



LIBRARY of PARLIAMENT
BIBLIOTHÈQUE du PARLEMENT

LEGISLATIVE SUMMARY



Bill S-15:

An Act to amend the Canada National Parks Act and the Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act and to make consequential amendments to the Canada Shipping Act, 2001

Publication No. 41-1-S15-E
15 March 2013
Revised 25 April 2013

Sam N. K. Banks

Economics, Resources and International Affairs Division
Parliamentary Information and Research Service

Library of Parliament **Legislative Summaries** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

© Library of Parliament, Ottawa, Canada, 2013

Legislative Summary of Bill S-15
(Legislative Summary)

Publication No. 41-1-S15-E

Ce document est également publié en français.

CONTENTS

1	BACKGROUND.....	1
2	DESCRIPTION AND ANALYSIS	2
2.1	Part 1: Sable Island National Park Reserve of Canada.....	2
2.1.1	Amendments to the <i>Canada National Parks Act</i> (Clauses 2 to 4)	2
2.1.1.1	Application of the Act to Reserves.....	2
2.1.1.2	Addition of Sections 41.2 and 41.3.....	2
2.1.2	Amendments to the <i>Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i> (Clauses 5 to 8)	3
2.1.3	Amendments to the <i>Canada Shipping Act, 2001</i> (Clauses 9 to 11)	4
2.2	Part 2: Other Amendments to the <i>Canada National Parks Act</i> (Clauses 13 to 15).....	4
2.3	Coming into Force (Clauses 12 and 16)	5

LEGISLATIVE SUMMARY OF BILL S-15: AN ACT TO AMEND THE CANADA NATIONAL PARKS ACT AND THE CANADA–NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO THE CANADA SHIPPING ACT, 2001

1 BACKGROUND

Bill S-15, An Act to amend the Canada National Parks Act and the Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act and to make consequential amendments to the Canada Shipping Act, 2001 (short title: Expansion and Conservation of Canada’s National Parks Act), was tabled by the Leader of the Government in the Senate on 12 February 2013. **On 27 March 2013, it was referred for study to the Standing Senate Committee on Energy, the Environment and Natural Resources, which presented its report on 25 April 2013 with one amendment.**

The proposed legislation will establish Sable Island National Park Reserve of Canada. At present, Sable Island is afforded little protection and does not have park status.

A long, narrow, crescent-shaped island in the North Atlantic lying approximately 290 kilometres southeast of Nova Scotia, Sable Island is characterized by sand dunes and grasses and is home to over 190 plant species, the world’s largest colony of grey seals and 350 species of birds, including the roseate tern, which breeds on the island and is protected under the *Species at Risk Act*. Perhaps the island’s most famous inhabitants are wild horses, of which there are approximately 375. Located at the edge of the Continental Shelf, Sable Island is subject to rough seas and storms. Since 1583, there have been more than 350 recorded shipwrecks on or near the island, earning it the title “Graveyard of the Atlantic.”¹

This bill is the culmination of years of work by the governments of Canada and Nova Scotia and by various stakeholders to protect Sable Island’s unique nature and ecosystems. In 2004, the federal and Nova Scotia governments concluded that “it would be in the public interest to use a federal protected area designation to achieve conservation objectives for Sable Island.”²

Further work, including funding in 2008 to examine the potential of a national wildlife area designation, led to the signing in 2010 of a memorandum of understanding (MOU) to establish a federal protected area on Sable Island.³ Following that MOU, a task group was created and public consultations, including consultations with the Mi’kmaq of Nova Scotia, were undertaken in 2010 to consider whether to establish Sable Island as a national wildlife area under the *Canada Wildlife Act* or as a national park under the *Canada National Parks Act*.⁴ These resulted in the recommendation to designate Sable Island as a national park. On 17 October 2011, the governments of Canada and Nova Scotia signed a memorandum of agreement to establish a national park on Sable Island.⁵

Bill S-15 gives effect to this agreement by amending the *Canada National Parks Act* to create Sable Island National Park Reserve of Canada. It also amends the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* to prohibit drilling for petroleum from the boundary of the park reserve out to one nautical mile.

Sable Island will be designated as a national park reserve in recognition of the fact that the island is subject to a claim in respect of Aboriginal rights by the Mi'kmaq of Nova Scotia. Section 4(2) of the *Canada National Parks Act* states that park reserves are established “where an area or a portion of an area proposed for a park is subject to a claim in respect of aboriginal rights that has been accepted for negotiation by the Government of Canada.” The Mi'kmaq of Nova Scotia have asserted Aboriginal rights and title to the province of Nova Scotia, and the governments of Canada and Nova Scotia are negotiating this claim under the Made-in-Nova Scotia Process. Designation as a national park would not allow for Aboriginal land claims against the area that it encompasses; accordingly, designation as a national park reserve allows the governments to continue these land claim negotiations.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: SABLE ISLAND NATIONAL PARK RESERVE OF CANADA

2.1.1 AMENDMENTS TO THE *CANADA NATIONAL PARKS ACT* (CLAUSES 2 TO 4)

2.1.1.1 APPLICATION OF THE ACT TO RESERVES

Clause 2 amends section 39 of the *Canada National Parks Act* to establish that the Act applies to a park reserve as though it were a park, subject to sections 40 to 41.3. Previously, the Act made this stipulation subject only to sections 40 and 41.1; however, new sections 41.2 and 41.3 have been added to the Act by this bill, as discussed below. Sections 40 and 41 of the Act deal with accommodating traditional renewable resource harvesting activities by Aboriginal persons, and the power of the Minister of the Environment to enter into an agreement with the Council of the Haida Nation respecting the management and operation of Gwaii Haanas National Park Reserve of Canada. Sections 41 and 41.1 empower the minister to enter into an agreement or to issue permissions that could vary the application of the Act to Nahanni National Park Reserve of Canada.

2.1.1.2 ADDITION OF SECTIONS 41.2 AND 41.3

Clause 3 adds sections 41.2 and 41.3. Section 41.2 states that existing leases, easements and licences of occupation in or on Sable Island are continued under the Act and may be renewed in accordance with their terms and conditions.

Section 41.3 provides that activities on or under Sable Island that have been authorized by the Canada–Nova Scotia Offshore Petroleum Board (the Board), which has jurisdiction under the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* to authorize activities in the Nova Scotia offshore area, including

Sable Island, may continue to be authorized. However, these activities are limited to those set out in amendments to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, discussed below.

Clause 4 amends Schedule 2 to the *Canada National Parks Act* to include Sable Island National Park Reserve and its legal description. Schedule 2 contains a list and legal description of all national park reserves of Canada.

2.1.2 AMENDMENTS TO THE *CANADA–NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT*
(CLAUSES 5 TO 8)

Amendments to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* are also made in order to facilitate the creation of the new national park reserve.

Clause 6 adds new section 140.1 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* to prohibit drilling for petroleum on Sable Island and within a one-nautical-mile exclusion zone around it. Exploration drilling is also prohibited.

As noted above, the Board can authorize activities on or under Sable Island. Clause 7 introduces new section 142.01, which states that if the Board receives an application for authorization for work or activity in Sable Island National Park Reserve, it must provide a copy of the application to the Parks Canada Agency, which will advise the Board of any potential impacts of the work or activity on the management of the surface of Sable Island National Park Reserve. The Board must consider this advice in deciding whether to authorize the work. If the Board does authorize the work, it has the discretion to include in the authorization's terms and conditions any mitigation or remedial measures to address the potential impacts of activities on the park reserve.

Moreover, clause 8 amends section 142.1 of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* by adding new section 142.1(3), which restricts the surface access rights on Sable Island to the following four activities:

- access to existing wellheads for the purposes of safety and environmental protection;
- petroleum exploration activities with a low impact on the environment, including seismic, geological or geophysical programs;
- emergency evacuation capacity for offshore workers; and
- the operation, maintenance and inspection of emergency facilities, including helicopter landing and fuel storage facilities.

It is worth noting that “low impact” petroleum exploration activities are not defined in either the *Canada National Parks Act* or the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. While Bill S-15 states that these include seismic, geological or geophysical work, it is unclear what other activities may fall within this definition.

2.1.3 AMENDMENTS TO THE *CANADA SHIPPING ACT, 2001*
(CLAUSES 9 TO 11)

The establishment of Sable Island National Park Reserve further requires consequential amendments to the *Canada Shipping Act, 2001*, as set out in clauses 9 through 11 of Bill S-15. Currently, the administration of Sable Island falls within the jurisdiction of the Canadian Coast Guard under the *Canada Shipping Act, 2001*. These amendments repeal sections 134, 136(2)(a), 136(2)(b) and 139 of that Act, which are specific to the administration of Sable Island. When Bill S-15 comes into force and Sable Island becomes a national park reserve, its administration will be transferred from the Canadian Coast Guard to Parks Canada Agency.

2.2 PART 2: OTHER AMENDMENTS TO THE *CANADA NATIONAL PARKS ACT*
(CLAUSES 13 TO 15)

Part 2 of Bill S-15 makes three further amendments to the *Canada National Parks Act*.

Clause 13 amends section 4(1) of the *Canada National Parks Act*. As originally proposed, the clause would have amended that section to correct discrepancies between the French and English versions of the text, and to state that the dedication of the national parks of Canada to the people of Canada is “subject to any Act of Parliament.”

This latter aspect gave rise to this clause being amended at committee stage. In testimony, the Standing Senate Committee on Energy, the Environment and Natural Resources heard that the amendment to section 4(1) as originally proposed could lead to misunderstanding of the application of the *Canada National Parks Act*. Accordingly, the committee amended section 4(1) of the Act to restore the original English version of the section. The clause was also amended to ensure that the French version aligns with the English version of section 4(1).

As well, new section 4(1.1) was added to the *Canada National Parks Act* to address a potential conflict between the Act and the *Parks Canada Agency Act* regarding the minister’s authority to set fees in national parks under the *Parks Canada Agency Act*. The new section clarifies that the minister’s authority for setting fees under sections 23 and 24 of the *Parks Canada Agency Act* will apply in national parks.

Clauses 14 and 15 make amendments to the *Canada National Parks Act* that are unrelated to the establishment of the proposed Sable Island National Park Reserve.

Clause 14 amends Schedule 4 to the Act, which describes commercial zones for communities located within national parks. In this instance, the commercial zones in the Community of Field, British Columbia, which is within Yoho National Park, are modified. According to information provided by Parks Canada, “[t]his will not result in any changes to the maximum growth limits outlined for Field in Schedule 4 to the Act.”⁶

Finally, clause 15 amends Schedule 5 to the Act, which defines commercial ski areas in national parks. This clause amends the leasehold boundary of the Marmot Basin ski area in Jasper National Park. According to Parks Canada Agency information,

This amendment implements provisions in the 2008 Site Guidelines that set permanent limits to growth and provide clear parameters for the future use and development of the Marmot Basin ski area in Jasper National Park of Canada. To achieve Parks Canada goals of maintaining and restoring ecological integrity while providing for an economically healthy operation, the Site Guidelines provide that the ski area leasehold be reconfigured by permanently removing ecologically sensitive areas from the leasehold in exchange for a smaller area of lower ecological value.⁷

2.3 COMING INTO FORCE (CLAUSES 12 AND 16)

Part 1 of the bill, establishing Sable Island National Park Reserve, and clause 15, defining the leasehold boundaries of Marmot Basin ski area in Jasper National Park, will come into force on a day to be fixed by order of the Governor in Council.

No coming into force information is given for clause 13, which amends the dedication of the national parks to the people of Canada, or clause 14, which modifies the commercial zones in the Community of Field in Yoho National Park. In this case, the *Interpretation Act* provides that these will come into force on the day the bill receives Royal Assent.⁸

NOTES

1. Parks Canada, [Sable Island: What We Heard – A Summary of Public Input](#), December 2010, p. 2.
2. Parks Canada, "[Establishment of Sable Island National Park Reserve](#)," *Protected Area Establishment*, Public Statement, 17 October 2011.
3. Ibid.
4. Parks Canada, "[Park Establishment: Public Engagement](#)," *Sable Island National Park Reserve*.
5. Parks Canada, "[Canada and Nova Scotia Reach Historic Agreement to designate Sable Island as a National Park Reserve](#)," News release, 17 October 2011.
6. Parks Canada, "[Expansion and Conservation of Canada's National Parks Act](#)," Backgrounder, n.d.
7. Ibid.
8. [Interpretation Act](#), R.S.C., 1985, c. I-21, s. 5.