fine of not less than \$8,000 and not more than \$400,000.

(4) In addition to a fine imposed under subsection (2) or (3) the court may impose a fine not exceeding \$10,000 for each day the offence continues.

(5) A proceeding in respect of an offence under this section may be instituted within, but not later than, 2 years after the subject matter of the proceedings is discovered.

2001 cE-10.1 s38

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Proof

39. For the purpose of proving an offence under section 38, an animal, plant or thing that is represented by the person charged with the offence to be an individual, or a part of or derived from an individual of a designated species, is considered to be so, in the absence of evidence establishing the contrary on a balance of probabilities.

2001 cE-10.1 s39

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Sentencing guidelines

40. A court shall take into account the following when imposing a sentence for an offence under section 38:

(a) the harm or risk of harm to a designated species caused by the offence;

(b) whether the offender committed the offence intentionally, recklessly or inadvertently;

(c) whether the offender was negligent or incompetent or showed a lack of concern in committing the offence;

(d) a benefit obtained by the offender as a result of committing the offence; and

(e) a history of non-compliance by the offender with legislation designed to protect species.

2001 cE-10.1 s40

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Obstruction of conservation officer

41. A person who obstructs or resists a conservation officer while he or she is engaged in exercising the powers of discharging the duties conferred or imposed under this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding \$500 and to imprisonment for a period not exceeding 6 months.

2001 cE-10.1 s41

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Liability of corporate directors and officers

42. (1) Where a corporation is convicted of an offence under this Act and a director or officer of the corporation failed to exercise the degree of care, diligence or skill to prevent the offence that a reasonably prudent person would have exercised in comparable circumstances, that director or officer is a party to and guilty of the offence and where convicted is subject to the punishment provided for that offence under subsection 38(2) whether or not the corporation has been prosecuted or convicted.

(2) A proceeding in respect of an offence under this section may be instituted not later than 2 years after the subject matter of the proceedings is discovered.

2001 cE-10.1 s42

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Powers of court on conviction

43. Where a person is convicted of an offence under this Act, the court may, in addition to a fine, order the offender to

(a) take an action that the court considers appropriate to remedy or avoid harm to a species that resulted or may result from the offence;

(b) pay to the minister an amount to restore habitat or individuals of the species which may have been harmed as a consequence of the offence;

(c) pay to the minister an amount to conduct research about the species in respect of which the offence was committed; and

(d) do or not do anything that the court considers appropriate to prevent and deter the person from committing the same or another offence under this Act.

2001 cE-10.1 s43

PART VII HOW GENERAL MATTERS ARE DEALT WITH

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Regulations

44. (1) The minister may, with the approval of the Lieutenant-Governor in Council, make regulations

(a) listing designated species under this Act;

(b) setting the minimum qualifications for a member of the SSAC;

(c) prescribing additional duties for the SSAC; and

(d) about how the SSAC is to be administered.

(2) The minister may make regulations

- (a) designating a species on an emergency basis under section 9;
- (b) prescribing the content of a management plan;
- (c) about the composition of a recovery team and the minimum qualifications of team members;
- (d) prescribing other information to be included in a recovery plan;
- (e) prescribing the duties and reporting requirements of a recovery team; and
- (f) providing for the protection of a species designated as vulnerable in a manner similar to that provided in this Act for a species that is designated as threatened or endangered.

2001 cE-10.1 s44

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Release of information

45. The minister may withhold information that may put a designated species at risk, including information on the location of individuals of a designated species.

2001 cE-10.1 s45

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Delay in prosecution

46. (1) A person who possesses a specimen in contravention of subsection 16(2) on the day this Act comes into force is not liable to prosecution for that contravention for a period of 6 months from the day that this Act comes into force.

(2) Where a person referred to in subsection (1) has obtained a permit to possess that specimen or disposes of the specimen in a manner satisfactory to the minister, within the 6 month period, he or she is not liable to prosecution for the contravention of subsection 16(2).

2001 cE-10.1 s46

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Species already designated

47. Where a species has been assessed by COSEWIC before the day this Act comes into force, the minister may, with the approval of the Lieutenant-Governor in Council, designate that species under section 7 of this Act and section 8 of this Act applies, except that the 90 day time limit shall not apply.

2001 cE-10.1 s47

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