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CHAPTER 64

(Bill No. 57)

An Act to Amend the Wildlife Conservation Act

Honourable George T. Webster
Minister of Environment, Energy and Forestry

GOVERNMENT BILL

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Queen's Printer
Charlottetown, Prince Edward Island

CHAPTER 64

An Act to Amend the Wildlife Conservation Act

(Assented to December 3, 2008)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. (1) Subsection 1(1) of the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1 is amended

(a) by the addition of the following after clause (c):

(c.1) “cadet conservation officer” means a cadet conservation officer cadet appointed under subsection 3.2(1);

(c.2) “Chief Conservation Officer” means the Chief Conservation Chief Conservation Officer Officer appointed under subsection 3.1(1);

(b) in clause (e), by the deletion of the words “appointed or designated under section 4, and includes the Director of Wildlife” and the substitution of the words “appointed under subsection 3.1(1), and includes the Chief Conservation Officer”;

(c) in clause (f), by the deletion of the words “considered to be threatened with imminent extinction”;

(d) by the repeal of clause (h) and the substitution of the following:

(h) “firearm” means a barrelled weapon from which a shot, bullet or firearm other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes a frame or receiver of such weapon and anything that can be adapted for use as a firearm;

(e) in clause (k), by the deletion of the words “for the purpose of angling”;

(f) in clause (m), by the deletion of the words “for the purpose of propagation or for sale,” and the substitution of the words “and are bred and sold for”;

(g) in clause (r), by the deletion of the words “and includes a provincial court judge” and the substitution of the words “or a provincial court judge appointed under the *Provincial Court Act* R.S.P.E.I 1988, Cap. P-25”;

(h) in clause (s), by the deletion of the words “license granted” and the substitution of the words “valid and subsisting license issued”;

(i) by the repeal of clause (t) and the substitution of the following:

loaded firearm

(t) “loaded firearm” means a firearm that has a propellant powder, projectile or cartridge that

- (i) is capable of being discharged from the firearm, and
- (ii) is contained in the breech or firing chamber or in a cartridge magazine attached to or inserted into the firearm;

(j) by the addition of the following after clause (v):

Natural resource
inspector

(v.1) “natural resource inspector” means a natural resource inspector appointed under subsection 3.1(1);

(k) by the repeal of clause (x) and the substitution of the following:

owner

(x) “owner” means

- (i) the owner of any real or personal property, or
- (ii) the lessee or other person having possession or control of real or personal property;

(l) in clause (y), by the deletion of the words “permit granted” and the substitution of the words “valid and subsisting permit issued”;

(m) by the repeal of clause (z);

(n) by the repeal of clause (aa) and the substitution of the following:

resident

(aa) “resident” means a person who

- (i) has resided in the province for a period of six months immediately prior to making an application for a licence,
- (ii) has resided in the province for a period of two weeks immediately prior to making an application for a licence, where that person proves to the satisfaction of the Minister that he or she was required to take up residence in the province as a result of being transferred to the province by his or her employer,
- (iii) is taking educational training of a three-month minimum duration within the province and has resided in the province for a period of two weeks immediately prior to making an application for a licence,

(iv) is taking educational training outside the province and resided in the province for a period of six months immediately prior to taking the educational training,

(v) proves to the satisfaction of the Minister that he or she has resided in the province for the purpose of employment for an aggregate period of six months within the twelve months immediately preceding the making of an application, or

(vi) was born in the province and owns real property in the province;

(o) by the repeal of clause (cc) and the substitution of the following:

(cc) “snare” means any device for the taking of wildlife in which the wildlife is caught in a noose; snare

(p) in clause (ee), by the deletion of the words “considered to be likely to become endangered if the factors affecting its vulnerability are not reversed”;

(q) in clause (ff), by the addition of the words “any other” after the words “net or”;

(r) by the repeal of clause (gg) and the substitution of the following:

(gg) “trapping” means taking or attempting to take wildlife by means of a trap, whether the wildlife is killed or not; trapping

(s) by the repeal of clause (hh) and the substitution of the following:

(hh) “vehicle” means a motor vehicle as defined in the *Highway Traffic Act* R.S.P.E.I. 1988, Cap.H-5;

(t) in clause (kk), by the deletion of the words “food, cover and water on which wildlife depend, directly or indirectly, in order to carry out their life processes” and the substitution of the words “food, cover or water”.

(2) Clause 1(2)(b) of the Act is amended by the addition of the words “and all” after the words “possession of each”.

2. Section 3 of the Act is amended by the repeal of subsections (1) and (2) and the substitution of the following:

3. (1) The Minister is responsible for the administration of this Act.

Administration of
Act

Designation or delegation by Minister	(2) The Minister may, in writing, <ul style="list-style-type: none"> (a) designate persons to act on his or her behalf; and (b) delegate to any person any of the functions of the Minister under this Act.
Designation or delegation in effect until revoked	(2.1) A written designation or delegation issued by the Minister under subsection (2) remains in effect until revoked by the Minister.
	3. The Act is amended by the addition of the following after section 3:
Chief Conservation Officer, conservation officers and natural resource inspectors	3.1 (1) There may be appointed in accordance with the <i>Civil Service Act</i> R.S.P.E.I. 1988, Cap. C-8 a Chief Conservation Officer, conservation officers, natural resource inspectors and such other employees as the Minister considers necessary for the administration of this Act and regulations.
Qualifications for appointment	(2) No person shall be appointed as Chief Conservation Officer or as a conservation officer unless the person has the qualifications in respect of the appointment that are required by the regulations.
Appointments in Gazette	(3) Notice shall be published in the Gazette of every appointment of a conservation officer.
Oath or affirmation of office	(4) A conservation officer, before commencing the performance of his or her duties, shall take the oath or solemn affirmation of office as prescribed by the regulations.
Identification card	(5) The Chief Conservation Officer shall ensure that an identification card containing the information required by the regulations is issued to a conservation officer before the conservation officer commences the performance of his or her duties.
Conservation officers	(6) The following persons are conservation officers by virtue of their office: <ul style="list-style-type: none"> (a) an officer or member of the Royal Canadian Mounted Police; (b) a game officer designated under the <i>Migratory Birds Convention Act</i> (Canada) R.S.C. 1985, c. M-7; (c) a fisheries officer appointed under the <i>Fisheries Act</i> (Canada) R.S.C. 1985, c. F-14; (d) a park warden designated under the <i>Canada National Parks Act</i>, S.C. 2000, c. 32.
Transitional, conservation officers	(7) Every person who, immediately before the day this section comes into force, holds an appointment as a conservation officer, shall be deemed to have been appointed as a conservation officer under subsection (1).

(8) For greater certainty, subsections (2), (3) and (4) do not apply in respect of any person referred to in subsection (7).

Application

3.2 (1) The Minister may appoint cadet conservation officers as the Minister considers necessary for the administration of this Act and the regulations, in accordance with the requirements set out in the regulations.

Cadet conservation officers

(2) Notice shall be published in the Gazette of every appointment of a cadet conservation officer.

Appointments in Gazette

(3) The appointment of a cadet conservation officer shall
 (a) be in writing; and
 (b) specify any conditions or restrictions that are attached to the appointment.

Conditions or restrictions on appointment

(4) The term of an appointment of a cadet conservation officer expires on the date specified in the appointment unless the Minister sooner revokes the appointment.

Term of appointment

(5) Every cadet conservation officer, before commencing the performance of his or her duties, shall take the oath or solemn affirmation of office as prescribed by the regulations.

Oath or affirmation of office

(6) The Chief Conservation Officer shall ensure that an identification card containing the information required by the regulations is issued to a cadet conservation officer before the cadet conservation officer commences the performance of his or her duties.

Identification card

4. Subsections 4(1) and (2) of the Act are repealed and the following substituted:

4. (1) The Chief Conservation Officer, conservation officers, cadet conservation officers, natural resource inspectors and any other employees appointed under subsection 3.1(1) may exercise the powers and shall perform the duties

Powers and duties

- (a) set out in this Act and the regulations; and
- (b) as may from time to time be assigned by the Minister.

(2) The Chief Conservation Officer
 (a) shall supervise conservation officers in the exercise of their powers and the performance of their duties; and
 (b) may exercise the powers and perform the duties of a conservation officer,

Powers and duties of Chief Conservation Officer

under this Act and the regulations and any other enactment.

5. Subsections 4(4) and (5) of the Act are repealed and the following substituted:

Function of cadet conservation officer (4) A cadet conservation officer shall, when accompanied by and under the direct supervision of a conservation officer, assist the conservation officer in the exercise of the powers and the performance of the duties of the conservation officer under this Act and the regulations and any other enactment.

Production of identification card (5) A conservation officer or cadet conservation officer shall, on demand by any person, produce his or her identification card for inspection, unless in the opinion of the conservation officer or cadet conservation officer it would be dangerous for the conservation officer or cadet conservation officer to comply with the demand.

6. The Act is amended by the addition of the following after section 4:

Function of natural resource inspector **4.1** A natural resource inspector shall perform the following functions:
 (a) the management and monitoring of wildlife and wildlife habitat, including, but not limited to, wildlife health and populations and human impact on wildlife and wildlife habitat;
 (b) the conduct of inspections for the purpose of ensuring compliance with this Act and the regulations;
 (c) the issuance of licenses and permits under this Act and the regulations, if the Minister has delegated the power to issue licenses and permits to the natural resource inspector.

7. Section 5 of the Act is amended

(a) by the repeal of subsection (2) and the substitution of the following:

Assistance (2) A conservation officer, while
 (a) exercising the powers and performing the duties of a conservation officer under this Act or the regulations; and
 (b) exercising the powers and performing the duties held by a conservation officer under any other enactment by virtue of his or her office under this Act,
 may call upon any person for assistance and that person, while giving the assistance, is a conservation officer for the purposes of this Act, the regulations or the other enactment.

(b) by the repeal of subsections (3) and (4).

8. The Act is amended by the addition of the following after subsection 5.1(3):

Person appointed or delegated may not be convicted (4) A natural resource inspector who is charged with an offence under a provincial enactment shall not be convicted if it is made to appear to

the justice before whom the offence is being prosecuted that the person charged

- (a) committed the offence while discharging his or her responsibilities;
- (b) was reasonably justified in committing the offence having regard to the responsibility being discharged; and
- (c) conducted himself or herself in a reasonable manner having regard to all of the circumstances.

9. The Act is amended by the addition of the following after section 5.1:

5.2 (1) A document purporting to be issued and signed by the Minister authorizing the person to whom it is issued to

Evidence of authorization

- (a) act as the Minister's designate; or
- (b) perform any functions of the Minister delegated by the Minister,

is, without proof of the Minister's appointment, authority or signature, admissible in evidence and is in the absence of evidence to the contrary, proof of the matters stated in the document.

(2) A document purporting to be issued and signed by the Minister to the effect that the person to whom it is issued has a current appointment under section 3.1 or 3.2 is, without proof of the Minister's appointment, authority or signature, admissible in evidence and is in the absence of evidence to the contrary, proof of the matters stated in the document.

Evidence of appointment

(3) An identification card purporting to be issued and signed by the Minister to the effect that the person to whom it is issued is a conservation officer or a cadet conservation officer is, without proof of the Minister's appointment, authority or signature, admissible in evidence and is in the absence of evidence to the contrary, proof of the matters stated in the identification card.

Identification card

(4) A person in possession of a document referred to in subsection (1) or (2) or an identification card referred to in subsection (3) shall, on proof that his or her name is the same as the person named in the document or identification card, be presumed, in the absence of evidence to the contrary, to be the person named in the document or identification card.

Presumption of identity

10. Section 13 of the Act is repealed and the following substituted:

13. No person under the age of sixteen years shall use or carry a loaded firearm unless under the direct and immediate supervision of a person over the age of eighteen years who holds the required authorizations under this Act and the regulations, the *Criminal Code* (Canada) and the *Firearms Act* (Canada).

Exception

11. The Act is amended by the addition of the following after section 14:

Production of license or permit

14.1 Every person, when hunting, trapping or snaring wildlife or angling, shall

- (a) carry on his or her person the licence or permit under which the person is authorized to hunt, trap, snare or angle; and
- (b) produce the licence or permit for inspection upon the demand of a conservation officer or a natural resource inspector.

12. Section 15 of the Act is repealed and the following is substituted:

Prohibitions

15. No person shall

- (a) knowingly give false or misleading information, either orally or in writing to a conservation officer, natural resource inspector or license vendor acting under this Act or the regulations;
- (b) being the holder of any license or permit issued under this Act, neglect or refuse to produce it for examination when requested or required to do so by a conservation officer or natural resource inspector;
- (c) sell, transfer or assign a license issued to the person;
- (d) cause or permit his or her license to be used by another person;
- or
- (e) use the license of another person.

13. Clause 19(1)(f) of the Act is amended by the deletion of the words “meeting place or any dwelling, farm building,” and the substitution of the words “meeting place, farm building, occupied dwelling.”.

14. The Act is amended by the addition of the following after section 19:

Wearing uniform or badge

19.1 No person, except a conservation officer shall use or wear a uniform or badge identifying that person as a conservation officer, or shall in any way represent himself or herself to be a conservation officer.

15. Section 20 of the Act is amended

(a) by the repeal of subsections (2) and (3);

(b) by the repeal of subsection (4) and the substitution of the following:

Order of Minister or Conservation Officer

(4) Where the Minister or a conservation officer believes, on reasonable grounds, that a person is carrying on or contributing to an action or an activity that

- (a) is detrimental to wildlife or to wildlife habitat; or

(b) contravenes a provision of this Act or the regulations or a permit or a license issued under this Act,
the Minister or a conservation officer, as the case may be, may issue an order requiring any person carrying out or contributing to the action or activity to do any or all of the following, at the person's own cost:

- (c) meet with a representative of the Department and other persons for the purposes that are specified by the order;
- (d) carry out or permit inspections, testing and sampling, as specified in the order;
- (e) cease an activity specified in the order either permanently or for a period of time, as specified in the order;
- (f) clean, repair, and restore the area affected by the action or activity to the extent specified in the order, or to the satisfaction of the Minister;
- (g) take specified action to prevent or avoid danger to wildlife or damage to wildlife habitat or property;
- (h) submit a written report with respect to his or her activities pursuant to clauses (d), (f) and (g).

(4.1) An order made under subsection (4) may require the person who is the subject of the order to comply with the order without delay or as of a future date specified in the order. *Idem*

(c) in subsection (5), by the addition of the words “or the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9” after the words “under this Act”; and

(d) in subsection (10), by the deletion of the words “be served in written form” and the substitution of the words “be made in written form by the Minister or the conservation officer, as the case may be, and served”.

16. Subsection 21(1) of the Act is repealed and the following substituted:

21. (1) A conservation officer and a natural resource inspector, and any person accompanying a conservation officer or a natural resource inspector, may, without being liable for trespass, enter upon and pass through privately-owned land for the purpose of

- (a) managing and monitoring wildlife and wildlife habitat;
- (b) investigating threats to wildlife or wildlife habitat; or
- (c) otherwise ensuring compliance with this Act or the regulations.

17. The Act is amended by the addition of the following after section 21:

- 21.1** (1) For the purpose of ensuring compliance with this Act or the regulations, a natural resource inspector or a conservation officer may, subject to section 21.2, at any reasonable time enter and inspect
- Natural resource inspector or conservation officer may enter and inspect
- (a) any premises in respect of which a license has been issued, or an application for a license has been made, under this Act or regulations; or
 - (b) any place or vehicle in which the natural resource inspector or conservation officer believes on reasonable grounds there is
 - (i) any wildlife,
 - (ii) any equipment or implement for the taking of wildlife,
 - (iii) any record or other document relevant to the administration of this Act or the regulations, or
 - (iv) any other thing to which this Act or the regulations apply.
- (2) In carrying out an inspection under this section, a natural resource inspector or conservation officer may
- Inspection
- (a) open any container that the natural resource inspector or conservation officer believes on reasonable grounds contains anything referred to in subclauses 21.1(1)(b)(i) to (iv);
 - (b) inspect anything referred to in subclauses 21.1(1)(b)(i) to (iv) and take photographs, samples, and measurements, and conduct any tests and analyses, free of charge;
 - (c) require any person to produce for inspection or copying, in whole or in part, any record or other document relevant to the administration of this Act or the regulations;
 - (d) use any computer or data processing system at the place to examine any data contained in or available to the computer or data processing system;
 - (e) reproduce any record from the data in the form of a printout or other intelligible output and take the printout or other output for examination or copying; and
 - (f) use any copying equipment at the place to make copies of any record or other document.
- (3) The owner or person in charge of any premises, place or vehicle referred to in subsection (1) and every person found there shall
- Assistance and information
- (a) give the natural resource inspector or conservation officer all reasonable assistance to enable the natural resource inspector or conservation officer to carry out his or her duties and functions under this Act; and
 - (b) provide the natural resource inspector or conservation officer any information with respect to the administration of this Act or the regulations as the natural resource inspector or conservation officer may reasonably require.

(4) A conservation officer may, for the purpose of enforcing this Act and the regulations, signal or request any person driving a vehicle to stop.

Signal to stop

(5) Where a conservation officer signals or requests a person driving a vehicle to stop, the person shall immediately bring the vehicle to a safe stop and shall not proceed until permitted to do so by the conservation officer.

Driver to stop

21.2 (1) A natural resource inspector shall not enter a dwelling-place for the purpose of an inspection under section 21.1.

Natural resource inspector shall not enter dwelling-place

(2) A conservation officer may enter a dwelling-place for the purpose of an inspection under section 21.1

Entry to dwelling-place by conservation officer

- (a) with the consent of the occupant; or
- (b) under the authority of a warrant issued under subsection (3).

(3) Where on *ex parte* application a justice is satisfied by information on oath that

Authority to issue warrant

- (a) the conditions for entry described in section 21.1 exist in relation to a dwelling-place;
- (b) entry to the dwelling-place is necessary for any purpose relating to the administration of this Act or the regulations; and
- (c) entry to the dwelling-place has been refused or there are reasonable grounds for believing that entry will be refused,

the justice may issue a warrant authorizing the conservation officer named in the warrant to enter the dwelling-place subject to such conditions as may be specified in the warrant.

(4) A conservation officer who executes a warrant shall not use force in the execution of a warrant issued under subsection (3) unless the use of force is specifically authorized in the warrant.

Use of force

(5) No person shall obstruct, impede or refuse to admit, or aid or assist any person in obstructing, impeding or refusing to admit, a conservation officer or other person acting in execution of a warrant issued under subsection (3).

Obstruction

21.3 (1) Subject to subsection (2), where a natural resource inspector or conservation officer believes on reasonable grounds that a person has contravened this Act or the regulations, the natural resource inspector or conservation officer may seize and detain anything, including wildlife,

Things liable to seizure

- (a) by means of or in relation to which the natural resource inspector or conservation officer believes on reasonable grounds the Act or the regulations has been contravened; or
- (b) that the natural resource inspector or conservation officer believes on reasonable grounds will afford evidence in respect of a contravention of this Act or the regulations.

Production of firearm and ammunition	(2) Every person, upon being requested to do so by a conservation officer, shall without delay produce and allow the conservation officer to inspect any firearm and ammunition in that person's possession or under that person's control.
Authority to issue warrant	<p>21.4 (1) Where on <i>ex parte</i> application a justice is satisfied by information on oath that there are reasonable grounds to believe that there is in any place anything, including wildlife,</p> <p style="padding-left: 40px;">(a) by means of or in relation to which this Act or the regulations have been contravened or are suspected of having been contravened;</p> <p style="padding-left: 40px;">or</p> <p style="padding-left: 40px;">(b) that there are reasonable grounds to believe will afford evidence in respect of a contravention of this Act or the regulations,</p> <p>the justice may at any time issue a warrant authorizing a conservation officer to enter and search the place for the thing or record or document and to seize it.</p>
Things liable to seizure	<p>(2) A conservation officer who executes a warrant issued under subsection (1) may exercise the powers described in section 21.1 and may seize, in addition to any thing mentioned in the warrant, any other thing, including wildlife,</p> <p style="padding-left: 40px;">(a) by means of or in relation to which the conservation officer believes on reasonable grounds this Act or the regulations have been contravened; or</p> <p style="padding-left: 40px;">(b) that the conservation officer believes on reasonable grounds will afford evidence in respect of a contravention of this Act or the regulations.</p>
Execution of warrant	(3) A warrant issued under subsection (1) shall be executed by day unless the justice authorizes its execution by night.
Exercise of powers without a warrant	(4) A conservation officer may exercise any of the powers referred to in subsections (1) and (2) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be practicable to obtain a warrant.
18. Section 22 of the Act is repealed and the following substituted:	
Seizure of wildlife	22. (1) A natural resource inspector or a conservation officer who suspects on reasonable grounds that any wildlife has a disease may seize the wildlife for the purpose of performing a biological or scientific examination of it.
Diseased wildlife	(2) Where wildlife seized under subsection (1) is found to have a disease, the Minister may direct that it be treated, destroyed, or otherwise disposed of in such manner as is reasonably required under the circumstances.

(3) A natural resource inspector or a conservation officer may seize and may destroy, if necessary, any wildlife that has become incapacitated or is a nuisance or a menace to lives and property. Incapacitated or nuisance wildlife

19. Section 27 of the Act is amended

(a) in subsection (1), by the deletion of the words “It is an offence for any person to refuse or fail” and the substitution of the words “No person shall fail or refuse”; and

(b) in subsection (2),

(i) by the deletion of the words “It is an offence for any person to” and the substitution of the words “No person shall”, and

(ii) by the deletion of the words “proper identification” and the substitution of the words “identification as a conservation officer”.

20. Section 28 of the Act is amended by the addition of the following after clause (a):

(a.1) respecting the qualifications required for appointment as Chief Conservation Officer or as a conservation officer;

(a.2) respecting the requirements for appointment as a cadet conservation officer;

(a.3) prescribing the oath or solemn affirmation of office of a conservation officer and a cadet conservation officer;

(a.4) respecting the information required to be contained in an information card issued to a conservation officer or a cadet conservation officer;

21. Section 30 of the Act is amended

(a) by renumbering it as subsection 30(1); and

(b) by the addition of the following after subsection (1):

(2) In any prosecution arising out of the possession of anything, the burden of proof is on the accused to prove that he or she did not have possession of the thing within the meaning of subsection 1(2). Burden of proof

(3) In the absence of evidence to the contrary, wildlife found within the province shall be presumed to have its place of origin in the province, and where the wildlife is dead it shall be presumed to have been killed within the province. Place of origin

(4) Where a person is charged with a contravention of any provision of this Act or the regulations by reason of the person having Possession or control of wildlife or article

- (a) taken or kept any wildlife, the taking or keeping of which is prohibited;
- (b) taken or kept any wildlife in an area where, or during a period or at a time when, the taking or keeping was prohibited;
- (c) had in his or her possession any article the possession of which is prohibited; or
- (d) had in his or her possession any article in an area where, or during a period or at a time when, possession of the article was prohibited,

if it is shown to the satisfaction of a justice that the wildlife or the article was found in the person's possession or under the person's control, the person shall be presumed, in the absence of evidence to the contrary, to have committed the offence with which the person is charged.

No exception
required to be
negatived

(5) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information or a summary offence ticket respecting an offence under this Act or the regulations.

Burden of proving
exception

(6) In any prosecution for an offence under this Act or the regulations, the burden of proving that any exception, exemption, proviso, excuse or qualification prescribed by law operates in favour of the defendant is on the defendant, to prove on a balance of probabilities, and the prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, proviso, excuse or qualification does not operate in favour of the defendant, whether or not it is set out in the information or summary offence ticket.

22. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

CHAPTER 64

(Bill No. 57)

An Act to Amend the Wildlife Conservation Act

<i>STAGE:</i>	<i>DATE:</i>
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<i>Assent:</i>	December 3, 2008

Honourable George T. Webster
Minister of Environment, Energy and Forestry

GOVERNMENT BILL