

**BILL C-38: AN ACT TO AMEND THE  
CANADA NATIONAL PARKS ACT TO ENLARGE  
NAHANNI NATIONAL PARK RESERVE OF CANADA**

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**23 July 2009**



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## LEGISLATIVE HISTORY OF BILL C-38

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	9 June 2009
Second Reading:	17 June 2009
Committee Report:	17 June 2009
Report Stage:	17 June 2009
Third Reading:	17 June 2009

### SENATE

Bill Stage	Date
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First Reading:	17 June 2009
Second Reading:	18 June 2009
Committee Report:	18 June 2009
Report Stage:	
Third Reading:	18 June 2009

Royal Assent: 18 June 2009

Statutes of Canada 2009, c. 17

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

CE DOCUMENT EST AUSSI  
PUBLIÉ EN FRANÇAIS

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BILL C-38: AN ACT TO AMEND THE CANADA NATIONAL PARKS ACT  
TO ENLARGE NAHANNI NATIONAL PARK RESERVE OF CANADA\*

BACKGROUND

Bill C-38, An Act to amend the Canada National Parks Act to enlarge Nahanni National Park Reserve of Canada, expands the park reserve from 4,766 square kilometres to over 30,000 square kilometres.<sup>(1)</sup> The bill was tabled by the Minister of the Environment, the Honourable Jim Prentice, on 9 June 2009. By unanimous consent, on 17 June 2009 the bill was deemed read a second time, deemed referred to a Committee of the Whole, deemed reported without amendment, deemed concurred in at report stage and deemed read a third time and passed by the House of Commons. On 18 June 2009 the bill was considered by the Standing Senate Committee on Energy, the Environment and Natural Resources, reported back to the Senate without amendment, read a third time and passed. It received Royal Assent later that same day.

The greater Nahanni ecosystem comprises 39,000 square kilometres. Most of the area lies within the Dehcho region of the Northwest Territories; approximately one-sixth lies within the Sahtu Dene and Métis Settlement Area. A map of the existing Nahanni National Park Reserve and the expansion area is appended.

The bill increases the size of Nahanni National Park Reserve in order to conserve Canadian wilderness that is of international importance, as it is designated under the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Convention as a world heritage site. The expansion of the park reserve will also protect the waters flowing into the South Nahanni River, as well as the area's resources and unique ecology.

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\* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Parks Canada, "Government of Canada Announces the Expanded Boundary for Nahanni National Park Reserve of Canada," News release, Ottawa, 9 June 2009, [http://www.pc.gc.ca/apps/cp-nr/release\\_e.asp?id=1337&andor1=nr](http://www.pc.gc.ca/apps/cp-nr/release_e.asp?id=1337&andor1=nr).

The new boundaries include the highest mountains and largest icefields in the Northwest Territories, and will protect the habitat for species that inhabit that area, including several species at risk.

In 2003 the Dehcho First Nations and Parks Canada signed a Memorandum of Understanding with a view to working together to increase the size of the park reserve. The two parties formed the Nahanni Expansion Working Group, which has conducted studies, managed consultations and developed boundary lines for the Dehcho portion of the greater Nahanni ecosystem.

Approximately 9% of the Dehcho part of that ecosystem is excluded from, but surrounded by, the expanded park reserve. According to the Parks Canada backgrounder released with the bill, the excluded area “represents all of the hydrocarbon potential and about half of the most important mineral potential [in the area], as well as 100 percent of existing mineral claims and mineral leases.”<sup>(2)</sup> The excluded area includes two current mining operations, which will continue to operate under existing regulations. The bill provides for the accommodation of certain existing third-party rights within the expansion area. This is an attempt to balance conservation and sustainable development by providing economic development opportunities for the people of the region.

Nahanni National Park Reserve, including the expansion area, is a national park reserve and not a national park. Section 4(2) of the *Canada National Parks Act* states that park reserves are established “where an area or a portion of an area proposed for a park is subject to a claim in respect of aboriginal rights that has been accepted for negotiation by the Government of Canada.” Thus, designation as a national park would not allow for Aboriginal land claims against the area that it encompasses, while designation as a national park reserve allows the government to continue land claim negotiations with First Nations people.

## DESCRIPTION AND ANALYSIS

### A. Short Title (Clause 1)

Clause 1 establishes that the short title of the Act is An Act Creating One of the World’s Largest National Park Reserves.

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(2) Parks Canada, “An Act Creating One of the World’s Largest National Park Reserves,” Backgrounder, Ottawa, [9 June 2009], [http://www.pc.gc.ca/apps/cp-nr/release\\_e.asp?bgid=1098&andor1=bg](http://www.pc.gc.ca/apps/cp-nr/release_e.asp?bgid=1098&andor1=bg).

B. Contravention of Land Use Permit or Water Licence in Nahanni (Clause 3)

Clause 3 amends section 24 of the Act, titled Offences and Punishment, by adding a fourth subsection. New subsection 24(4) states that an individual who violates the conditions of a land use permit or water licence issued under new sections 41.1(3) and (4) may be held liable on summary conviction. Section 41.1(3) (added to the Act by clause 7(1) of Bill C-38; see below) states that the Minister – i.e., the Minister responsible for Parks Canada – may grant permits for land use in the expansion area for the purposes of mining access roads. If the conditions upon which the permit is granted are violated, the violator will be held liable. Section 41.1(4) (also added by clause 7(1)) states that the Minister may grant licences for water use in the expansion area for the purposes of mining access roads. Again, if the conditions upon which the permit is granted are violated, the violator will be held liable.

New subsection 24(4) also provides that any person who contravenes an order or direction given by a superintendent, a park warden or an enforcement officer with regard to the above-noted land use permits and water licences is guilty of an offence and liable on summary conviction.

These new subsections are necessary to accommodate mining facilities that are currently operating on land inside the expansion area. Although the mines are wholly surrounded by the expansion area, they have been excluded from it and are not part of the national park reserve.

C. Trafficking in Wildlife (Clause 4)

Clause 4 amends subsection 25(1) of the Act to prohibit all traffic in any wild creature, plant, or other natural object, taken in or from a park, unless authorized under the Act or the regulations. Previously, such traffic was permitted only if authorized under the regulations.

D. Poaching and Trafficking (Clause 5)

Clause 5 amends subsections 26(1) and (3) of the Act to specifically prohibit the hunting or trafficking of any species listed in Parts 1 or 2 of Schedule 3 of the Act, unless authorized under the Act or the regulations. As in the case of subsection 25(1), amended by clause 4, such traffic was previously permitted only if authorized under the regulations.

The species listed in Part 1 of Schedule 3 are the piping plover, peregrine falcon, gyrfalcon, whooping crane, mountain goat, bighorn sheep, Dall's sheep, eastern Massasaugua rattlesnake, grizzly bear and polar bear.

The species listed in Part 2 of Schedule 3 are moose, American bison, wolf, American elk (wapiti), cougar (mountain lion), mule deer, white-tailed deer, caribou, Atlantic salmon, and black bear.

#### E. Application of Act to Reserves (Clause 6)

Clause 6 replaces the previous section 39 to establish that the Act applies to a park reserve as though it were a park, subject to sections 40 to 41.1. Previously, the Act made this stipulation subject only to section 40; however, new section 41.1 has been added to the Act by this bill, as discussed below. Sections 40 and 41 of the Act deal with accommodating traditional renewable resource harvesting activities by Aboriginal persons, and the power of the Minister to enter into an agreement with the Council of the Haida Nation respecting the management and operation of Gwaii Haanas National Park Reserve of Canada. Sections 41 and 41.1 empower the Minister to enter into an agreement or to issue permissions that could vary the application of the Act to the expanded park reserve.

#### F. Addition of Section 41.1 (Clause 7(1))

Clause 7(1) defines the expansion area of Nahanni National Park Reserve to mean the lands identified in Parts II and III of the description of the park reserve in Schedule 2 of the Act (new section 41.1(1)).

The bill gives the Minister the power to grant easements or land use permits relating to the expansion area to allow for access to mining sites (new section 41.1(2)). The Minister also has the power to grant, amend, renew, suspend, and cancel land use permits or water licences (new sections 41.1(3) and (4)).

Outfitter licences that have been issued under the Northwest Territories' *Wildlife Act* for use on lands included in the expansion area will be allowed to continue for up to 10 years; however, no new licences with respect to those lands will be issued (new section 41.1(5)).

Clause 7(1) provides that hunting, possessing and transporting of wild animals are permitted provided that a guide is accompanying the person responsible (new section 41.1(7)). This clause also defines a guide as a person who has been issued a licence in accordance with the *Wildlife Act* (new section 41.1(6)). The Governor in Council may create regulations relating to

the activities of guides, hunters, and holders of outfitter licences in the expansion area. These regulations may deal with the hunting of animals, the use of firearms, the removal or disposal of equipment and other activities (new section 41.1(8)).

The provisions relating to outfitter licences, guides, hunting, and regulations respecting the activities of guides and holders of outfitter licences in the expansion area, which are set out in new sections 41.1(5) to (8), are to be repealed 10 years after the day on which this Act receives Royal Assent, in June 2019. This time frame will allow for the temporary continuation of existing guide and outfitter enterprises operating within the park reserve and expansion area. During this time, the Crown will undertake negotiations to acquire those businesses at fair market value.<sup>(3)</sup>

#### G. Transitional Provisions (Clauses 10 and 11)

Clause 10 states that leases of public lands in the expansion area that are in effect on the day this Act receives Royal Assent continue as if they were issued under the Act. Clause 11 states that on the day this Act receives Royal Assent, the Minister responsible for Parks Canada shall issue permits, authorizations and licences to replace existing land use permits and authorizations and existing water licences issued under territorial legislation, with the same conditions and limits as were previously granted under that legislation.

#### H. Coordinating Amendments (Clause 12)

The bill contains coordinating amendments to ensure it is aligned with Bill C-16, which was considered by Parliament concurrently with this bill. Bill C-16, which received Royal Assent on 18 June 2009, amended several statutes administered by Environment Canada and Parks Canada and created the *Environmental Violations Administrative Monetary Penalties Act*. Notably, Bill C-16 amended sections 24, 25 and 26 of the *Canada National Parks Act* relating to the offences and punishments for the contravention of regulations concerning land use permits and water licences, and hunting, trafficking in or possessing wild animals. The coordinating amendments in clause 12 of Bill C-38 ensure that these new offences are consistent with the regulations made under Bill C-16.

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(3) Senate, Standing Committee on Energy, the Environment and Natural Resources, *Evidence*, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, 18 June 2009, p. 9:88 (the Honourable Jim Prentice, Minister of the Environment).



## COMMENTARY

This bill is the culmination of approximately 30 years of work by various governments to increase the size of Nahanni National Park Reserve in order to better protect the area's ecosystems. According to information on a Parks Canada website, "Since 1984, Parks Canada has been on record as wanting to increase the size of Nahanni National Park Reserve to better represent the Mackenzie Mountains Natural Region in the National Parks System and to enhance the ecological integrity of the Park Reserve."<sup>(4)</sup>

Bill C-38 received unanimous support as it moved through Parliament, and appears to have been uncontroversial. Perhaps more importantly, the initiative to expand the park reserve area has the support of the Dehcho First Nations. In speaking on the bill before the House of Commons, the Minister of the Environment stated that "the bill would not be before us today were it not for the co-operation and leadership of the Deh Cho First Nations ... [They] have been totally and unfailingly in support of the expansion of the park reserve."<sup>(5)</sup>

In addition to the Dehcho First Nations, the Tourism Industry Association of the Yukon supported the expansion,<sup>(6)</sup> as did the Yellowstone to Yukon Conservation Initiative,<sup>(7)</sup> a binational not-for-profit organization seeking to "preserve and maintain the wildlife, native plants, wilderness and natural processes of the mountainous region from Yellowstone National Park to the Yukon Territory."<sup>(8)</sup> A review of media coverage of this bill does not reveal any reported objections to the expansion of the park reserve.

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(4) Parks Canada, "Nahanni National Park Reserve of Canada: Park Establishment," [http://www.pc.gc.ca/pn-np/nt/nahanni/natcul/natcul1g\\_e.asp](http://www.pc.gc.ca/pn-np/nt/nahanni/natcul/natcul1g_e.asp).

(5) House of Commons, *Debates*, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, 17 June 2009, p. 4743 (the Honourable Jim Prentice, Minister of the Environment).

(6) "TIA Yukon Welcomes Park Expansion," *Whitehorse Star*, 24 June 2009, p. 8.

(7) "Planned Nahanni Park Expansion Praised," *Whitehorse Star*, 19 June 2009, p. 12.

(8) Yellowstone to Yukon Conservation Initiative, "About Us," <http://www.y2y.net/Default.aspx?cid=374&lang=1>.

APPENDIX

MAP OF THE EXISTING NAHANNI NATIONAL PARK RESERVE AND THE EXPANSION AREA



Parcs  
Canada

Parks  
Canada

Nahꞵ Dehé

NAHANNI. REAL. INSPIRING.  
*Nahanni*  
NAHANNI. UNIQUE. VRAIMENT.

