

Administration of Seized Articles Policy	Amended	Inspection and Enforcement New Brunswick	2.1.4
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1. Policy Statement

- A. The Department of Justice and Public Safety recognizes several instances in which it is valid to seize articles from persons:
- i. where articles are likely to be **evidence** in a case under investigation;
 - ii. where articles are believed to have been used in the **commission of an offence**, so that forfeiture is contemplated;
 - iii. to prevent the continuation and repetition of an offence.
- B. The following guidelines are to give further direction to staff relating to fish & wildlife, and Crown land offences in conjunction with the procedures outlined in the Bond Room and Exhibits policy of IENB.

2. Application

- A. This policy applies to all employees of the Department of Justice and Public Safety who are assigned enforcement and other assigned duties.
- B. Staff are reminded that the provisions contained within this policy are in addition to the procedure and direction provided in the Bond Room and Exhibits policy. This includes requirements for storing and tracking seized items, as well the requirements for orders of detention.

3. Definitions

“**Major Offence**” means offences described in section 95 of the *Fish and Wildlife Act*.

“**Commercialized**” means an offence committed for financial advantage.

“**Minister**” means, in context of the appropriate legislation, Minister of Natural Resources and Energy, Minister of Federal Fisheries or Minister of the Environment.

4. Policy

In general, seizures will be made:

- A. For evidentiary purposes (including ballistics and forensic investigations).

- B. Where detailed searches (with search warrant) in a controlled atmosphere are required (e.g., vehicles).
- C. Pending an ongoing investigation where evidence will continue to be gathered and obtained. In such cases, reasonable and probable grounds must exist for the initial seizure.
- D. Of wildlife that:
 - i. has been road killed;
 - ii. incidentally trapped or snared; or
 - iii. killed as nuisance wildlife;
 - iv. wildlife or Crown resources taken illegally.

5. Authority

A. Provincial Statutes:

- I. *Fish and Wildlife Act*
- II. *Crown Lands and Forests Act*
- III. *Quarriable Substances Act*
- IV. *Parks Act*
- V. *Trespass Act*

B. Federal Statutes:

- I. *Fisheries Act*
- II. *Migratory Birds Convention Act*

6. Procedure

This Policy contains procedures for each Act under which seizures are authorized:

GENERIC ACT REQUIREMENTS

A. **Seized Articles – All Provincial Acts**

- I. Maintenance of Seized Articles

B. **Fish and Wildlife Act**

- I. Specific Procedures – Firearms and Ammunition

- III. Specific Procedures – Refrigerators and Freezers
- IV. Disposal of seized fish wildlife

C. Crown Lands and Forests Act

- I. Informing the Accused
- II. Timber of Mixed Origins
- III. Vehicles and Equipment
- IV. Return of Seized Articles

D. Quarriable Substances Act

- I. Informing the Accused
- II. Order of Forfeiture
- III. Return of Seized Articles

E. Parks Act

* See POPA for explicit seizing provisions.

- I. Return of Seized Articles

F. Trespass Act

* See POPA for explicit seizing provisions.

- I. Seizure and Detention of Vehicles
- II. Order of Forfeiture

G. Fisheries Act

- I. Order of Forfeiture
- II. Holding of Seized Articles
- III. Return of Seized Articles
- IV. Disposal of Seized Articles
- V. Recovery of Costs

H. Migratory Birds Convention

- I. Order of Forfeiture
- II. Holding of Seized Articles
- III. Return of Seized Articles

- IV. Disposal of Seized Articles
- V. Liability for Costs

7. Seized Articles – All Provincial Acts

- A. Maintenance of Seized Articles
- B. Enforcement officers making seizures shall ensure that all seized items are:
 - i. given proper care and attention (e.g., firearms – dried, cleaned and given a light coat of oil prior to storage; chainsaws – gas and oil is emptied);
 - ii. properly marked with lock seal plastic and cardboard seizure tags;
 - iii. locked in a secure room or locker; and
 - iv. noted in the enforcement officer's notebook.
- C. Any person requesting a receipt for any items being seized shall, if time and circumstances permit, be issued a receipt by the enforcement officer making the seizure (at the time of the occurrence); otherwise, at the first reasonable time available. A copy of the receipt shall be placed in the Offence file.
 - i. Seized articles received from a colleague agency (RCMP, DFO, etc.) shall be transferred via property receipt and placed in a sealed evidence bag or have a cardboard seizure tag attached immediately, and in either case, which indicates all particulars about the seizure. An interim violation report, giving a brief outline of the circumstances, shall also be completed, with a copy of the outside agency's report attached.

8. Procedures – *Fish and Wildlife Act*

- A. Specific Procedures – Minor Offences

Firearms and Ammunition: Where it must be proven a firearm is a functioning firearm capable of discharging a projectile as an element of the offence, officers have 2 options for gathering the necessary evidence:

- i. Testing the firearm themselves where the officer feels that a firearm and its ammunition are safe. Under the following conditions the officer may test firearm themselves:

- a. officer is in a location where the officer can legally discharge the firearm;
 - b. It is during daylight hours. The officer has a suitable target to which the projectile can be shot through, and the target is retained as evidence;
 - c. the target must be labelled with date, time, Officer's name, and accused name;
 - d. target should be bagged/tagged and entered as evidence in Violation System or Versadex;
 - e. the spent shell casing must be collected as evidence and bagged/tagged as evidence and entered in Violation System or Versadex;
 - f. the officer must wear hearing and eye protection; and
 - g. where the firearm, target and ammunition are photographed pre and post discharge.
- ii. An officer may seize firearm and ammunition to have tested by an approved examiner prior to trial.

B. Bag Limit Violations:

- i. All fish and wildlife taken illegally shall be seized.
- ii. Where daily and possession limit exist, all animals that contribute to the bag limit may be seized; or at the officer's discretion, all animals taken must be photographed and only those taken in excess of the daily limit seized.

C. Angling With Restricted Gear Violations:

- i. For minor offences items such as: fishing rods and tackle may be seized OR the officer may take photos of the fishing rod, tackle, or any other item to provide sufficient evidence in addition to notes depicting item. Officers shall collect as much evidence as required to prove the charge. This may include photos and statements.
- ii. For major offences: all items used in the commission of the offence shall be seized and processed accordingly.

D. Shooting Too Close To Dwellings Section 46:

- i. All wildlife taken contrary to section 46 shall be seized and processed accordingly, Photos, notes, and a sample retained.

- ii. If wildlife was taken illegally, the officer shall notify the individual that only one deer can be harvested under the Class III License and if they harvest a second deer they may be charged.

E. Disposal Of Seized Fish And Wildlife:

- i. Upon obtaining a conviction - under authority of Section 29(1), any **Fish or Wildlife** lawfully seized shall be forfeited to the Minister. Disposition shall be by one of the following methods:
 - a. delivery to a bona fide game farm; or
 - b. disposal by burial or by placement at approved locations on Crown land;
 - c. where approval has been granted by the Minister or his designate the remain or any portion there of may be retained for scientific, educational, or investigative purposes.
- ii. Where no charge is laid or no conviction results – a determination will be made on a case by case basis whether or not seized fish or wildlife will be returned. The decision will be based on whether the person from whom the seizure was made has a **legal entitlement** to the seized items.
- iii. Where wildlife incidentally trapped, snared, or otherwise killed (excluding road kills) has been seized, and a conviction is not anticipated – approval for a means of disposal shall be obtained from the Regional Conservation Inspector.
- iv. In the circumstances set out in B. and C., seized Fish and Wildlife must be disposed in a manner set out in E (i). – (iii).
- v. Road kills / nuisance wildlife – Where staff take possession of road kills or nuisance wildlife, they shall consult Dept. of Natural Resources and Energy (DNRE) staff and shall dispose of it as directed.

9. Procedure – Crown Lands and Forests Act

Damage, Destruction, or Removal of Timber

- A. **Informing the Accused** – per section 56.5(4)(b), a person in actual or apparent possession of the item seized at the time of the seizure shall be given notice of the seizure, either by personal service or by registered mail.

- B. Timber of Mixed Origins** – per section 56.5(3), where timber from Crown Lands, in respect of which reasonable and probable grounds exist to believe that an offence has been committed, is mixed with:
- i. timber other than from Crown Lands; or
 - ii. timber authorized to be harvested on Crown Lands;
 - iii. then any or all such timber may be seized.

C. Vehicles, Equipment

- i. Any items such as axes, chainsaws etc. directly linked to illegal activity under sections 67(1) (a), (b), and (C) of the CLFA shall be seized and processed accordingly.
- ii. In respect to vehicles, ORV's, forestry equipment and attachments may be seized if it is necessary to preserve or collect further evidence or stop the continuation of the offence or if used in the commission of the offence.
- iii. These vehicles and attachments may be returned depending on if there are extenuating circumstances (i.e.: repeat offender, etc.).

Illegal Occupations

- D. Property or Things** - Items removed as a result of an offence stemming from a violation Section 71(1) and authorised in Section 71.2(2) become property of the Crown as per Section 71.2(3) and are disposed of at the direction of the Minister.
- i. Before disposal, of items referred to in 71(1) a notice of intention to dispose of the property must be published in a publication having local circulation in the area of Crown Lands relevant to the seizure at least 1 month prior to disposal.
 - ii. Under Section 71.3, despite any other provision of this Act, the Minister may remove or dispose of in any manner the Minister sees fit any property or thing abandoned, placed, or left on Crown Lands if, in the opinion of the Minister, the value of the property or thing is \$500 or less.

E. Return of Seized Articles

- i. Any seized article may be returned to a person with a property interest in it:
 - a. where (Section 56.5(5)) the article will not be retained for evidentiary purposes or will not be the subject of an Order of Forfeiture; or,

- b. upon a judicial order (Sections 56.5(6) & 56.5(7)), where the person has made application for the article's return, after giving the prosecutor fourteen days' notice in writing.
 - c. Where a judicial order is issued, the seized article shall be returned to the person as soon thereafter as is practicable.
- ii. Seized articles not belonging to the Crown shall be returned:
- a. where the accused (Section 56.5(10)(a)) is not charged with an offence; Or,
 - b. no sooner than thirty one days after the final disposition of the charge, where (Section 56.5(10)(b))the accused is convicted and the judge does order forfeiture, or where no conviction results from the charge.

10. Procedures – Quarriable Substances Act

A. Informing the Accused – per section 34(1)(b), a person in actual or apparent possession of the item seized at the time of the seizure shall be given notice of the seizure, either by personal service or by registered mail.

B. Order of Forfeiture

Upon obtaining a conviction, any equipment or vehicle seized:

- i. May be ordered forfeited, to the extent any interest held by the person convicted;
- ii. Upon the provision of notice to any other person having an interest in the seized property, may be declared forfeited to the Crown by the Minister, if the Minister is satisfied on reasonable grounds that the person had knowledge of the use to which the property was being put; and
- iii. The Minister may, in lieu of ordering forfeiture of equipment or property, order a bond or other security, in whole or in part, to be forfeited to the Crown.

C. Return of Seized Articles

- i. Any equipment or vehicle may be returned to a person with a property interest in it, upon deposit of a bond or other security satisfactory to the Minister, pending the outcome of any prosecution that may be instituted in relation to the use of the equipment or vehicle.
- ii. Any equipment or vehicle, and any bond or other security, shall be released where:

- a. no prosecution has been instituted within six months of the seizure, or
- b. a charge has been dismissed, notice of appeal has not been given, and the time for such notice has expired.

11. Procedures – *Park Act*

A. Return of Seized Articles

Anything seized by a park warden pursuant to the *Provincial Offences Procedure Act* may be detained for a period of six months following the time of seizure or, if proceedings are instituted **within the two months** following seizure, until the proceedings are concluded.

B. On Application

Anything seized on application shall be released to its owner after the expiration of two months from the date of seizure, when no proceedings have been instituted, or the accused is acquitted.

C. Deemed Forfeited

Any item shall be deemed to be forfeited to the Crown if, after a period of six months from the date of seizure, no application has been made and no proceedings have been instituted.

12. Procedures – *Trespass Act*

A. Seizure and Detention of Vehicles

- i. Where a peace officer has reasonable and probable grounds to believe an offence under this Act has been committed by means of a motor vehicle and that the seizure of the motor vehicle is necessary to prevent the **continuation or repetition** of the offence or the commission of another offence under this Act, the peace officer may seize and detain the motor vehicle for such period of time not exceeding forty-eight hours as he considers necessary (it is expected this would be a rare occasion).
- ii. Before a motor vehicle seized and detained under this section is released, the expenses relating to the seizure and detention shall be paid by the person to whom it is to be released, except where that person is the owner of the motor vehicle and the motor vehicle, at the time when it was seized, had been taken or was being used without his consent.

B. Order of Forfeiture

- i. Where a person is convicted of a second or subsequent offence in relation to the same land under this Act that was committed by means of a motor vehicle the court may, upon application by counsel for the Attorney General, order that the motor vehicle be seized and forfeited to the Crown, and upon such order being made, the motor vehicle is thereupon forfeited to the Crown.
- ii. Before a motor vehicle seized and forfeited under this section is released, the expenses relating to the seizure and storage of the motor vehicle shall be paid by the applicant, unless the applicant is the owner of the motor vehicle and the motor vehicle, at the time of the offence leading to its forfeiture, had been taken or was being used without the applicant's consent.
- iii. This Act **does not apply** to lands that are Crown Lands as defined in the *Crown Lands and Forests Act* except where the lands are referred to in the *Trespass Act* under subsection 2.1(1) or section 2.2.

13. Procedures – Fisheries Act & Regulations

A. Order of Forfeiture

- i. Upon obtaining a conviction (Section 72), any seized article or any proceeds realized from its disposition may be ordered forfeited to His Majesty. In the case of an acquittal, where it is proved that fish were caught in contravention of the act or regulations, the fish or any proceeds realized from its disposition may be ordered forfeited to His Majesty. The Governor in Council (Section 85) may prescribe the manner in which the proceeds of the sale of confiscated items shall be distributed.
- ii. Where the ownership of any seized article cannot be ascertained at the time of the seizure, it is thereupon forfeited to His Majesty.
- iii. Summary proceedings – all forfeitures are recoverable and enforceable under the provisions of the Criminal Code relating to summary convictions.
- iv. Proceeds of sale of seized articles - where an information is laid by a fishery officer or guardian employed by the provincial government, proceeds from sale of seized articles shall be made to the provincial government.
- v. Person claiming interest in forfeited article – upon a judicial order, where the person has made application for the article's return, the Minister shall either:
 - a. return the article to the applicant; or,

- b. Direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to him.

B. Holding of Seized Articles

- i. A fishery officer or guardian may (Section 70) retain custody of a seized article or deliver it into the custody of any person the officer or guardian considers appropriate. In the latter case, the article shall be made available for inspection or delivered into the custody of the officer or guardian on request, at any reasonable time.
- ii. Any seized article, or any proceeds realized from its disposition, may (Section 71(1)) be detained until the article or proceeds are forfeited, or proceedings relating to it are finally concluded.
- iii. Seized articles may be detained, by court order, for a period greater than ninety days, on the application of the Minister within ninety days after seizure.

C. Return of Seized Articles

- i. On deposit of security - seized articles may be returned, by court order, if (Section 71(2)) the person from whom they were seized provides security to His Majesty in a satisfactory form and amount.
- ii. Where proceedings are not instituted – seized article or proceeds realized from their disposition shall be returned:
 - a. on the Minister's decision not to institute proceedings; or
 - b. on the expiration of ninety days after seizure, or any other period specified by court order.
- iii. Where articles are not forfeited – seized articles or proceeds realized from their disposition shall (Section 73.1(1)), on the final conclusion of proceedings, be returned. However, where (Section 73.1(2)) a conviction is obtained, and the court imposes a fine but does not order forfeiture:
 - a. articles may be detained until the fine is paid;
 - b. articles may be sold to satisfy the fine; or
 - c. any proceeds from their disposition may be applied in payment of the fine.

D. Disposal of Seized Articles

- i. Fish or other perishables – may be disposed of in any manner the officer or guardian considers appropriate, and proceeds realized shall be paid to the Receiver General.
- ii. Forfeited articles – shall, after the final conclusion of proceedings, be disposed of as the Minister directs.
- iii. Where ownership cannot be ascertained:
 - a. Fishing gear or equipment – may be disposed of immediately as the Minister directs.
 - b. All other articles – shall be disposed of after the expiration of thirty days as the Minister directs.
- iv. Fish seized and believed to be alive – may be returned to the water at the time of seizure.

E. Recovery of Costs

Upon obtaining a conviction, the court may order an amount of money paid to the Minister, as compensation for costs incurred in seizure, storage, or disposition of articles. This amount, and any interest payable, constitute a debt due to His Majesty, and may be recovered as such in any court of competent jurisdiction.

14. Procedures – *Migratory Birds Convention Act*

A. Order of Forfeiture

- i. Upon obtaining a conviction (Section 14(1)), any seized article or any proceeds realized from its disposition may be ordered forfeited to His Majesty.
- ii. Where the ownership of any seized article cannot be ascertained within thirty days after its seizure, it is forfeited to:
 - a. His Majesty in right of Canada, if seized by a game officer employed in the service of Canada; or
 - b. His Majesty in right of New Brunswick, if seized by a game officer employed by the government of New Brunswick.

B. Holding of Seized Articles

- i. Custody of seized articles shall be retained by the game officer making the seizure, or any person that the officer may designate.
- ii. Upon obtaining a conviction, any seized article may be retained until a fine imposed is paid or sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

C. Return of Seized Articles

- i. Where the court does not order forfeiture, seized articles (or the proceeds of their disposition) must be returned to their lawful owner or the person lawfully entitled to their possession.

D. Disposal of Seized Articles

- i. Anything that has been forfeited or abandoned must be dealt with and disposed of as the Minister may direct.
- ii. Where the seized article is perishable, the game officer (Section 9(3)) may dispose of it or destroy it, and any proceeds of its disposition must be:
 - a. paid to the lawful owner or person lawfully entitled to its possession, unless proceedings are instituted within ninety days after its seizure; or
 - b. retained by the game officer pending the outcome of the proceedings.

E. Liability For Costs

- i. The lawful owner and any person lawfully entitled to possession of seized, abandoned, or forfeited articles are (Section 11) jointly and severally responsible for all costs of inspection, seizure, abandonment, forfeiture, or disposition incurred by His Majesty in excess of any proceeds of disposition.