

ENVIRONMENTAL PROTECTION AND LAND MANAGEMENT IN CANTABRIA. LEGISLATION, INSTRUMENTS AND TERRITORIAL CONFLICTS

Carmen Delgado Viñas

Departamento de Geografía, Urbanismo y Ordenación del Territorio. Universidad de Cantabria
carmen.delgado@unican.es

I. NATURAL AREAS IN CANTABRIA: ENVIRONMENTAL PROTECTION AND RESOURCES MANAGEMENT

1. Legal basis and regulatory and institutional framework

The Autonomy of Cantabria Statute in his Article 23 provides that corresponds to the Government of the Autonomous Community the legislative development of natural areas within the framework of the State's basic law, then the Law 15/1975 on *Protected Natural Areas* and, later, the Law 4/89 on *Conservation of Natural Areas and Wild Flora and Fauna*.

Almost twenty years elapsed since that date to the development and promulgation of the first law of regional level in this area, Cantabria Law 4 / 2006 of 19 May, on *Conservation of Cantabria's Nature*. This Law remains in force today without having undergone any change after the enactment of Law 42/2007, of December 13, on *Natural Heritage and Biodiversity*.

This Cantabrian Act classifies the Protected Natural Areas in the following categories of legal protection in terms of goods and values to be protected and the objectives of his statement: National Parks, Natural Parks, Nature Reserves, Natural Monuments, Protected Landscapes, Areas of European Ecological Network Natura 2000 and Areas of Special Interest. The Act further provides that the competent regional Ministry must develop and approve the Director Program for Conservation of Nature, considered as the basic tool of management that has to collect the guidelines, criteria, measures and actions needed to protect natural resources. This Director Program should be approved in less than two years after the Law comes into force, that is in 2008. Nearly three years after the deadline, the Director Program has not yet seen the light.

In regard to natural resources planning, technical and legal instruments required for the management of Protected Natural Areas in Cantabria are: Natural Resources Management Plans (NRMP) and Master Plans for Use and Management (MPUM) in National Parks,

Wildlife and Nature Reserves; in the areas of the European Ecological Network Natura 2000 specific management plans may be adopted or any of the above planning instruments «within four years after the entry into force of this Act».

2. The instruments of protection, planning and management of Cantabrian Protected Natural Areas

The Conservation of Cantabria's Nature Law has involved also the formation of the Network of Protected Natural Areas in which also include the Natura 2000 Network areas. Currently, the Cantabrian Network of Protected Natural Areas has a surface area of 147,572 hectares, representing 27,73% of the regional area, and is composed of thirty-seven spaces twenty-nine of which are part of the Natura 2000 Network; the others are one National Park, six Natural Parks and one Natural Monument.

The **Picos de Europa National Park** was conceived from the Act of July 22, 1918 by which the National Park of Covadonga Mountain or Peña Santa was established in the Picos de Europa in Asturias and Leon. In 1995 his legal birth took place through the statement as a National Park, located on the territories of the Autonomous Communities of Asturias, Cantabria and Castilla y León, whose preservation was declared a general interest of the nation. The Park, part of the State Network of National Parks, has a total area of 64,660 hectares, of which 15,441 hectares (23.8%) correspond to Cantabria and, specifically, to the municipalities Liébana Tresviso, Camaleño and Cillorigo.

The Picos de Europa National Park is the last that has been transferred in Spain and the process of transference has been quite complex because this is the only one whose surface extends through the territory of three different Autonomous Communities. From February 1, 2011 an inter-regional consortium composed of Cantabria, Asturias and Castilla y León has assumed management of the National Park Picos de Europa; this government will develop, adopt and implement the Master Plans for Use and Management (MPUM).

The little **Liencrees Dunes Natural Park** was declared by Decree 101/1986 of 9 December, and some months later adopted its Master Plan for Use and Management with the primary objective, among others, to contribute to national and international heritage a representative sample of the formation of dunes located in this area of the mouth of the river Pas (Mogro Estuary). Twenty four years have passed since declaration and the Natural Resources Management Plan (NRMP) has not yet been approved, although, in November 2010, the initial document has sent to be submitted to environmental assessment.

The **Saja-Besaya Natural Park** was established by Decree 25/1988 of 2 May to protect a large forested area, consisting almost entirely of mountains of public utility, which includes part of the basins of the rivers Saja and Besaya.

The MPUM was approved in 1990 and amended two years later. The enforcement of Master Plan had some difficulties and was insufficient and inappropriate for the regulation of certain activities or to handle new social demands. For this reason was drafted a second Master Plan most current, comprehensive and appropriate, that has been considered a model, particularly with regard to zoning.

Currently are working on preparing a document of ecological basis and on the definition of environmental units for the zoning of Saja-Besaya Natural Park as the first phase of the development of a new Master Plan.

The statement of **Oyambre Natural Park** was through Cantabria Law 4/1988 of 26 October under the Law 15/1975, of *Protected Natural Areas*, which did not require specific tools for planning in protected areas. The only planning instrument provided was a Special Plan for Protection of Agricultural-Livestock Peripheral Zone that should be written in the maximum period of one year. It was not one but ten years but, finally, dated May 11, 1998, the Regional Planning Commission finally approved the Special Plan. Later, after the required legal proceedings, the revision of the subsidiary regulations of the Municipality of the town of San Vicente de la Barquera, including the park boundaries, was approved.

The Second Additional Provision of Law 4/2006 proceeded to amend the Act declaring Oyambre Natural Park in order to allow the adequacy of the legal instruments of planning and management to referred in the Act in force. Thus, it states that the basic tools of Natural Park will be a Natural Resources Management Plan, that must be approved within six months after the entry into force of Law, and a Master Plan for Use and Management that have to be approved within a maximum period of two years from the time that one was in force.

The NRMP draft was submitted twice to public information to ensure the participation of all stakeholders and reach the widest possible consensus. In late 2009 there was a new wording of the draft to incorporate many of the allegations. The changes were so important that it was considered necessary to submit the document to a new period of public information. The NRMP, which was approved in December 2010, is the first available to the Natural Park twenty-four years after his statement.

As a result of the classification of Peña Cabarga Massif as a geological point of interest by the Geological and Mining Institute of Spain (1983), the first steps to his proposal as a nature reserve was initiated. The declaration of the **Peña Cabarga Massif Natural Park** was made in 1989 by a decree of the Cantabrian Ministry of Ecology, Environment and Planning which was canceled in May 2005 by order of the Chamber for Contentious Administrative High Court Justice of Cantabria being as the required Natural Resources Management Plan never put into force. However, since the sentence has not been made final, the Peña Cabarga Massif has maintained its status as Protected Natural Area. On the other hand, Cantabria Act 4/2006 did not provide anything special about this space, so it has maintained its current category of Natural Park, which requires the preparation of mandatory MPUM and NRMP under Article 20.3 of that said law

Law 6/1992 of March 21 stated the **Natural Reserve of Santoña, Victoria and Joyel Marshes**. One of the arguments for the declaration was that «Current property expectations are forcing the drying, phasing out the Marshes.» Therefore, the land affected by this legal regime were classified, for all purposes, such as undeveloped land under special protection, with the exception of land classified as urban to its entry into force, or had known by the town planning an urban use that, with the implementation of these rules, give rise to compensation under the legislation.

Considering the uniqueness of this case, the Act was drafted without the prior approval of a Natural Resources Management Plan, under the provisions of Article 15.2 of Law 4/1989, although, according to the law itself, a NRMP should be approved within a maximum period

of one year. Did not happen either because the NRMP took eight years to see the light and made it through Decree 34/1997 of 5 May.

Article 91 of NRMP advised «to declare Protected Natural Area all the land included within the limits of the NRMP.» According to this recommendation, the declaration of **Natural Park of Santoña, Victoria and Joyel Marshes** was made through the First Additional Provision of Law 4/2006. This required the review procedure of NRMP will begin within one year after the entry into force of the law and the adoption of the Master Plan for Use and Management within two years from the effective date of that one.

Not now have to meet deadlines. In November 2009 the Park Board agreed to start a review of NRMP and a few months later the cantabrian Minister for Rural Development, Livestock, Fisheries and Biodiversity announced that he hoped could be approved in late 2012.

The penultimate protected area declared in Cantabria has been the **Collados del Ason Natural Park** by Law 1/1999 of 18 February. Like the Saja-Besaya Natural Park, almost the entire surface consists of mountains of public utility owned by several villages of the Soba municipality with an area of 4,020 hectares of public forest, most of the 4,740 hectares the Park has in total.

Also in this case the declaration of Natural Park was made without the prior approval of the Natural Resources Management Plan, but this time the NRMP «only» took five years to be given birth; however, this management tool has been considered a model of an almost unanimous

II. PROTECTION OF COASTAL: SPANISH COASTAL ACT AND CANTABRIAN COASTAL MANAGEMENT PLAN

The fundamental regulatory framework of planning in Cantabria is the Law 2 / 2001 of 25 June, *Urban Planning and Land Regime de Cantabria* (LOTRUSCA). The main management and planning tools currently in force, including the Coastal Management Plan (CMP) come from the additional provisions of this Act.

The CMP, which can be regarded as the first territorial management tool itself developed, promulgated and implemented by the Autonomous Community, definitely reached legal status through Cantabria Act 2 / 2004 of 27 September, of *Management Plan Coastal* whose main objective is to ensure effective and comprehensive protection for the coastal area of the Autonomous Community. The law applies the sustainability as a basic criterion from the notion of «carrying capacity» of the territory, understood as the ability that each geographical area has to withstand a certain level of intensity of use without, in any case, produce a process of environmental, social or cultural degradation.

The CMP provides general criteria for environmental and coastal landscape protection and for management uses and activities in this area, while guiding urban growth strategies and the implementation of infrastructure.

In the CMP Memory of Spatial Management, territorial model is defined based on three main areas, including a Protected Area in which it differs, in turn, between the Environmental Protection and Coastal Protection with different categories of protection (Coastal, Intertidal, Riverside, Ecological and Landscape Interest).

As urban development, the Act provides a fundamental concept for the planning, the «carrying capacity», which is the highest urban growth that a territory can support in response to the dynamics of population, economic activity, resource availability, infrastructure and equipment.

The CMP area is also defined in the Fourth Additional Provision of Law 2/2001 like the territory of the 37 coastal municipalities of the region except urban soils, soils with developable Partial Plan finally approved and the areas under a special protection because they correspond to a Protected Natural Area or have a Plan of Management of Natural Resources in force.

The affected municipalities were required by law to begin the adaptation of urban planning at the Coastal Management Plan within one year after its entry into force. After that time the Minister responsible in the management of the territory would require the town council to initiate the process of adaptation within a period not exceeding three months, which exceeded the Autonomous Community could be subrogated to all intents and purposes, municipal powers. To the adaptation of urban planning at CMP developable soils included in the Planning Area could be further developed, unless it is isolated from the residential estates in the category of traditional models.

The deadlines have been largely exceeded and, almost seven years after the adoption of the CMP, only four municipalities (Argoños, Santillana del Mar, Comillas and Medio Cudeyo) have approved plans adapted to the Act; another, Santander, is about obtain final approval.

III. HOME BUILDING AND URBAN SPRAWL *VERSUS* ENVIRONMENTAL PROTECTION AND LAND MANAGEMENT: TERRITORIAL CONFLICTS IN CANTABRIAN COASTAL PROTECTED AREAS

A gradual accelerated process of urbanization and, ultimately, of artificiality of the soil has been in Cantabria, as has occurred in most parts of Spanish territory.

If we take the data from the Observatory of Sustainability in Spain (OSE) in its report on *Changes in land use in Spain* (2006), in the period 1987-2000 artificial surfaces have grown up in Cantabria in 22.1%. Most of this increase has corresponded to urban areas, which have risen in absolute terms 879.9 hectares (9.9%) coming to represent represented 70.7% of the artificial surface in 2000. In the first five years of XXI century about another 2,000 hectares have artificialised (OSE, 2010), more than double that in the thirteen years of the previous period.

Much of the territory artificialised corresponds to soil consumed for home building, an activity that has been in Cantabria a boom since the mid-nineties of the twentieth century. According to data provided by the latest Census of Population and Housing, only in the decade 1991-2001 were built 58,683 houses in Cantabria, 26.0% of the regional housing stock at the beginning of the century.

The actual building rate has been gradually accelerated, culminating in the mid first decade of the current century. In accordance with data from the Association of Technical Architects of Cantabria, in almost thirteen years, between 1998 and 2010, have endorsed them construction contracts for the building of 123,193 new houses, representing 54.6% of total housing census in 1991.

Although less dramatic than in other Spanish regions, which have a strong urban pressure, also in Cantabria many coastal municipalities have drawn up disproportionate urban plans, almost always linked to building holiday homes. Enough of these inmoderate plans are being overridden by the Cantabrian High Court of Justice (CHCJ) sentences, as has occurred, among others, those of Alfoz de Lloredo, Santa Cruz de Bezana, Polanco, Bareyo or Colindres.

Many times urban conflicts are related to direct aggression suffered by the Protected Natural Areas without planning or with inadequate planning. Among other reasons because the development and enforcement of the basic tools for planning and management is lagging a lot and therefore are still quite limited.

Such is not exceptional the case of the Oyambre Natural Park, inside which the company Golf Santa Marina promoted in the late nineties, the building of a tourist area of 72 hectares consisting of a golf course, 350 detached houses and a luxury hotel.

In November 2002, the Cantabrian High Court of Justice declared unlawful the Santa Marina Partial Plan after having canceled the Oyambre Special Plan and the Subsidiary Regulations of the City Council of San Vicente de la Barquera. The process continued during the following years until, in June 2006, the Spanish Supreme Court confirmed the successive rulings by the Cantabrian Court. The housing estate was not finished, but some infrastructures, roads and a golf course were ended.

Expectations to go on with the project have increased after implementation of the penultimate change the Cantabrian Land Act, which has been approved in 2009 to allow the change of use and rehabilitation of buildings in rural areas, and the final version NRMP.

Near the golf course of Santa Marina is another one, Oyambre Dunes Golf, located on the dunes system itself and in the easement area to protect the maritime public domain land, in violation of the Coastal Act.

A slightly different situation to the Natural Park of Santoña, Victoria and Joyel Marshes on which urban threats also loom. Cantabrian High Court of Justice recently returned to cancel the building permit granted in 1997 by the Argoños City Council to build ninety-one houses finding that is contrary to Plan for Natural Resource Management.

Natural Park of Liencres Dunes, which still lacks NRMP although it has MPUM, is also a victim of urban harassment. In February 2002 started a campaign in defense of Natural Park to try to halt the destruction of the northern slope of Mount La Picota, which forms a landscape and ecological unit with the Park. At this time the plans for the Picota included the urban development of an area of 200,000 m² and the building of 196 houses. The process has been stalled, in 2006, as a result of the beginning of the project of developing a NRMP, not yet submitted.

To that, add, and even, sometimes, overlap, the problems arising from the implementation of the Coastal Act of 1988, as in the case of housing estates of Cerrias in Liencres and the Golf Course Oyambre Dunes.

Although the Act is in force since that date has not been until recent years, from 2004, when it has actually started the process of demarcation of the maritime-terrestrial public domain. This explains the recent establishment of associations and platforms of affected consolidated in 2009 into the Cantabrian Association of People Affected by the Coastal Act, which includes, in turn, in the National Platform of the same name. The Association

is promoting that the Parliament adopted «as soon as possible» a motion urging the State Government to institute an imperative reform of the Coastal Act.

The emerging conflict comes from the delay that has made the process of demarcation: in early 2009, after more than twenty years of application of the Act, had completed the demarcation of 73% of Cantabrian coast, but still remains to be done in some municipalities surrounding the peri-urban area of Santander (Miengo, El Astillero, Camargo, Villaescusa, Marina de Cudeyo, Medio Cudeyo) and partly in Ribamontán al Mar, Laredo, Limpias, Santoña, Noja, Santander and Polanco, where affected Requejada industrial park.

IV. CONCLUSIONS

As a balance of what I have outlined above, it must be pointed that the protection of natural areas of Cantabria shows many insufficiencies and some deficiencies. Among others, the general lack of essential land management tools, particularly NRMP, which, until now, only the Collados del Asón Natural Park have one since 2004 and the Oyambre Natural Park since late 2010. National Park of Picos de Europa it is on hold and the Natural Park of the Marshes is under review after its declaration as such. On the other hand, only the Natural Park of Liencres Dunes and the Saja-Besaya Natural Park have MPUM.

It can be stated that the insufficiencies and deficiencies that have so far characterized the land management and planning of the natural environment, linked to new ways of urban growth and spread processes present, are causing significant and harmful effects of environmental and landscape degradation in Cantabria, particularly in coastal areas.

But, if this is serious, the current use of few available instruments of territorial planning and environmental protection to adapt to solving immediate problems seem much more dangerous, however arduous, through changes little explicit and inconsistent with the objectives, principles and criteria that were developed up to adulterate in practice. Such is the case of recent punctual changes of the Coastal Management Plan, the proposed amendments to the boundaries of protected natural areas and zoning of their NRMP, whose primal purpose to protect land an landscape has been refocused towards the preservation of housing estates with overlapping issues of legality. As also the legal establishment of mechanisms of complicity between environmental management plans and urban planning to circumvent court rulings seem reckless.

