

# **Agricultural Marshland Conservation Act**

CHAPTER 22 OF THE ACTS OF 2000

*as amended by*

2001, c. 1, ss. 2, 3; 2001, c. 6, s. 96; 2004, c. 38, s. 26;  
2009, c. 7



© 2021 Her Majesty the Queen in right of the Province of Nova Scotia  
Published by Authority of the Speaker of the House of Assembly  
Halifax

This page is intentionally blank.

CHAPTER 22 OF THE ACTS OF 2000  
amended 2001, c. 1, ss. 2, 3; 2001, c. 6, s. 96; 2004, c. 38, s. 26;  
2009, c. 7

**An Act for the Conservation  
of Agricultural Marshland**

**Table of Contents**

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
Supervision and management .....	3
Construction of Works	
Powers of Minister.....	4
Designations.....	5
Effect of designation.....	6
Agricultural Marshland Conservation Commission	
Composition, remuneration and staff.....	7
Duties of Commission.....	8
Expenses.....	9
Marshland Administrator	
Appointment and duties .....	10
Marsh Bodies	
Incorporation of marsh bodies .....	11
Membership of bodies.....	12
Variation of boundaries .....	13
Powers of marsh bodies .....	14
Executive Committee.....	15
Execution of document .....	16
Provisional executive committee .....	17
Chair and secretary of executive committee.....	18
Filling of vacancies .....	19
Frequency of meetings.....	20
Annual report .....	20A
Quorum .....	21
Fiscal year .....	22
Meetings of members of body .....	23
Voting rights.....	24
Notice of time and place of meeting .....	25
Report of executive committee .....	26
Auditor .....	27
Estimates and reserve fund .....	28
Assessment and Rating	
Preparation of lists and valuations .....	29
Right to appeal .....	30
Certification of lists.....	31
Rates.....	32
Recovery of rate.....	33
Certificate as proof.....	34

Collection of arrears .....	35
Power of sale.....	36
Manner of pursuing remedies .....	37
Borrowing Powers	
Powers of executive committee .....	38
Entry and Development	
Power of entry.....	39
Expropriation .....	40
Requirement for permit.....	41
Offence and remedies .....	42
Liability to repair .....	43
Supervision of executive committee.....	44
Surrender and Revocation of Certificate	
Effect of surrender or revocation .....	45
Effect of surrender or revocation .....	46
General	
Penalty and separate offences .....	47
Conveyance of land .....	48
Conflict .....	49
Immunity from liability .....	50
Regulations .....	51
By-laws .....	52
Continuation of agreements .....	53
Designation not injurious affection.....	54
Repeal .....	55
Effective dates.....	56

### Short title

**1** This Act may be cited as the *Agricultural Marshland Conservation Act*. 2000, c. 22, s. 1.

### Interpretation

**2** In this Act,

(a) “Commission” means the Agricultural Marshlands Conservation Commission;

(b) “development” includes the erection, construction, alteration, placement, location, replacement or relocation of, or addition to, a structure or a change or alteration in the use made of lands or structures;

(c) “marsh body” means a marsh body incorporated pursuant to this Act or continued by this Act;

(d) “marshland” means land that is

(i) subject to periodic tidal flooding, and

- (ii) designated by the Minister as marshland pursuant to this Act or Chapter 274 of the Revised Statutes, 1989, the *Marshland Reclamation Act*;
- (e) “Marshland Administrator” means the Marshland Administrator appointed pursuant to this Act and includes a person acting under the supervision and direction of the Marshland Administrator;
- (f) “marshland section” means an area of marshland that may be effectively dealt with as a unit in the construction and maintenance of works;
- (g) “Minister” means the Minister of Agriculture;
- (h) “rates” means rates levied pursuant this Act, including interest on rates;
- (i) “works” includes dykes, aboiteaux, breakwaters, canals, ditches, drains, roads and other structures, excavations and facilities for the conservation, development, improvement or protection of marshland to a standard appropriate for agricultural purposes. 2000, c. 22, s. 2; 2009, c. 7, s. 1.

### Supervision and management

**3** The Minister has the general supervision and management of this Act. 2000, c. 22, s. 3.

### Powers of Minister

**4 (1)** Subject to the approval of the Governor in Council, the Minister may construct works to develop marshland for agricultural purposes.

**(2)** The Minister may reconstruct, repair, operate and maintain any works for the protection, drainage and improvement of marshland for agricultural purposes.

**(3)** The costs and expenses incurred as a result of the activities carried out pursuant to subsections (1) and (2) shall be paid from moneys appropriated annually by the Legislature.

**(4)** For the purpose of carrying out the activities authorized by this Section, the Minister may

- (a) enter into agreements with the Government of Canada, the government of any other province of Canada, any department, body or person;
- (b) purchase, dispose of or rent real and personal property;
- (c) engage all necessary employees, consultants, contractors or other persons;
- (d) take or authorize any person to take any action that may be necessary for carrying out the purpose of this Act. 2000, c. 22, s. 4.

**Designations**

**5** (1) The Minister may, by order, designate and fix the boundaries of any marshland section for the purpose of carrying out any works or projects pursuant to this Act.

(2) A marshland section designated pursuant to subsection (1) may include any lands adjacent to the marshland that the Minister considers necessary for the construction and maintenance of any works.

(3) Where the designation of a marshland section has been made pursuant to this Section, the Minister shall

(a) publish a notice containing a description of the marshland section in the Royal Gazette;

(b) deposit a description of the marshland section in the office of the registrar of deeds for the registration district in which the marshland section is situate or where the marshland section is located in one or more parcels of land registered pursuant to the *Land Registration Act*, record the legal description in the register or registers established for that parcel or those parcels pursuant to that Act; and

(c) give notice of the designation and a description of the marshland section to the owner of the marshland section. 2000, c. 22, s. 5; 2001, c. 6, s. 96; 2004, c. 38, s. 26.

**Effect of designation**

**6** Any area designated by the Minister as a marshland section pursuant to Section 5 is marshland for the purpose of this Act. 2000, c. 22, s. 6.

**AGRICULTURAL MARSHLAND  
CONSERVATION COMMISSION****Composition, remuneration and staff**

**7** (1) The Governor in Council may appoint an Agricultural Marshland Conservation Commission consisting of not more than five members.

(2) The Governor in Council shall appoint one member to be the Chair of the Commission.

(3) The Governor in Council shall appoint, from the public service of the Province, a suitable person to be the Secretary of the Commission.

(4) A majority of members of the Commission constitutes a quorum.

(5) Each member of the Commission shall be paid such remuneration as determined by the Governor in Council.

(6) Each member of the Commission shall be reimbursed as determined by the Governor in Council for reasonable travel and other expenses incurred by that member in carrying out the duties of a member of the Commission.

(7) Each member of the Commission holds office for a period of up to three years unless the appointment is revoked and is eligible for re-appointment.

(8) A vacancy on the Commission does not impair the ability of the Commission to act. 2000, c. 22, s. 7.

#### **Duties of Commission**

**8** The Commission shall

(a) advise the Minister on matters related to the conservation and protection of marshland and its development and maintenance;

(b) hear appeals pursuant to this Act;

(c) study and examine proposals for the construction, reconstruction, recondition, repair, maintenance, conduct or operation of works and make recommendations to the Minister;

(d) approve rules made by a marsh body respecting works and land within a marshland section; and

(e) perform such further or other duties as may be assigned to it by this Act or the regulations. 2000, c. 22, s. 8.

#### **Expenses**

**9** The administration expenses of the Commission are administration expenses of the Department of Agriculture. 2000, c. 22, s. 9; 2009, c. 7, s. 2.

### MARSHLAND ADMINISTRATOR

#### **Appointment and duties**

**10** The Minister shall appoint from the public service of the Province a suitable person to be the Marshland Administrator who shall perform such duties as are imposed by this Act or the regulations. 2000, c. 22, s. 10.

### MARSH BODIES

#### **Incorporation of marsh bodies**

**11** (1) The owners of marshland in any marshland section may petition the Commission requesting that they be incorporated as a marsh body for that marshland section.

(2) The petition shall set forth

(a) the boundaries and size of the marshland section;

(b) the names and addresses of all persons believed to be, after due inquiry, the owners of marshland within the marshland section;

(c) the approximate amount of marshland owned by each owner within the marshland section;

(d) the proposed name of the marsh body; and

(e) the names of not more than nine persons to be the provisional executive committee of the marsh body.

(3) Subject to subsection (4), where the Minister is satisfied that

(a) the petition is signed by not less than two thirds of the owners of marshland within the marshland section;

(b) the persons signing the petition are the owners of not less than one half of the marshland within the marshland section; and

(c) the Commission recommends that the owners be constituted as a marsh body,

the Minister may, by issuing a certificate in a form prescribed by the regulations, constitute the owners of land within the marshland section as a body corporate under the name set out in the certificate.

(4) Except in exceptional circumstances, a marsh body may not be incorporated for any marshland other than a marshland section, but in such circumstances a certificate of incorporation may be issued for marshland that comprises less than a marshland section or that comprises more than one marshland section.

(5) A certificate of incorporation issued pursuant to this Act shall be published in the Royal Gazette.

(6) Each marsh body incorporated pursuant to Chapter 274 of the Revised Statutes, 1989, the *Marshland Reclamation Act*, and in existence immediately before the coming into force of this Act is continued as a body corporate with the same powers and functions as a marsh body incorporated pursuant to this Act. 2000, c. 22, s. 11.

#### **Membership of bodies**

12 (1) Every person who is an owner of marshland in a marshland section is a voting member of the marsh body incorporated for the marshland.

(2) A member of a marsh body may, by instrument in writing filed with the secretary of the marsh body, nominate another person who is a tenant, occupant or manager of the marshland owned by the member to represent the member at meetings of members of the marsh body.



(3) A person nominated is, until the nomination is rescinded, a member of the marsh body and, without restricting the generality of the foregoing, has, at meetings of members of the marsh body, all the rights and privileges of the member represented and is eligible for election to and to serve as a member of the executive committee of the marsh body.

(4) At any meeting of the marsh body, a member that is a corporation may vote in the manner prescribed by the by-laws of the marsh body. 2000, c. 22, s. 12.

#### Variation of boundaries

13 (1) The Minister may vary the boundaries of a marshland section for which a marsh body is incorporated by adding marshland to the section or excluding marshland from the section where

(a) the Commission recommends that the Minister make the variation; and

(b) the Minister is satisfied that

(i) a resolution requesting the variation has been passed at a general or special meeting of the members of the marsh body by a vote of not fewer than two thirds of the members of the marsh body present at the meeting, and

(ii) the owners of not less than two thirds of the marshland proposed to be added or excluded favour the variation.

(2) Where the Minister varies the boundaries of a marshland section for which a marsh body was incorporated,

(a) each owner of marshland added to the marshland section is a member of the marsh body;

(b) any marshland added to the marshland section is subject to this Act;

(c) each owner of marshland excluded from the marshland section ceases to be a member of the marsh body if, as a result of the variation, the owner ceases to own any land in the marshland section; and

(d) any marshland excluded from the marshland section ceases to be subject to this Act.

(3) Where a variation is made pursuant to this Section, the Minister shall insert a notice containing a description of the area in of the Royal Gazette. 2000, c. 22, s. 13.

#### Powers of marsh bodies

14 A marsh body may

- (a) acquire, use, sell and lease real and personal property;
- (b) construct, reconstruct, recondition, repair, maintain, conduct and operate works;
- (c) enter into agreements with the Minister or other persons for the construction, reconstruction, reconditioning, repairing, maintenance, conduct or operation of works;
- (d) make by-laws not inconsistent with this Act for the regulation of its business and affairs;
- (e) subject to the approval of the Commission, make rules respecting works and land within or affecting the marshland section;
- (f) raise money for its purposes by borrowing or by the levying of rates pursuant to this Act;
- (g) prepare a mission or an objectives statement;
- (h) do and perform all other acts and things incidental or conducive to the attainment of its objects. 2000, c. 22, s. 14.

**Executive Committee**

**15 (1)** Each marsh body shall have an executive committee.

**(2)** The executive committee consists of such number of members of the marsh body as are prescribed by the by-laws of the marsh body.

**(3)** The executive committee has the management and direction of the business and affairs of the marsh body. 2000, c. 22, s. 15.

**Execution of document**

**16** All documents to which a marsh body is a party shall be executed on behalf of the marsh body by the chair and the secretary of the executive committee of the marsh body or by such members of the executive committee as the executive committee may authorize. 2000, c. 22, s. 16.

**Provisional executive committee**

**17 (1)** Those persons who are, in a petition requesting the incorporation of a marsh body, named as the provisional executive committee of the marsh body constitute the provisional executive committee of the marsh body and are the first executive committee of the marsh body.

**(2)** The members of the provisional executive committee hold office and are the executive committee of the marsh body until their successors are elected pursuant to the by-laws of the marsh body.

**(3)** The provisional executive committee shall elect from their number a chair and a secretary.

(4) The provisional executive committee shall call an organization meeting of the members of the marsh body, not later than three months from the date of publication of the certificate of incorporation.

(5) At the organization meeting, by-laws of the marsh body shall be adopted and an executive committee consisting of the number of persons prescribed by the by-laws shall be elected.

(6) A member of the executive committee elected at a general meeting of the marsh body holds office for a term as prescribed by the by-laws and may be re-elected. 2000, c. 22, s. 17.

#### **Chair and secretary of executive committee**

**18** (1) The members of the executive committee of a marsh body shall, at their first meeting after the organization meeting of the marsh body and, after each general meeting, elect one of their number to be chair of the executive committee.

(2) The chair of the executive committee is also the chair of the marsh body and shall preside over meetings of the executive committee and the marsh body.

(3) At the same meeting, the executive committee of a marsh body shall elect a secretary.

(4) The secretary of the executive committee is also the secretary of the marsh body. 2000, c. 22, s. 18.

#### **Filling of vacancies**

**19** When a vacancy occurs on the executive committee of a marsh body, the remaining members may appoint a successor to the member whose office becomes vacant, and the person appointed holds office until the next general meeting of the marsh body, when the vacancy shall be filled for the unexpired portion of the term. 2000, c. 22, s. 19.

#### **Frequency of meetings**

**20** The executive committee of a marsh body shall meet as frequently as may be necessary to attend to the business and affairs of the marsh body, and shall be convened by the chair of the executive committee at any time when at least two members of the marsh body request the meeting in writing. 2000, c. 22, s. 20.

#### **Annual report**

**20A** Within ninety days after the end of each calendar year, the executive committee of a marsh body shall meet and submit to the Commission a report respecting the activities of the marsh body during that calendar year. 2009, c. 7, s. 3.

**Quorum**

**21** A majority of the members of the executive committee of a marsh body constitutes a quorum. 2000, c. 22, s. 21.

**Fiscal year**

**22** The financial year of a marsh body shall be fixed by the by-laws of the marsh body. 2000, c. 22, s. 22.

**Meetings of members of body**

**23 (1)** There shall be general meetings of the members of a marsh body as prescribed by the by-laws of the marsh body and at a time and place determined by the executive committee of the marsh body.

**(2)** A special meeting of the members of the marsh body may be called and held in the manner prescribed by the by-laws of the marsh body. 2000, c. 22, s. 23.

**Voting rights**

**24 (1)** At an organization meeting and at any other meeting of a marsh body within one year after its incorporation each member of the marsh body may vote.

**(2)** Notwithstanding subsection (1), a member may not vote at a meeting of the marsh body if, after one year from the date of its incorporation, all rates levied upon the member's land, pursuant to this Act, prior to one year before the date of the meeting have not been paid. 2000, c. 22, s. 24.

**Notice of time and place of meeting**

**25** The chair or secretary of the executive committee of a marsh body shall give notice of the time and place of each general or special meeting of the marsh body by mailing a notice to each owner at the owner's last known address at least ten days before the date of the meeting. 2000, c. 22, s. 25.

**Report of executive committee**

**26** The executive committee of a marsh body shall, at each general meeting of the marsh body, present a report of its administration of the affairs of the marsh body and an audited financial statement covering its administration since the last general meeting. 2000, c. 22, s. 26.

**Auditor**

**27 (1)** The members of a marsh body shall, at the organization meeting and at each general meeting of the marsh body, appoint an auditor or auditors who shall examine the accounts of the marsh body.

**(2)** The auditor shall have free access at all times to the books, accounts and vouchers of the marsh body and may require from the officers and sec-

retary of the marsh body any information and explanation necessary for the performance of the duties of the auditor.

(3) The auditor may be paid for services such compensation as the executive committee of the marsh body determines.

(4) The executive committee of the marsh body shall publish the auditor's report and provide each member with a copy of the report. 2000, c. 22, s. 27.

#### **Estimates and reserve fund**

28 (1) The executive committee of a marsh body shall annually prepare estimates of the amount required for the purposes of the marsh body for the ensuing year, making allowances for losses and expenses that may occur in the collection of rates pursuant to this Act and for rates that may not be collected or collectable, and shall present the estimates to a general meeting of the marsh body for approval of the marsh body.

(2) In preparing its estimates, the executive committee may make provision for the raising of an amount that is not less than one per cent of the value at which all marshland within the marshland section is assessed for the purpose of levying rates pursuant to this Act to be placed in a special reserve fund.

(3) The executive committee may invest the special reserve fund in investments authorized by the *Trustee Act*.

(4) The special reserve fund may be used only for the payment of the cost of extraordinary work and no withdrawals shall be made from it without the approval in writing of the Commission. 2000, c. 22, s. 28.

### ASSESSMENT AND RATING

#### **Preparation of lists and valuations**

29 The executive committee of a marsh body shall

(a) in such manner as is prescribed by the regulations, prepare and make available for inspection by the owners an assessment list containing the name of each person who is, the owner of marshland for which the marsh body was incorporated, the owner's address, the number of hectares owned by the owner; and

(b) establish the value at which the land is assessed by the executive committee for the purpose of levying rates pursuant to this Act. 2000, c. 22, s. 29.

#### **Right to appeal**

30 (1) Any person complaining of being wrongfully inserted or omitted in an assessment list may appeal to the executive committee of the marsh body.

(2) An appeal may be taken by giving notice of the appeal to the secretary of the executive committee within thirty days after the assessment list was made available for inspection.

(3) The executive committee, for the purpose of an appeal, may examine witnesses on oath or affirmation, administered by the chair of the committee, and the person appealing or any person interested in the appeal may call and examine witnesses on oath.

(4) The executive committee may, on an appeal or on its own motion,

(a) confirm or vary the number of hectares owned by any person;

(b) confirm or vary the value per hectare at which the land is assessed;

(c) add to the assessment list the name and assessment of any person improperly left off the assessment list if the person has been given notice of the addition and has had a reasonable opportunity to be heard; or

(d) strike off the assessment list the name and assessment of any person improperly entered. 2000, c. 22, s. 30.

#### Certification of lists

**31** (1) The secretary of the executive committee of a marsh body shall certify that the assessment list was approved by the executive committee, and it shall be open to inspection at the office of the secretary by any owner of land within the marshland section.

(2) The assessment list after being certified binds all owners assessed on the list. 2000, c. 22, s. 31.

#### Rates

**32** (1) The executive committee of a marsh body may, no later than April 15th in each year, levy a rate on each owner of land included in the marsh section for which the marsh body was incorporated in such an amount that the aggregate of all rates so levied is sufficient to raise the amount estimated by the executive committee as the amount of money required for the purposes of the marsh body for the ensuing year.

(2) The rate shall be

(a) based on the area of the land and expressed as so much per hectare of land; or

(b) based on the value of the land as established for the purpose of levying a rate pursuant to this Act and expressed as so much on each dollar of the value of the land.

- (3) In subsection (2), "land" does not include
- (a) buildings;
  - (b) utility poles;
  - (c) structures to be used for the generation of power; and
  - (d) such structures as the regulations may designate.
- (4) A rate based on the value of the land may not be levied without the approval of the Commission.
- (5) When the rate is fixed, the secretary of the executive committee shall have every owner rated in the assessment list served with a notice either personally or by mail showing the amount of the rate assessed for the current year as well as all arrears of the rate unpaid. 2000, c. 22, s. 32.

#### Recovery of rate

33 The amount due by any owner for a rate is a charge on the land and is a debt due to the marsh body and may be sued for and recovered as an ordinary debt in any court of competent jurisdiction. 2000, c. 22, s. 33.

#### Certificate as proof

34 In any action or proceeding for the recovery of a rate, a certificate appearing to be signed by the secretary of the executive committee of a marsh body is *prima facie* proof of the amount of the rate due and of the liability of the owner named in the certificate without proof of the signature or appointment of the secretary. 2000, c. 22, s. 34.

#### Collection of arrears

35 (1) Where an owner does not pay the rate assessed against that owner by July 1st in the year in which the rate has been levied, the secretary of the executive committee of the marsh body may issue a warrant for collection of the rate and of any arrears of the rate unpaid by the owner directed to any officer having jurisdiction in the place where the marshland section is situated.

(2) The officer shall, under the warrant, levy the amount mentioned in the warrant with costs and expenses of the collection by distress and sale of the goods and chattels of the owner named in the warrant.

(3) When the officer distrains upon goods or chattels, the officer shall advertise the sale for ten days in advance of the sale in a conspicuous place and, where the rate and the costs and expenses are not paid at or before the time appointed for the sale, or any adjournment of the sale, the goods and chattels shall be sold at public auction.

(4) The officer shall apply the proceeds of the sale toward payment of the rate and the costs and expenses incurred in the issue of the warrant, the

making of the levy and the holding of the sale and, where any balance remains, it shall be paid to the owner assessed for the rate. 2000, c. 22, s. 35.

#### **Power of sale**

**36 (1)** In addition to the other remedies provided in this Act for the collection of rates, the secretary of the executive committee of a marsh body may, in the manner provided by the *Municipal Government Act* for the sale of land for rates and taxes, sell or cause to be sold any marshland with respect to which rates are in arrears for a period of one year or more.

**2)** For the purpose of a sale of land pursuant to this Section, the chair and the secretary of the executive committee have all the powers, privileges and authority of the mayor and treasurer, respectively, of a town.

**(3)** The secretary shall apply the proceeds of any sale in the following order:

- (a) first, in payment of the costs and expenses of the sale;
- (b) second, in payment of the rate and interest due the marsh body; and
- (c) third, in payment of municipal taxes and interest on the land sold,

and the balance, if any, shall be paid to the prothonotary of the Supreme Court of Nova Scotia of the justice centre area in which the land is situate to be paid out by the prothonotary as directed by an order of the Supreme Court. 2000, c. 22, s. 36.

#### **Manner of pursuing remedies**

**37** The remedies provided in this Act for the collection of rates may be pursued consecutively and in the order the executive committee of a marsh body deems best, but no land shall be sold in the manner provided for arrears of rates for which a judgment has been obtained. 2000, c. 22, s. 37.

### BORROWING POWERS

#### **Powers of executive committee**

**38** With the approval of the Commission, the executive committee of a marsh body may, in the name of the marsh body, borrow money for the purpose of defraying expenditures of the marsh body. 2000, c. 22, s. 38.

### ENTRY AND DEVELOPMENT

#### **Power of entry**

**39** Where the executive committee of a marsh body considers it is necessary for any purpose relating to the construction, maintenance or repair of works it may, without the consent of the owner, enter on any lands within the marshland sec-



tion for which the marsh body was incorporated and do any work the executive committee considers necessary for its purposes. 2000, c. 22, s. 39.

### Expropriation

**40** A marsh body may expropriate an easement in, over or relating to land for any purpose relating to the construction, maintenance or repair of works. 2000, c. 22, s. 40.

### Requirement for permit

**41 (1)** In this Section, “working day” means any day other than Saturday, Sunday, a holiday or another day on which the offices of the Government of the Province are closed.

**(1A)** Notwithstanding the *Municipal Government Act* or any other provision of this Act, no development shall, on and after November 7, 2000, be carried out in a marshland section unless

- (a) a permit for variance authorizing the development is granted by the Marshland Administrator; or
- (b) the development
  - (i) conforms with generally accepted farming practices that do not require structures to be built,
  - (ii) is necessary for the protection of the marshland section,
  - (iii) was lawfully commenced before November 7, 2000,
  - (iv) was not commenced before November 7, 2000, but could have been lawfully commenced before November 7, 2000, or
  - (v) has been exempted from the application of this Section pursuant to subsection (2).

**(2)** The Governor in Council may exempt a development from the application of this Section where

- (a) the development consists of the construction of roads, the installation of utility poles or the installation or construction of structures to be used for the generation of power; and
- (b) the Governor in Council considers that it is in the public interest to grant the exemption.

**(3)** Within ten working days after receiving an application for a permit for variance, the Marshland Administrator shall

- (a) determine if the application is complete; and

(b) where the application is incomplete, notify the applicant in writing advising what is required to complete the application.

(4) Within thirty working days after receiving a completed application for a permit for variance, the Marshland Administrator shall either grant the permit with or without conditions or inform the applicant of the reasons for not granting the permit.

(5) The applicant may appeal a decision of the Marshland Administrator to the Commission within thirty working days of the decision being issued by the Marshland Administrator.

(5A) Within sixty working days of receiving an appeal, the Commission shall

- (a) confirm the decision of the Marshland Administrator;
- (b) order that the permit for variance be granted; or
- (c) order that the permit for variance be granted and impose conditions on the variance.

(5B) A permit for variance expires

- (a) twelve months after the date it is issued unless the development commences within twelve months of the date of its issue; or
- (b) upon discontinuance of the development more than twelve months after the date of its issue.

(6) Subsection (1A) does not apply to non-agricultural uses existing on the coming into force of this Act on lands specified in the regulations. 2000, c. 22, s. 41; 2009, c. 7, s. 4.

#### Offence and remedies

42 (1) Everyone who violates subsection 41(1A) is guilty of an offence.

(2) Where there is an offence under subsection (1), the Minister may apply to the Supreme Court of Nova Scotia for any or all of the remedies provided by this Section.

(3) The Supreme Court of Nova Scotia may hear and determine the matter at any time and, in addition to any other remedy or relief, may make an order

- (a) restraining the continuance or repetition of the offence with respect to the same property;
- (b) directing the removal or destruction of any structure or part of a structure that was constructed in violation of subsection

41(1A) and authorizing the Minister, where an order is not complied with, to enter upon the land and premises with necessary workers and equipment and remove and destroy the structure, or part of it, at the expense of the owner;

(c) as to the recovery of the expense of removal and destruction and for the enforcement of this Section and for costs as is deemed proper,

and an order may be interlocutory, interim or final.

(4) Where, after the proceeding is commenced,

(a) the offence that was the subject of the proceeding may have been done or committed by a person other than the defendant;

(b) the title to the property, or part or any interest in it, that vested or was vested at the time of the commencement of the proceeding in the defendant, has since become vested in a person other than the defendant; or

(c) there has been a fresh offence by the same person or by another person with respect to the same property,

it is not necessary to bring another application and the original application may be amended from time to time and at any time before final judgment to include all parties and all offences and the whole matter of the offences shall be heard, dealt with and determined.

(5) Where the owner of any property where an offence under subsection (1) is taking place or has taken place cannot be found, the Minister may post a notice of the offence and upon the application upon the property, and the posting of the notice and the application is deemed to be personal service of the notice and the application on that owner. 2000, c. 22, s. 42; 2009, c. 7, s. 5.

### **Liability to repair**

**43** Marshland or works damaged as a result of use authorized by a permit granted to a person pursuant to Section 41 or exempted from the application of Section 41 pursuant to subsection 41(2), shall be repaired by the person and, where necessary repairs are not carried out within thirty days of being brought to the attention of the person by the marsh body, the marsh body may make the repairs and may recover the cost of repairs by an action in debt against the person in any court and the court may make such orders as to cost it may determine. 2000, c. 22, s. 43.

### **Supervision of executive committee**

**44 (1)** Where at any time a marsh body defaults in the performance of any of the terms of an agreement with the Minister for the construction, reconstruction, reconditioning, repairing, maintaining or operating of any work or works and it appears to the Governor in Council that permanent damage or injury may result to any marshland, the Governor in Council may, by order published in the Royal Gazette, suspend the powers and authority of the executive committee of the

marsh body from a date set out in the order whereupon the powers and authority of the executive committee are suspended and are vested in and may be exercised by the Commission or its nominee or nominees.

(2) The Governor in Council may revoke an order made pursuant to subsection (1) and, upon such revocation, the powers and authorities of the executive committee revert to and may be exercised by the executive committee. 2000, c. 22, s. 44.

#### SURRENDER AND REVOCATION OF CERTIFICATE

##### Effect of surrender or revocation

**45 (1)** A marsh body may surrender to the Minister its certificate of incorporation if

- (a) the Commission approves of the surrender;
- (b) no debts or liabilities of the marsh body are outstanding;
- (c) a resolution authorizing the surrender of the certificate is passed at a general or special meeting of the marsh body by a vote of not fewer than two thirds of the members of the marsh body who own not less than half of the marshland section for which the marsh body was incorporated; and
- (d) at least thirty days before the meeting a notice has been given to all members of the marsh body stating
  - (i) the time and place of the meeting, and
  - (ii) that such a resolution will be considered by the meeting.

(2) Where the Minister is satisfied that the marsh body has surrendered its certificate of incorporation in accordance with subsection (1), the Minister may, by order, accept the surrender and thereupon the marsh body is dissolved on and from such date as is set out in the order.

(3) Where a marsh body fails to comply with this Act or defaults on any agreement it has with the Minister, the Minister, after having given the members of the marsh body notice that the Minister intends to revoke the marsh body's certificate of incorporation, may, by order, revoke the certificate of incorporation, if

- (a) the Minister is satisfied that
  - (i) the Commission approves of the revocation, and
  - (ii) no debts or liabilities of the marsh body are outstanding;

and

(b) the Minister has, at least thirty days before revoking the certificate, given notice of intention to revoke the certificate to each member of the marsh body.

(4) Where an order is made pursuant to subsection (3) revoking the certificate of incorporation of a marsh body, the marsh body is dissolved on and after such date as is set out in the order.

(5) Acceptance of the surrender or the revocation of the certificate of incorporation by the Minister and of the dissolution of the marsh body shall be published in the Royal Gazette. 2000, c. 22, s. 45.

#### **Effect of surrender or revocation**

46 Where a certificate of incorporation of a marsh body is surrendered or revoked and sixty days public notice is given, the Minister may, with the approval of Governor in Council, cease to maintain works for the marshland section for which the marsh body was incorporated. 2000, c. 22, s. 46.

### GENERAL

#### **Penalty and separate offences**

47 (1) Any person who contravenes this Act or the regulations is liable on summary conviction to a penalty of not more than three thousand dollars and in default of payment to imprisonment for a term of not more than two years less a day.

(2) Where a person violates this Act on more than one day, each day constitutes a separate offence. 2000, c. 22, s. 47.

#### **Conveyance of land**

48 When lands that have been conveyed to Her Majesty in right of the Province pursuant to an agreement between the Minister and a person are required by the agreement to be reconveyed to the marsh body or the person, the Governor in Council may grant and convey the lands to the person and may authorize a member of the Executive Council to execute and deliver the necessary deed or deeds of conveyance in the name of Her Majesty in right of the Province. 2000, c. 22, s. 48.

#### **Conflict**

49 Where there is a conflict between any provision of this Act or the regulations and a more stringent provision of any other enactment, the more stringent provision prevails. 2000, c. 22, s. 49.

**Immunity from liability**

**50** Neither Her Majesty in right of the Province nor any marsh body is liable to pay compensation for any damages caused by flooding as a result of activities undertaken pursuant to this Act. 2000, c. 22, s. 50.

**Regulations**

- 51** (1) The Minister may make regulations
- (a) prescribing accounting and bookkeeping methods and systems to be adopted by marsh bodies;
  - (b) requiring marsh bodies to make reports and returns to the Commission;
  - (c) prescribing and amending forms and agreements;
  - (d) prescribing the terms and conditions for the issuing of permits for variance;
  - (e) prescribing the procedures for hearing appeals by the Commission;
  - (f) prescribing the manner in which the names and addresses of owners and the area of land is to be determined pursuant to Section 29;
  - (g) providing for the examination and audit of accounts of marsh bodies and for the inspection and examination of works;
  - (h) prescribing further or other or additional functions, duties or powers of the Commission;
  - (i) designating structures that are not included within the meaning of "land" for the purpose of subsections 32(2) and (3);
  - (ia) specifying land for the purpose of subsection 41(6);
  - (j) respecting any other matter or thing that the Minister considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) In making a regulation pursuant to clauses (1)(d) or (e), the Minister shall consult with each marsh body affected by the regulation and with each municipality in which lands affected by the regulation are located.

(3) Where there is a conflict between a regulation made by the Minister pursuant to this Act and a rule made by a marsh body pursuant to this Act, the regulation prevails.

(4) The exercise by the Minister of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2000, c. 22, s. 51; 2001, c. 1, s. 2.

**By-laws**

- 52** (1) A marsh body may make by-laws
- (a) prescribing the number of members on the executive committee of the marsh body and their terms of office;
  - (b) providing for the manner of calling meetings of members of the marsh body and of the executive committee and the procedure at such meetings;
  - (c) fixing the financial year of the marsh body;
  - (d) prescribing the frequency of general meetings of the marsh body;
  - (e) prescribing the frequency of reports and estimates;
  - (f) providing for the manner of voting at meetings of the marsh body;
  - (g) prescribing the procedures respecting the assessment list inspection and appeals;
  - (h) imposing an interest charge at the rate fixed by the by-law upon rates that are unpaid on July 1st or such later date in any year as is fixed by the by-law;
  - (i) *repealed 2001, c. 1, s. 3.*
  - (j) generally for the management and conduct of its business and affairs.

(2) The secretary of a marsh body shall file with the Commission a copy of by-laws and amendments made by the marsh body.

(3) The secretary of the Commission shall file with the Registrar of Regulations a copy of each rule made by a marsh body pursuant to clause 14(e) and publication in the Royal Gazette is proof of approval by the Commission. 2000, c. 22, s. 52; 2001, c. 1, s. 3.

**Continuation of agreements**

**53** Each agreement made pursuant to the *Marsh Act* or the *Marshland Reclamation Act* and in effect immediately before the coming into force of this Act is hereby continued. 2000, c. 22, s. 53.

**Designation not injurious affection**

**54** Property is deemed not to be injuriously affected by any designation referred to in clause 2(d). 2000, c. 22, s. 54.

**Repeal**

**55** (1) Chapter 273 of the Revised Statutes, 1989, the *Marsh Act*, is repealed.

(2) Chapter 274 of the Revised Statutes, 1989, the *Marshland Reclamation Act* is repealed. 2000, c. 22, s. 55.

**Effective dates**

**56** Sections 41, 42 and 43 have effect on and after November 7, 2000. 2000, c. 22, s. 56.

---