

We All Share the Coast: A Workshop on Coastal Access

Presented by Coastal Nova

May 7th, 2009

Saint Mary's University

Halifax, Nova Scotia

WORKSHOP SUMMARY REPORT



Acknowledgements

The organizers of the Coastal Nova series; the Coastal Coalition of Nova Scotia, the Ecology Action Centre, the Environmental Studies Program at Saint Mary's University, and the Marine Affairs Program at Dalhousie University would like to thank all participants for sharing their views and offering solutions to the coastal access issue. We look forward to your continued participation in future Coastal Nova events and as well as in ongoing provincial, and federal initiatives towards improved coastal management in Nova Scotia.

The organizers also thank Chris Burbidge, Don McCrimmon and Liz Wilson for their assistance with capturing the discussion reflected in this report; special additional thanks are extended to Chris Burbidge for writing the report.

Foreword

This report summarizes the results of the workshop, *We All Share the Coast: A Workshop on Coastal Access*. The workshop marked the third event in a series of public events and strategic workshops under the name *Coastal Nova: Where Nova Scotia meets the Sea* (www.ecologyaction.ca/content-coastal-nova). The workshop was attended by 36 participants from community groups, NGOs, all levels of government, academic institutions and industry. Coastal access is a very important issue for Nova Scotians, and this workshop was conceived to create a space where many different types of stakeholders could discuss access issue and develop potential solutions to access issues. Traditionally, coastal access is considered as being a question of public or collective rights versus the property rights of coastal landowners. In this workshop, we wanted to present these perspectives, as well as the additional dimension that our coastal ecosystems are incredibly diverse and very sensitive to human impacts. Responsible coastal access in Nova Scotia must incorporate: private, public and environmental considerations.

The organizers believe that this workshop demonstrated the desire of all Nova Scotians to work together, share information and create solutions to the coastal issues facing our province. This report has been sent to representatives of the Government of Nova Scotia in the hope that policy-makers will use the results of this workshop to advance provincial coastal policy and management related to the coastal access issue. It is also expected that this report and the accompanying summary sheet will be useful tools for citizens and organizations or agencies making written or oral submissions to upcoming public processes on coastal policy.

Tony Charles, *Saint Mary's University*

Lucia Fanning, *Marine Affairs Program, Dalhousie University*

Jennifer Graham, *Ecology Action Centre*

Karen Traversy, *Coastal Coalition of Nova Scotia*

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Panelist Presentations

Amy Parker, *Legal Counsel Department of Natural Resources*

- There is no official agreement regarding federal and provincial coastal jurisdiction separate from constitutional rights
- Some arbitrary agreements exist
- In Nova Scotia Crown Land is defined from the Ordinary High Water (OHW) mark out to the seaward limit of Nova Scotia's jurisdiction (whatever that may be)
- Most Crown Land in Nova Scotia fall under the Crown Land Act which is managed by the Department of Natural Resources
- There are various other provincially owned lands managed by other agencies, such as Nova Scotia Environment
- Beaches in Nova Scotia are afforded some protection under the Beaches Act
- Under the Beaches Act, a beach is defined as the area of land (whether an actual "beach" or not) below the OHW mark.
- Some" official " beaches designated under the Beaches Act have additional land included in the definition of the beach area
- Section 8 of the Beaches Act outlines the activities that are permitted / forbidden on beaches and designated "protected beaches"
- The Protection of Private Property Act is another important piece of legislation to consider
- Private property is off limits if there is an obviously enclosed area (such as a fence) created to keep animals in or people out OR by official notice (such as a no trespassing sign)
- The UK is awaiting approval of a Marine and Coastal Access Act (currently a bill). For information, look here: <http://www.defra.gov.uk/marine/legislation/>
- Australia protects coastal access under a common law concept known as the "Queen's Chain" (chain = 22 yards or 66 feet)s

- Public access to the coast is kept open for a distance of one chain around the entire coast of the country

Wendy Harrington, *Nova Scotia Association of Realtors*

- The focus of property rights is on quality of life
- There is no guaranteed right when it comes to private property, regulations governing private property can be overturned by the Governor in Council with no compensation to the land owner
- Private property rights is really about the right to use not to own
- Preserving privacy is the goal of most private landowners, often expect personal access and no public access
- Public access on private land is often thought of as trespassing, but what about customary access?
- Realtors must advise property buyers of expectations of public access and respecting privacy
- “Realtor’s job is to balance the two”
- Quality of realtor’s advice to property buyers regarding access is often dependent on their experience
- Advice is not a requirement, but realtors must disclose any known right of ways on the property to the buyer

Jim Moir, *Former Chair of Voluntary Planning Task Force on Non-Resident Land Ownership in Nova Scotia*

- See Voluntary Planning report here: <http://vp.gov.ns.ca/files/vp/shared/pubs/non-resland.pdf>
- Voluntary Planning report (2001) recommended that the province develop a land use policy and strategy
- Called for a long-term access strategy in 1991
- Co-owner of coastal land (along with wife) in Lunenburg County

- Shared land with the public for decades
- Province needs an inventory of all public access points
- Nova Scotia has done much to protect coastal lands (and access) especially through new Wilderness Protected Areas and the purchases of coastal properties.
- The per capita resources available to us (in terms of public access to land) is unequalled on a global scale
- We need to reflect on whether we have a coastal access “crisis”
- Still stands by statement regarding public access made in 2001 report, pg. 39:

“It is also interesting to note that Nova Scotia has 25 times the amount of Crown land held by Prince Edward Island, a marked difference since Nova Scotia has only 7 times the population. The real issue we face in the province, therefore, may not be a lack of public resources, but a matter of how we are using these assets.”

- Has no plans to close off public access to his coastal property, but will not tolerate misuse (for example, litter or violation of hunting regulations)
- Has no adverse experiences to report from allowing the public to access his land and often receives notes of appreciation

Glen Parsons, *Habitat Biologist, Department of Natural Resources*

- Has flown many aerial surveys of Nova Scotia’s coastline
- Coastline is approximately 10,000 km long
- If stretched out, would reach from Halifax to Vancouver and back again
- Key message: Diversity of Nova Scotia’s Coastline
- Department of Natural Resources maintains a Wetlands and Coastal Habitats Inventory Database, constantly being updated. Read more about it here:
 - <http://www.gov.ns.ca/natr/wildlife/wetlands/wet.htm>
- Department of Natural Resources undertaking a Coastal Ecosystem Classification Project
- Reviewing international approaches to coastal ecosystem classification, will collect and analyze field data

- Many wildlife species inhabit coastal areas of Nova Scotia
- Common Eider Duck – nests on coastal island where there are no predators or people
- Restricted access to Eastern Shore Islands Wildlife Management Area in spring as a conservation measure
- Semi-palmated Plovers are a shore bird that concentrates in large numbers on exposed mudflats, 2.5 million in Upper Bay of Fundy
- Many shorebirds will take to the sky when disturbed by humans – waste of energy for the birds as they migrate to South America
- Much of the land inhabited by coastal wildlife is privately owned
- Many private land owners have signed conservation agreements with the Department of Natural Resources that often restrict their own access!
- Participate in the Eastern Habitat Joint Venture under the North American Waterfowl Management Plan designed to manage impacts on migratory birds.
- Acquire private land for public interest (conservation) under the venture
- Open to the public, subject to conservation restrictions
- 144 parcels of coastal land totaling 2,239 hectares have been acquired so far
- Focus on islands, salt marshes, and Crown land
- For more information on the Eastern Habitat Joint Venture, see the following websites:
 - http://www.nawmp.ca/eng/index_e.html
 - <http://www.whc.org/EN/grant/07-08/NovaScotiaEHJWetlandStewardshipProgram.htm>
 - <http://www.gov.ns.ca/natr/wildlife/wetlands/page0.htm>
- Agrees with Jim Moir that the province is blessed with many public resources, but adds that we need more
- Good stewardship of private lands is essential in Nova Scotia

Small Group Session 1: Key Issues

This section compiles information from 3 separate breakout groups each answering the following question:

What are the key issues?

What do you want us to know?

1. General lack of understanding and awareness surrounding public coastal access in Nova Scotia

- Often unclear where coastal access is restricted / permitted.
- Boundary lines delineating public vs. private lands are unclear.
- Is the ordinary high water mark an appropriate boundary?
- How does sea-level rise affect boundary lines for public and private coastal land (it must fluctuate)?

2. Lack of compiled data and information on coastal access

- Knowledge regarding coastal access is often scattered.
- One must often speak to many people to get the full picture regarding public access to coastal areas.
- No central warehouse for information on coastal access exists in Nova Scotia.
- This lack of information can lead to conflict.

3. Public coastal access is declining

- Some coastal areas are not publically accessible even though public access is permitted.

4. High cost of coastal land

- Coastal land is unaffordable to most Nova Scotians and thus we are losing coastal land to non-residents.
- Creating an economic incentive for coastal residents to sell portions of their land.

- Government can't acquire land at a reasonable price.

5. Many different user / interest groups access the coast and the different uses often conflict

- Coastal access means different things to different users; there are many different perspectives (visual access, recreational access, work/livelihood access, etc.).
- Most common understanding of coastal access is access to the water via land.
- Various interest / user groups need to be identified along with the reason behind their interest in accessing the coast.
 - Can then determine access rights vs. access privileges (what is / should be allowed and what is / should be restricted).
- Working waterfronts an important point of conflict where commercial and recreational use conflicts for space (e.g. kayaking vs. lobster fishing).

6. Culture and tradition of coastal access in Nova Scotia is often at odds with legal property and access rights

- Loss of coastal access is a recent crisis brought on by a desire to maintain tradition and culture of coastal access while growing numbers of coastal landowners exercise and enforce their private property rights.
- First Nations traditionally gathered medicine in coastal areas but find it increasingly challenging to gain access to coastal areas.
- Clam diggers are finding it difficult to maintain livelihoods as more and more coastal areas become restricted.
 - Licenses were given by Department of Fisheries and Aquaculture to depuration companies to “areas of closed beaches”, who then decide who gets access (i.e. works for the company).
- Coastal property owners are a minority in Nova Scotia and it is frustrating for citizens to be excluded from coastal areas. Whether one actively uses those areas or not, the option of access should be kept open.
- Urban values (strangers not welcome) vs. rural values (strangers welcome): Urban values are spreading to rural areas. Urban residents take advantage of rural values by trespassing and damaging (littering, setting fires) in rural areas.
- Culture and tradition are not always a valid reason to trespass on private property because (1) it may only be tradition because private property rights weren't

adequately enforced in the past and (2) certain activities that could be considered culture and tradition are not always desirable (i.e. using ATVs in sensitive habitats or starting fires with tires).

7. Lack of education and understanding regarding liability for public access on private land

- Liability of private landowners with members of the public accessing their land is not well understood by most.
- Liability for people getting hurt on private land is a main concern of private landowners and is often the reason behind public access restrictions.
- Liability is often used as an excuse for restricting public access to the coast.
- Property owners have limited liability for allowing public access on their land and they should be made more aware that they cannot be sued if people are injured crossing or using their land.
- Not clear who has responsibility for maintaining recreational areas.

8. Environmental impacts of coastal access not well understood /monitored

- Some species of wildlife need specific coastal areas to survive and thus conservation should prevail over public access.
- The question “Do humans really need to access this area of coast?” must be asked during the permitting process for provincial beaches.

9. Divestment of public lands without consultation

- Government is selling public land to private buyers without consulting the public.

10. Existing property laws and regulations are not being enforced

Plenary Discussion on Coastal Access Issues

- “Us vs. Them” mentality when it comes to coastal access
- No black or white, lots of grey areas with coastal access
- Solution will require a “made in Nova Scotia approach”

- Solution will rely heavily on offering incentives to private land owners to preserve public coastal access
- Don't need to have public coastal access everywhere
- Need to have a look at what people of Nova Scotia already own (Crown land) and question whether it's being used to the best advantage
- Important to remember that public land is not distributed evenly around the province
- Missing piece: Provincial-Municipal partnership and openness to work together
- Many success stories involve voluntary efforts; great value in these efforts

Small Group Session 2: Recommendations

This section is comprised of information compiled from 3 small group discussions answering the questions:

Considering the above, what are your recommendations on access?

1. Create a publically-available coastal access database for Nova Scotia

- Database should have an inventory of past, present and potential future public/private coastal access points and associated legal aspects
- Should have indicators to monitor changes to coastal access

2. Increase public education and awareness around coastal access issue

- Create communication tools to build awareness and improve communication surrounding coastal access issue
- Communicate Nova Scotia's culture and values regarding coastal access
- Launch "Invitation to use coast/beach campaign" to spread awareness
- Create and distribute a pamphlet on property rights and liability to the public detailing the role of realtors, landowners, buyers, users, industry, etc.
- Educate public about various conservation programs and funding opportunities available to them from government, NGOs, etc.
- Create and distribute private land stewardship booklets and maps; see B.C.'s Green Shores for example:

➤ <http://www.greenshores.ca/>

3. Create a Code of Best Practices/Conduct for public coastal access and stewardship

- Include a 'vision' for coastal access in Nova Scotia
- Should recognize different user groups and interests and respect sensitive ecosystems and habitats

4. Establish a strong partnership between provincial and municipal governments and collaborate on coastal access issue

- Develop a ‘tool box’ for municipalities to address coastal access issue
- Make joint land purchases
- Develop a prioritization strategy for acquiring coastal lands starting with ecologically significant and unique lands

5. Identify and address any Aboriginal and traditional use issues regarding coastal access

- Protect cultural and traditional access to the coast

6. Establish community monitoring programs and voluntary stewardship programs and support existing programs

- Community groups have volunteers on the ground that are able to support coastal management and achieve collective goals
- Offer financial and technical support (e.g. funding, best practices manual/network)
- Implement a ‘beach/coastal watch’ program
- Support coastal monitoring programs (e.g. community watershed groups in PEI)
- Look for successful programs to model new programs after
- Build foundations and share success stories

7. Increase connectivity coordination between relevant management agencies

- Include agencies responsible for managing Crown land, coastal development, Ports/Harbours, coastal access, coastal and marine resources as well as community management groups

8. Offer tax incentives for private landowners to provide access

9. The Government of Nova Scotia should maintain/expand program of coastal acquisitions

- Also look to acquire federal land

10. Strive for a balance and equity between private property rights and public coastal access

11. Take a holistic view of coastal access

- Include all user groups and interests and all perspectives of coastal access
- Focus tends to be on public coastal access for recreation

- Must include access for harvesting (clammers), cultural and traditional access, working waterfronts

12. Improve enforcement of existing property rights laws and regulations

13. Create legislation for coastal lands

- Include regulations for access from land to coastal waters
- Include new development guidelines including construction setbacks from coastal waters
- Develop zoning plan for the entire coast with clear definition and regulations for each zone

14. Increase public involvement in planning process for coastal development and access

15. Establish a reliable funding mechanism for coastal access management programs

- Consider partnerships, user fees, tax schemes, etc.

16. Promote and expand existing economic incentives to maintain public access to the coast

17. Establish a public consultation process for the sale of government lands (federal, provincial, municipal)

18. Review and revise the Beaches Act

- Develop more specific and inclusive definition for protected beaches
- Create zones according to coastal processes and structures
- Incorporate zoning and prioritize areas beginning with ecological considerations then recreational, etc.

Appendix A



We all Share the Coast: A workshop on Coastal Access

May 7th, 2009
Room L175, Loyola Bldg.,
St. Mary's University

Agenda

Time	Activity	Speaker
1:00	Welcome	Dr. Tony Charles (SMU)
1:05	Introductions	All
1:15	Panelists and question and answers	Dr. Lucia Fanning (moderator) Amy Parker, Legal Counsel, NS-DNR Wendy Harrington, NS Association of Realtors Jim Moir, Former Chair of Voluntary Planning Task for force on non-resident ownership Glen Parsons, Habitat Biologist, NS-DNR
2:15	Overview	Jen Graham, EAC
2:20	Small Group Session #1	What are the key issues? What do you want us to know?
3:00	Break	Refreshments
3:20	Plenary	Jen Graham, EAC
3:45	Small Group #2	Considering the above, what are your recommendations on access?
4:30	Plenary	Jen Graham, EAC
4:55	Closing Remarks	Karen Traversy and Tony Charles

Appendix B

We All Share the Coast: A Workshop on Coastal Access

List of Participants

<u>Name</u>	<u>Affiliation</u>
Iain Archibald	Coastal Access Committee
Alexi Baccardax	St. Margaret's Bay Stewardship Association
Heather Breeze	Fisheries and Oceans Canada
Chris Burbidge	St. Mary's University
Bob Capistrano	United Nations / St. Mary's University
Tony Charles	Saint Mary's University
Jacklyn Chisholm-Lighthouse	Marine Affairs Program, Dalhousie University
Scott Coffen-Smout	Fisheries and Oceans Canada
Alex Day	St. Margaret's Bay Stewardship Association
Garth Demont	NS Department of Natural Resources
Lucia Fanning	Marine Affairs Program, Dalhousie University
Janelle Frail	Clean Nova Scotia
Jen Graham	Ecology Action Centre
Wendy Harrington	Nova Scotia Realtors
Justin Huston	NS Department of Fisheries and Aquaculture / Provincial Oceans Network (PON)
John Kearney	Coastal CURA / NS Bird Society
Melissa Landry	Coastal CURA

Art Lynds	NS Department of Natural Resources
Ian M. MacCallum	NS Transportation and Infrastructure
Jack MacNeil	Fisheries and Oceans Canada
Patricia Manuel	School of Planning, Dalhousie University
Don McCrimmon	Dalhousie University
Jim Moir	Voluntary Planning (Non-Resident Chair)
Ishbel Munro	Coastal Communities Network
Liz Wilson	Coastal CURA / Dalhousie University
Peter Oram	Mining Association of Nova Scotia
Else Marie Ostermann	Nova Shores Adventures / Tourism Industry Association of Nova Scotia
Amy Parker	NS Department of Natural Resources
Glen Parsons	NS Department of Natural Resources
Tanya Poulton	Tourism Industry Association of Nova Scotia
Deb Ryan	Municipality of Annapolis County
Amy Schwartz	Nova Scotia Sea School / Surf Association of Nova Scotia
Craig Smith	Nova Scotia Nature Trust
Dusan Soudek	Canoe Kayak Nova Scotia
Karen Traversy	Coastal Coalition of Nova Scotia
Sean Weseloh McKeane	NS Department of Fisheries and Aquaculture / Provincial Oceans Network