



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 129
(2002, chapter 74)

Natural Heritage Conservation Act

Introduced 31 October 2002
Passage in principle 28 November 2002
Passage 18 December 2002
Assented to 19 December 2002

Québec Official Publisher
2002

EXPLANATORY NOTES

The object of this bill is to provide for the conservation of Québec's natural heritage. More specifically, it introduces measures to facilitate the establishment of a network of protected areas that are representative of Québec's biodiversity.

The bill makes it possible to protect certain natural settings by assigning biodiversity reserve, aquatic reserve, ecological reserve, or man-made landscape status to parts of Québec's territory. It specifies the procedure for setting aside land for the purpose of assigning temporary protection status, and the procedure leading to the assignment by the Government of permanent protection status. The bill provides a framework for the management and supervision of the activities permitted in such areas once temporary or permanent status has been assigned.

Special protection measures consisting in authorizations and orders are also proposed to help preserve certain natural settings.

The bill replaces the current legislative provisions governing nature reserves on private land by incorporating them into the new Act.

Lastly, the bill contains amending and transitional provisions to ensure concordance with various existing legislative provisions.

LEGISLATION REPLACED BY THIS BILL :

- Ecological Reserves Act (R.S.Q., chapter R-26.1);
- Act respecting nature reserves on private land (2001, chapter 14).

LEGISLATION AMENDED BY THIS BILL :

- Act respecting land use planning and development (R.S.Q., chapter A-19.1);
- Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1);
- Act respecting hunting and fishing rights in the James Bay and New Québec territories (R.S.Q., chapter D-13.1);

- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting the Ministère de l'Environnement (R.S.Q., chapter M-15.2.1);
- Act respecting off-highway vehicles (R.S.Q., chapter V-1.2).

Bill 129

NATURAL HERITAGE CONSERVATION ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

TITLE I

GENERAL PROVISIONS

CHAPTER I

OBJECTS, DEFINITIONS AND SCOPE

1. The object of this Act is to contribute to the objective of safeguarding the character, diversity and integrity of Québec's natural heritage through measures to protect its biological diversity and the life-sustaining elements of natural settings.

More specifically, the Act is intended to facilitate the establishment of a network of protected areas representative of biodiversity by introducing protection measures for natural settings that complete existing measures, including the assigning of protection status to certain areas under the responsibility of other government departments or bodies.

2. In this Act,

“aquatic reserve” means an area, consisting mainly of fresh water, salt water or brackish water, established to protect all or part of a body of water or watercourse, including associated wetlands, because of the exceptional value it holds from a scientific, biodiversity-based viewpoint, or to conserve the diversity of its biocenoses or biotopes ;

“biodiversity or biological diversity” means the variability among living organisms from all sources including terrestrial, marine, estuarial and freshwater ecosystems and the ecological complexes of which they are a part ; those terms include diversity within species, between species and of ecosystems ;

“biodiversity reserve” means an area established in order to maintain biodiversity and in particular an area established to preserve a natural monument — a physical formation or group of formations — and an area established as a representative sample of the biological diversity of the various natural regions of Québec ;

“ecological reserve” means an area established

(1) to conserve the elements constituting biological diversity in their natural state, as integrally as possible and in a permanent manner, in particular by protecting ecosystems and the elements or processes on which their dynamics are based;

(2) to set aside land for scientific study or educational purposes ; or

(3) to safeguard the habitats of threatened or vulnerable species of flora or fauna ;

“government body” means a body a majority of whose members are appointed by the Government or by a minister and whose personnel is, by law, appointed in accordance with the Public Service Act (chapter F-3.1.1), or whose assets form part of the domain of the State ;

“man-made landscape” means an area established to protect the biodiversity of an inhabited area of water or land whose landscape and natural features have been shaped over time by human activities in harmony with nature and present outstanding intrinsic qualities the conservation of which depends to a large extent on the continuation of the practices that originally shaped them ;

“nature reserve” means land under private ownership recognized as a nature reserve because it has significant biological, ecological, wildlife, floristic, geological, geomorphic or landscape features that warrant preservation ;

“protected area” means a geographically defined expanse of land or water established under a legal and administrative framework designed specifically to ensure the protection and maintenance of biological diversity and of related natural and cultural resources.

3. This Act is binding on the Government, government departments and bodies that are mandataries of the State.

4. The Minister of the Environment is responsible for the administration of this Act.

CHAPTER II

POWERS OF THE MINISTER

5. The Minister shall maintain a register of the various protected areas. The register shall contain information on the surface area, location, type or types of protection status of each area, the minister, government body or person responsible for the area and its classification according to the different categories recognized by the World Conservation Union (UICN).

In addition, in the case of a nature reserve, the register shall contain the name and address of its owner, the name of the conservation organization, if any, with which an agreement has been entered into, and the term of the recognition or, where applicable, an indication of the fact that recognition is perpetual. The information is public information.

6. Land within a protected area that is entered in the register provided for in section 5 cannot be assigned to a new use, be sold or exchanged or be the subject of a transaction that affects its protection status, unless the Minister of the Environment has been consulted.

7. The government departments and bodies solicited by the Minister shall lend their assistance to the Minister for matters involving biodiversity protection in the fields within their competence. In particular, they must disclose to the Minister all the information required for the establishment of a network of protected areas representative of biodiversity or for the implementation of other protection measures provided for in this Act, including information on the ecological characteristics, state of preservation or degradation, and constraints affecting certain zones of the land.

8. In order to facilitate the administration of this Act, the Minister may, in particular,

(1) conduct or commission research, studies and analyses on natural settings and biodiversity protection, and make grants for that purpose ;

(2) establish and implement programs of financial or technical assistance to foster the preservation of the natural heritage or the development or re-establishment of natural settings, including programs to support the creation, conservation, supervision and management of nature reserves on private land ;

(3) delegate the establishment or implementation of the programs under paragraph 2 to any person, and grant financial assistance for that purpose ;

(4) lease or acquire property or real rights in property by agreement or, where authorized by the Government and subject to the conditions it fixes, by expropriation in accordance with the Expropriation Act (chapter E-24) ; and

(5) accept any movable or immovable property or any real right in property as a gift or legacy.

9. Land in the domain of the State within an ecological reserve and land that has been set aside for that purpose shall be under the authority of the Minister.

Land in the domain of the State within an aquatic reserve, biodiversity reserve or man-made landscape and land set aside for those purposes shall remain under the authority of the minister or of the government body holding them. That minister or a government body may, however, transfer authority

over all or part of such land to the Minister, or may entrust the administration of the land to the Minister.

Similarly, the Minister may entrust the administration of land or transfer authority over land to another minister or to a government body.

10. The Government may change the current protection status of a protected area in order to assign a protection status provided for in this Act.

Unless the order effecting such a change provides for another type of status, the protected area shall become a biodiversity reserve and be governed by the provisions of this Act that apply to biodiversity reserves, with the necessary modifications, from the time and on the conditions specified in the order.

Where conditions are provided for by law for the revocation or termination of a protected area's status, the conditions must be fulfilled before a change in status under this section may take place.

Authority over land in the domain of the State is not affected by such a change of status, unless the Government provides otherwise.

11. Legislative and regulatory provisions not incompatible with this Act, the regulations or the agreements and conservation plans provided for in the Act continue to apply within land that has been set aside or established as an aquatic reserve, biodiversity reserve, ecological reserve, nature reserve or man-made landscape.

The activities permitted in those areas may, therefore, remain subject to the measures provided for in other laws that govern the carrying on of the activities, including activities for which an authorization, lease, permit or licence must be obtained or certain fees must be paid.

12. The Minister may, on the conditions the Minister determines, entrust any natural person or legal person established in the public interest or for a private interest with all or any of the Minister's powers relating to the management of an aquatic reserve, biodiversity reserve, ecological reserve or man-made landscape.

A delegation of functions in relation to a man-made landscape must be first offered to the local and regional municipal authorities in whose territory the protected area is situated.

TITLE II

SPECIAL PROTECTION MEASURES FOR CERTAIN NATURAL SETTINGS

CHAPTER I

AUTHORIZATIONS

DIVISION I

NATURAL SETTINGS DESIGNATED BY A PLAN

13. A natural setting that is remarkable because of the rarity or exceptional interest of one of its biophysical features may be designated by the Minister, who shall prepare a plan of it.

Any proposed human intervention in a designated natural setting, or if the human intervention has commenced, any furtherance or continuance of it, is subject to the authorization of the Minister.

The Minister may, however, exempt any person or any category of human intervention determined by the Minister from the requirement to obtain authorization. Any human intervention already subject to an authorization of the Minister under the Environment Quality Act (chapter Q-2) or any other provision for which the Minister is responsible is also exempted from that requirement.

In this chapter, human intervention includes any type of undertaking, works, construction, industry or activity, including the production of goods or services.

14. The Minister shall prepare a plan of the natural setting proposed to be designated under section 13, in collaboration with the Société de la faune et des parcs du Québec, the Minister responsible for the Société and the Minister of Natural Resources.

15. The Minister shall make public a proposal to designate a natural setting under section 13 by publishing a notice in the *Gazette officielle du Québec* and in a newspaper circulated in the region in which the natural setting is situated.

The notice must include a summary plan of the zone proposed to be designated. The notice must state

(1) the places where copies of the original plan kept by the Minister are accessible, and the procedure for obtaining a copy of the plan ;

(2) that no designation by the Minister may be made before 30 days have elapsed following publication of the notice in the *Gazette officielle du Québec* ;
and

(3) that any interested person may, within the 30-day period, send comments to the person specified in the notice.

Where the natural setting is situated on land under private ownership, the Minister shall also forward a copy of the notice to the owner of the land.

16. The Minister shall publish the definitive plan of a natural setting designated under section 13 in the *Gazette officielle du Québec*. The Minister shall also give notice of any subsequent revocation of the designation.

The Minister shall forward a copy of the plan

(1) to every minister and government body that was consulted on the plan ;

(2) to the Minister of Natural Resources for entry on the land use plan prepared in accordance with section 21 of the Act respecting the lands in the domain of the State (chapter T-8.1) and in the registers of rights kept by that minister ;

(3) to the regional and local municipal authorities whose territory is affected by the plan, so that the plan may be taken into account in the exercise of their powers ; and

(4) to the owner of any land under private ownership covered by the plan and to the registry office for entry in the land register.

17. The designation of a natural setting comes into force on the fifteenth day following the date of publication of the plan in the *Gazette officielle du Québec*.

18. The Minister shall maintain and make accessible a register of all natural settings designated under section 13.

DIVISION II

OTHER SETTINGS DESIGNATED BY THE MINISTER

19. The Minister may also require, in a zone that is not designated under section 13, that proposed human intervention, or if the human intervention has commenced, any furtherance or continuance of it be submitted for authorization, if the Minister has serious cause for believing that the human intervention may severely degrade a natural setting that is remarkable because of the rarity or exceptional interest of one of its biophysical features.

20. The Minister's decision subjecting human intervention to authorization must be communicated by registered mail to the person concerned, informing the person of the right to appeal.

DIVISION III

APPLICATIONS FOR AUTHORIZATIONS AND DECISIONS

21. The Minister may require an applicant to provide any information or document the Minister considers is necessary to examine an application or to make an authorization subject to appropriate conditions.

The Minister may give directives as to the form and content of the applications for authorization that must be made to the Minister.

The Minister may, by order, determine the fees payable for an application for authorization or an application to amend, renew or terminate an existing authorization. Every ministerial order made under this section shall be published in the *Gazette officielle du Québec* and shall come into force in accordance with the Regulations Act (chapter R-18.1).

22. When deciding an application for authorization, the Minister shall take into consideration

(1) any constraints and damaging effects of the intervention on the natural setting;

(2) the possibility of ensuring the conservation of the natural setting in another manner;

(3) the consequences of an authorization on the maintenance of the biodiversity of Québec;

(4) the availability of other locations in which the intervention may be carried on;

(5) the possibility of modifying the methods and means considered, of revising the stages or other components of the intervention so that any degradation of the natural setting is reduced to a minimum or prevented;

(6) the possibilities of using the land for purposes other than the intervention;

(7) the consequences of a refusal for the applicant;

(8) the presence of a marked disproportion between the anticipated benefits derived from preserving the natural setting and the injury that may result from limiting or prohibiting the intervention; and

(9) the comments made by the Ministère des Ressources naturelles and the Société de la faune et des parcs du Québec.

The Minister may subject an authorization to the conditions the Minister determines.

23. The Minister's decisions on applications for authorization must be communicated by registered mail to the persons concerned and inform them of the right to appeal.

24. Every decision made by the Minister on an application for authorization and every decision to subject human intervention to an authorization under section 19 may be contested by the person concerned before the Administrative Tribunal of Québec.

The proceeding in respect of such decisions must be brought within 30 days of the Minister's decision.

CHAPTER II

ORDERS

25. Where the Minister is of the opinion that a natural setting that is remarkable because of the rarity or exceptional interest of one of its biophysical features is facing a real or apprehended threat of irreversible degradation, the Minister may make an order, effective for a period of not more than 30 days,

(1) directing that the site be closed, or permitting access only to certain persons or on certain conditions, and providing for the posting of a notice to that effect in public view at or near the entrance to the site;

(2) directing that an activity be terminated or that special security measures be taken if the activity is a source of threat to the natural setting;

(3) directing that any thing, animal or introduced plant be destroyed in the manner indicated by the Minister, or that certain animals or plants be treated if they are a source of threat to the natural setting; and

(4) directing that any other measure the Minister considers necessary be taken to prevent greater threat to the natural setting, or to mitigate the effects of or eliminate the threat.

Before making an order against a person, the Minister must notify the person in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the interested person at least 10 days to present observations. The Minister may, however, where urgent action is required or so as to prevent irreparable harm, make an order without being bound by such prior obligations. In such a case, the person may, within the time prescribed, present observations to the Minister for a review of the order.

A judge of the Superior Court may reduce the effective period of or cancel the order on application by an interested person.

On application by the Minister, a judge of that Court may also, in addition to ordering the person to comply therewith, extend, renew or make permanent the order if the judge considers that the continued existence of the natural setting is seriously threatened and is of the opinion that the order made by the Minister is appropriate.

The judge may also make any amendment to the order that appears to the judge to be reasonable in the circumstances.

26. Every application to a judge under this division must be made according to the rules applicable to ordinary procedure contained in the Code of Civil Procedure (chapter C-25).

Applications made by the Minister must be served on the person or persons they concern, but the judge may waive that requirement if the judge considers that the delay resulting from the service would unnecessarily imperil the natural setting.

All orders issued must be personally served on the person concerned and may in particular be executed by a peace officer.

Applications are decided by preference and orders issued are executory notwithstanding an appeal. A judge of the Court of Appeal may, however, suspend the execution of an order if the judge considers the suspension is necessary in the interest of justice.

TITLE III

TEMPORARY PROTECTION OF LAND

CHAPTER I

LAND SET ASIDE AND TEMPORARY PROTECTION STATUS

27. For the purpose of protecting land to be established as a new protected area, such as a park, the Minister shall, with the approval of the Government, prepare the plan of that area, establish a conservation plan and assign temporary protection status to the area as a proposed aquatic reserve, biodiversity reserve, ecological reserve or man-made landscape.

The selection of land, the choice of protection status, and the conservation plans for the areas shall be effected by the Minister in collaboration with the government departments and bodies concerned including the minister responsible for the Société de la faune et des parcs du Québec, the Société, the Minister of Natural Resources, the Minister of Agriculture, Fisheries and Food, the Minister of Culture and Communications, the Minister of Municipal Affairs and Greater Montréal and the Minister of Regions.

In the case of a proposed man-made landscape, the local and regional municipal authorities in whose territories the land set aside is situated must also be consulted.

Such consultations shall not affect consultations required under other laws, such as consultation of the Coordinating Committee on hunting, fishing and trapping provided for in section 75 of the Act respecting hunting and fishing rights in the James Bay and New Québec territories (chapter D-13.1).

28. Unless the Government authorizes a longer period, the setting aside of land under section 27 is valid for a period of not more than four years, which may be renewed or extended.

The renewals or extensions of that period may not, however, unless so authorized by the Government, be such that the term of the setting aside exceeds six years.

29. Notice of the setting aside of land by the Minister pursuant to section 27 shall be published in the *Gazette officielle du Québec* and in a newspaper circulated in the region concerned or, if there is no such newspaper, in the region closest to the proposed protected area. The notice shall contain a summary description of the location of the land set aside and state that a copy of the notice may be obtained on the payment of a fee.

The notice shall also specify

(1) the type or types of permanent protection status proposed for the area and the Act under which the status may be conferred;

(2) the date on which temporary protection of the land is to take effect, or if the area includes different protection zones according to its conservation plan, the dates on which protection takes effect in each zone and where applicable, the duration of the protection; and

(3) the period of time for which the land has been set aside by the order.

The notice published in the *Gazette officielle du Québec* shall also include the conservation plan for the land set aside.

30. A copy of the plan prepared for land set aside under section 27 shall be forwarded

(1) to every minister or government body having participated in the preparation of the plan;

(2) to the Minister of Natural Resources for entry on the land use plan prepared in accordance with section 21 of the Act respecting the lands in the domain of the State (chapter T-8.1) and in the registers of rights kept by that minister;

(3) to the regional and local municipal authorities whose territory is affected by the plan so that the plan may be taken into account in the exercise of their powers ; and

(4) in the case of a proposed man-made landscape on land that includes land under private ownership, to the registry office for entry in the land register.

31. The Minister may, on the same conditions, amend, replace or revoke the plan of land set aside under section 27 or the conservation plan established for that land.

No amendment to or replacement of a plan may affect the period of time for which the land has been set aside.

32. Land ceases to be set aside when permanent protection status is assigned under this or another Act, when the term for which the land has been set aside expires, or on publication in the *Gazette officielle du Québec* of a notice of revocation of the plans by the Minister, with the approval of the Government.

CHAPTER II

CONSERVATION PLAN

33. A conservation plan established for a proposed aquatic reserve, biodiversity reserve, ecological reserve or man-made landscape must contain, in particular, the following information :

(1) a description of the land and a summary plan of the protected area ;

(2) the type or types of permanent protection status proposed ;

(3) the conservation measures and zoning for the various types of protection proposed and, if different, those that are to apply while the land is set aside ;

(4) the activities that are permitted or prohibited while the land is set aside and following the assignment of permanent protection status by the Government, including the conditions on which permitted activities may be carried on ; and

(5) where applicable, the alternative dispute resolution mechanisms for disputes involving land occupancy or resource development that will apply in the area while the land is set aside or following the assignment of permanent protection status by the Government.

CHAPTER III

ACTIVITIES IN PROPOSED ECOLOGICAL RESERVES, AQUATIC RESERVES, BIODIVERSITY RESERVES AND MAN-MADE LANDSCAPES

34. On land in the domain of the State covered by the plan of a proposed aquatic reserve, biodiversity reserve or ecological reserve,

(1) the following activities are prohibited :

(a) mining, and gas or petroleum development ;

(b) forest management within the meaning of section 3 of the Forest Act (chapter F-4.1) ;

(c) the development of hydraulic resources and any production of energy on a commercial or industrial basis ;

(d) any other activity prohibited by the conservation plan for the proposed area ;

(e) any other activity which the Government may prohibit by regulation ;
and

(f) subject to measures in the conservation plan authorizing the activities and specifying the conditions on which they may be carried on :

i. mining, gas and petroleum exploration, brine and underground reservoir exploration, prospecting, and digging or boring where those activities necessitate stripping, the digging of trenches, excavation or deforestation,

ii. any new allocation of a right to occupy land for vacation resort purposes,
and

iii. earthwork or construction work ;

(2) all other activities are permitted, subject to the conditions contained in the conservation plan governing the carrying on of the activities. Notwithstanding subparagraph *b* of subparagraph 1, activities carried out to meet domestic needs or for the purpose of maintaining biodiversity are permitted, subject to the conditions contained in the conservation plan governing the carrying on of the activities.

The prohibitions and restrictions on the carrying on of activities under subparagraphs 1 and 2 of the first paragraph also apply, in addition to the prohibitions set out in section 69 of the Expropriation Act (chapter E-24), on all private land subject to a reserve for public purposes established by the Minister pursuant to Title III of that Act.

35. The activities permitted and prohibited on land in a proposed man-made landscape are the activities provided for in the conservation plan for the area.

36. The conditions that may be imposed for the carrying on of an activity in a proposed aquatic reserve, biodiversity reserve or man-made landscape may include a requirement to pay fees or to provide security or any other form of financial guarantee.

The conditions may also include a requirement to obtain the authorization of the Minister or of another government authority. An authorization may be suspended or revoked

(1) if the holder of the authorization does not comply with the conditions fixed by the Minister or with the regulatory standards prescribed under this Act;

(2) if the authorization was granted on the basis of erroneous or false information; or

(3) if the measure has become necessary to ensure the protection of the area concerned.

The Minister or the authority shall, before suspending or revoking an authorization, notify the holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the holder at least 10 days to present observations.

The Minister or the authority may, however, where urgent action is required or in order to prevent irreparable damage, make a decision without being bound by those prior obligations. In such a case, the holder may within the time specified present observations for a review of the decision.

TITLE IV

PERMANENT PROTECTION OF LAND

CHAPTER I

AQUATIC RESERVES, BIODIVERSITY RESERVES, ECOLOGICAL RESERVES AND MAN-MADE LANDSCAPES

DIVISION I

PUBLIC CONSULTATION

37. A public consultation shall be held by the Minister in accordance with the following provisions following the setting aside of land under section 27.

§1. — *Ecological reserves*

38. Before proposing to the Government that land be established as an ecological reserve, the Minister shall solicit comments from the public. For that purpose and in addition to the other information required by section 29, the notice of the setting aside of land published in the *Gazette officielle du Québec* must specify

(1) that no permanent protection status may be ordered by the Government before 60 days have elapsed following publication of the notice in the *Gazette officielle du Québec*; and

(2) that any interested person may, within the 60-day period, send comments to the person specified in the notice.

§2. — *Aquatic reserves, biodiversity reserves and man-made landscapes*

39. Before a proposal is made to the Government on permanent protection status for land set aside as a proposed aquatic reserve, biological reserve or man-made landscape, the Minister shall entrust the Bureau d'audiences publiques sur l'environnement or one or more persons the Minister designates as commissioners with the mandate to hold a public consultation.

The Government may, however, exempt any proposal it designates from the consultation process. An exemption may be made in particular where the Government considers that other means may be used to clarify the various issues raised by the proposal, such as the environmental and social impact assessment and review procedure provided for in Chapter II of the Environment Quality Act (chapter Q-2).

In every such case of exemption, the Minister shall publish in the *Gazette officielle du Québec* a notice containing the particulars required under paragraphs 1 and 2 of section 38, with the necessary modifications. The notice shall also be published in a newspaper circulated in the region concerned or, if there is no such newspaper, in the region closest to the proposed protected area. The decision of the Government shall be published in the *Gazette officielle du Québec* with the Minister's notice, and shall briefly state the reasons justifying the exemption.

40. The provisions of sections 6.3 to 6.6 of the Environment Quality Act (chapter Q-2), with the necessary modifications, apply to consultations held by the Bureau d'audiences publiques sur l'environnement.

41. Where one or more persons are designated by the Minister as commissioners under section 39, they must submit their rules for the proper conduct of the consultation to the Minister for approval.

The mandate of those persons terminates when they submit their report to the Minister. The commissioners are entitled, to carry out their mandate, to the remuneration, allowances and indemnities determined by the Government.

42. The public consultation provided for in the first paragraph of section 39 shall begin where possible not more than 12 months following publication in the *Gazette officielle du Québec* of the notice referred to in section 29.

The report of the Bureau or, where applicable, of the commissioners, must be submitted to the Minister not more than six months after the consultation ends. It shall be made available to the public on the date and subject to the conditions determined by the Minister.

DIVISION II

PERMANENT PROTECTION STATUS

43. The Minister may recommend to the Government that all or part of land set aside under section 27 of this Act be assigned one of the following types of protection status: aquatic reserve, biodiversity reserve, ecological reserve, or man-made landscape.

The Minister shall at the same time submit to the Government for its approval the conservation plan for the land or, in the case of a man-made landscape under the management of a municipal authority, the proposed protection agreement.

44. In addition to the public consultation provided for in Division I, the establishment of an aquatic reserve, a biodiversity reserve, an ecological reserve or a man-made landscape, a change in their limits, or their abolishment, is effected by order of the Government, on a proposal by the Minister, subject to

(1) compliance with the prescriptions of Chapter VI of Title I of the Act respecting land use planning and development (chapter A-19.1) where they apply within the area;

(2) the opinion of the Commission de protection du territoire agricole du Québec if all or part of the land is situated in a reserved area or in an agricultural zone established under the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1); and

(3) publication of a notice of the decision of the Government in the *Gazette officielle du Québec* with the plan of the area and the applicable conservation plan or protection agreement in the case of a man-made landscape.

45. Permanent protection status for land, conservation plans and applicable agreements, and amendments or revocations take effect on the date of publication of the order in the *Gazette officielle du Québec* or on any later date specified in the order.

DIVISION III**ACTIVITIES**

§1. — *Aquatic reserves, biodiversity reserves and ecological reserves*

46. In an aquatic reserve and a biodiversity reserve

(1) the following activities are prohibited :

(a) forest management within the meaning of section 3 of the Forest Act (chapter F-4.1);

(b) mining, and gas or petroleum development ;

(c) mining, gas and petroleum exploration, brine and underground reservoir exploration, prospecting, and digging or boring ;

(d) the development of hydraulic resources and any production of energy on a commercial or industrial basis ;

(e) any other activity prohibited by the approved conservation plan ;

(f) any other activity which the Government may prohibit by regulation ;
and

(g) subject to measures in the conservation plan authorizing the activities and specifying the conditions on which they may be carried on :

i. any allocation of a right to occupy land for vacation resort purposes,

ii. earthwork, backfilling or construction work ; and

iii. commercial activities ;

(2) all other activities are permitted, subject to the conditions contained in the approved conservation plan governing the carrying on of such activities. Notwithstanding subparagraph *a* of subparagraph 1, activities carried out to meet domestic needs or for the purpose of maintaining biodiversity are permitted, subject to the conditions contained in the conservation plan governing the carrying on of such activities.

47. In an aquatic reserve, the following activities are also prohibited :

(1) any type of activity likely to degrade the bed, banks or shores or to otherwise affect the integrity of the body of water or watercourse ; and

(2) any operation of a motorized vessel in contravention of the conditions contained in the conservation plan approved by the Government.

48. In an ecological reserve, the activities described in subparagraphs *a* to *f* of paragraph 1 of section 46 are prohibited.

The following activities are also prohibited: hunting, trapping, fishing, earthwork and construction activities, agricultural, industrial or commercial activities and, generally, any activity likely to alter the state or nature of ecosystems.

No person may be in an ecological reserve, except for an inspection or for the carrying on of an activity authorized under law.

However, the Minister may authorize, in writing and on the conditions the Minister determines, any activity consistent with the purposes of an ecological reserve or with the management thereof.

The Minister shall, before issuing an authorization, take into account, in particular, the nature and objectives of the proposed activity, its impact on living organisms and ecosystems and, where applicable, any protection measures required. The holder of an application for authorization granted for the purposes of scientific research shall submit to the Minister a final activity report and, where the activities extend over a period of more than one year, an annual report.

49. The conditions that may be imposed for the carrying on of an activity in an aquatic reserve, biodiversity reserve or ecological reserve may include the requirement to pay fees or to provide security or any other form of financial guarantee.

The conditions may also include a requirement to obtain the authorization of the Minister or of another government authority. An authorization may be suspended or revoked

(1) if the holder of the authorization does not comply with the conditions fixed by the Minister or with the regulatory standards prescribed under this Act;

(2) if the authorization was granted on the basis of erroneous or false information; or

(3) if the measure has become necessary to ensure the protection of the area concerned.

The Minister or the authority shall, before suspending or revoking an authorization, notify the holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the holder at least 10 days to present observations.

The Minister or the authority may, however, where urgent action is required or in order to prevent irreparable damage, make a decision without being bound by those prior obligations. In such a case, the holder may within the time specified present observations for a review of the decision.

50. For the purposes of the periodic review of the conservation plan of an area, the Minister shall, during the seventh year following the year of its initial approval by the Government and thereafter at least every ten years, assess the implementation of the conservation plan and assess the advisability of amending it.

§2. — *Man-made landscapes*

51. Where a man-made landscape is under the management of a municipal authority, the activities permitted or prohibited in the man-made landscape are determined in a protection agreement for the man-made landscape entered into by the municipal authority and the Minister.

The terms of the agreement provided for in the first paragraph shall be established in collaboration with the government departments and bodies concerned.

52. A protection agreement for a man-made landscape must contain, in particular,

- (1) a description of the land and the natural setting ;
- (2) the protection and development objectives for the natural setting ;
- (3) the means retained to achieve the objectives, including a description of the administrative or regulatory measures that will be applied by the municipality ;
- (4) the respective obligations of the municipal authorities and government departments concerned ; and
- (5) the term of the agreement, which may not be less than 25 years, and the conditions on which it may be renewed or terminated.

53. Where a man-made landscape is not, or is no longer, under a protection agreement with a municipal authority, the permitted and prohibited activities are the activities provided for in the conservation plan established by the Minister in collaboration with the government departments and bodies concerned and approved by the Government. The provisions of sections 49 and 50 apply, with the necessary modifications, to the agreement.

CHAPTER II

NATURE RESERVES

DIVISION I

RECOGNITION

54. Any private property having significant biological, ecological, wildlife, floristic, geological, geomorphic or landscape features that warrant preservation may be recognized as a nature reserve on the application of the owner as provided in this Act.

The recognition may be perpetual or for a term of not less than 25 years.

DIVISION II

APPLICATION

55. An application for recognition, which may be made jointly with a non-profit conservation organization, shall be submitted in writing to the Minister. The application must contain

- (1) the name and address of the owner;
- (2) a description of the property that is the subject of the application and a summary site plan;
- (3) the significant features of the property that warrant preservation;
- (4) an indication that the application is for perpetual recognition, or the term of recognition applied for;
- (5) a description of the conservation measures the owner intends to implement;
- (6) a description of the activities the owner wishes to allow and of those the owner wishes to prohibit on the property;
- (7) the management arrangements for the property, including, where applicable, an indication that management will be assumed by a non-profit conservation organization;
- (8) a copy of the deed conferring ownership of the property on the owner;
- (9) where applicable, a copy of any permit or authorization required under an Act or regulation for the carrying on of an activity on the property; and
- (10) any other information or document determined by regulation by the Government.

The application may be submitted together with the report of a qualified person demonstrating why the recognition of the property as a nature reserve is warranted.

56. The Minister may require of the owner any information or document the Minister considers necessary for the examination of the application.

DIVISION III

AGREEMENT AND PUBLICATION OF RECOGNITION

57. Before recognizing a property as a nature reserve, the Minister shall enter into an agreement with the owner or, as the case may be, approve an agreement entered into between the owner and a non-profit conservation organization. In either case, the agreement shall contain, among other provisions,

- (1) a description of the property ;
- (2) the perpetual nature of the recognition or the applicable term ;
- (3) the significant features of the property that warrant preservation ;
- (4) the management arrangements for the property, including, where applicable, the identity of the non-profit conservation organization that is to manage the property ;
- (5) the conservation measures to be applied ;
- (6) the permitted and prohibited activities ; and
- (7) any other provision determined by regulation by the Government.

58. The Minister shall publish a notice stating that the property is recognized as a nature reserve in the *Gazette officielle du Québec* and in a newspaper circulated in the region concerned or, if there is no such newspaper, in the region closest to the recognized property.

The recognition takes effect on the date of the publication of the notice in the *Gazette officielle du Québec*.

59. The Minister shall require the registration of the agreement in the land register and shall transmit a certified statement of registration to the owner, to the conservation organization, where applicable, and to the local and regional municipal authorities having authority in whose territory the property is situated.

The agreement, once registered, is binding on all subsequent acquirers of the property.

To enable the updating of the register maintained by the Minister under section 5, every acquirer of property recognized as a nature reserve must, within 30 days of acquiring the property, send a copy of the deed of transfer to the Minister.

60. The Minister shall issue to the owner a certificate attesting that the property has been recognized as a nature reserve.

The designation “recognized nature reserve” may only be used in respect of a property for which a valid certificate is held.

DIVISION IV

AMENDMENTS TO THE AGREEMENT AND TERMINATION OF RECOGNITION

61. The agreement may be amended at any time with the consent of the parties, provided the amendments are not contrary to the purpose for which the property has been recognized as a nature reserve. Where amendments are made to an agreement between an owner and a conservation organization, the amendments require the approval of the Minister.

62. If the agreement is amended, the Minister shall require registration of the amendments in the land register and shall transmit a certified statement of registration to the persons mentioned in the first paragraph of section 59.

Amendments have no effect against third persons until their registration in the land register.

63. The recognition of a property as a nature reserve shall terminate at the expiry of its term or upon the Minister’s decision to withdraw the recognition because

(1) the property was recognized on the basis of inaccurate or incomplete information or documents ;

(2) the provisions of the agreement are not being complied with ;

(3) the features of the property no longer warrant preservation ; or

(4) it would be more detrimental to the community to maintain the recognition than to withdraw it.

64. A decision of the Minister to withdraw recognition may be contested before the Administrative Tribunal of Québec within 30 days of notification of the decision to the owner and, where applicable, to the conservation organization that is a party to the agreement or that is managing the property.

65. Upon termination of the recognition of a property as a nature reserve, the Minister shall publish, in the *Gazette officielle du Québec* and in a newspaper circulated in the territory of the local and regional municipal authorities where the property is situated, a notice stating that the recognition terminated on the date specified therein.

As well, the Minister shall require the land registrar to cancel the registrations made under this Act and shall transmit a notice of the cancellation to the persons mentioned in the first paragraph of section 59.

TITLE V

ADMINISTRATIVE MEASURES AND PENAL PROVISIONS

CHAPTER I

POWERS OF INSPECTION

66. For the purposes of this Act, the Minister may authorize a person to act as an inspector.

The person may, as an inspector,

(1) have access at any reasonable time to a place, other than a dwelling-house, where activities are carried on on land that is temporarily or permanently protected under this Act, and any premises specified in an order or a ministerial order made under Title II or in an authorization issued pursuant to the provisions of that title, for the purposes of an inspection;

(2) take photographs of the premises and the property located there, take samples, and conduct analyses;

(3) enter on and pass over private land; and

(4) require any information or document pertaining to the application of this Act.

Where so requested, the person must show a certificate signed by the Minister authorizing the person to act as an inspector.

67. No person may be prosecuted for an act performed in good faith while acting as an inspector.

68. Every person carrying on an activity in a place that is temporarily or permanently protected under this Act, or in a place in respect of which an order or a ministerial order has been issued under Title II or in respect of which an authorization has been issued pursuant to the provisions of that title must, at the request of an inspector, show any authorization required to be held under this Act for the activity.

69. An inspector may, in exercising inspection functions, seize any thing

- (1) that may be used to prove an offence against this Act or the regulations ;
- (2) the possession of which constitutes an offence against this Act or the regulations ; or
- (3) that was obtained, directly or indirectly, through the perpetration of an offence against this Act or the regulations.

The provisions of the Code of Penal Procedure (chapter C-25.1) relating to the seizure of things during a search apply to seizures made under this section.

CHAPTER II

OFFENCES AND PENALTIES

70. Every person who, contrary to the conditions for the carrying on of a permitted activity set out in this Act for a place that is temporarily or permanently protected, or contrary to the conditions for carrying on an activity set out in a conservation plan applicable to such a place, damages the place or destroys property forming part of it is guilty of an offence and is liable to a fine of not less than \$500 nor more than \$100,000 in the case of a natural person, and to a fine of not less than \$1,000 nor more than \$200,000 in the case of a legal person.

Every person is guilty of an offence and liable to the same penalty who

- (1) engages in an activity or intervention prohibited under this Act ;
- (2) engages in an activity or intervention without an authorization required by this Act ;
- (3) engages in an activity or intervention contrary to a condition imposed or an obligation prescribed by this Act ; or
- (4) engages in an activity or intervention contrary to an order of the Minister made under this Act, or otherwise contravenes such an order.

71. Every person who enters an ecological reserve without authorization is liable to a fine of not less than \$100 nor more than \$1,000.

72. Every person who hinders the work of a person authorized to exercise powers under this Act, makes a false or misleading statement to such a person or refuses to provide information or a document that the person is entitled to obtain under this Act is guilty of an offence and is liable to a fine of not less than \$250 nor more than \$2,000.

73. Every person who assists another person in committing an offence under this Act or who encourages, advises, allows, authorizes or orders another person to commit an offence under this Act is guilty of an offence.

A person convicted under this section is liable to the same penalty as is prescribed for the offence committed by the other person.

74. For a second or subsequent offence, the fines prescribed in sections 70, 71 and 72 shall be doubled.

75. On convicting a person of an offence under this Act, the court may, in addition to imposing any other penalty and provided the application for the order is made in the person's presence or the person was given prior notice by the prosecutor, order the person to take every measure, at his or her expense and within the time fixed, necessary to restore the premises to the state they were in before the commission of the offence.

If the place cannot be restored to its previous state, the court may, on application by the prosecutor, impose an additional fine based on the degree of degradation.

76. If an offender fails to comply with a court order, the Minister may restore a place to its previous state at the offender's expense.

The Minister may claim the direct and indirect restoration costs from the offender in the same manner as any debt due to the Government.

77. Penal proceedings for an offence against this Act are prescribed two years after the date on which the offence is committed.

TITLE VI

AMENDING PROVISIONS

78. Section 149 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1) is amended by replacing "or an ecological reserve" in subparagraph 4 of the first paragraph by " , an ecological reserve, an aquatic reserve, a biodiversity reserve or a man-made landscape".

79. Section 5 of the Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1) is amended by replacing paragraph 4 by the following paragraph:

"(4) the Natural Heritage Conservation Act (2002, chapter 74);".

80. Section 21 of the Act respecting hunting and fishing rights in the James Bay and New Québec territories (R.S.Q., chapter D-13.1) is amended by replacing "Ecological Reserves Act (chapter R-26.1)" in the second paragraph by "Natural Heritage Conservation Act (2002, chapter 74)".

81. Schedule III to the Act respecting administrative justice (R.S.Q., chapter J-3), amended by section 24 of chapter 14 of the statutes of 2001 and by section 27 of chapter 22 of the statutes of 2002, is again amended

(1) by replacing “under section 96” in paragraph 3 by “under sections 24 and 64 of the Natural Heritage Conservation Act (2002, chapter 74), section 96”;

(2) by striking out paragraph 5.

82. Section 11 of the Act respecting the Ministère de l’Environnement (R.S.Q., chapter M-15.2.1) is amended by replacing “ecological reserves” in subparagraph 4 of the first paragraph by “aquatic reserves, biodiversity reserves, ecological reserves and man-made landscapes”.

83. The said Act is amended by inserting the following section after section 13:

“**13.1.** The Minister shall exercise in respect of the lands in the domain of the State under the Minister’s authority the rights and powers inherent in the right of ownership, excluding any alienation, transfer or exchange of property. The exercise by the Minister of those rights and powers must be compatible with the use of the land under the Minister’s authority or on which the property is situated.

In respect of such land, the Minister may, in particular, authorize or carry out such maintenance, development and construction work as is advisable to maintain or improve its quality.

The Minister may also take any necessary measures to remedy or mitigate any damage sustained by the natural environment on such lands and may claim the costs incurred from the person responsible in the same manner as any debt due to the Government.

The lands in the domain of the State referred to in section 2 of the Watercourses Act (chapter R-13) are excluded from the lands to which the first paragraph applies.”

84. Sections 1 to 12 of the Act respecting nature reserves on private land (2001, chapter 14) become sections 54 to 65 of this Act, with the following amendments:

(1) Chapter I becomes Division I;

(2) Division I of Chapter I becomes Division II;

(3) section 2 is amended by striking out “of the Environment” in the first paragraph;

(4) Division II of Chapter I becomes Division III;

(5) section 5 is amended by replacing the first paragraph by the following paragraph:

“5. The Minister shall publish a notice stating that the private property is recognized as a nature reserve in the *Gazette officielle du Québec* and in a newspaper circulated in the region concerned or, if there is no such newspaper, in the region closest to the recognized property.”;

(6) section 6 is amended

(a) by replacing “to any municipal body” in the first paragraph by “to the local and regional municipal authorities having authority”;

(b) by adding the following paragraph at the end:

“To enable the updating of the register maintained by the Minister under section 5, every acquirer of property recognized as a nature reserve must, within 30 days of acquiring the property, send a copy of the deed of transfer to the Minister.”;

(7) Division III of Chapter I becomes Division IV and its heading is replaced by the following heading:

“AMENDMENTS TO THE AGREEMENT AND TERMINATION OF RECOGNITION”;

(8) by striking out the heading of Division IV;

(9) section 12 is amended by replacing “circulated in the territory of the municipal body” in the first paragraph by “circulated in the territory of the local and regional municipal authorities”.

85. Section 8 of the Act respecting off-highway vehicles (R.S.Q., chapter V-1.2) is amended by replacing “Ecological Reserves Act (chapter R-26.1)” in subparagraph 1 of the first paragraph by “Natural Heritage Conservation Act (2002, chapter 74)”.

TITLE VII

TRANSITIONAL AND FINAL PROVISIONS

86. The Ecological Reserves Act (R.S.Q., chapter R-26.1) is replaced by this Act.

87. The Act respecting nature reserves on private land (2001, chapter 14) is replaced by this Act.

88. The ecological reserves established and the nature reserves recognized before 19 December 2002 are maintained. The same applies to proposed ecological reserves in whose respect a notice was published in the *Gazette officielle du Québec* before that date. Those reserves are governed, as of that date, by the provisions of this Act subject to the following paragraph.

The Minister is not required to propose to the Government for approval a conservation plan for the ecological reserves already established. The Minister has one year from 19 December 2002 to have the Government approve a conservation plan for proposed ecological reserves. The proposed ecological reserves are deemed to have been set aside, in accordance with Title III, for a period of four years beginning on 19 December 2002. Any public consultation on the proposals being held on that date shall continue in accordance with the provisions of this Act.

89. Unless otherwise indicated by the context, in any text or document, of whatever nature and regardless of its storage medium, a reference to the Ecological Reserves Act or the Act respecting nature reserves on private land or to any provision of those Acts is a reference to this Act and to the relevant provision of this Act.

90. The proposed protected areas listed in the schedule, announced before 19 December 2002 are deemed to have been set aside by the Minister as biodiversity reserves in accordance with Title III, for a period of four years beginning six months after that date.

Any consultation on the proposals in progress on that date is deemed to be the consultation required under this Act.

91. Subject to any extension authorized by the Government, the Minister shall cause a conservation plan for the area to be published in the *Gazette officielle du Québec* within six months from the date on which the land is set aside.

92. During the period where land is set aside prior to the publication of the plan, the permitted or prohibited activities in an area referred to in section 90 are as follows :

- (1) the following activities are prohibited :
 - (a) forest management within the meaning of section 3 of the Forest Act (chapter F-4.1) ;
 - (b) mining, and gas or petroleum development ;
 - (c) the development of hydraulic resources and any production of energy on a commercial or industrial basis ;
 - (d) any other activity which the Government may prohibit by regulation ;

(e) subject to the authorization of the Minister and to compliance with the conditions on which they may be carried on:

i. activities relating to mining, gas or petroleum exploration and development, brine and underground reservoir exploration activities, prospecting, digging or boring, if those activities are not already authorized by the Minister of Natural Resources on 19 December 2002, where such activities necessitate stripping, the digging of trenches, excavation or deforestation,

ii. any new allocation of a right to occupy land for vacation resort purposes, and

iii. earthwork or construction work;

(2) all other activities are permitted.

Notwithstanding subparagraph *a* of subparagraph 1 of the first paragraph, activities carried out to meet domestic needs or for the purpose of maintaining biodiversity are also permitted.

93. This Act comes into force on 19 December 2002.

SCHEDULE

PROPOSED PROTECTED AREAS

(section 90)

Central Laurentian natural province :

- (1) Île René-Levasseur ;
- (2) Monts Groulx ;
- (3) Lac Gensart ;

Lower North Shore Plateau natural province :

- (4) Lac Bright Sand ;
- (5) Massif des lacs Belmont et Magpie ;
- (6) Buttes du Lac aux Sauterelles ;
- (7) Natashquan river valley ;
- (8) Harrington Harbour shore ;
- (9) Lac Guernesé hills ;
- (10) Brador hills.

TABLE OF CONTENTS

| | SECTIONS |
|--|----------|
| TITLE I GENERAL PROVISIONS | 1-12 |
| CHAPTER I OBJECTS, DEFINITIONS AND SCOPE | 1-4 |
| CHAPTER II POWERS OF THE MINISTER | 5-12 |
| TITLE II SPECIAL PROTECTION MEASURES FOR CERTAIN NATURAL SETTINGS | 13-26 |
| CHAPTER I AUTHORIZATIONS | 13-24 |
| Division I Natural settings designated by a plan | 13-18 |
| Division II Other settings designated by the Minister | 19-20 |
| Division III Applications for authorizations and decisions | 21-24 |
| CHAPTER II ORDERS | 25-26 |
| TITLE III TEMPORARY PROTECTION OF LAND | 27-36 |
| CHAPTER I LAND SET ASIDE AND TEMPORARY PROTECTION STATUS | 27-32 |
| CHAPTER II CONSERVATION PLAN | 33 |
| CHAPTER III ACTIVITIES IN PROPOSED ECOLOGICAL RESERVES, AQUATIC RESERVES, BIODIVERSITY RESERVES AND MAN-MADE LANDSCAPES | 34-36 |
| TITLE IV PERMANENT PROTECTION OF LAND | 37-65 |
| CHAPTER I AQUATIC RESERVES, BIODIVERSITY RESERVES, ECOLOGICAL RESERVES AND MAN-MADE LANDSCAPES | 37-54 |
| Division I Public consultation | 37-42 |
| §1. — <i>Ecological reserves</i> | 38 |
| §2. — <i>Aquatic reserves, biodiversity reserves and man-made landscapes</i> | 39-42 |
| Division II Permanent protection status | 43-45 |
| Division III Activities | 46-53 |
| §1. — <i>Aquatic reserves, biodiversity reserves and ecological reserves</i> | 46-50 |
| §2. — <i>Man-made landscapes</i> | 51-53 |

| | | |
|---------------------|--|-------|
| CHAPTER II | NATURE RESERVES | 54-65 |
| Division I | Recognition | 54 |
| Division II | Application | 55-56 |
| Division III | Agreement and publication of recognition | 57-60 |
| Division IV | Amendments to the agreement and termination of recognition | 61-65 |
| TITLE V | ADMINISTRATIVE MEASURES AND PENAL PROVISIONS | 66-77 |
| CHAPTER I | POWERS OF INSPECTION | 66-69 |
| CHAPTER II | OFFENCES AND PENALTIES | 70-77 |
| TITLE VI | AMENDING PROVISIONS | 78-85 |
| TITLE VII | TRANSITIONAL AND FINAL PROVISIONS | 86-93 |
| SCHEDULE | | |