

NATIONAL ASSEMBLY
Thirty-third Legislature, second session

1989, chapter 37

**AN ACT RESPECTING THREATENED OR VULNERABLE
SPECIES AND AMENDING THE ACT RESPECTING
THE CONSERVATION AND DEVELOPMENT OF WILDLIFE**

Bill 108

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

Introduced 22 December 1988

Passage in principle 10 May 1989

Passage 21 June 1989

Assented to 22 June 1989

Coming into force: 22 June 1989

Act amended:

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



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CHAPTER 37

An Act respecting threatened or vulnerable species and amending the Act respecting the conservation and development of wildlife

[Assented to 22 June 1989]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

INTERPRETATION AND SCOPE

Scope of
application

1. This Act applies to the threatened or vulnerable wildlife and plant species designated under this Act which live in Québec or are imported into Québec.

Species

2. For the purposes of this Act, a subspecies, a geographically isolated population or a strain or variety of wildlife or of plants is considered to be a species.

Government
bound

3. This Act binds the Government and its departments and agencies.

Applicable
Act

4. This Act applies subject to the Act respecting hunting and fishing rights in the James Bay and New Québec territories (R.S.Q., chapter D-13.1).

Applicable
Act

5. The threatened or vulnerable wildlife species designated under this Act and their habitats are governed by the Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1), subject to the provisions of this Act.

DIVISION II

POWERS AND DUTIES

Policy of
protection
and manage-
ment

6. The Minister of the Environment shall propose to the Government a policy of protection and management of designated threatened or vulnerable species or of species likely to be so designated, or of their habitats, coordinate the application of the policy and see to its implementation.

Joint
policy

However, in respect of wildlife species, the content of the policy shall be proposed jointly with the Minister of Recreation, Fish and Game, who shall see to its implementation.

Prior
consultation

The Minister of the Environment shall hold prior consultation with the Minister of Agriculture, Fisheries and Food, the Minister of Energy and Resources and the Minister of Municipal Affairs.

Powers of
Ministers

7. The Minister of the Environment or the Minister of Recreation, Fish and Game may, in keeping with their respective responsibilities,

(1) carry out or cause the carrying out of research, studies or surveys respecting species which appear to require protection or respecting their habitats, and grant subsidies therefor;

(2) establish programs to promote the survival of designated threatened or vulnerable species or of species likely to be so designated, and the protection and development of existing habitats, the restoration of damaged habitats or the creation of new habitats;

(3) delegate the establishment or implementation of the programs contemplated in paragraph 2 to any person, and grant subsidies therefor;

(4) enter into an agreement with any person for the purpose of achieving the objectives of this Act;

(5) enter, according to law, into an agreement with any government or any governmental or international agency for the purpose of achieving the objectives of this Act.

Acquisition
of immov-
ables

8. The Minister of the Environment may, for the purposes of protection and management of designated threatened or vulnerable plant species or of plant species likely to be so designated,

(1) lease or acquire by agreement or expropriation, with the authorization of the Government, any immovable property or immovable real right;

(2) accept any movable or immovable property as a gift or legacy.

Repair of
damage

The Minister may also, for the purposes of protection and management of designated threatened or vulnerable plant species, take all measures necessary to repair or mitigate damage caused to a designated threatened or vulnerable plant species or to its habitat and, in the manner of any debt owed to the Government, claim reimbursement of the costs entailed by these measures from the author of the damage.

DIVISION III

DESIGNATION OF THREATENED OR VULNERABLE SPECIES AND DEMARCATION OF THEIR HABITATS

List of
species

9. The Minister of the Environment and the Minister of Recreation, Fish and Game may, jointly, by order, establish a list of threatened or vulnerable species which are likely to be so designated.

Publication

The order shall be published in the *Gazette officielle du Québec*.

Identifica-
tion and
designation

10. Upon the joint recommendation of the Minister of the Environment and the Minister of Recreation, Fish and Game, and after consultation with the other ministers mentioned in the third paragraph of section 6, the Government may, by regulation,

(1) designate, as a threatened or vulnerable species, any species requiring it;

(2) determine the features or conditions by which the habitats of threatened or vulnerable species may be identified, according to their biological features, such as sex or age, or according to their number, density or location, the time of year or environmental features, and, as the case may be, determine which habitats of threatened or vulnerable species must be demarcated on a chart prepared according to sections 11 to 15.

Preparation
of chart

11. Where the Government determines that the habitat of a threatened or vulnerable wildlife species must be demarcated on a chart, the Minister of Recreation, Fish and Game shall prepare the chart according to sections 128.2 to 128.5 of the Act respecting the conservation and development of wildlife, giving attention to the features or conditions determined by the Government under this Act.

Cooperation
between
Ministers

12. Where the Government determines that the habitat of a threatened or vulnerable plant species must be demarcated on a chart, the Minister of the Environment shall prepare the chart 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 Recreation, Fish and Game.

Amendments
to charts

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

Notice

13. The Minister of the Environment shall publish a notice in the *Gazette officielle du Québec* indicating that the chart of a habitat of a threatened or vulnerable plant species has been prepared, or, as the case may be, amended, replaced or cancelled.

Content

The notice shall name the plant species concerned and briefly indicate the location of its habitat.

Coming into
force

The chart comes into force fifteen days after publication of the notice or on any later date indicated therein.

Custody of
originals

14. The Minister of the Environment shall have custody of the originals of the charts he prepares, and he shall transmit a copy thereof to any person on request.

Transmission
of copies

15. The Minister of the Environment shall transmit a copy of the chart of the habitat of a plant species to

(1) the Minister of Energy and Resources, who shall enter it on the land use plan prepared in accordance with section 21 of the Act respecting the lands in the public domain (R.S.Q., chapter T-8.1);

(2) the regional county municipality whose territory is included on the chart so that it may enter the chart on the development plan provided for in 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 all persons concerned may examine it.

DIVISION IV

ACTIVITIES HAVING AN IMPACT ON A THREATENED OR VULNERABLE PLANT SPECIES
OR ITS HABITATProhibited
practices

16. No person may have any specimen of a threatened or vulnerable plant species or any of its parts, including its progeny, in his possession outside its natural environment, or harvest, exploit, mutilate, destroy, acquire, transfer, offer to transfer or genetically manipulate it.

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 required for educational, scientific or management purposes carried on in accordance with the conditions of an authorization from the Minister of the Environment;
- (4) an activity required to repair damage caused by a catastrophe or to prevent possible damage from an apprehended catastrophe.

Prohibited
practices

17. No person may, in the habitat of a threatened or vulnerable plant species, carry on an activity that may alter the existing ecosystem, the present biological diversity or the physical or chemical components peculiar to that habitat.

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 of the Environment or the Government;
- (4) an activity required to repair damage caused by a catastrophe or to prevent possible damage from an apprehended catastrophe;
- (5) an activity required for educational, scientific or management purposes carried on in accordance with an authorization from the Minister of the Environment.

Authoriza-
tion

18. The Minister of the Environment may authorize the carrying on of

(1) an activity required for educational, scientific or management purposes;

(2) an activity that alters the habitat of a threatened or vulnerable plant species.

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.

Criteria

Before issuing an authorization, the Minister shall take into account, in particular but not exclusively, the objectives pursued by the applicant, the nature of the proposed activities and their impact on the threatened or vulnerable plant species and on their habitats, the competence and experience of the applicant, and the precautionary, mitigating and monitoring measures necessary to ensure favourable living conditions for the threatened or vulnerable plant species or for their habitats.

**Alteration
of plant
habitat**

19. The Government, upon the advice of the Minister of the Environment 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 the habitat of a threatened or vulnerable plant species 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 habitat of the plant species concerned.

**Written
application**

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

**Information
required**

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

Denial

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

**Information
required**

22. The Minister may demand any information relating to the carrying on of an activity in the habitat of a plant species.

**Failure to
comply**

23. Where the holder of an authorization fails to comply with the conditions attached to the authorization, the Minister of the Environment may suspend or revoke the authorization or confiscate the security furnished by the holder and use it to repair the damage caused to a threatened or vulnerable plant species or its habitat.

Representa-
tions

24. 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.

Ministerial
order

25. The Minister of the Environment may make an order on ascertaining that an activity that may result in serious or irreparable damage to a threatened or vulnerable plant species or its 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.

Content of
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.

Justifica-
tion and
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.

Delegation of
powers

26. The Minister of the Environment, by memorandum of agreement, on such conditions and for such activities or such habitats of a threatened or vulnerable plant species as he determines, may entrust, to the Communauté urbaine de Montréal, the Communauté urbaine de Québec, the Communauté régionale de l'Outaouais or to a municipality, the exercise in its territory of the powers provided in sections 18 and 20 to 24 and the second paragraph of section 8.

Subdelega-
tion of
powers

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

Notice

The Minister shall publish a notice in the *Gazette officielle du Québec* indicating that a memorandum of agreement has been subscribed with a municipal body and giving the date of its coming into force.

Authority to
exercise
powers

From the given date, the municipal body party to the memorandum of agreement has the necessary authority for the exercise of the powers delegated pursuant to this section.

DIVISION V

INSPECTION, SEIZURE, CONFISCATION AND ARREST

Interpreta-
tion**27.** In this division,"dwelling-
house"

"dwelling-house" means a building or structure or a part thereof kept or occupied as a permanent or temporary residence, and a building or structure or a part thereof connected to it by a doorway or by a covered and enclosed passageway.

Inspector of
plant life

28. To ensure the enforcement of the provisions of this Act and the regulations thereunder pertaining to a plant species, the Minister of the Environment may generally or specially authorize any person to act as an inspector of plant life.

Powers of
inspector

29. For the purposes of an inspection, an inspector of plant life may

(1) have access, at any reasonable time, to any place other than a dwelling-house where an activity contemplated in the second paragraph of section 16 or of section 17 is carried on in respect of a threatened or vulnerable plant species or its habitat;

(2) photograph such places, take samples and make analyses;

(3) enter and pass on private land;

(4) require any information relating to this Act and the regulations thereunder pertaining to a threatened or vulnerable plant species or its habitat.

Identification

The inspector shall, upon request, identify himself and show the certificate issued by the Minister of the Environment attesting his capacity.

Seizure of
specimens

30. In carrying out an inspection, an inspector of plant life may seize any specimen of a threatened or vulnerable plant species or one of its parts, or anything in the possession of an offender that has been used for the commission of the offence and that is required for purposes of expertise, if he has reasonable grounds to believe that an offence has been committed in violation of this Act or the regulations thereunder, or is being committed, in respect thereof.

Hindering
prohibited

31. No person may knowingly give false information to an inspector of plant life or hinder him in the performance of his duties.

Arrest

32. Any inspector of plant life may arrest a person who is in the act of committing an offence which creates a risk of immediate danger to the life of a threatened or vulnerable plant species or of consequent irreparable damage to its habitat.

Written report

33. Every inspector of plant life shall, without delay, make a written report to the Minister of the Environment of every seizure made by him under this Act.

Responsibility of inspector

34. Every inspector of plant life is responsible for the custody of a thing he has seized until a judge declares it confiscated or orders it returned to the person from whom it was seized or the person who claims title to it.

Custody of vehicle, aircraft or boat

However, in the case of a person resident in Québec, an inspector of plant life who seizes a vehicle, aircraft or boat shall, after making any appropriate expertise, entrust it to the custody of the person from whom it was seized or the person who claims to have title to it; the person is bound to accept its custody until a judge has declared it confiscated or ordered it returned to the person from whom it was seized or the person who claims title to it.

Deterioration or alienation

The person to whose custody a vehicle, aircraft or boat seized by an inspector of plant life is entrusted shall not remove, deteriorate or alienate the thing under pain of a fine equal to the value of the thing seized.

Return of thing seized

35. Anything seized by an inspector of plant life must, at the request of the person from whom it was seized or the person who claims title to it, be returned to him if no charge is laid in respect of the thing within 90 days from the date of seizure.

Extension of period of seizure

The justice of the peace may, however, order the period of seizure extended by not over 90 days.

Owner unknown

36. Where the owner of a thing seized by any inspector of plant life is unknown or cannot be located, the thing shall be confiscated 60 days from the date of seizure, and shall then be disposed of in the manner prescribed by regulation.

Claim of ownership

37. The owner of a seized thing may claim the ownership thereof in penal proceedings and thereafter until final judgment, by presenting to the judge a petition alleging the nature of his right in the thing seized and proving his title of ownership.

Delivery to petitioner

The judge to whom the petition is presented may order the thing to be delivered to the petitioner.

Unlawful
possession

38. Where unlawful possession of the thing seized prevents its return to the person from whom it was seized or to the person who claims to have title to it, the judge shall order it confiscated on the motion of the plaintiff; if unlawful possession is not established, the judge shall designate the person to whom the thing may be delivered.

DIVISION VI

REGULATIONS

Regulations

39. In addition to its regulation-making powers under section 10, the Government may, by regulation,

(1) withdraw certain activities from the application of section 16 in respect of a threatened or vulnerable plant species designated by virtue of this Act;

(2) determine activities that may alter the ecosystem, biological diversity and physical or chemical components of the habitat of a threatened or vulnerable plant species for which no authorization is required;

(3) prescribe management standards or conditions, as the case may be, applicable to activities contemplated in paragraphs 1 and 2;

(4) prescribe the cases and manner in which a habitat of a threatened or vulnerable plant species must be indicated;

(5) 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 of the Environment to take or cause the taking of the required measures pursuant to the second paragraph of section 8 or to section 23, and fix the nature and amount of the security according to the class of person or habitat or to the kind of activity;

(6) prescribe the manner of disposing of any seized thing that has been confiscated by virtue of this Act;

(7) prescribe any provision of the regulations the violation of which is an offence.

Variations

The activities or the management standards or conditions prescribed in subparagraphs 1, 2 and 3 of the first paragraph may vary according to the plant species, the kind of activity, the class of habitat of a plant species or its location, the time of year or environmental features.

DIVISION VII

PENAL PROVISIONS

Offences
and penalties

40. Every person who contravenes any provision of section 16 or 17 or an order made under section 25 or who does not respect a condition of an authorization issued under section 18 or 19 or a standard or condition of management determined by regulation is guilty of an offence and is 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 for a first offence and to a fine of not less than \$1 000 nor more than \$40 000 for any subsequent offence within three years of conviction for an offence under the same provision; in addition, in the latter case, the judge may condemn the offender to imprisonment for a term of not more than one year;

(2) in the case of a legal person, to a fine of not less than \$1 000 nor more than \$40 000 for a first offence and to a fine of not less than \$2 000 nor more than \$80 000 for any subsequent offence within three years of conviction for an offence under the same provision.

Prior
notification
to landowner

41. The owner of private land on which a habitat of a threatened or vulnerable plant species demarcated on a chart prepared by the Minister of the Environment is situated cannot be convicted of an offence under section 17 or for violation of a standard or condition of management prescribed by regulation committed in that habitat unless he had prior notification of the existence of the habitat.

Registration
in lieu of
notice

The Minister of the Environment 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 habitat of a threatened or vulnerable plant species 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 notice of the existence of a habitat of a threatened or vulnerable plant species on that land with regard to any person who becomes the owner thereof after the registration.

Prior indica-
tion or
notification

42. In the cases prescribed by the Government, by regulation, in which a habitat of a threatened or vulnerable plant species must be indicated, a person cannot be convicted of an offence under section 17 or for violation of a standard or condition of management prescribed by regulation committed in that habitat unless prior indication of the habitat had been given in the manner prescribed by regulation or unless the person had prior notification of the existence of the habitat.

Refusal to
cooperate

43. Every person who refuses or neglects to provide information required by virtue of section 22 is guilty of an offence and is liable, in addition to costs, to a fine of not under \$200 nor over \$600.

Hindering

44. Every person who contravenes any provision of section 31 is guilty of an offence and is liable, in addition to costs, to a fine of not less than \$200 nor more than \$1 000.

Party to the
offence

45. Every person who knowingly performs or omits to perform an act in view of aiding a person to commit an offence in respect of this Act or the regulations thereunder, or who advises, encourages or incites a person to commit an offence is himself guilty of the offence and liable to the same penalty as that provided for the person who has committed the offence, whether or not the latter has been prosecuted or found guilty.

Party to
the offence

46. Every director or officer of a legal person who induces the legal person, by order, authorization, permission or encouragement to commit an offence referred to in section 40 is himself guilty of the offence and is liable to the penalty provided in paragraph 1 of that section.

Penal
proceedings

47. Penal proceedings under this Act are prescribed by two years from the date of the offence. However, wherever false or misleading declarations are made to the Minister of the Environment or to an inspector of plant life, penal proceedings are prescribed by one year from the date on which such persons become aware of the facts giving rise thereto.

Penal
proceedings

48. Penal proceedings taken pursuant to this Act shall be instituted in accordance with the Summary Convictions Act (R.S.Q., chapter P-15) by the Attorney General or by a person generally or specially authorized by him, in writing, for that purpose.

Municipal
body

49. Notwithstanding section 48, a municipal body party to a memorandum of agreement in accordance with section 26 may, in respect of activities contemplated in the memorandum of agreement, institute proceedings for an offence under section 40 or 43, in which case the amount of the fine shall be paid to that body.

DIVISION VIII

AMENDING AND FINAL PROVISIONS

c. C-61.1,
s. 1, am.

50. Section 1 of the Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1) is amended by

inserting, after the definition of “to sell”, the following definition:

“threatened or vulnerable species” ““threatened or vulnerable species” means a wildlife species designated or recognized under the Act respecting threatened or vulnerable species (1989, chapter 37);”.

c. C-61.1,
s. 1.1, added **51.** The said Act, amended by chapters 24 and 39 of the statutes of 1988, is again amended by inserting, after section 1, the following section:

“animal” **1.1** In the case of a threatened or vulnerable species of animal, “animal” also means any invertebrate other than a mollusc or a crustacean.

Species In the case of a threatened or vulnerable species of animal or fish, a geographically isolated population or a strain or variety is also considered to be a species.”

c. C-61.1,
s. 128.3, am. **52.** Section 128.3 of the said Act, introduced by section 5 of chapter 24 of the statutes of 1988, is amended by inserting, after the word “animal” in the first line of the second paragraph, the words “or fish”.

c. C-61.1,
s. 128.4,
replaced **53.** Section 128.4 of the said Act, enacted by section 5 of chapter 24 of the statutes of 1988, is replaced by the following section:

Custody of
originals **128.4** The Minister shall have custody of the originals of the charts he prepares, and he shall transmit a copy thereof to any person on request.”

c. C-61.1,
s. 162, am. **54.** Section 162 of the said Act, amended by section 35 of chapter 39 of the statutes of 1988, is again amended by striking out paragraph 25.

c. C-61.1,
s. 171.1,
replaced **55.** Section 171.1 of the said Act is replaced by the following section:

Maximum
fine **171.1** Notwithstanding the provisions of sections 165 to 167 and 171, where an offence has been committed in respect of a threatened or vulnerable species of animal or fish, the offender is liable to a fine of not more than \$20 000 for a first offence and a fine of not more than \$40 000 in the case of any subsequent offence.”

c. C-61.1,
s. 171.2, am. **56.** Section 171.2 of the said Act, introduced by section 7 of chapter 24 of the statutes of 1988, is amended

(1) by adding the following at the end of paragraph 1: “for a first offence and a fine of not less than \$1 000 nor more than \$40 000 for any subsequent offence within three years of conviction for an offence under the same provision; in addition, in the latter case, the judge may condemn the offender to imprisonment for a term of not more than one year;”;

(2) by adding the following at the end of paragraph 2: “for a first offence and a fine of not less than \$2 000 and at least \$80 000 for any subsequent offence within three years of conviction for an offence under the same provision”.

Ministers
responsible

57. The Minister of the Environment is responsible for the administration of this Act, except where it applies to the protection and management of wildlife species or their habitats; in the latter case, the administration of the provisions relating to a wildlife species or its habitat comes under the responsibility of the Minister of Recreation, Fish and Game.

Effect

58. Sections 52, 53 and 56 have effect from the date of the coming into force of sections 128.3, 128.4 and 171.2, respectively, of the Act respecting the conservation and development of wildlife.

Coming into
force

59. The provisions of this Act come into force on 22 June 1989.