

1988, chapter 24

AN ACT TO AGAIN AMEND THE ACT RESPECTING THE CONSERVATION AND DEVELOPMENT OF WILDLIFE WITH REGARD TO WILDLIFE HABITATS

Bill 15

Introduced by Mr Yvon Picotte, Minister of Recreation, Fish and Game

Introduced 17 March 1988

Passage in principle 24 March 1988

Passage 15 June 1988

Assented to 17 June 1988

Coming into force: on the date fixed by the Government

Act amended:

Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1)





CHAPTER 24

An Act to again amend the Act respecting the conservation and development of wildlife with regard to wildlife habitats

[Assented to 17 June 1988]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. C-61.1,
s. 2, am.

1. Section 2 of the Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1) is amended by adding, at the end, the words “and the wildlife habitat”.

c. C-61.1,
s. 26,
replaced

2. Section 26 of the said Act is replaced by the following sections:

Prohibition

“**26.** No person may disturb, destroy or damage a beaver dam or the eggs, nest or den of an animal.

Derogation

A person or anyone lending him assistance may derogate from the prohibition under the first paragraph if he cannot prevent an animal from causing damage to his property or to property under his care or maintenance.

Authoriza-
tion

The Minister, on the conditions he determines, may authorize a person to derogate from the first paragraph.

Authorized
damage

“**26.1** Notwithstanding section 26, the holder of a trapping licence may, during open season for trapping, damage a beaver dam or open a muskrat den to set a trap.

Obligation

He must close the muskrat den immediately after setting the trap.”

c. C-61.1,
s. 67,
replaced

3. Section 67 of the said Act is replaced by the following section:

Attacking
animals

“67. No person nor anyone lending him assistance may kill or capture an animal attacking him or causing damage to his property or property under his care or maintenance unless he is unable to frighten the animal away or prevent it from causing damage.”

c. C-61.1,
s. 68, am.

4. Section 68 of the said Act is amended by striking out the words “paragraph 1 of” in the first line.

c. C-61.1,
ss. 128.1 to
128.18,
added

5. The said Act is amended by adding, after section 128, the following:

“CHAPTER IV.1

“WILDLIFE HABITATS

“DIVISION I

“APPLICATION

Wildlife
habitats

“128.1 This chapter applies to wildlife habitats having the features specified by regulation or in which the conditions specified by regulation prevail and, in the cases prescribed by regulation, which are demarcated on a chart prepared by the Minister.

Preparation
of chart

“128.2 The Minister shall prepare the chart of a wildlife habitat in cooperation with, as the case may be, the Minister of Energy and Resources, the Minister of Agriculture, Fisheries and Food, the Minister of Transport, the Minister of Municipal Affairs or the Minister of the Environment.

Amend-
ments

He may amend, replace or cancel a chart in the same manner.

Publication
of notice

“128.3 The Minister shall publish a notice in the *Gazette officielle du Québec* of the preparation or, as the case may be, the amendment, replacement or repeal of a wildlife habitat chart.

Contents

The notice shall name the animal concerned and give a summary indication of where its habitat is located.

Coming into
force

The chart comes into force fifteen days from the date of publication of the notice or on any later date provided in the notice.

Custody of
originals

“128.4 The Minister shall have custody of the originals of the charts he prepares.

Transmis-
sion of
copies

He shall transmit a copy of a chart to any person on request upon payment of the cost of transmission and the copying charge fixed by the Minister.

Transmis-
sion of
copies

“**128.5** The Minister shall transmit a copy of every wildlife habitat chart to

(1) the Minister of Energy and Resources, who shall enter it in the land use plan prepared in accordance with section 21 of the Act respecting the lands in the public domain (1987, chapter 23);

(2) the regional county municipality whose territory is included on the chart, so that it may enter it on the development plan provided for by the Act respecting land use planning and development (R.S.Q., chapter A-19.1);

(3) the municipality whose territory is included on the chart so that it may take it into account in carrying on its functions;

(4) the registry office of the registration division whose territory is included on the chart so that any persons concerned may examine it.

“DIVISION II

“ACTIVITIES IN A WILDLIFE HABITAT

Prohibitions

“**128.6** No person may, in a wildlife habitat, carry on an activity that may alter any biological, physical or chemical component peculiar to the habitat of the animal or fish concerned.

Exceptions

The prohibition in the first paragraph does not apply to

(1) an activity exempted by regulation;

(2) an activity carried on in accordance with the standards or conditions of management prescribed by regulation;

(3) an activity authorized by the Minister or the Government;

(4) an activity required to repair damage caused by a catastrophe or to prevent possible damage from an apprehended catastrophe.

Alteration
of wildlife
habitat

“**128.7** The Minister may authorize the carrying on of an activity that alters a wildlife habitat.

Conditions

He may attach such conditions to the authorization as he determines, in particular the requirement that the applicant furnish security in accordance with the regulations.

Prior consi-
derations

Before issuing an authorization, the Minister shall take into account, in particular but not exclusively, the physical features of the area, the nature of the proposed activities, the economic and social consequences

of the proposed activities, the impact of the activity on the conservation of the wildlife and its habitat and the possibility of substituting another habitat.

General
authoriza-
tion

“128.8 The Minister may issue a general authorization, for such activities, on such conditions and for such time as he determines, to another minister in respect of activities carried on in a wildlife habitat by or on behalf of that minister.

Decision of
the Govern-
ment

“128.9 The Government, upon the advice of the Minister and after a public hearing by the Minister or his representative, may, on such conditions as it determines, authorize the carrying on of an activity that alters a wildlife habitat if it considers that the consequences of not carrying on or of abandoning the activity would be more harmful to the public than the alteration of the wildlife habitat concerned.

Public
hearing

The Minister may request that the Minister of the Environment give a mandate to the Bureau d'audiences publiques sur l'environnement to hold a public hearing.

Written
application

“128.10 To obtain authorization, a person must apply in writing to the Minister.

Information

The Minister may demand any information he considers necessary for his decision.

Notice to
applicant

“128.11 Where the Minister denies an application for authorization, he shall notify the applicant in writing, giving his reasons.

Information

“128.12 The Minister may demand any information relating to the carrying on of an activity in a wildlife habitat.

Suspension
or revoca-
tion

“128.13 Where the holder of an authorization fails to comply with the conditions attached to the authorization, the Minister may suspend or revoke the authorization or confiscate the security furnished by the holder and use it to repair the damage caused to the wildlife habitat.

Representa-
tions

“128.14 Before denying, suspending or revoking an authorization or confiscating security, the Minister shall give the applicant or holder an opportunity to make representations within the time he indicates.

Order

“128.15 The Minister may make an order on ascertaining that an activity that may result in serious or irreparable damage to a wildlife habitat

(1) has begun or is about to begin without authorization;

(2) violates the conditions attached to the authorization;

(3) violates the standards or conditions of management prescribed by regulation.

Order The order shall require the offender to suspend the activity until he obtains the required authorization or, as the case may be, to observe the conditions attached to the authorization or the standards or conditions of management prescribed by regulation.

Coming into force The order must give the reasons on which it is based; it comes into force on its date of service.

Injunction Where a person to whom an order is made refuses or neglects to follow it, the Minister may, in addition to any other remedy, apply to the Superior Court for an injunction ordering the person to comply with the order.

“DIVISION III

“ADMINISTRATION

Delegation of powers “**128.16** The Minister, by a memorandum of agreement, may, on such conditions and for such activities or wildlife habitats as he determines, entrust the exercise of his powers under sections 128.7, 128.10 to 128.14 and 171.5 to the Communauté urbaine de Montréal, the Communauté urbaine de Québec, the Communauté régionale de l'Outaouais or to a municipality, including a regional county municipality, in respect of its territory.

Subdelegation The memorandum may in addition provide the conditions on which the powers entrusted to the municipal body may be subdelegated to its employees.

Public notice The Minister shall publish in the *Gazette officielle du Québec* a notice to the effect that a memorandum of agreement has been signed with a municipal body and setting out the date of its coming into force.

Exercise of delegated powers From the date of coming into force of the memorandum of agreement, the municipal body which is a party to it has full exercise of the powers delegated to it under this section.

Financial assistance “**128.17** The Minister may grant financial assistance to a person who carries on an activity on private land on which a wildlife habitat is situated if the denial of authorization for an activity, or a condition

attached to an authorization, or a standard or condition of management prescribed by regulation is harmful to his interests.

“DIVISION IV

“REGULATIONS

Regulations

“**128.18** The Government may, by regulation,

(1) specify the peculiar features or conditions of the wildlife habitats contemplated in this chapter, with reference to animals or fish, their sex, age, number, density or location, the season, or physical features and, as the case may be, designate the wildlife habitats demarcated on a chart prepared by the Minister;

(2) designate activities which, while they may alter a biological, chemical or physical component of a wildlife habitat, do not require any authorization and, as the case may be, prescribe the applicable standards or conditions of management, which may vary according to the kind of activity, the class or location of the wildlife habitat, the season, or physical features;

(3) require as a condition precedent to the issue of an authorization, in such cases as it prescribes, that a person furnish security to enable the Minister to take or cause the taking of the required measures pursuant to section 128.13 or 171.5, and fix the nature and amount of the security according to the class of person or wildlife habitat or to the kind of activity.”

c. C-61.1,
s. 162, am.

6. The said Act is amended by striking out paragraph 11 of section 162.

c. C-61.1,
ss. 171.2 to
171.5,
added

7. The said Act is amended by inserting, after section 171.1, the following sections:

Offence and
penalty

“**171.2** Every person who contravenes section 128.6 or an order made under section 128.15 or fails to observe a condition attached to an authorization issued under section 128.7, 128.8 or 128.9 or a standard or condition of wildlife habitat management prescribed by regulation is guilty of an offence and liable, in addition to costs,

(1) in the case of a natural person, to a fine of not less than \$500 nor more than \$20 000;

(2) in any other case, to a fine of not less than \$1 000 nor more than \$40 000.

Owner of a private land “**171.3** The owner of private land on which a wildlife habitat demarcated on a chart prepared by the Minister is situated cannot be convicted of an offence under section 128.6 or for contravention of a standard or condition of wildlife habitat management prescribed by regulation unless he had prior notification of the existence of the habitat.

Registration The Minister may, in respect of private land, register, in accordance with the prescriptions of article 2168 of the Civil Code of Lower Canada, a declaration to the effect that a wildlife habitat is situated on that land. Registration shall be made by deposit at the registry office of the registration division in which the land is situated and shall be in lieu of a notice of the existence of a wildlife habitat on that land with regard to any person who becomes the owner thereof after the registration.

Offence and penalty “**171.4** Every person who neglects or refuses to provide information required pursuant to section 128.12 is guilty of an offence and liable, in addition to costs, to a fine of not less than \$200 nor more than \$600.

Restoration “**171.5** Where an offender has been convicted of an offence described in section 171.2, the Minister may, at the expense of the offender, particularly, but not exclusively, by confiscating the security furnished by the holder of an authorization, take the necessary measures to return the wildlife habitat to its condition before the offending act.

Expenses The Minister may claim the expenses for the measures from the offender in the same manner as any debt due to the Government.”

c. C-61.1,
s. 178.1,
added **8.** The said Act is amended by inserting, after section 178, the following section:

Proceedings “**178.1** A municipal body which is a party to a memorandum of agreement in accordance with section 128.16 may, in respect of activities provided for in the memorandum, institute proceedings for a violation of section 171.2 or 171.4, in which case the fine shall be paid to the municipal body.”

Coming into force **9.** This Act comes into force on the date or dates fixed by the Government.