



Protected Areas Act

Plain Language Summary

The Plain Language Summary of Bill 38 is provided solely to facilitate review of this Bill which is currently before a Standing Committee of the NWT Legislative Assembly. It is not intended to subsequently be an interpretive tool. For clarity, the legislative proposals set out in the Bill and described in this summary may be stated as if they have already been adopted or were in force. It is important to note, however that the Bill may be amended pending its review by Committee, and has no force or effect unless and until it is passed by the Legislative Assembly, receives Assent, and comes into force.

The Plain Language Summary is without prejudice to the position that the Government of the Northwest Territories may subsequently take on the interpretation of any provision in Bill 38.

About the Protected Areas Act

The proposed Protected Areas Act, or Bill 38, recognizes that the creation of protected areas is for our benefit and for the benefit of our children and our children's children.

It takes into account that protected areas are intended to contribute to the conservation of biodiversity, ecological integrity and cultural continuity, locally, nationally and internationally.

The Act considers the importance of working together with Indigenous governments and organizations, and the value of using local, community, traditional and scientific knowledge in making decisions.

It also recognizes the importance of Aboriginal and treaty rights, and that there are rights and processes set out in land, resources and self-government agreements relating to the creation and management of protected areas.

What are the goals of the Act?

- Provide a tool to create a network of permanent protected areas that support and promote the protection, conservation and maintenance of biodiversity, ecological integrity and cultural continuity of the Northwest Territories (NWT)

How are Aboriginal and treaty rights protected?

- The rights of Indigenous peoples are protected under the Canadian Constitution. Nothing in the proposed Act changes those rights.
- Anything done under the Act must be done in a way that is consistent with land, resources and self-government agreements.

Definitions

Biodiversity

- all the different types of animals and plants

Candidate protected area

- an area of land being considered for establishment as a protected area

Cultural continuity

- the ways that the relationship between Indigenous cultures and the natural environment stays intact, even if it changes over time

Ecological Integrity

- things in the natural environment (e.g. plants, animals, soil and water), as well as processes (e.g. water flow and reproduction) are likely to continue into the future

Establishment agreement

- an agreement between the Minister and one or more Indigenous governments or organizations to set up a protected area

Choosing a candidate protected area

How is an area chosen to become a protected area?

The first step in creating a protected area is to nominate it for consideration by the Minister of Environment and Natural Resources (ENR).

An Indigenous government or organization can nominate an area, or Cabinet can nominate a candidate protected area for the Minister's approval.

Any nomination requests must include:

- a description of what is important about the area and how protecting the area would help to meet the goals of the Act
- a map of the area
- the private landholders' consent to the nomination must be included, if applicable

For a nominated area to become a candidate protected area:

- the area must be made up of public land or, if it contains any privately-held land, the private landholders must agree to the nomination
- the Minister must agree that the nominated area meets the goals of this Act as well as any other rules set out in regulations
- the GNWT must have adequately consulted anyone whose Aboriginal or treaty rights might be affected by the creation of the candidate protected area
- the area must be temporarily protected from any kind of industrial development until a decision is made on whether or not the area will become permanently protected

The Minister can reject a nomination but must provide written reasons for the rejection to the organization that made the nomination.

It is possible for the approved candidate protected area to have different borders than the area originally nominated.

The Minister will add a candidate protected area to a protected areas registry once it has been approved by Cabinet.

If any part of a candidate protected area is in a region where there is a land use plan or where a land use plan is being developed, or where there is a Renewable Resources Board, the Minister will let the affected land use planning organization and/or board know about the candidate area.

Definitions (cont.)

Land, resources and self-government agreement

- land claim agreements
- land and resources agreements
- self-government agreements
- other similar agreements between Indigenous governments and organizations, the GNWT and the Government of Canada that deal with protected areas

Protected area

- an area of land where certain activities are restricted to ensure important natural and cultural features are permanently protected

Can a candidate protected area be removed from the registry?

- Every five years after a candidate area is added to the protected areas registry, the Minister will check on the status of work being done on that area until it is either removed from the registry or made a protected area.
- In some cases, the organization that originally nominated an area may decide they no longer support permanent protection of that area. The Minister may also decide that a candidate protected area no longer meets the goals of this Act. In these cases, a candidate protected area may be removed from the registry and will no longer be considered for permanent protected status.
- Before removing a candidate protected area from the registry, the GNWT must consult with those whose Aboriginal and treaty rights might be affected by the removal. Cabinet must also approve the removal.

Establishing a protected area

How does a candidate protected area become a permanent protected area?

A candidate protected area can become a permanent protected area through what is called an establishment process.

The first step in the establishment process is for Cabinet to identify which Indigenous governments or organizations are most appropriate to be involved in setting up the protected area. The Minister must then work with the identified Indigenous governments and organizations to decide on some important matters including, for example:

- the goals of permanently protecting the area
- the responsibilities of each of the groups involved in setting up the protected area
- how the protected area will be managed and by who
- how the involved groups will resolve disagreements
- what activities will or will not be allowed in the protected area
- how to manage visitors to the protected area
- how the set-up and management of the protected area will be funded
- how to make sure Aboriginal and treaty rights are not negatively affected
- how people might benefit from protecting the area (e.g. jobs, training, etc.)
- how to deal with things like buildings or equipment that are needed in the area
- how reviews or reports will be done over time to see if the protected area is meeting its goals
- anything else the Minister and involved groups decide is important for setting up the protected area

Decisions on these matters are written down in what is called an establishment agreement.

What if not all Indigenous governments and organizations want to be part of an establishment agreement?

Although it is best if the Minister can enter into an establishment agreement with all of the identified Indigenous governments and organizations, a protected area can still be created through an establishment agreement if:

- the Minister can reach agreement with at least one of the Indigenous governments or organizations
- the GNWT has consulted with all of the groups whose Aboriginal and treaty rights might be affected by the creation of the protected area

Can a protected area be created without an establishment agreement?

There are two situations in which a protected area can be created without an establishment agreement:

- if none of the identified Indigenous governments or organizations want to be included in an establishment agreement
- if the identified Indigenous governments and organizations are not able to reach an agreement together

In these cases, Cabinet can only decide to create a permanent protected area if:

- it is clear the Minister made best efforts to enter into establishment agreements with the identified Indigenous governments and organizations
- the GNWT consulted with those whose Aboriginal and treaty rights might be affected by the creation of the protected area.

When does a candidate area officially become a protected area?

A candidate protected area officially becomes a protected area when Cabinet makes a regulation to that effect.

The regulations will be based on what is in the establishment agreement. If there is no establishment agreement, the regulations can include anything needed to manage the protected area.

The regulations for the protected area will, at a minimum, describe its borders as well as what activities will not be allowed in the area.

The regulations may also include, for example:

- what activities require a permit within the area
- how entry to and use of the area will be controlled
- how public facilities will be managed
- the use of drugs or alcohol
- the best way to ensure all users can peacefully enjoy the area
- fire control
- activities that may contaminate the environment
- the possession or use of guns

- the possession of animals
- the use of any kind of vehicle
- anything else Cabinet decides is important for management of the protected area

If there is a difference or a conflict between any regulations made for a specific protected area and other general regulations made under this Act, the protected area-specific regulations will be followed.

Once the protected area is approved by Cabinet, the Minister will add it to the protected areas registry, along with information on the area's borders, how it meets the goals of the Act, the rules for the area, and why the area is important to protect. This information will be publicly available.

Protected areas management

Who is responsible for managing and operating a protected area?

An establishment agreement will specify who is responsible for what aspects of managing and operating a protected area. The Minister is ultimately responsible for ensuring the ongoing management and operation of a protected area under the proposed Act. The Minister can cover some of the costs of managing and operating protected areas by entering into agreements or accepting donations to a dedicated fund.

In most cases, it is expected that a management board will be created to manage an individual protected area. The board will have to follow the regulations when making decisions about the protected area. Instead of creating a new board, an existing board can be used.

The Minister can also set up a panel of expert advisors, called an advisory body, to give advice to a management board about any matter related to a protected area. If an establishment agreement exists for the area, the advisory body would only be set up with the agreement of the Indigenous government or organization that is working with the GNWT to establish and manage the area.

The Minister may also set up advisory bodies to provide expert advice on a protected area that does not have a management board, or on anything to do with protected areas in general.

How will a protected area be managed?

According to the proposed Act, a management plan will be developed for each protected area within five years of establishment.

The management plan will describe what the protected area is intended to protect, what the current state of the area is and what actions will need to be taken to meet the long-term or future vision for the area.

The plan will also describe how baseline data will be collected over time. This information will be used to determine if the management actions are protecting the area in the way that was intended. If not, the management plan will be adjusted.

The groups involved in setting up a protected area have the option of developing temporary guidelines that can be used to manage the area until a full management plan is in place.

Can changes be made to a protected area after it's established?

Once established, protected areas are intended to be permanent, but changes can be made to the area in certain cases.

A protected area can be either reduced in size or have its protected status completely removed if:

- every Indigenous government and organization either involved in setting up the area agrees to the proposed changes
- some of the lands within the area become the property of an Indigenous government or organization as part of a newly settled land, resources or self-government agreement
- a court decides some of the land within the protected area already belongs to an Indigenous government or organization

For protected areas on public land, the public will have an opportunity to share their views and concerns with the Minister about any proposed changes to an existing protected area.

The Minister will update the protected areas registry with any changes to a protected area.

If any part of a candidate protected area is in a region where there is a land use plan or where a land use plan is being developed, or where there is a Renewable Resources Board, the Minister will let the affected land use planning organization or board know about the intended changes to the existing protected area. The Minister will also make sure that any requirements in land, resources and self-government agreements that relate to Renewable Resources Boards are met before making changes to an existing protected area.

Activities allowed in protected areas

What activities are allowed within protected areas?

The management plan for a protected area, as well as the Act and regulations, describes what activities are and are not allowed in an area. No one is allowed to do anything in a protected area that is not allowed by this Act, the regulations or a management plan.

In all cases, no one is allowed to do anything in a protected area that might harm any part of the natural or cultural environment.

Permits may be required for activities allowed by the management plan for a protected area. If a permit is required for an activity, it must be obtained before a person can do that activity.

Do people with Aboriginal or treaty rights need permits?

The rights of Indigenous peoples are protected under the Canadian Constitution. Nothing in this Act changes those rights. If someone has an Aboriginal or treaty right to do something within a protected area, that person does not need a permit for that activity and does not need to pay a fee. The person must carry proper identification to prove they have that right, and they must show their identification if an officer asks to see it.

Some protected areas may be divided up into zones. Different activities may be allowed in different zones.

Groups or individuals may apply to the GNWT for special permission to use or occupy land within a protected area but must always follow the rules laid out in regulations or a management plan.

In urgent circumstances, actions can be taken that would not normally be allowed by this Act. For example, the government can take the necessary actions to protect public safety, enforce the law (for example, laws to protect wildlife) or respond to an emergency.

What are some of the rules about allowable activities in the proposed Act?

Buildings and structures

No one is allowed to damage, remove or destroy any buildings or other structures in a protected area unless they have the legal right to do so.

Plants and trees

No one can damage, remove or destroy any kind of plant life in a protected area unless it is for:

- personal use
- making things using local methods and skills
- use by a community close to the area
- to help with management of the area
- as part of a research program that has permission to work in the area

If there is a lodge or eco-tourism business allowed to operate in a protected area, they are allowed to harvest and use wood or other forest products for building or maintaining their buildings, if:

- they can show it is not practical to get the wood from outside the area
- harvesting the wood won't harm natural or cultural features of the area
- they are following all the rules laid out in a management plan or regulations for the area

Gardening may be allowed in a protected area around cabins, lodges or eco-tourism businesses. However, farming or growing crops on a larger-scale is not allowed in protected areas.

No one can bring plants into a protected area unless it is for the purposes of gardening around a cabin, lodge or eco-tourism business. In the case of gardening, plants can't be brought in if there is a chance they could harm or take over the plants that naturally live in the area.

Stone and soil

No one can move or take stone or soil from a protected area unless it is for:

- personal use
- making things using local methods and skills
- use by a community close to the area
- use in gardening around cabins, lodges or eco-tourism businesses in the area
- to help with management of the area
- as part of a research program that has permission to work in the area

If there is a lodge or eco-tourism business allowed to operate in a protected area, they are allowed to use stone and soil from the area for building or maintaining their buildings, as long as:

- they can show it is not practical to get the materials from outside the area
- taking the materials won't harm natural or cultural features of the area
- they are following all the rules laid out in a management plan or regulations for the area

Waste disposal

No one is allowed to dump or leave waste in a protected area that could harm any part of the environment. Waste may be placed in containers, such as cans for garbage or compost or outhouses, if they are available in the protected area.

The management plan or regulations for a protected area may have more details about types of waste and how they can be disposed of in the area.

Small-scale energy development

It may be possible to set up a small-scale renewable energy development to provide energy for use within the protected area or by a community that is close to the area. In this case, the development would have to be low impact, such as geothermal power or solar panels. The energy source has to be renewable, so power generated by oil or gas, for example, would not be allowed.

Small-scale renewable energy development will only be allowed in a protected area if:

- it can be shown it is not practical to use an energy source from outside the area
- the development won't harm any natural or cultural features of the area
- the rules laid out in a management plan or regulations for the area will be followed

Power lines and roads

The Minister can decide, in the public interest, that it is necessary for a road or power line to go through a protected area.

When making this decision, the Minister must consider whether it is possible to avoid going through the protected area and what the potential effects would be on the natural and cultural features of the area.

The construction and operation of a road or power line through a protected area must follow the rules laid out in the regulations or management plan for the area.

Before making a decision, the Minister would have to talk to and consider the opinions of the protected area's management board, as well as the public if it's on public land.

Signage

Individuals who have responsibility for a protected area may put up signs or notices, for example to clarify what activities are and are not allowed in the area.

No one is allowed to remove, change or destroy any sign or notice put up by someone who had legal permission to do so. Similarly, no one is allowed to put up a sign to stop or regulate any activities related to a protected area unless they have a permit or other legal right to put up a sign.

What activities are never allowed in a protected area?

There are some activities that are not allowed in any protected area. These are:

- mining, oil and gas development
- non-renewable and/or large scale energy development, such as fossil fuel power stations and nuclear generators
- exploration for minerals, oil or gas
- introducing any animals, fish or insects into a protected area

Public engagement

Who gets to have input into the creation of a protected area?

Public engagement is built into the proposed Protected Areas Act.

Before a protected area is created, the Minister has to give the general public and the governments of any communities close to the area an opportunity to hear about what is happening and share any concerns they might have.

There will also be an opportunity for the public to add their views and ideas during the preparation of a management plan for a protected area. The Minister will also ensure the governments of any communities close to the protected area have an opportunity give input during the preparation of a management plan.

The public will also have an opportunity to share their views and concerns with the Minister about any proposed changes to an established protected area, if it's on public land.

Enforcement

Who will enforce the Act?

The Minister can appoint officers to enforce this Act and specify or limit what powers those officers have. These protected areas officers are peace officers under the *Criminal Code* and common law.

The Minister can designate people in certain jobs or positions as protected areas officers. For example, the Minister could make Renewable Resource Officers under the *Wildlife Act*, or Park Officers under the *Territorial Parks Act*, protected area officers under this Act.

If a group of people work for a different government, the Minister must first get approval from their employing government before making them protected areas officers.

What is an officer able to do when enforcing the Act?

An officer can order anyone to:

- remove something from a protected area they built without a permit
- repair any damage they caused to the environment or property in a protected area
- fix anything they did that does not comply with their permit conditions
- stop doing anything that is not allowed under this Act, the regulations or the management plan for the protected area

All orders from an officer must be followed. If a person does not do what an officer orders them to do, they will have to pay the costs of someone else doing it for them.

An officer can arrest someone who is committing an offence, or has committed an offence. The officer can use as much force as necessary and reasonable to arrest someone.

Removal of abandoned property

An officer can remove and store anything, including vehicles or equipment, he or she believes has been abandoned in a protected area or left in a place where it is not allowed.

In these cases, the officer will try to find the owner of the removed item and arrange to have the item returned, if possible. If the owner of the removed item cannot be found within three months, the item will become the property of the GNWT.

If the owner of the removed item has been found but does not want the item back, it may become GNWT property or the Minister may decide the owner has to take it back. If someone abandons something, like a vehicle or a piece of equipment, in a protected area, the GNWT can require that person to pay for the removal and storage of the abandoned item.

Inspections of vehicles and property

An officer can stop any vehicle to inspect it as part of an investigation. When anyone sees red and blue flashing lights, hears a siren or sees an officer directing them to pull over, they must pull over, stop their vehicle and remain stopped until the officer says they can leave.

At any reasonable time, an officer can enter and inspect a place where there might be things that were taken from or used in a protected area, records, data, or anything else that might be connected to a protected area. An officer can only enter a place where someone lives if the person says it is okay or the officer has a warrant, or if evidence would be destroyed in the time it takes to get a warrant.

While an officer is carrying out an inspection, a person must show anything the officer asks for and give any information or help the officer needs.

What if someone doesn't agree with an officer's actions?

If someone feels an officer has made a decision or has given them an order that is unfair, they can appeal it by sending an appeal form to the Minister within 10 days.

The Minister, or someone appointed by the Minister, will consider what the person has to say and then decide whether to leave the order in place, change the order or cancel the order.

Until the Minister has made a decision on an appeal, the officer's order remains in place and must be followed.

If someone commits an offence under the Act, what is the punishment?

A corporation convicted of an offence under this Act can be fined up to a maximum of \$1,000,000 for each offence. Corporations that have been convicted of an offence under this Act must give their shareholders all the information about the offence.

An individual convicted of an offence under this Act can be fined up to a maximum of \$100,000, be sent to jail for up to one year, or both.

Total fines can be more if the person commits several or repeat offences, or commits the same offence on more than one day, for example. They may also be required to pay back any money they made by committing an offence.

If someone tries to do something that is an offence, they can be charged with committing the offence even if they were not successful. If someone helps someone else commit an offence, that person is also guilty of that offence.

If someone works for a corporation that commits an offence, they can be charged with the offence if they were involved or knew about it, even if the corporation isn't charged. Similarly, someone can be charged with an offence if it is committed by someone who works for them, even if their employee is not charged, unless they can show they did not know about it.

A court is allowed to give any penalty it thinks is required to appropriately punish someone who has committed an offence to stop them from committing another offence. For example, a person may be ordered to pay for repairs to damage they caused or be prohibited from entering protected areas.

Instead of going through the normal court system, other measures can be taken to deal with someone who has committed an offence under this Act through an alternative measures program approved by the Minister of Justice.

