



**The Act respecting the  
conservation of wetlands  
and bodies of water:**

**Critical legal analysis of  
the wetland compensation  
fund in Quebec**

**Valérie Dupont  
Postdoctoral researcher  
University Laval**

**Land Use 2021**

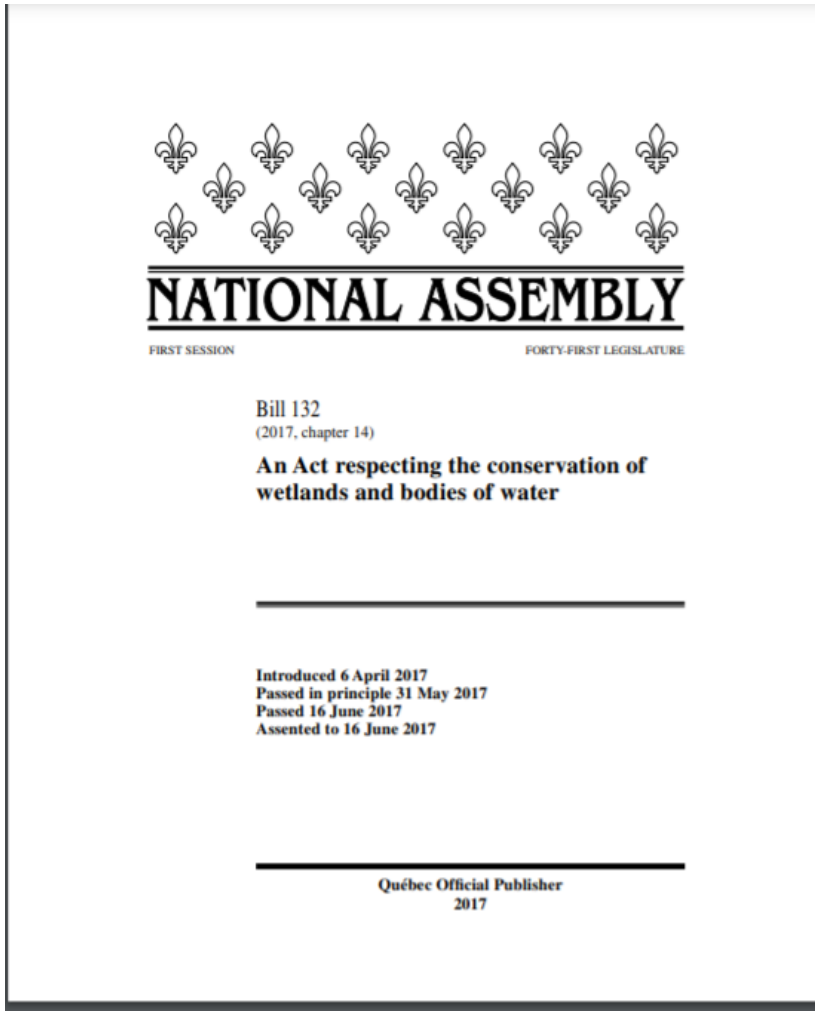
**A Place for biodiversity offsets**

**8th session: Offsetting in the  
Canadian context**

**14 June 2021**



## Key measures of the wetland protection regime



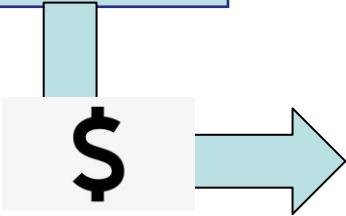
### Objective of No Net Loss

- Mitigation hierarchy in environmental permits
- Compensation Fund
- Regional planification
- Possibility to apply special conservation measures

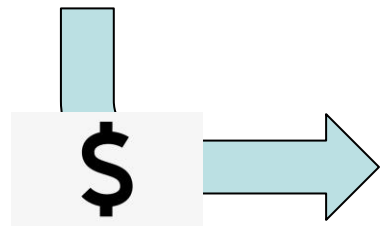
# Compensation Fund in Quebec



Unavoidable  
destruction of  
wetlands

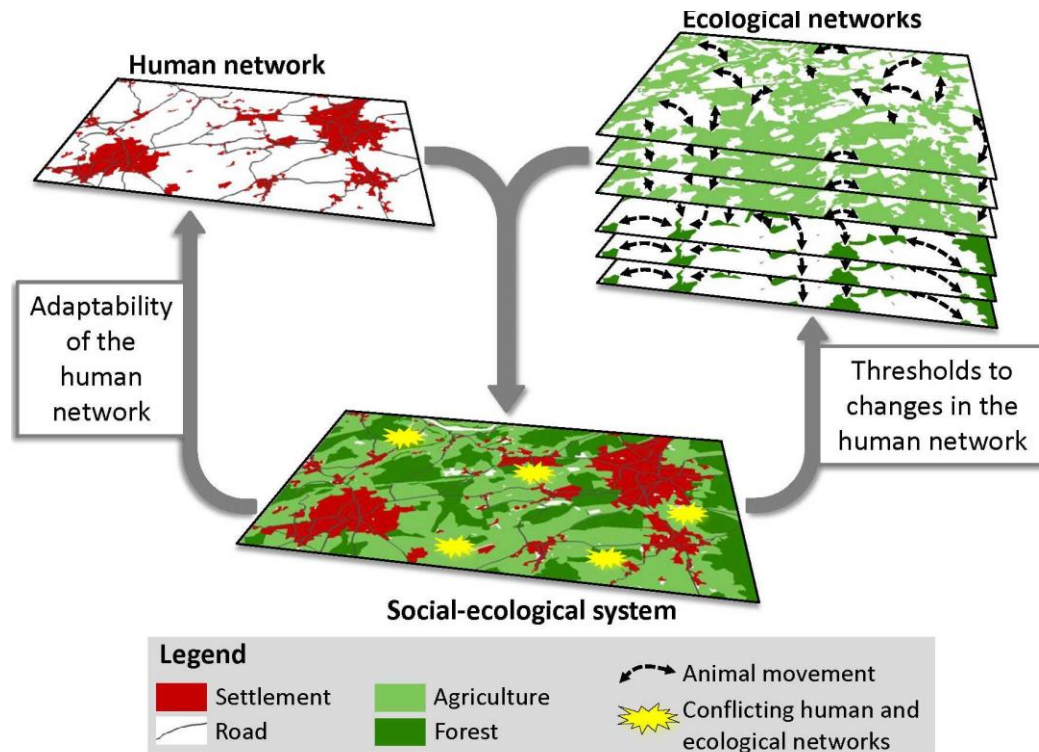


Compensation  
Fund



Restoration or  
creation projects

# 1) Key Advantage: Strategic investment of compensation fund based on conservation and restoration priorities

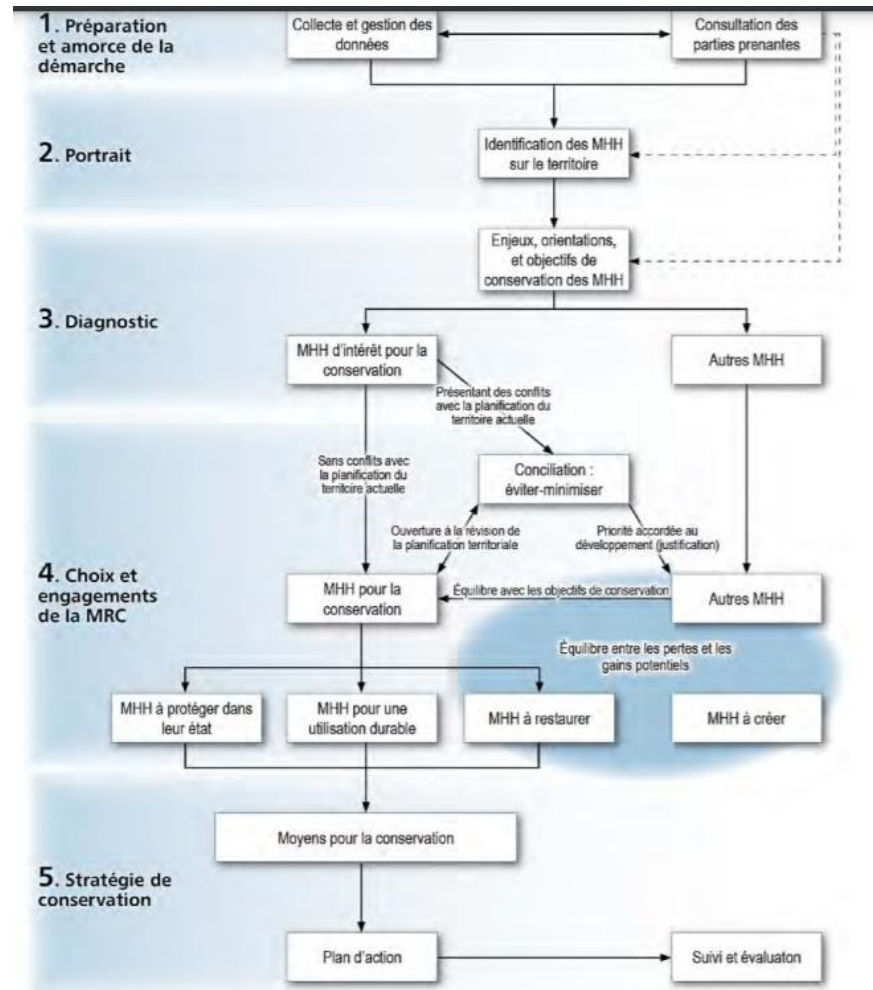




# Regional wetlands and bodies of water plans

Steps of the environmental diagnosis of wetlands and bodies of water

Source: MELCC, guide d'élaboration du PRMHH, 2019



## Program for the restoration and creation of wetlands

Such a program must also include, but is not limited to,

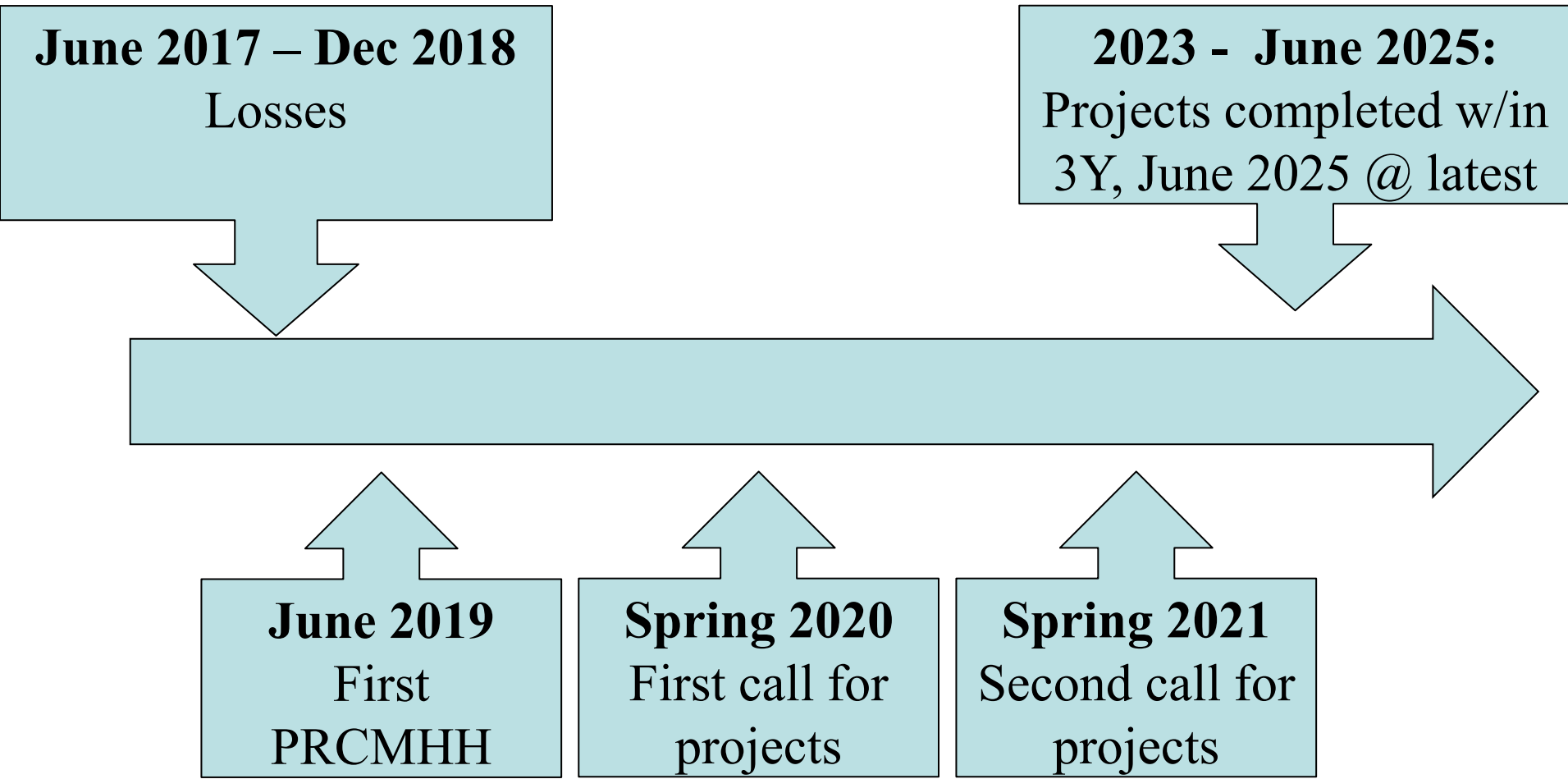
- (1) the eligibility criteria for the persons and bodies [...]
- (2) the eligibility criteria for the costs associated with carrying out the projects;
- (3) the objectives and targets to be reached;
- (4) the minimum content of the agreements to be entered into to implement the program [...]
- (5) the measures to be put in place to monitor the progress of the projects selected and assess their effectiveness; and
- (6) follow-up measures to ensure the sustainability of the restored or created wetlands and bodies of water.



## 2) Key weakness : *ex post* implementation and interim losses



# Timeline of Quebec first restoration program





### 3) Challenge of setting the right price Risks of fees being insufficient

(ii) For in-lieu fee programs, the cost per unit of credit must include the expected costs associated with the restoration, establishment, enhancement, and/or preservation of aquatic resources in that service area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as land acquisition, project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the in-lieu fee program. The cost per unit credit must also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of credit must also take into account the resources necessary for the long-term management and protection of the in-lieu fee project. In addition, the cost per unit credit must include financial assurances that are necessary to ensure successful completion of in-lieu fee projects.

(c) Credits provided by prescription

#### Full recovery costs

- Restoration costs
- Land acquisition
- Project planning and design
- Plant materials
- Labor
- Legal fees
- Monitoring
- Long-term protection and management
- Etc.

#### Equitable costs

- Net Gains ?
- Historic losses ?

# Amount of financial contribution in Quebec

- Amount based on formula in 2018 Regulation

$$AC = (cw + vl) \times SA$$

AC = Amount of contribution

cw = cost per square metre for the creation or restoration

vl = value of the land per square metre calculated according to the average value of vacant lots in the territory of the RCM concerned

SA = surface area, in square metres, of the portion of the WBW in which the activity is carried out, excluding the surface area occupied by existing works or structures

## 4) Challenge of equivalency



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# Equivalency in Quebec

- Water Law:
  - « projects maintain the surface areas or functions of a watershed's wetlands and bodies of water »,
  - « projects are assessed using equivalence factors with regard to the types of wetlands and bodies of water destroyed or disturbed »
- Target of the first program:
  - Surface area: 63 hectares
  - BUT no details on the functions or types of wetlands that were impacted



# Final thoughts



Démarche d'élaboration

Québec 



Votre  gouvernement

Québec 