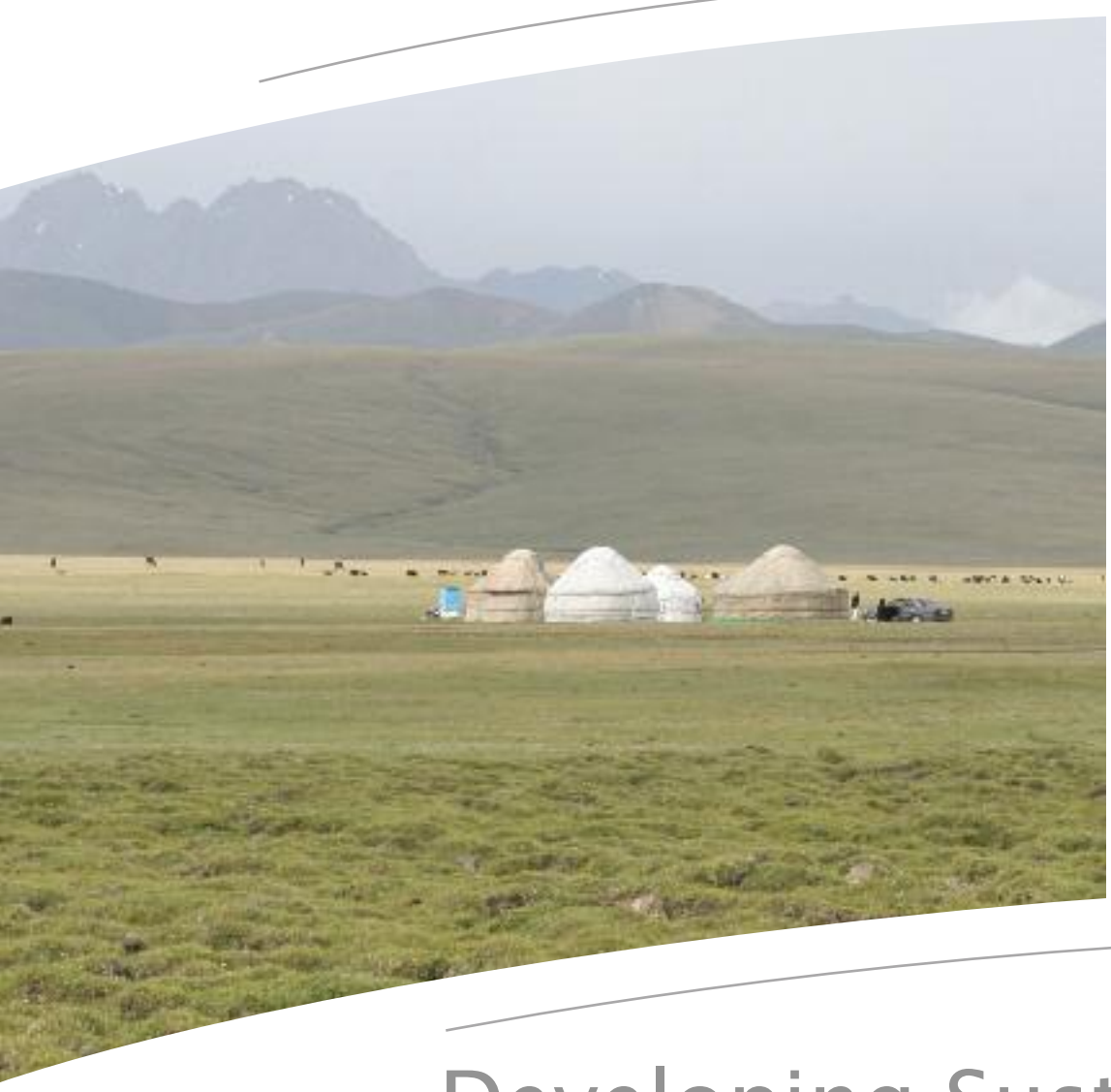

Developing Sustainable Wildlife Management Laws in Western and Central Asia

CIC Technical Series Publication No. 4

ISBN: 978-963-87791-4-4

Citation:
Morgera, E., Wingard, J., Fodella, A. (2009): Developing Sustainable Wildlife Management Laws in Western and Central Asia. Joint publication of FAO and CIC. Budapest. 180 pp.

Published by the CIC – International Council for Game and Wildlife Conservation and the
FAO – Food and Agriculture Organization of the United Nations

Editor: Kai-Uwe Wollscheid

Addresses:
FAO HEADQUARTERS
Viale delle Terme di Caracalla, 00153 Rome, Italy
Phone: +39-06-57051, Fax: +39-06-57053152
E-mail: FAO-HQ@fao.org, Website: http://www.fao.org

CIC – International Council for Game and Wildlife Conservation
Administrative Office, P.O. Box 82, H-2092 Budakeszi, Hungary
Phone: +36 23 453 830, Fax: +36 23 453 832
E-mail: office@cic-wildlife.org, Website: www.cic-wildlife.org

Cover photos: Stefan Michel, Dominique Reeb, Eugène Reiter

Printed in Hungary

Developing Sustainable Wildlife Management Laws in Western and Central Asia

Elisa Morgera
James Wingard
Alessandro Fodella

This report was edited by Elisa Morgera and Victor Mosoti, FAO Legal Officers (Development Law Service). Part I was authored by James Wingard (FAO International Legal Consultant) and Elisa Morgera. Part II was authored by Alessandro Fodella (FAO International Legal Consultant), with the research assistance of Anna Vartanyan and Vsevolod Gnetii (FAO Legal Consultants).

The authors wish to thank for their inputs: René Czudek (FAO Wildlife and Protected Area Management Officer), Kai Wollscheid (Director General, CIC), Dominique Reeb (FAO Sub-Regional Senior Forestry Officer), Ali Mekouar (Director of FAO Conference, Council and Protocol Affairs Division; former Chief, FAO Development Law Service), Charlotta Jull (FAO Legal Officer) and the participants in the workshop "Review and validation of FAO/CIC draft legislative study on Developing Sustainable Wildlife Management Laws in Western and Central Asia" (Antalya, Turkey, 12-16 May 2008).

Table of contents

Part I: An Introduction to Sustainable Wildlife Management Law

Part II: A Comparative Analysis of National Legislation

Introduction

Wildlife management is the process of keeping certain wildlife populations, including endangered species, at desirable levels on the basis of scientific, technical and traditional knowledge. *Sustainable* wildlife management adds to this objective the aim of balancing the economic, ecological and social values of wildlife, with a view to protecting the interests of present and future generations. Thus, this concept goes beyond the protection of interests related to hunting and protection for individual species, and rather focuses on wildlife as a renewable natural resource in a holistic way.

Law is a key tool to achieve sustainable wildlife management. It sets the parameters for protection and use of wild animals. Over time, legislation has shifted from narrow command and control, to a more comprehensive approach based on broader concepts such as the conservation and sustainable use of biodiversity. This trend is informed by a number of factors. Among them, there is the recognition of interdependence among different species and the direct and indirect threats to wildlife. There is also the broad appeal of a people-centred approach to wildlife management – meaning, the participation of concerned individuals in wildlife-related decision-making and the involvement of local communities in wildlife management and the sharing of its benefits.

Against this background, in 2006, the FAO and the International Council for Game and Wildlife Conservation (CIC) organized a workshop on "Policy and Institutions for Sustainable Use and Conservation of Wildlife Resources" in Western and Central Asia. The workshop was sponsored by the Government of the Czech Republic. One of the key findings that emerged from the discussions at the workshop was the general "weakness of wildlife management policy and legislation"[1] in the region. Consequently, one of the main recommendations of the workshop was that countries in the region should undertake an urgent review of existing legislation followed by improvements or the development of new legislation where needed. The workshop also urged that in reviewing and improving legislation, attention should be given to regional and global trends and international best practices, and where desired, assistance should be requested from competent international organizations.

This study flows directly from the recommendations of the workshop. As countries in the region start the process of legal review and legislative reform, this study seeks to launch a dialogue on considerations to be borne in mind. The overall purpose of the paper is to give an overview of legislative design principles and international best practices for sustainable wildlife management and hunting for the region. It comprises a set of conceptual recommendations and design principles on how to develop effective legislation, taking into account discernible trends in existing national legislation and relevant international legal instruments.

The study has two objectives. The first is to distil a set of region-specific messages on how to draft effective legislation on hunting and wildlife management – in other words, a set of sensible design principles that policy makers, wildlife managers and legal drafters in the region should focus on when embarking on legislative reforms in the hunting and wildlife management sector. The principles should take into account regional and national specificities while reflecting international best practices. Some of these principles and practices, such as participatory law-making processes, transparency and public awareness, international cooperation, and equitable sharing of benefits, are well known and apply to natural resources as a whole.

The second objective is to analyse hunting and wildlife conservation laws and the linkages with key related legislation, in particular, forestry and land laws, as well as laws governing related service sectors such as ecotourism. This analysis is based on the assessment of available legal texts on, or related to, wildlife management, as well as interviews with national focal points. From the analysis, the study then focuses on

[1] The Workshop Report of, and the various Country Reports presented at, the FAO/CIC/Czech Republic-sponsored workshop on "Policy and Institutions for Sustainable Use and Conservation of Wildlife Resources" held in September 2006, is available on-line at http://www.fao.org/forestry/foris/webview/pageview.jsp?langId=1&pageId=42070.

a set of country-specific recommendations for legislative reform. For those countries in which legal reforms have been undertaken in the recent past, greater attention has been paid to issues of institutional coordination and enforcement.

These two central parts of the study are preceded by a brief overview of the characteristics of the wildlife sectors in Central and Western Asian countries, as well as their institutional and legal frameworks related to wildlife. In addition, another introductory section illustrates the international framework (international treaties and standards) applicable to wildlife management.

A first draft of this study was discussed during the workshop "Review and validation of FAO/CIC draft legislative study on Developing Sustainable Wildlife Management Laws in Western and Central Asia" (Antalya, Turkey, 12-16 May 2008), and comments and suggestions made during the workshop have been reflected in the final version of the study. The authors thankfully acnkowledge funding from the FAO Forestry Department and the International Council for Game and Wildlife Conservation for the internatioal consultancies that contributed to the study and from the FAO Sub-regional Office for Central Asia and the Turkish Ministry of Environment and Forestry for the convening of the regional workshop in Antalya.

Overview of the region

This study covers the following countries: Armenia, Georgia and Turkey (in Western Asia), and Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan, the Russian Federation and Uzbekistan (in Central Asia). These countries are unique for many reasons. Some of these reasons, such as their Soviet past with centrally planned economies, have a direct bearing on the effectiveness of the legal framework on hunting and wildlife management. Other reasons of significance include the sheer size of the wildlife resources and their important economic and social role, including as a source of food and revenue, as well as the popularity of hunting and its connection with politically powerful interest groups.

In Western and Central Asia, climate and landscape are defined by extremes – extreme temperature fluctuations associated with the palearctic ecozone and extreme elevation differences. On the one hand, there are the massive ranges of the Himalayas to the east and the Caucasus to the west, and on the other, there are the vast, low lying deserts to the south and west, including the Kara Kum, Kyzyl Kum, and Taklamakan deserts. The north is bounded by Siberian taiga forests and running through it all are the grasslands stretching from the far east in Mongolia to the plains of Europe in the west, a vast region known as the Euro-Asian steppe. Like the mountains in the east, the grasslands are a dominant feature that has defined both the wildlife and the peoples that live here. The diversity of habitats caused by these extremes results in a similarly diverse suite of wildlife.

The common thread through most of the countries in Western and Central Asia is the shared Soviet political and legal heritage of wildlife management and related difficulties in adjusting to the change in government and economy after the collapse of the Soviet Union. At the risk of generalizing, a fair assessment is that in the former Soviet times, wildlife management had its place in the government structure of these countries. However imperfect some practices may have been, there was nevertheless a system in place to manage wildlife resources.This included the conduct of surveys, the determination of quotas, documentation of harvest numbers and trade statistics, the control of gun ownership and ammunition, and finally a regulatory framework for the issuance of hunting permits.

It is now increasingly clear that while the laws in the region are grounded in certain commonly acknowledged management principles – including the concepts of sustainable development, endangered species, habitat protection, hunting seasons and quotas, among others – the reality seems to be that the countries are facing challenges in effectively ensuring sustainable wildlife management. The litany of related problems is a long one: illegal trade in wildlife and wildlife products continues unabated, funding constraints mean infrequent and inadequate population surveys, records of actual harvest and trade values are either incomplete or do not exist, guns and ammunition are more readily available, and a lack of enforcement allows poaching to continue at unsustainable rates. Little documentation, however, is available to provide certain and updated information on the status of wildlife in the region. A 1995 study conducted by TRAFFIC International concluded that the dilemma "with wildlife management in all of the post-Soviet Central Asian States seems related not to 'subsistence' poaching..., but to the activities of the governments and governmental agencies responsible for wildlife control."[2] Since the collapse of the Soviet Union, the institutions responsible for managing wildlife have found themselves either without funds or with so little that practical management is no longer feasible.

A common approach has been for the responsible agencies to commercialize the very resource they were charged with protecting, whether through legal mechanisms – such as the approval of trophy hunting, or by issuing quotas despite unknown or even decreasing populations; or through simple inaction – as a result of the sudden evaporation of government funding. The idea behind this apporach is to let the resource pay for itself – a practice that has been used in all of the countries in this study, but with admittedly limited success. Another common challenge for the region is the continued reliance on a legal system focused on a punitive

[2] TRAFFIC. 1995. "The bear facts: The east Asian market for bear gall bladder." A TRAFFIC Network Report. TRAFFIC International.

approach and on law enforcement, as opposed to a combination of restictions to use and incentives to sustainable management. Along the same lines, countries experience in their legislation an exaggerated emphasis on the role of the government in ensuring sustainable wildlife management, while little – if any – attention is paid to the role of other stakeholders in sharing management responsibilities and assisting in ensuirng conservation and sustainable use of wildlife. Thus, the role of local communities, hunters, and environmental NGOs is often overlooked in wildlife legislation.

In all the countries surveyed for this study, the overall assessment of wildlife management, with or without examples of private endeavours, is for the most part negative. In Kazakhstan, for example, herds of Saiga antelope that were probably the largest in the world, were decimated within a period of a few years. A similar story is replicated in Mongolia with respect to several species. Most notably, the red deer that once numbered more than 130,000 in the 80s fell to an estimated 8,000-10,000 by 2006 as the antlers became a source of income for locals and professional hunters alike.[3] Marmots, once a seemingly inexhaustible resource, have plummeted from an estimated 40 million in the 1940s to less than a few million in recent years. The Georgia case study similarly cites poaching as one of the most serious threats to biodiversity conservation.

By all accounts, poaching continues at unsustainable levels, even if enforcement has increased, and Central and Western Asia have quickly become destinations for trophy hunters looking for exotic big game such as the Altai argali (Ovis ammon ammon), the Marco Polo sheep, the Siberian ibex, markhor (Capra falconeri), and wild boar. In 2002, TRAFFIC concluded that a primary destination for trophy hunters in Central Asia was Kazakhstan Mongolia is also very attractive to trophy hunters because it has the largest big horn sheep, although it probably has fewer hunters overall. The other Central Asian countries also attract trophy hunters, but it is difficult to obtain reliable figures on their numbers.

Despite actual losses in wildlife populations in Central and Western Asia, indications are that management has improved since the early days of political and ecnomic transition. Most countries are coming to terms with the new market-oriented economic conditions, establishing ties with international organizations interested in wildlife conservation and management, developing and refining legal frameworks, and signing international conventions specific to wildlife management. All the countries in this study have cited the development of their trophy hunting programs as a priority. Some countries are also experimenting with forms of community involvement in wildife management.

With some exceptions, the status of wildlife and hunting legislation in the region remains outdated, weak, fragmented, unevenly enforced or simply ineffective. Whereas the international legal framework is clear, and many of the target countries are already party to the majority of relevant legal instruments, how such legal instruments and international best practices are to be coherently reflected in domestic legislation represents a challenge.[4] As many countries in the region are either about to, or already in the process of, reviewing their wildlife legislation, there is a window of opportunity to introduce international best practices and sound legislative principles into the process. The ensuing sections will therefore first illustrate the applicable international legal framework, and on that basis elaborate principles for the review and design of effective wildlife management legislation.

[3] Wingard, J.R. and Zahler, P. 2006. Silent Steppe: The Illegal Wildlife Trade Crisis in Mongolia. Mongolia Discussion Papers. East Asia and Pacific Environment and Social Development Department. Washington D.C.: World Bank.
East Asia and Pacifi c Environment and Social Development Department. Washington D.C.: World Bank.

[4] See: FAO 2002 *Law and Sustainable Development*, Rome Legislative Study No. 73 Chapter 11 on 'Wildlife' and FAO 2002 *Legal Trends in Wildlife Management*, FAO Legislative Study No. 74, Rome.

International legal framework

Wildlife management has long been regulated at the international level. Initially this was done through a focus on the protection of certain species or on the protection of certain wildlife habitats. More recently, the focus has shifted to more comprehensive approaches, epitomised by the innovative features of the Convention on Biological Diversity. All of these international legally binding agreements are of key importance for the review and drafting of effective national legislation on sustainable wildlife management, either because they pose limits to the sovereignty of countries in regulating wildlife use and protection, or because they call for the operationalization of specific principles, methods and processes for the management, protection and use of wildlife.

In addition, a recent international agreement to address cross-cutting environmental issues – thus implicitly including wildlife management – requires States to make provision for public participation in the design of national laws. This is the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters.

Most wildlife-related international agreements have been widely ratified in the Central and Western Asian region, as summarized in the table below (showing the date of entry into force of each agreement for a given country, except where otherwise indicated).[5]

	CBD	WHC	CITES	Ramsar	Aarhus	CMS	AEWA	Curlew	Bukhara	Siberian	Saiga
							(CMS)	(CMS)	(CMS)	(CMS)	(CMS)
Armenia	1993	1991		1993	2001						
Georgia	1994	1991	1996	1997	2001	2000	2001	1994			
Kazakhstan	1994	1994	2000	2007	2001	2006		1995	2002	1999	2006
Kyrgyzstan	1996	1995	2007	2003	2001						
Mongolia	1993	1990	1996	1998		1999				2004	2006
Tajikistan	1998	1991		2001	2001	2001			2002		
Turkmenistan	1996	1991			2001					1999	2006
Uzbekistan	1995	1991	1997	2002		1998	2004	1994	2002	1999	2006
Turkey	1997	1983	1996	1994							
The Russian Federation	1995	1989	1992	1977							

a) Species-based international agreements

Endangered species legislation involves specialized legal approach to wildlife management. It focuses exclusively on the identification and restoration of species that have reached critically low population levels, on the basis of defined criteria and procedures for listing these species and at least two general mechanisms designed to ensure recovery of individual species. Listing criteria and procedures are based on science-based definitions of "threatened" and/or "endangered," both of which imply an assessment of the status of the species and the threats to their continued survival. The primary mechanism for recovery is the requirement that government agencies and private developers consider listed species in designing and constructing projects and include adequate protection measures to minimize or mitigate project impacts and ensure the species long-term survival or recovery. The second mechanism is the prohibition of direct and/or incidental "take" of the species in question. "Take" includes the killing of such species by whatever means (not just hunting), as well as any actions that remove a species from its habitat, destroy critical habitat, or otherwise harm, harass, or injure the species (see the definition provided by the Convention on Migratory Species in Box 2).

[5] Information from ECOLEX (www.ecolex.org); last visited on 5 September 2008.

Two major international wildlife agreements are species-based and focus on the immediate protection of certain species by the adoption of different lists according to the degree of threat. These lists usually take the form of Appendixes to the Convention, some of which cover most endangered species for which the use is prohibited (albeit with certain exceptions), while others cover less endangered species, the use of which is allowed but should be controlled. These Appendixes are regularly updated by the parties to the Conventions. International listings are usually combined with a permit system, thus requiring the enactment of national legislation to this effect.[6]

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (**CITES,** Washington, 1973), aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES therefore protects endangered species by restricting and regulating their international trade through export permit systems. For species threatened with extinction which are or may be affected by trade (listed in Appendix I to the Convention), export permits may be granted only in exceptional circumstances and subject to strict requirements. The importation of these species also requires a permit, while trade for primarily commercial purposes is not allowed. For species which may become endangered if their trade is not subject to strict regulation (listed in Appendix II), export permits (including for commercial trade) can only be granted if export is not detrimental to the survival of that species and if other requirements are met. A third list concerns species subject to national regulation and needing international co-operation for trade control (listed in Appendix III): in this case, export permits may be granted for specimens not obtained illegally. Additions and deletions of species from Appendices I and II are made by the Conference of Parties (COP), according to established criteria. There are approximately 5,000 fauna species and 28,000 flora species protected under the three CITES Appendices.

Box 1: CITES listing criteria

In 1994, the COP adopted updated criteria for listing species, repealing those long in force. The new criteria encompass general principles such as the precautionary principle, which implies that in case of uncertainty either as regards the status of a species or the impact of trade on the conservation of a species, parties should act in the best interest of the conservation of the species concerned and adopt measures that are proportionate to the anticipated risks to the species.[7]

Accordingly, **a species "is or may be affected by trade"** if:
i) it is known to be in trade (using the definition of 'trade' in Article I of the Convention), and that trade has or may have a detrimental impact on the status of the species; or
ii) it is suspected to be in trade, or there is demonstrable potential international demand for the species, that may be detrimental to its survival in the wild.

In addition, a species is considered to be "**threatened with extinction**" if it meets, or is likely to meet, at least one of the following criteria:

A. The wild population is small, and is characterized by at least one of the following:
i) an observed, inferred or projected decline in the number of individuals or the area and quality of habitat; or
ii) a very small subpopulation; or
iii) a majority of individuals being concentrated geographically during one or more life-history phases; or

[6] Birnie and Boyle, 2002. *International Law and the Environment*, Oxford University Press. (hereinafter, Birnie and Boyle), p. 623
[7] CITES Conf. 9.24 (Rev. CoP14).

iv) large short-term fluctuations in population size; or
v) a high vulnerability to either intrinsic or extrinsic factors.

B. The wild population has a restricted area of distribution and is characterized by at least one of the following:
i) fragmentation or occurrence at very few locations; or
ii) large fluctuations in the area of distribution or the number of subpopulations; or
iii) a high vulnerability to either intrinsic or extrinsic factors; or
iv) an observed, inferred or projected decrease in any one of the following:
– the area of distribution; or
– the area of habitat; or
– the number of subpopulations; or
– the number of individuals; or
– the quality of habitat; or
– the recruitment.

C. A marked decline in the population size in the wild, which has been either:
i) observed as ongoing or as having occurred in the past (but with a potential to resume); or
ii) inferred or projected on the basis of any one of the following:
– a decrease in area of habitat; or
– a decrease in quality of habitat; or
– levels or patterns of exploitation; or
– a high vulnerability to either intrinsic or extrinsic factors; or
– a decreasing recruitment.

The Convention requires States to adopt legislation that:

i) designates at least one Management Authority and one Scientific Authority;
ii) prohibits trade in specimens in violation of the Convention;
iii) penalizes such trade; or
iv) calls for the confiscation of specimens illegally traded or possessed.

In the last decade, the COP has adopted several resolutions on enforcement and compliance, recommending confiscation of specimens exported illegally;[8] on disposal of confiscated specimens or their parts or derivatives;[9] and recommending greater coordination between competent authorities, and outlining measures to promote enforcement, such as creating appropriate incentives for local and rural communities.[10] The COP has also adopted resolutions on trade in specified species, and on ranching and breeding of protected species. Compliance and the adequacy of legislation has recently been enshrined in CITES Strategic Vision 2008-2013.[11] Parties are called to comply with their obligations under the Convention through appropriate policies and legislation, by establishing transparent, practical, coherent and user-friendly administrative procedures, and reducing unnecessary administrative burdens. In addition, it is stressed that implementation of the Convention at the national level must be consistent with decisions adopted by the Conference of the Parties. National drafters, law enforcement officers and wildlife managers should, therefore, keep abreast of the periodic decision-making by the Conference of the Parties.

[8] CITES Resolution 9.9 (1994).
[9] CITES Resolution 9.10 (Rev.) (1994).
[10] CITES Resolution 11.3 (2000).
[11] CITES Conf. 14.2: CITES Strategic Vision: 2008-2013.

It should be noted that CITES specifically provides that its provisions do not affect the right of Parties to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III (art. 14).

The Convention on the Conservation of Migratory Species of Wild Animals (**CMS**, Bonn, 1979) aims to conserve terrestrial, marine and avian migratory species throughout their range, thus requiring cooperation among "range" States host to migratory species regularly crossing international boundaries. With regard to species considered as endangered (listed in Appendix I), States must conserve and restore their habitats; prevent, remove or minimize impediments to their migration; prevent, reduce and control factors endangering them; and prohibit their taking. With regard to other species which have an unfavourable conservation status (listed in Appendix II), range States undertake to conclude global or regional agreements to maintain or restore concerned species in a favourable conservation status. These agreements may range from legally binding treaties, called Agreements, to less formal instruments, such as Memoranda of Understanding, and can be adapted to the requirements of particular regions. Similarily to CITES, the CMS explicitly states that its provisions do not affect the right of Parties to adopt stricter domestic measures concerning the conservation of migratory species listed in Appendices I and II or to adopt domestic measures concerning the conservation of species not listed in Appendices I and II (art. 12).

Box 2: Relevant defintions from CMS Article 1

"**Migratory species**" means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries.

"**Conservation status of a migratory species**" means the sum of the influences acting on the migratory species that may affect its long-term distribution and abundance.

"Conservation status" will be taken as "**favourable**" when:
(1) population dynamics data indicate that the migratory species is maintaining itself on a long-term basis as a viable component of its ecosystems;
(2) the range of the migratory species is neither currently being reduced, nor is likely to be reduced, on a long-term basis;
(3) there is, and will be in the foreseeable future sufficient habitat to maintain the population of the migratory species on a long-term basis; and
(4) the distribution and abundance of the migratory species approach, historic coverage and levels to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management.

"**Endangered**" in relation to a particular migratory species means that the migratory species is in danger of extinction throughout all or a significant portion of its range.

"**Range**" means all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route.

"**Habitat**" means any area in the range of a migratory species which contains suitable living conditions for that species.

"**Range State**" in relation to a particular migratory species means any State ... that exercises jurisdiction over any part of the range of that migratory species...

"**Taking**" means taking, hunting, fishing capturing, harassing, deliberate killing, or attempting to engage in any such conduct.

Several agreements adopted under the Convention are relevant for the Western and Central Asia region. One is the **Agreement on the Conservation of African-Eurasian Migratory Waterbirds** (**AEWA**, 1995), which provides for concerted actions to be taken by the range States (117 countries, from the northern reaches of Canada and the Russian Federation to the southernmost tip of Africa) throughout the migration systems of the 172 species of water birds to which it applies (and that are listed in an Annex). Detailed provisions are laid down in an Action Plan, which forms an integral part of the Agreement, and which includes among priority issues: the provision of legal protection to species, habitat conservation measures, management of human activities, research and monitoring, education and information, and implementation measures.

In addition, four Memoranda of Understanding (MoU), which are non legally-binding, are of particular concern to more than one country within the region - Siberian Crane, Slender-billed Curlew, Bukhara Deer, and Saiga Antelope. **The Bukhara Deer MOU** became effective on 16 May 2002, and specifically targets Central Asia's only true deer species – the Bukhara deer (Cervus elaphus bactrianus). The MoU aims to provide strict protection to the Bukhara Deer and identify, conserve and, where feasible and appropriate, restore habitats of importance to the improvement of its conservation status, with more detailed measures identified by an Action Plan annexed to the MoU.

The Saiga Antelope MOU and associated action plan commits governments and partners to enhance enforcement and anti-poaching efforts, along with public education and work with local communities to reduce poaching and illegal trade. The MoU came into effect on 24 September 2006. **The Siberian Crane MOU** was concluded on 1 July 1993 and revised on 1 January 1999. It covers Western and Central populations of Siberian cranes, as well as the larger Eastern Asian population which winters around Poyang Lake, China, and accounts for over 95% of the birds. The serious threat of the Siberian Crane must be attributed firstly to hunting during their migration routes and habitat deterioration in their wintering ground. Parties undertake to provide strict protection to Siberian Cranes, and identify and conserve wetland habitats essential for their survival. A Conservation Plan is annexed to the MoU to be implemented as a basis for conserving the western, central and eastern populations of the species. **The Slender-billed Curlew MOU** became effective on 10 September 1994. Parties undertake to endeavour to, inter alia, provide strict protection to the Slender-billed Curlew – a migratory shorebird estimated at fewer than 50 individuals. Parties are also to identify and conserve wetlands and other habitats essential for the Slender-billed Curlew's survival, and implement the Action Plan annexed to the MoU as a basis for the conservation of the whole population of the species.

b) Area-based international agreements

Another specific approach in wildlife conservation legislation is that of identifying specific areas that are critical for the survival of certain wildlife species (migration routes, feeding or breeding grounds, etc.) through a listing system. This legal approach, therefore, prioritizes the protection of habitats as special conservation areas for wildlife. The main area-based treaties are the Convention on Wetlands (Ramsar Convention, Ramsar, 1971), and the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention, Paris, 1972). Area-based international obligations are usually implemented at the national level through the creation of protected areas legislation (national parks, nature reserves, etc.), as well as with legislation ensuring the prevention or minimization of negative interferences

in or near these areas. It should be recalled that species-based treaties also call on parties to protect endangered wildlife habitats, along with other management measures.

According to the **Ramsar Convention**, Parties must designate wetlands in their territory for inclusion in a List of Wetlands of International Importance, and promote their conservation and wise use, for example by establishing nature reserves. "**Wetlands**" are defined as "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres" (Art. 1). The concept of "**wise use**" does not forbid or regulate the taking of species for any purpose, but at least such use must not affect the ecological characteristics of wetlands.[12] Wise use refers to the "sustainable utilization for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem."[13] Selection for the Ramsar List should be based on the wetland's significance in terms of ecology, botany, zoology, limnology, or hydrology. Parties are also to promote sites conservation, including, where appropriate, their wise use; and have a general obligation to include wetland conservation considerations in their national land-use planning. It is worth noting that the Ramsar Convention has undergone a significant evolution: it was originally named "Convention on Wetlands of International Importance especially as Waterfowl Habitat", in line with its original emphasis on the conservation and wise use of wetlands primarily to provide habitat for waterbirds. Parties to the Convention now recognize that the Convention is applicable to all aspects of wetland conservation and wise use, recognizing wetlands as ecosystems that are extremely important for biodiversity conservation in general and for the well-being of human communities.

The **World Heritage Convention** provides for the identification and conservation of sites of outstanding universal value from a natural or cultural point of view, which are included in the World Heritage List. Natural habitats may include the habitat of threatened species of animals of outstanding universal value from the point of view of science or conservation (Art. 2). The site has to fulfil conditions of integrity, so it has to be large enough to include the essential components of the support system it represents and be sustainable.[14] While responsibility for conservation is primarily vested in the State where the site is located, the Convention also provides for international assistance funded by the World Heritage Fund. Parties to the Convention are obliged to ensure the identification, protection and transmission of natural heritage to future generations. They must adopt protective policies, put in place management services for conservation and take appropriate measures to remove threats (arts. 4 and 5).

c) Biodiversity protection and sustainable use

As opposed to the sectoral approach of the species- or area-based international treaties, the **Convention on Biological Diversity** (**CBD**, Rio de Janeiro, 1992) reflects the increased global awareness of the interdependence among species. The Convention is not limited to particular species or habitats, but provides for the conservation and sustainable use of biodiversity, defined as "the variability among living organisms", including "diversity within species, between species and of ecosystems" (art. 2). Although successive to the other wildlife-related international agreements described above, the CBD has become the "umbrella" for the overall biodiversity-related international regime and has significantly contributed to the evolution of pre-existing treaties and to continued coordination of their activities with the CBD. With regards to its State parties, the Convention provides guiding principles that should be taken into account in developing national policy and laws.[15]

The CBD has three objectives, which include not only the conservation, but also the **sustainable use** of biodiversity components (thereby including wildlife), as well as the fair and equitable sharing of the benefits arising out of the utilization of genetic resources (art. 1). Sustainable use is defined as using biodiversity components in a way and at a rate that does not lead to the long-term decline of biological diversity, thus

[12] Birnie and Boyle supra note 7, at 618.
[13] Rec. C.3.3 (rev.).
[14] Birnie and Boyle at 621.
[15] Ibid at 599.

meeting the needs and aspirations of present and future generations (art. 2). This concept is particularly relevant for the sustainable management of wildlife as it entails, at a minimum, that countries monitor use, manage resources on a flexible basis, adopt a holistic approach, and base measures on scientific research.[16]

Biodiversity conservation and sustainable use are to be pursued by adopting specific strategies, plans and programmes and by incorporating relevant concerns into any plans, programmes and policies (art. 6). Sustainable use of biodiversity must also be a consideration in national decision-making (art. 10(a)). Parties must establish a system of protected areas, rehabilitate and restore degraded ecosystems and promote recovery of threatened species. To this effect, the role of national legislation is emphasized (art. 8). The threats to biodiversity are not limited to deliberate killing (e.g., hunting): parties are required to identify and control all potential sources of adverse impacts on biodiversity, and to carry out environmental impact assessments of projects likely to have "significant adverse effects" on biological diversity (art. 14). The Convention further calls attention to conservation of animals outside their natural habitats ("ex-situ conservation", such as in zoos, parks, etc.), with a view to facilitating recovery and rehabilitation and reintroduction of threatened species into their natural habitats under appropriate conditions without threatening ecosystems and in-situ populations of species (art. 9).

Box 3: Relevant definitions from the CBD Article 2

"**Biological diversity**" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"**Biological resources**" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"**Ecosystem**" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

"**Ex-situ conservation**" means the conservation of components of biological diversity outside their natural habitats.

"**Habitat**" means the place or type of site where an organism or population naturally occurs.

"**In-situ conservation**" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"**Protected area**" means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

"**Sustainable use**" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

[16] Ibid at 638.

Another salient feature of the CBD is the importance attached to **people**, in particular local and indigenous communities and their relationship with biodiversity (including wildlife). Particularly with reference to sustainable use, the Convention calls for cooperation between national authorities and indigenous communities and the private sector. In addition, parties are to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. They must also support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced (art. 10). Finally, the Convention has a pivotal role in promoting the respect, preservation and maintenance of traditional knowledge and practices relevant for the conservation and sustainable use of biological diversity. It calls upon national governments to ensure communities' approval and involvement when such knowledge is applied, as well as the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices (art. 8(j)).

As can be gleaned from the previous paragraph, the CBD is mostly expressed as overall goals, rather than precisely defined obligations, thus allowing a variety of flexible approaches at the national and local level, so long as the goals are achieved. This reflects the recognition that the requirement for resources conservation must be built around the interests of the individuals, communities and governments concerned in the specific circumstances of the country, as well as the importance of building incentives into conservation and sustainable use objectives (art. 11). Nonetheless, the innovative features of the Convention most often require a major reconsideration of the role of national law in the sustainable management of wildlife, among other things.

As is the case of the other international agreements relevant to wildlife, the CBD provisions are further defined by the decisions of the periodic meetings of its Conference of the Parties (COP). The CBD COP, for example, adopted Decisions V/6 (2000) and VII/11 (2004), calling on parties to apply an **ecosystem approach**, while not precluding other conservation approaches, be they area-based or species-based. Ecosystem in this context is defined as "a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit", without determining the spatial scale of that unit. The ecosystem approach is considered the primary framework for action under the Convention, as its application is expected to help to reach a balance of the three objectives of the Convention. The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. Furthermore, the ecosystem approach entails a social process: different interested communities must be involved through the development of efficient and effective structures and processes for decision-making and management. The above-mentioned Decisions formulate guiding principles in this regard, including decentralization, consideration of adjacent and other ecosystems, long-term objectives and integration of use and conservation.

In the framework of the ecosystem approach, the parties to the CBD have further adopted specific principles and operational guidelines on sustainable use (Decision VII/14: **the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity**), which provide guidance to ensure that the use of the components of biodiversity will not lead to the long-term decline of biological diversity. The principles and guidelines have been drafted with a view to generating incentives for the conservation and restoration of biodiversity because of the social, cultural and economic benefits that people derive from it, and are considered as applicable to both the consumptive and non-consumptive use of biodiversity. Although not legally binding, these guidelines comprise several elements that may inspire national legislators in regulating the use of wildlife to ensure its sustainability. However, the operalization of these elements will require a flexible and adaptable legal and policy framework adjustable to local realities and specific ecosystems. Indeed, Principle 1 stresses the important role of legislation in ensuring sustainable use. Furthermore, the Principles call for the consideration of local customs and traditions when drafting new legislation and regulations, and the development of new supportive incentives measures. Moreover, they underline the need to resolve any overlaps, omissions and contradictions in existing laws and policies; and highlight the benefits of creating

cooperative and supportive linkages between all levels of governance in order to avoid duplication of efforts or inconsistencies. A brief overview of the principles is provided below. In the following section on design principles for sustainable wildlife management legislation, specific principles and their operational guidelines will be discussed more in detailed when appropriate.

Box 4 Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity: an overview of practical principles[17]

Practical principle 1: Supportive policies, laws, and institutions are in place at all levels of governance and there are effective linkages between these levels.

Practical principle 2**:** Recognizing the need for a governing framework consistent with international and national laws, local users of biodiversity components should be sufficiently empowered and supported by rights to be responsible and accountable for use of the resources concerned.

Practical principle 3**:** International, national policies, laws and regulations that distort markets which contribute to habitat degradation or otherwise generate perverse incentives that undermine conservation and sustainable use of biodiversity, should be identified and removed or mitigated.

Practical principle 4**:** Adaptive management should be practiced, based on:

1. Science and traditional and local knowledge;

2. Iterative, timely and transparent feedback derived from monitoring the use, environmental, socio-economic impacts, and the status of the resource being used; and

3. Adjusting management based on timely feedback from the monitoring procedures.

Practical principle 5**:** Sustainable use management goals and practices should avoid or minimize adverse impacts on ecosystem services, structure and functions as well as other components of ecosystems.

Practical principle 6**:** Interdisciplinary research into all aspects of the use and conservation of biological diversity should be promoted and supported.

Practical principle 7**:** The spatial and temporal scale of management should be compatible with the ecological and socio-economic scales of the use and its impact.

Practical principle 8**:** There should be arrangements for international cooperation where multinational decision-making and coordination are needed.

Practical principle 9**:** An interdisciplinary, participatory approach should be applied at the appropriate levels of management and governance related to the use.

Practical principle 10**:** International, national policies should take into account:

1. Current and potential values derived from the use of biological diversity;

[17] http://www.cbd.int/programmes/socio-eco/use/addis.asp.

2. Intrinsic and other non-economic values of biological diversity and

3. Market forces affecting the values and use.

Practical principle 11**:** Users of biodiversity components should seek to minimize waste and adverse environmental impact and optimize benefits from uses.

Practical principle 12**:** The needs of indigenous and local communities who live with and are affected by the use and conservation of biological diversity, along with their contributions to its conservation and sustainable use, should be reflected in the equitable distribution of the benefits from the use of those resources.

Practical principle 13**:** The costs of management and conservation of biological diversity should be internalized within the area of management and reflected in the distribution of the benefits from the use.

Practical principle 14**:** Education and public awareness programmes on conservation and sustainable use should be implemented and more effective methods of communications should be developed between and among stakeholders and managers.

The full text of the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity is appended to this study as an Annex.

d) Public participation

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (**Aarhus Convention**) was adopted under the aegis of the UN Economic Commission for Europe. It was signed on 25 June 1998 in Aarhus, Denmark, and entered into force on 30 October 2001. Although regional in scope, the Convention is considered global in its significance, namely in the recognition that sustainable development can be achieved only through the involvement of all stakeholders. To this end, the Convention established three sets of rights for the public (and corresponding international obligations for member countries), which should be implemented through appropriate legislation and regulatory instruments.

First of all, the Convention creates an obligation for public authorities to provide environmental information upon request from the public (art. 4), as well as an obligation to proactively collect and disseminate available environmental information to the public (art. 5). Secondly, the Convention creates an obligation for public authorities to establish transparent and fair procedures allowing public participation in environmental decision-making (art. 6), including in the preparation of plans and programmes relating to the environment (art. 7) or in the drafting of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment (art. 8). Thirdly, the Convention creates an obligation for public authorities to establish procedures guaranteeing public access to justice (a review procedure before a court of law or another independent and impartial body established by law) in case of denial of access to information or public participation or to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment (art. 9).

The Aarhus Convention applies to every government body performing duties, activities or services related to the environment and possessing environment-related information, thus applying also to authorities dealing with wildlife management. The detailed rules of the Aarhus Convention thus provide useful specifications for the implementation of more general public participation principles supported by the biodiversity-related conventions. The fulfilment of the rights protected by the Aarhus Convention presents significant challenges for the Western and Central Asian region. One is the difficulty of public authorities in shifting from a culture of providing "pre-packaged" information to the public towards providing information "upon request." Another is the challenge of coordinating the provision of environmental information scattered among different government agencies.[18]

Box 5: Relevant definitions of the Aarhus Convention Article 2

"**Public authority**" means:
(a) Government at national, regional and other level;
(b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
(c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;
(d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.
This definition does not include bodies or institutions acting in a judicial or legislative capacity.

"**Environmental information**" means any information in written, visual, aural, electronic or any other material form on:
(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.

"**The public**" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.

"**The public concerned**" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

[18] Zaharchenko T. and Goldenman G. 2004 "Accountability and Governance: The Challenge of Implementing the Aarhus Convention in Eastern Europe and Central Asia", *International Environmental Agreements: Politics, Law and Economics* (4), pages 229-251.

Conlcuding remarks

The international obligations and standards illustrated in this section are either applicable to specific wildlife species or their habitats, or to a holistic concept of sustainable wildlife management as part of each country's efforts to preserve biodiversity and ensure the sustainable use of its components. Some obligations pose significant limits to the sovereignty of countries in regulating wildlife use and conservation (as in the case of CITES and CMS Appendix-I listed species), such that State parties have limited, if any, flexibility in translating them into national legislation. On the other hand, other international commitments are of a more general nature, because they call for the operationalization of broad principles, methods and processes (most notably, the Biodiversity Convention), providing a variety of options for State parties to implement them at the national level. Nonetheless, these broad principles and general obligations may have a highly innovative impact on the design of national legislation, particularly when introducing new concepts in a national legal framework (for instance, the participatory approach).

It should be noted that countries in the region may also be party to bilateral or regional agreements having a bearing on wildlife management. This is the case of the 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats**,** which Armenia ratified in 2008, and of the 1998 Agreement between Kazakhstan, the Kyrgyz Republic and Uzbekistan on cooperation in the sphere of biological diversity conservation of West Tien Shan (which, however, has not yet entered into force). It should be noted that, under the *aegis* of the Berne Convention, the European Charter on Hunting and Biodiversity was adopted in 2007 by the Convention Standing Committee (Resolution 128). Along the same lines, countries in the region may be interested in approximating their wildlife legislation to the of the European Union (EU): this would be the case of Western and Central Asian countries that are associated with the EU, and may benefit from certain EU assistance in this respect.[19] The two main legal instruments within the EU related to wildlife management are: Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

In addition, national legislators and wildlife managers may find it useful to draw upon the instruments elaborated by the International Union for the Conservation of Nature (IUCN), an international organization whose members are both governmental and non-governmental in nature. With regards to wildlife, two specific instruments may be consulted:

- The IUCN Red List of Threatened Species assesses the conservation status of species, subspecies, varieties and even selected subpopulations on a global scale in order to highlight taxa threatened with extinction, and therefore promote their conservation. Thus, the main purpose of the IUCN Red List is to catalogue and highlight those taxa that are facing a higher risk of global extinction (i.e. those listed as Critically Endangered, Endangered and Vulnerable). The IUCN Red List also includes information on taxa that are categorized as Extinct or Extinct in the Wild; on taxa that cannot be evaluated because of insufficient information (i.e. are Data Deficient); and on taxa that are either close to meeting the threatened thresholds or that would be threatened were it not for an ongoing taxon-specific conservation programme (i.e. are Near Threatened);[20]
- The IUCN Protected Area Management Categories aim to establish greater understanding among all concerned about the different categories of protected areas. The categories are defined by the objectives of management, not by the title of the area nor by the effectiveness of management in meeting those objectives. Each category implies a different gradation of human intervention. They are expected to be used by those planning to set up new protected areas, and by those reviewing existing ones, with a view to meeting objectives consistent with national, local or private goals and needs. The Categories defined in

[19] Indeed, countries that have concluded an Association Agreement with the EU are often called upon to approximate their national legislation (particularly on natural resources management) to that of the European Union. See Duran, G.M. and Morgera, E. 2006 "Towards Environmental Integration in EC External Relations? A Comparative Analysis of Selected Association Agreements", 6 *Yearbook of European Environmental Law*, 179-210.

[20] http://www.iucnredlist.org/.

1994 include areas managed mainly for: I Strict protection [Ia) Strict Nature Reserve and Ib) Wilderness Area]; II Ecosystem conservation and protection (i.e. National Park); III Conservation of natural features (i.e. Natural Monument); IV Conservation through active management (i.e. Habitat/Species Management Area); V Landscape/seascape conservation and recreation (i.e. Protected Landscape/Seascape); and VI Sustainable use of natural resources (i.e. Managed Resource Protected Area).[21]

***

On the basis of the international legal framework on wildlife management, the following section will identify principles for the design of effective legal frameworks on sustainable wildlife management. These principles are based on the experience of FAO in advising member countries, in reviewing existing legislation and in drafting new legislation related to renewable natural resources.[22]

[21] The guidelines for applying protected area management categories are currently under revision: http://www.parksnet.org/files/1/2/89267_documents_document_file_1282.doc.

[22] See, for instance, the following LEGN publications: Cirelli, M.T. 2002. *Legal Trends in Wildlife Management*, FAO Legislative Study #74; Lindsay, J. 2004. *Legal frameworks and access to common pool resources*, Legal Paper Online #39; and Rosenbaum, K. L. 2007. *Legislative drafting guide: A practitioner's view*, Legal Paper Online #64. The Legal Papers Online are available at http://www.fao.org/Legal/prs-ol/full.htm.

Design principles for Sustainable Wildlife Management Laws

The following principles for the design of sustainable wildlife management laws first address general approaches to good legal drafting that are applicable to laws on renewable natural resources in general. Then, they address specifically wildlife management planning as an overarching mechanism for wildlife conservation and sustainable use. This is followed by principles on conservation and sustainable use and finally, by principles related to strengthening law enforcement. Where appropriate, attention is drawn to underlying international obligations and standards.

General principles

Principle 1: Developing a wildlife policy/strategy
A policy (or strategy) provides a set of orientations and principles of actions to guide and determine future decisions in relation to the conservation and sustainable use of natural resources for the benefit of society from a social, economic and environmental viewpoint. A wildlife policy specifically provides guidance for planning, resource allocation as well as legal reforms related to the wildlife sector. The policy represents the consensus among all relevant stakeholders on wildlife management objectives in the country. While the national wildlife authority will most likely lead the process of policy development, the responsibility to undertake activities to reach the identified policy objectives may be allocated to different governmental and non governmental actors. The national wildlife authority will remain in charge of overseeing that the policy goals are achieved.

The policy process will start with the identification of the relevant stakeholders, and of existing constraints and prospects for the development of the wildlife sector, including legal constraints and opportunities. On the basis of the problems identified, the policy will identify possible solutions that will be discussed by different stakeholders having an interest in, or being potentially affected by, wildlife management, with a view to defining the goals of wildlife management in a medium- to long-term period. For each goal, implementation tools will then be identified, including capacity building and training, public education and awareness raising, technical work, and legislative and institutional review. This exercise will finally conclude with a determination of responsibilities, timeframes and resources necessary for policy implementation. Thus, a wildlife policy helps to determine thorugh a participatory and inter-sectoral manner how legislation should be adapted or reformed in order to achieve medium and long-term goals for the wildlife sector. Wildlife policy may also remedy existing problems, while at the same time indicating where instruments other than legislation may be preferable to attain specific objectives.

Principle 2: Drafting clear and understandable legislation in a participatory way
A general understanding of the legislation and its application is required to ensure compliance with the law and to exercise rights effectively. To ensure that laws will be followed and will actually have an impact on social behavior, legal drafting should be undertaken from the perspective of end users. The general public, as well as wildlife management professionals need to have clear understanding of their rights and responsibilities under the law. This will also avoid or minimize doubts or conflicts in the interpretation of legislation by national courts.

The process by which legislation is written can indeed facilitate or obstruct efforts to reduce illegal activities. To ensure that legislation reflects reality and is subsequently understood by those affected by it, new legal provisions should be drafted in a participatory manner to build capacity among stakeholders in the knowledge and use of the law and in the exercise of their rights. Participatory legislative drafting involves the genuine involvement of all categories of stakeholders at the central and local level, in urban and rural contexts (government and non-governmental institutions, central and local institutions, local communities and traditional wildlife users, private sector organizations, farmers, environmental NGOs and hunters' associations). It also requires a true commitment to understand the needs, objectives, insights and capacities of intended users of the law and to find ways to accommodate multiple interests at stake. Participatory

legislative drafting greatly contributes to the quality and clarity of legislation, thanks to the information and perspectives gathered through public consultations. As a result of the sense of ownership and legitimacy nurtured by the legislative process, public acceptance and compliance with legislation will be increased.

For parties to the Aarhus Convention – among which figure several countries considered in this study – ensuring public participation in wildlife law-making is also a matter of fulfilling international obligations. In addition, in accordance with the Convention on Biological Diversity, participatory legislative drafting provides an avenue for bringing on board the concerns of local and indigenous communities, particularly their traditional use of wildlife, as well as traditional knowledge and practices related to wildlife conservation. Accordingly, the Addis Ababa Principles and Guidelines invite decision makers to consider local costumes and customary law when drafting new legislation."[23]

Principle 3: Adopting an integrated and multi-disciplinary approach
Legislation should never be adopted in a vacuum. A new law should complement other laws and sectoral strategies. Drafting sustainable wildlife management legislation is no exception. Adopting an integrated approach that takes into account other sectoral laws (environment, protected areas, land, forest, agriculture, arms, and tourism) is critical for the effectiveness of wildlife legislation.

Before developing new legislation, therefore, it is essential to identify and analyse all of the existing legal provisions that are directly or indirectly related to wildlife management. This helps determine the range of reforms that will be necessary, while outlining the parameters within which any new regulation will take place. The analysis will aim at identifying gaps where no rules exist on specific aspects of wildlife management, or where are insufficient or outdated. It will also identify inconsistencies within the wildlife-specific legal framework, or between that framework and other related laws. Finally, it will also indentify areas where the laws have proven difficult or even impossible to implement or enforce. Carrying out an initial analysis of the existing framework serves, therefore, to map the scope of legal reforms needed: the preparation of a new legal instrument, or in other cases, only amendments to existing legal instruments, for example to add a few specific obligations or to enhance coordination.[24]

This approach is also supported by the Addis Ababa Principles and Guidelines for the Sustainable use of Biodiversity (Addis Ababa Principles), that call for "identify[ing] any overlaps, omissions and contradictions in existing laws and policies, and initiating concrete actions to resolve them."[25] In addition, other laws of general application should be taken into account (first and foremost the Constitution, and then property laws, civil and criminal law, tax law, etc.). With regard to the appropriate level of wildlife management, it will also be important to take into account local government laws. In this respect, the Addis Ababa Guidelines call for "strengthen[ing] and/or creat[ing] cooperative and supportive linkages between all levels of governance in order to avoid duplication of efforts or inconsistencies."[26] These recommendations also justify the need for wildlife legal drafters to make appropriate references to other applicable legislation. When intending to derogate from more general rules, the law should expressly state so.

Principle 4: Avoiding legislative overreach
Legislation should be realistic: to ensure compliance, legislation should provide for obligations that people can reasonably be expected to adhere to, taking into account the capacity of public authorities and other stakeholders. This is also reflected in the Addis Ababa Principles, where reference is made to the need to "avoid unnecessary and inadequate regulations ...because they can increase costs, foreclose opportunities and encourage unregulated uses, thus decreasing the sustainability of use."[27]

[23] Addis Ababa Principles and Guidelines for the Sustainable use of Biodiversity (hereinafter, Addis Ababa Principles and Guidelines), practical principle 1, first operational guideline.
[24] Inspired by FAO, 2005. *Perspectives and guidelines on food legislation, with a new model food law*, Legislative Study 87, Chapter 5.
[25] Addis Ababa Principles and Guidelines, practical principle 1, third operational guideline.
[26] Ibid, fourth operational guideline.
[27] Ibid practical principle 3, third operational guideline.

This is not to say that legislation should not introduce changes in management practices. That is of course the point of making changes – to introduce new management concepts and methods as a way of filling gaps or aligning national legislation with international standards and obligations. Where there is little implementation capacity for proposed changes, legal requirements could still be introduced in an incremenetal fashion, and be reviewed in time as capacity increases.

Legal options: where certain wildlife management goals are not immediately achievable, it may be useful to look for ways to "phase in" or create "trigger" legal provisions. In other words, treat legislation as preliminary and target timeframes or events that are most likely needed before a given legal requirement can be imposed. Structuring the law this way will create an immediate potential but ensure that prerequisites first be met before rights may be exercised.
For example, if community management of a trophy hunting concession is the desired goal, it may be useful to establish a legal requirement that trophy hunting will only be allowed where:
- scientific evidence demonstrates that a viable wildlife population exists to support such hunting (example of a "trigger"); and
- the community has initiated specific management activities and entered into an agreement for collaborative management with the appropriate agency (example of a "trigger").

An example of a "phase-in" approach to handle a new concept is the use of "grace periods" where existing practices may continue for a specified period of time before some other requirement must be fulfilled. Thus the law may state:
- that hunting in a given area may continue for a period of three years from the date the law becomes effective, after which a management plan covering the area and targeted wildlife must be in place;
- that areas failing to meet the requirement will have hunting rights terminated until the requirement is fulfilled.

This allows for the gradual implementation of the law in a manner more likely to obtain compliance than an immediate obligation that neither government agencies, nor local communities are prepared to assume. The same may be done with a number of tools, including the use of wildlife surveys, the establishment of hunting quotas and the determination of hunting seasons and hunting methods, etc. Another option may be to use pilot experiences to test new legal approaches within a restricted geographical area. In light of lessons learnt, national legislators may decide to opt for new legal tools that meet local circumstances and capacities.

In light of the chronic lack of or delayed enactment of implementing regulations in many countries in the world, drafters need also to consider carefully the the essential provisions in the framework law and whether some areas should be instead left to subsidiary legislation (rules, decrees, bylaws, regulations, etc.). It should be ensured that the level of detail in the law suffices for it to be operational on its own, in the delays of developing and adopting implementing regulations. To avoid these difficulties, it is necessary for the framework law to spell out at a minimum the *rights* and *obligations* it creates (or rather *powers* and *responsibilities*, when public authorities are concerned), and the basic objectives and principles for the processes to implement them. This should not result in an overly detailed law, but rather clarify the mandate for, and facilitate enactment of subsidiary legislation. Technical specifications should generally be left to subsidiary legislation.

Principle 5: Ensuring clarity in the institutional set-up and inter-institutional coordination
Another general principle for good legal drafting, which is also applicable to wildlife management laws, is that the law should clarify the mandate and functions of all public authorities related to wildlife management. "Legal mandates" refer to legal provisions requiring or allowing government agencies or persons to engage in activities affecting the resource or its components. This is a deliberately broad concept that encompasses all possible actions, activities, permissions, or even prohibitions. Usually, legal mandates are framed in general terms, thus resulting of difficult practical application, with no guidance as to the exercise of powers, limits to discretion or procedures for decision-making. Possibly, the law should provide some *guidance to the exercise of public discretion*, in order to increase the legitimacy and accountability of public authorities.[28]

[28] This is also encouraged from an ecosystem approach perspective: see Convention on Biological Diversity Conference of the Parties Decision VII/11 on the ecosystem approach (CBD Decision VII/11 on the Ecosystem approach), Principle 1.6.

Furthermore, with a view to enhancing the accountability of wildlife authorities and avoiding conflict of interests, the law should avoid the possibility of *mixing management/commercial activities and control functions* in the same (public or private) body.

Legal options:
- In order to facilitate and legitimize the work of wildlife authorities, the law should define at a minimum the powers and responsibilities of each level of authority, in order to clarify their respective mandates;.
- the law should specify the criteria according to which powers should be exercised (for example, by requiring that they are compatible with wildlife management plans, or with overall objectives for a particular type of wildlife);
- the law should ensure that the actions of public authorities are open to public scrutiny and that their decisions can be judged against measurable criteria to avoid any abuse of authority;
- the law should allocate management/commercial activities and control functions to different public bodies or other entities.

In addition, as wildlife legislation does not exist in a vacuum but must be coordinated with legislation in other relevant areas, so wildlife authorities need to coordinate their activities with other government agencies in related areas of work. Laws sometimes limit themselves to short or scant provisions on coordination, without prescribing coordinated planning or joint-decision making. There is therefore a need to *institutionalize coordination* with other public bodies, and clarify how and when inter-institutional coordination should be sought. This is particularly important when it is not possible, for political or other reasons, to have one main body responsible for wildlife management, so that relevant legal mandates are and will likely remain scattered among different institutions.

Legal options:
- the law should spell out in detail in which cases or on which matters institutional coordination should be sought;
- the law should also define the procedures or mechanism through which coordination can be achieved, for instance by:
  - creating a duty to exchange information on matters of common concern, and/or request the prior consent or advice of interested government bodies;
  - setting up joint decision-making procedures; and
  - creating a coordination body composed of government and possibly non-governmental representatives.

Principle 6: Involving local communities and the private sector in wildlife management

History has demonstrated that focusing exclusively on the control functions of government authorities related to natural resources law has a limited impact on social behaviour. The extent to which the law encourages positive behaviour by providing incentives may be more effective in ensuring sustainable wildlife management than penalty provisions. Without the involvement of local people and the creation of a significant stake in the management of wildlife resources for them, the efforts of officials to protect and ensure the sustainable use of wildlife will often be futile. The absence of a personal stake can reduce the incentive for local people to comply with the law and may prevent them from insisting on the compliance of others, including government officials themselves. This is reflected in the Addis Ababa Guidelines, which call for "recognizing the need for a governing framework, consistent with international laws, in which local users of biodiversity should be sufficiently empowered and supported by rights to be responsible and accountable for the use of the resource concerned."[29]

Legal options include:
- adopting measures that aim toward delegating rights, responsibilities, and accountability of those who use and manage resources, taking into account local custom, traditions and customary laws;[30]

[29] Addis Ababa Principles and Guidelines, practical principle 2.
[30] Ibid, first and second operational guideline

- providing for the equitable distribution of benefits deriving from the use of wildlife resources among local communities who live or are affected by such use or wildlife conservation, in light of their needs and contributions to wildlife conservation and sustainable use.[31] To this end, the law could:
  - promote economic incentives (job opportunities, equal distribution of returns among local and outside investors/co-management);[32]
  - promote alternative non-consumptive uses of wildlife,[33] or provide assistance to have access to alternatives;[34]
  - involve local stakeholders in the management of wildlife and provide with equitable compensation for their efforts;[35]
  - ensure that an equitable share of benefits remain with local people when foreign investment is concerned.[36]

Principle 7: Guaranteeing public participation in decision-making

International standards on sustainable development and environmental protection emphasize the need for public participation. The assumption is that greater public participation can improve the quality of decisions, improve the public's respect for those decisions and improve public perception of government. In this regard, it should be noted that public perceptions may vary among different non-governmental stakeholders, depending on the level of consultations. Thus, public participation should be ensured both at the central and at the local level, particularly involving rural communities.

Provisions on public participation are initially considered burdensome by government officials who are worried that the process of plan adoption or regulatory reform will be slowed by an avalanche of comments. Such fears, however, are usually exaggerated and the process can serve pragmatic purposes, such as greater public ownership, increasing acceptance and higher level of compliance. Another reason for governments' scepticism regarding participatory approaches is the fear of losing power, although a participatory process does not undermine the government's role in balancing (and prioritising) competing interests. It rather calls for transparency in such process, and for the need to justify decisions in light of the public concerns represented in the consultative process. Participation thus brings more legitimacy to the decision-making process, and may lead to a better public image of decision-makers.

Wildlife legislation, as all resource allocation laws, can and should contribute to the creation of such transparent decision-making. The appropriate means of achieving this transparency will certainly vary depending on the resource, the managing authority, and local traditions. Even when public participation provisions exist in the law, these may be very difficult to apply in practice as they are often framed in very general terms, without clarity of process and outcome. However, there are a number of sub-principles within this subject that have been accepted internationally in the context of the Aarhus Convention and that can effectively inspire national legislators. The following options will indicate how wildlife legislation can support public participation and be framed in such a way as to ensure its immediate application, even if there are delays in enacting implementing regulations.

Legal options: First of all, the law could identify the subject areas where transparency is considered critical. These could include:

- management planning exercises directly affecting wildlife (i.e., plans for specific species) or related to wildlife habitat conservation (i.e., forestry, national parks, wetlands, etc.);
- listing and delisting of species under national endangered species legislation and under hunting laws;
- development and amendment of hunting regulations;
- opening and closing of hunting areas;

[31] Ibid, practical principle 12.
[32] Ibid, practical principle 12 first operational guideline
[33] Ibid, fourth operational guideline
[34] Ibid, seventh operational guideline
[35] Ibid, fourth operational guideline
[36] Ibid, fifth operational guideline

- allocation of hunting concessions (regardless of whether these are government or private concessions);
- creation and renewal of community-based hunting agreements (these may concern individual members of communities, households, the community as a whole);
- all scientific data related to wildlife, including population studies, study methods, results from hunter return forms, numbers of and types of permits issued, estimated harvest levels for specific areas, etc);
- annual setting of hunting quotas (with the requirement that the scientific authority use the best available scientific information);
- accounting of all hunting revenues; and
- legal proceedings related to any of the forgoing or any violation of hunting and wildlife management legislation.

To ensure that these areas have been adequately addressed, it may be sufficient to reference Aarhus-compliant legislation and to identify the additional requirements and procedures applicable to the subjects listed above. If Aarhus-compliant legislation is not available, sustainable wildlife laws should spell out modalities to facilitate public access to information specifically related to wildlife.

Legal options:
- Establishing a public right to access wildlife-related information: this requires a mechanism by which concerned citizens can obtain upon request information in an easy, adequate and timely fashion. The law, therefore, needs to go beyond the "right to seek and receive information" formulation, and rather (as suggested, for example, by the Aarhus Convention, Article 4):
  - spell out how the information should be requested (from which public authority information can be obtained or where the information is deposited);
  - provide for minimal fees or exemptions to fees to obtain the information:
  - specify the grounds for refusing information and maximum timelines for providing the information requested:
  - set penalties for improperly withholding information, and/or
  - create judicial mechanisms for challenging denial of requests.
- Creating a duty to inform the public: alternatively or in addition to the right to access information, the law can impose a duty to inform the public upon wildlife authorities. Thus, the law can require as a matter of routine the publication of certain types of information whether or not requested by the public. In this case, the law needs to specify:
  - what kind of information should be made public:
  - in what form and in what timeframe the information should be made public, and
  - which public authority is responsible for informing the public.

Similarly, wildlife laws should provide the minimum requirements for public participation in wildlife-related decision making, both at the central and local levels.

Legal options: Several options can be taken into account in this regard:
- regular admittance to government meetings: the law may simply allow the public, or relevant stakeholders, to participate in government meetings called for wildlife-related decision-making;
- legally mandated consultations: with a more proactive approach, the law may establish a duty for public authorities to use a public notice and comment period prior to the adoption of a wildlife-related decision. These consultations may be convened at the central and/or local level, depending on the foreseen effects of the decision to be made. This should entail:
  - the publication of proposed rules or decisions;
  - the sharing of information on the process for receiving and reviewing comments at a reasonably early time;
  - the obligation for public authorities to take into account the comments received; and
  - the obligation for public authorities to provide reasons in writing about the decision made, and to allow for public scrutiny over how comments have been taken into account.

- establishment of a public oversight body: the law may create an *ad hoc* body to allow ongoing public participation in wildlife decision-making as well as monitoring decisions implementation. One such body could be a "forum" with permanent legal status or central and regional "advisory committees." In either case, the law should provide guidance as to their composition, powers, placement in the government structure. More importantly, the law should establish the obligation for the authority to consider and respond to the advice of this oversight body. It should be noted that the same body could also facilitate institutional cooperation through a mixed composition of government and non-governmental stakeholders.

In accordance with Article 9 of the Aarhus Convention, members of the public should have access to administrative and/or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment, as well as in the specific case in which their rights to access environmental information were ignored, wrongfully refused, or inadequately answered. Along the same lines, in the specific framework of wildlife legislation, the public should be given the possibility to access justice both against private persons and public authorities. Usually, laws simply refer to the possibility to recur to the general means for dispute resolution, but there may be a need for more detailed provisions to ensure a fair and efficient process for resolving disputes not only between users, but also between users and government entities. The latter would function as a public monitoring mechanism over the wildlife regulatory system, including a right to challenge government decisions at administrative and judicial levels.

Legal options:
- administrative appeals: a mechanism for the review of conduct of government officials at a higher level of the same government authority that allocated or denied certain rights. It will be necessary for the law to indicate the responsible authority and provide some minimum principles;
- recourse to independent administrative courts: this should be considered an additional avenue for the resolution of conflicts of interest between forest users and the authority that allocated or denied such use rights;
- means for resolving disputes between wildlife users: besides recourse to the general court system, users could benefit from alternative dispute settlement mechanisms (out of the court system). For example, users groups could create an internal dispute resolution system. In this case, the law should detail requirement to form a dispute resolution body, and provide for a right to appeal such decisions to a court of first instance.

Management planning

The essential condition for sustainable wildlife management is planning: the process whereby information on the status of wildlife resources, their habitats, their interactions and their economic, social and environmental values is gathered, regularly updated (through a wildlife inventory, assessment, survey, or register/cadastre) and used for planning in time and space the objectives and actions of both wildlife protection and sustainable use (through management plans). This fundamental approach is considered a cornerstone for the sustainable management of natural resources, and should be reflected in wildlife laws. Indeed, the wildlife legal framework should spell out the basic dynamics of the process:
- its objectives and components;
- the logical sequences of steps in the process;
- the need for regular updating; and
- its legal consequences (for example, limits to quantity and to time/place for hunting).

In accordance with global trends and international standards, management planning should be based on the most reliable scientific information and on a precautionary approach. It should be fair and transparent and should take into account social, cultural, religious, economic and ecological considerations affecting wildlife management. Traditional knowledge and practices, should also be taken into account at the planning stage. All this is expected to promote rational and transparent decisions with regards to the protection and sustainable use of wildlife: the law is a fundamental tool to ensure that this process reaches its objectives.

Sustainable management planning should be distinguished from *central planning* systems adopted in Soviet times, i.e. a process undertaken by economists and focused on determination of demand and concomitant development of production quotas and financial inputs needed to achieve certain production goals. Rather, *sustainable management planning* is a process that focuses not only on technical and scientific issues, but equally on the diverse needs of sustainable development (not only economic, but also social and environmental aspects), allowing for flexibility and local decision-making. It is important to underline here that management planning should not be over-regulated, but rather reflect a practical approach that responds to the capacity and resources of a country's authorities. Different/simplified planning could be envisaged in case of community-based management.

Wildlife management planning is an instrument for the operationalization of the concept of adaptive management advocated by the Addis Ababa Principles[37] and the ecosystem approach. Natural resources, especially wildlife, are dynamic. In other words, wildlife population levels are rarely the same from year to year, and can be affected by any number of natural and human-caused events – drought, heavy snow, disease, habitat destruction from human development, over-hunting, etc. Legal structures for decision making need to allow for decisions and changes to be made that will reflect the needs of the resource. Because of the complexity of the systems being managed, in this instance wildlife, and the number of users or activities having some impact on the resource, it simply is not possible to know everything in advance. The management solution relies on monitoring, analysis, and adaptation to make the adjustments as necessary. For example, hunting seasons can be shortened, extended, or even cancelled based on new information on the status of the target population. The same is true for a number of other wildlife-related decisions including – but not limited to – listing and delisting of endangered species, hunting quotas, open and close areas, etc. The overarching lesson within this principle is that while legislation can provide guidance (standards) for decisions, it cannot and should not try to make these decisions itself.

Legal options: Generally speaking, embedding flexibility in a legal framework will require the use of provisions that:
- first, specifically identify those decisions requiring flexibility (i.e., seasons, hunting quotas for specific species and populations, etc.);
- second, establish the framework and basis for the decision (i.e., who will make the decisions, when, using what information, and who will be allowed to participate); and
- finally, provide for the expedient resolution of disputes that may arise, including both administrative and judicial venues where appropriate.

These decisions will need to be tied to monitoring efforts that will supply the data necessary for the basis of the decision. In this vein, traditional and local knowledge should not be forgotten or ignored. Indeed, in many societies, it is this knowledge that has allowed for the sustainable use of resources over long periods of time.

Principle 8: Establishing a system for information-gathering and monitoring

As highlighted above, the basis for effective wildlife management planning based on an ecosystem approach[38] is accurate and updated information on wildlife resources, their status and their use, environmental and socio-economic impacts, and their interactions with their habitats and with local communities. All sources of information are relevant in decision-making for resource management. Science-based information should be privileged, while at the same time allowing for consideration of traditional and local knowledge.[39] Information should be constantly or at least regularly updated: iterative, timely and transparent feedback from monitoring should be ensured.

The importance of information gathering and monitoring has been highlighted by the CBD in the context of the ecosystem approach: reporting performance and results of a certain management approach is

[37] Addis Ababa Principles supra note 24, practical principle 4.
[38] CBD Decision VII/11 on the ecosystem approach Annex, para. 16.
[39] Ibid, principle 11; Addis Ababa Principles and Guidelines, practical principle 4.

considered indispensable for adapting management decisions and developing responsive management capacity.[40] Adaptive management, therefore, is based on active learning derived from monitoring the outcomes of planned interventions and on that basis formulate appropriate responses to disturbances.[41]

Wildlife laws, therefore, need to assign relevant responsibilities and establish the basic elements of the information system feeding into wildlife management planning.

Legal options: Wildlife laws should at a minimum provide the basics for a system of continuous information-gathering and monitoring. Legal options include:
- clarifying how the information will be collected and records kept, and setting the criteria to be taken into account in the development of such records (so as to covering social, economic and environmental functions of wildlife, including impact on local populations);
- specifying who at the government level is responsible for information gathering: which government entity should ensure the collection and analysis of information, the frequency and breadth of such collection and its analysis, and forms of inter-institutional cooperation as appropriate. This could entail assigning the responsibility for preparing periodic wildlife inventories or assessments covering the whole of the country's territory to a certain central government agency, and specifying how local government agencies can contribute with information gathered at the local level;
- creating specific obligations to provide information to the government authority for individuals that engage in wildlife conservation and/or sustainable use (as a general obligation, as a condition of licences and concessions, etc.);
- specifing how traditional knowledge can be integrated in the information gathering and analysis process, by facilitating the participation of local communities. In this respect, in accordance with the Addis Ababa Principles, the law should also ensure that the approval of the holder of traditional knowledge is sought before including such knowledge in wildlife assessments and inventories; and
- specifing how the larger public can access information on wildlife and contribute with additional information on a voluntary basis.[42]

The ultimate goal of managing wildlife, as with any natural resource, is to maintain the resource so that it provides a benefit to present and future generations. To achieve this goal, managers need the best available scientific information available. What types of studies will be required and when will depend on several factors including for example the species involved, distribution of the species in country and in the region, types of use, international standards, etc. It is therefore not advisable to attempt to dictate in the law exactly what science will be used. However, the law can serve an important role in strengthening the use and availability of scientific information for decision makers.

Legal options: The law can do an effective job of strengthening the use of science in wildlife management by:
- requiring the use of standardized information sources. The type of information and sources required for quota setting should be standardized to the extent possible to allow for the comparison of data across areas and years;
- providing for the timely and thorough analysis of collected data (i.e. sufficiently in advance of seasons of use, to allow for review and distribution of licenses and permits);
- using multiple sources of information and data, including indices such as population size, status and trends, sex ratios, frequency of sightings, catch effort and trophy quality (i.e. size);
- where available or necessary, using information and data relevant to a specified hunting block or concession to ensure that science is scaled to the ecology and use;

[40] CBD Decision VII/11 on the ecosystem approach, Annex, para. 17.
[41] Ibid, Principle 6.
[42] CBD Decision VII/11 on the ecosystem approach, Principle 11.1.

- using hunt return forms that provide data on a range of important issues, such as effort vs. success rates, the quality of trophies and off-take rates;[43] and
- requiring the use of simple data reporting formats, streamlined to facilitate the collection of data from all stakeholders and avoid legislative overreach,

The interdisciplinary nature of scientific inquiry must be stressed.[44] Wildlife is part of a complex natural system that cannot be understood if questions and concerns are looked at in isolation. In other words, if managers want to understand why a given population of wildlife is decreasing, then just counting the animals will not be enough. Depending on the species, area, local and possibly even international uses and events, any number of factors will need to be studied – many of which may not be within the expertise of wildlife biologists. To draw one example, decreasing populations of wild sheep may be a function of hunting pressure (for which local knowledge may help), disease (requiring the assistance of wildlife veterinarians), or grazing pressure and competition for forage between domestic stock and wildlife (a study that can and should be aided by the expertise of rangeland specialists) – or any number of other issues and/or combinations of them.

Legal options: intedisciplinary approaches to scientific inquiries can be supported by:
- requiring and encouraging active collaboration between scientific researchers and people with local and traditional knowledge;[45]
- requiring that population studies be designed not only to look at the current status of species in question, but also undertake studies designed to understand reasons behind observed trends;
- if possible, including provisions that require investment in related research and studies that will promote both consumptive and non-consumptive uses (wildlife viewing in national parks, wildlife reserves);
- developing cooperation between researchers and biodiversity users (private or local communities), in particular, involving indigenous and local communities as research partners and using their expertise to assess management methods and technologies;[46]
- making research results available in a form which decision makers, users, and other stakeholders can apply;[47] and
- promoting exchange programs in scientific and technical areas.[48]

Principle 9: Requiring management planning as a prerequisite to formal management

As for all natural resources, the management plan is the instrument in which all the ingredients for active management are described – which organizations will undertake what responsibilities and what actions to achieve what ends. However, despite being a primary tool, management plans often go unused. While there are many reasons for this, in the legal world this lack of use can most likely be blamed on two problems – 1) legislative overreach and 2) a failure to tie the creation and adequacy of the plan to a specific consequence – in other words, the law may requires it, but it may fail to produce results or meet some minimum standard of adequacy, and therefore has no effect. Another important aspect is for the wildlife management plan not to be developed in isolation, but rather in a way (participatory and inter-disciplinary) that ensures its consistency with other natural resources plans, such as forest and wetlands management plans.

Legal options: Beyond simply requiring the development of management planning (where possible, on a species-by-species basis, with separate sections on identifiable populations), some practical legal tools include:
- tailoring the level of planning to the capacities of the agencies and communities involved. Management planning should be a practical tool – one that can be created in simple form and built upon over time. Appropriately designed legislation can assist in establishing an achievable requirement;

[43] On a related note, an effective means to ensure that hunt return information is regularly submitted is to require proof of submission as the basis for applications for trophy export permits. Similarly, compliance with hunt return regulations should form part of the requirement for renewing hunting permits and licenses.
[44] Addis Ababa Principles and Guidelines, practical principle 6.
[45] Ibid., third operational guideline.
[46] Ibid, fifth operational guideline.
[47] Ibid, eighth operational guideline.
[48] Ibid, ninth operational guideline.

- stating specifically what information must be included for the plan to be adequate. This may include at a minimum:
  - a legal description of the area covered (whether national, provincial, local, or some other designation). This may include or officially recognize customary land boundaries and/or natural boundaries (e.g., rivers, river basins, mountain ranges, etc.);
  - the species covered by the plan;
  - the time period for which the plan is valid;
  - a brief statement of the wildlife management goals and objectives;
  - a description of habitat types, amounts, and plant composition (where possible);
  - a description of history of land use, habitat manipulation and wildlife management;
  - data on historical wildlife harvests where such information is available;
  - approved survey methods to be used for determining population density. Indicate date when current year's survey data will be submitted;
  - an approved method for determining harvest levels; and
  - recommendations for habitat conservation for the species;
- requiring updates of the plan for local hunting management planning and activities;
- clarifying the legal implications of management plans: who should comply with them and which legal tools should be in line with management plans (such as allocation of quotas and conditions for permits and concessions);
- restricting the establishment of quotas for any area or species where there is no management plan in place;
- specifically granting the court or other authority the power to stay any agency action for a given area where it is alleged and shown that there is no management plan or that the plan does not meet minimum requirements;
- requiring public participation should be provided for, before the adoption of the management plan.

In connection with adaptive management and the precautionary approach, those managing wildlife will have to look at the impacts of the use not only on one resource, but on the ecosystem generally.[49] An example specific to wildlife conservation would be considering the environmental disturbance of a particular harvest quota for any given species on other species that depend on its existence or share its habitat. The decline or loss of one species leads to what is called "cascade effects." For example, this is what happens to other species or the environment generally when one species declines to the point that it no longer serves its role in the ecosystem by providing a source of food and/or shelter, altering vegetation composition, or serving additional functions that affect the survival of other species. Some of the effects might include prey switching by predators, (e.g. when snow leopards turn from wild prey to livestock) due to a declining prey base; or to a situation in which smaller predator population increases due to a decline or loss of large predators, which in turn can lead to declines in small prey species.

Legal options: Avoiding such negative consequences may involve:
- allowing for changes to be made to seasons, quotas, and areas as new information comes to light, which may include the temporary prohibition of setting seasons, open areas and quotas until a reliable monitoring system is in place and impacts better understood;
- linking responsibility and accountability to the spatial and temporal scale of use, and designing monitoring systems of a temporal scale sufficient to ensure that information about the status of wildlife and its ecosystem is available to inform management. For hunting seasons, for example, this implies legally mandating that monitoring results and quota setting be accomplished sufficiently in advance of the season to allow for review, amendments as necessary, and distribution licenses or permits;
- monitoring guidelines that require managing bodies to consider aggregate and cumulative impacts of activities on a target species and well as related species or ecosystem;[50] and
- aiming at avoiding or minimizing adverse impacts on wildlife and its ecosystems,[51] by requiring – when

[49] Adapted from Addis Ababa Principles and Guidelines
[50] Ibid, practical principle 5, fifth operational guideline.
[51] Ibid, Practical Principle 5.

the use of additional resources is justified by necessity – the formulation and implementation of contingency action plans and, where previous impacts have degraded and reduced biodiversity, remedial action plans.[52]

Principle 10: Sharing management responsibilities between central and local authorities and with local communities

The law should match the scale management requirements with the ecology of the resource and the economies of use, in accordance with Practical Principle 2 of the Addis Ababa Principles and Guidelines. Along the same lines, according to the ecosystem approach, management should be decentralized to the lowest appropriate level, because "the closer management is to the ecosystem, the greater the responsibility, ownership, accountability, participation and use of local knowledge."[53] Applied to hunting and wildlife conservation, this principle would recognize that where hunting of a trophy animal occurs only in a given area, then the communities that live in and government agencies responsible for that region should be responsible for the management of that particular wildlife population (subject, of course, to any governing legislation at the national or sub-national level). The ecology of the resource is a particular area, and the economy of use is local. This principle, therefore, on one side, advocates for the decentralization and/or the delegation of some management responsibilities to local government entities, in light of their vicinity to the resource and to the users.

Legal options: Design options that incorporate a certain degree of decentralization may include the following:

- where management decisions concern a specific area, local government structures should be empowered with the possibility to make such decisions and with their implementation;
- where wildlife occurs in several areas or migrates between political borders within the country, delegate responsibility to coordinate joint management efforts to regional and local authorities;
- delegating local authorities to legislate on certain aspects of wildlife management (regulation of local initiatives), within the limits set by national legislation;
- delegating protected areas management entities with powers to determine applicable rules within their concerned areas;
- creating the possibility for the central government to conclude "agreements" with local governments to specify which wildlife management responsibilities can be exercised at the local level.

In all these cases, communication and information sharing among the different levels of management should be ensured.

On the other hand, the principle under discussion recognizes the fact that management of natural resources is strongest when both local communities and responsible government agencies are involved. While local communities are often in the best position to affect local management, they often lack fundamental capacities that can be improved with the help of responsible government agencies and through appropriately selected policies and actions. Government agencies acting alone have a strong tendency to manage the resource for interests that ignore the realities of local needs and uses. Such marginalized communities become competing users of the resource and declines in species populations are most often the result.

Legal options: If a sharing of responsibilities is desired, the balance of power also needs to be defined and achieved for management to succeed. For wildlife management, this principle can take several forms, including:

- joint decision making requirements, supported by the provision of all information available both to local communities and government managers. The Aarhus Convention establishes agreed upon international principles of environmental management that can either be referenced or incorporated into appropriate legislation;

[52] Ibid, sixth operational guideline; CBD Art. 10(d).
[53] CBD Decision VII/11 on Ecosystem Approach, Annex, principle 2.

- shared monitoring responsibilities. This is a task that can be shared with local communities and provide substantial data for use in adapting management decisions to the needs of the resource;
- delegation of enforcement authority to local communities. This option has been used in some countries, but is sometimes constrained to reporting requirements and/or incentives;
- establishment of a negotiated process where feasible that allows for: 1) the use of different instruments, including contracts, memoranda of understanding, collaborative management agreements, etc, to formally recognize the kind of sharing that will occur; and 2) the changing of responsibilities as experience dictates without requiring a change in the law; and
- provision of adequate channels of negotiations and conflict prevention/resolution that is appropriate, understandable and easily accessible by local communities.[54]

Overall, local communities and other stakeholders should be engaged at different administrative and decision-making levels.[55]

Principle 11: Providing for international cooperation where multinational decision-making and coordination are needed

This principle echoes Practical Principle #8 of the Addis Principles and Guidelines, which states that adequate management of a given species will require cooperative efforts (typically embodied in bi-lateral and multi-lateral agreements) between States to determine how resources will be used. Past experience shows that the absence of such agreements results in piecemeal management, which fails to prevent the over-utilization of a resource.

Legal options Capturing this principle in law will require an adaptive and iterative approach on an international level, for example by:

- requiring the managing authority to identify wildlife populations that migrate into neighboring countries and engage in cooperation with those countries. This may take the form of requiring the responsible agency to identify existing multi-lateral treaties to which they may become a party,
- granting the power to the managing authority to propose and develop bilateral or multilateral agreements between or among the States for the sustainable use of transboundary wildlife resources;
- for transboundary wildlife populations, making it the responsibility of the appropriate agency or agencies to establish formal and informal links with those countries to undertake joint management of the resource where necessary;
- legally requiring that funding be made available to promote multinational technical committees to prepare recommendations for the sustainable use of transboundary wildlife resources; and
- strengthening the legal force of such agreement and initiatives by explicitly recognizing and incorporating them by reference into domestic legislation. The latter may automatically be accomplished through a monist legal system[56] approach mandated in the constitution. To strengthen interpretations, reference to the appropriate section in the constitution should be made.

Conservation

As highlighted by the Addis Ababa Guidelines, sustainable use cannot be achieved without effective conservation measures.[57] Conservation is indeed the "priority target" of the ecosystem approach.[58] There are several legal tools that can be used to support wildlife conservation. The law can frame general principles that should guide public authorities, as well as individuals and communities. The law can also use more specific techniques, namely species-based conservation, area-based conservation, as well as the protection of wildlife from harmful processes (indirect threats). It should further be noted that sustainable use also

[54] Inspired by Addis Ababa Principles and Guidelines, Principle 9, seventh operational guideline.
[55] CBD Decision VII/11 on Ecosystem Approach, Annex, principle 7.4.
[56] In a monist legal system, the constitution of the country in question recognizes the existence of a single legal system and explicitly states that international treaties to which the country is a signatory become law to the extent not inconsistent with the constitution.
[57] Addis Ababa Principles and Guidelines, preambular para. 2.
[58] CBD Decision VII/11 on Ecosystem Approach, Annex, principle 5.

contributes to conservation, creating incentives for stakeholder active involvement and contributing to poverty reduction and sustainable development.[59] All these aspects will have to be taken into consideration for wildlife management planning, in order to ensure that interactions among species and their habitats are accounted for, and that there is the possibility to regularly review and updated specific approaches.

Principle 12: Using a species-based approach

Species-based approaches have long been accepted as an appropriate method for wildlife conservation. The advantage of the method is that it focuses attention on the conservation status of the species regardless of where it occurs, and allows for management activities to be formulated on the broadest possible scale. As a matter of course, this approach has the strong tendency to compel inter-agency and cross-border initiatives. It should be stressed that wildlife laws should not go into listing protected species, as this will basically deprive of all significance the management planning process, and overall would impede all flexibility in the face of new scientific knowledge or changed international obligations. The law should, therefore, rather establish the responsibility, principles and processes for coming to these decisions.

Legal options: Domestic laws should:

- require the responsible authority to develop species-based management plans that investigate not only status, trade, and habitat, but all uses and processes that may affect the conservation status of the species in question;
- include specific conservation requirements for listed species into area-based management planning. This is most likely to occur in the context of forest management plans and protected area management plans, but may also find use in other planning exercises as well, such as wildlife reserves, transboundary initiatives, etc.; and
- develop a listing system for species affording higher levels of protection for species whose "conservation status" is unfavourable. This is most often referred to as endangered species legislation and may be separately drafted or included within an overall wildlife conservation law. These lists should be regularly updated, on the basis of recent scientific information and in accordance with international listings (such as those of CITES and CMS, when a country is party to these international agreements).

To be effective, the law should provide regulatory direction for listing/delisting of species and criteria for how conservation of a listed species will occur. The goal of listing a given species as endangered is to trigger the implementation of additional protection requirements beyond those applicable to all wildlife. These additional requirements need to apply to both government and private actors alike.

Legal options: The following should be considered in the design of endangered species legislation:

- specifically listing what types of protection will be instituted for each level of listing, ensuring that if listed, a species may be further protected by increased disincentives to poaching and incidental take;
- clearly stating what conservation objectives must be achieved before a delisting will occur;
- where warranted, allowing for the treatment of separate populations of the same species differently to account for differences in both the status and trends;
- requiring the responsible authorities to develop a species recovery plan in consultation with the national scientific authority, local governments, and the public;
- ensuring that the legal requirements for listing and delisting are first and foremost a scientific decision. This means protecting against review by non-scientific bodies – a format that is in line with CITES requirements that the scientific authority is the final decider of quotas for Appendix I and II species;
- using terms and definitions that clearly target both the status and the trend in the population of the species (rare vs. threatened); and
- establishing transparent procedures for listing and delisting that require, in addition to scientific research, public notice and comment processes.

[59] World Summit on Sustainable Development, Plan of Implemenation (2002), para. 44(d). See also IUCN Policy Statement on Sustainable Use (Resolution 2.29, 2000), para 7a): "Use of living wild resources, if sustainable, is an important conservation tool because the social and economic benefits derived from such use provide incentives for people to conserve them."

Many countries in the region do not have a separate endangered species law, instead they rely on the listing and classification of endangered species in a "Red Book" where a listing constitutes a condition precedent for the application of conservation requirements and restrictions contained in relevant wildlife legislation. In most of the Red Books produced by former Soviet states, listings relied on scant scientific information with no clear definition of threshold criteria and little or no consideration of a species' global status. Categories were simple – "very rare" or "rare", with little assessment or consideration of trends and reasons for the status. So, for example, a species would be listed as "rare" because it occurred in small numbers in the country, which may have been 1) a function of naturally occurring restrictions to its distribution and density in that particular country or region, or 2) caused by human related activities. For example, using this format in Uzbekistan resulted in Severtzov's argali (Ovis ammon severtzovi) being listed due to over-hunting while the caracal (Felis caracal) was listed because there were few habitats for caracal within the political boundaries of Uzbekistan. Mongolia has used the same format in the past with similar results.[60] Both of these listings may be correct, but the management needs are entirely different. The significant downward trend in the population of argali sheep, for example, was due to hunting pressure and possibly grazing pressure. Management initiatives should address such concerns through grazing management measures, community incentives to conservation, increased fines for poaching, patrols, or other enforcement activities. The continued survival of the caracal, for example, will depend on preserving the small area of habitat through, for example, special designation of the area as a wildlife preserve and/or the application of additional environmental impact assessment requirements for any activities that might affect the area. Nonetheless if the national capacity to adopt other measures is lacking, then using Red Book listings is certainly better than not having any system in place at all.

Principle 13: Using an area-based approach for the conservation of habitats critical to the survival of identified species

This principle also takes its lead from international conventions and is mentioned here both for its focus on a fundamental component of wildlife conservation (habitat protection), but also because the focus on habitat again has the tendency to ignore political boundaries and thus force a degree of local, regional, and international cooperation.

Legal options: Area-based approaches to wildlife management typically find expression within domestic legislation in three ways:
- a mandate within protected area legislation to create a protected area system that includes areas identified as critical wildlife habitat;
- a mandate to the primary wildlife management authority to designate areas outside the protected area system that should benefit from wildlife-specific protection measures; and finally
- the establishment of an area-based hunting scheme that opens only certain areas to hunting and sets criteria for their designation and management.

Once again, flexibility should be retained in the law, so that the list of protected habitats can be easily updated in light of new scientific knowledge, local needs, or changed international obligations.

Principle 14: Involving local stakeholders in wildlife conservation

It is increasingly recognized that without local communities having a significant stake in the management of local resources (that is, by empowering stakeholders and making them accountable), the efforts of under-staffed and poorly financed officials to patrol and protect wildlife will often be futile. The absence of such a stake both reduces the incentives of local communities to comply with the law, and prevents them from insisting on the compliance of outsiders, including government officials. Therefore, the needs of local communities who live with and are affected by the use and conservation of biological diversity, along with their contributions to its conservation, should be reflected in the equitable distribution of the benefits from the conservation of those resources.

[60] Both countries have engaged in a process to bring assessments in line with IUCN categories.

Legal options:
- involve local stakeholders, including indigenous and local communities, in the management of any natural resource and provide those involved with equitable compensation for their efforts, taking into account monetary and non-monetary benefits;[61]
- promote other economic incentives that will guarantee additional benefits to indigenous and local communities and stakeholders who are involved in the management of any biodiversity components, e.g., job opportunities for local peoples, training and capacity building, equal distribution of returns amongst locals and outside investors;[62]
- ensure that an equitable share of the benefits remain with the local people in those cases where foreign investment is involved;[63]
- involve local communities in the decision-making and actual management of protected areas. Where compatible with the conservation objectives, allow local communities' traditional use of certain resources in the protected area. Limitation to traditional use for wildlife conservation purposes should be compensated; and
- allocate a portion of fines applied to illegal hunting to local community members that contribute to detect and stop illegal activities.

Principle 15: Protecting wildlife from harmful processes and negative impacts of other land uses

Wildlife conservation does not only entail the protection of species or of their habitats from activities directly affecting them (such as off-take and trade), but also protecting them from activities that may indirectly impact on them in a negative way. This is the case of industrial developments, construction, tourism and mining operations that may result in a serious disturbance to wildlife species or in the destruction of their habitat. In addition, competing land uses (forestry or agriculture) may also affect wildlife, and usually different pieces of legislation may regulate in different (and sometimes conflicting) ways their impacts on wildlife. This is in recognition of the fact that actual or potential effects of human activities may concern adjacent or other ecosystems.[64] Indeed, in accordance with the Convention on Biological Diversity, countries are required to identify and control all potential sources of adverse impacts on biodiversity, and to carry out environmental impact assessments of projects likely to have "significant adverse effects" on biodiversity (art. 14). Wildlife laws, therefore, should take these impacts into account when providing for the conservation of wildlife, by providing tools for the detection and mitigation of these impacts.

Legal options: There are several stages at which the law can play a role in protecting wildlife from harmful processes or impacts of other land uses, such as:
- requesting the assessment of any processes that may be harmful on wildlife (usually through an environmental impact assessment), specifying all steps and minimum requirements (such as the need to consider all alternatives). The law should also specify whether such assessment would be necessary for any economic, administrative or other activities directly or indirectly impacting on wildlife and their habitats. The law should further allow the public to request such as assessment, and to participate with information or comments in the assessment requested by public authorities. The law should in addition specify the legal implications of these assessments – for example, whether expected negative impacts would impede the carrying out of the proposed activity altogether, or whether the activity could be carried out but only in accordance with specific requirements necessary to eliminate or minimize negative effects. Another alternative is to impose restrictions on the types of activities that can be undertaken, prohibiting any activities that are likely to cause irreversible damage to the environment. If general environmental legislation already provides rules applicable to wildlife, it may still be advisable for wildlife law to clarify the link with general rules on environmental impact assessment, to avoid legislative conflicts and difficulties in interpretation;
- taking into account the possible negative impacts on wildlife of competing land uses (by refering to restrictions and other requirements under legislation regulating the forestry, agriculture, mining and tourism sectors, for example);

[61] Addis Ababa Principles and Guidelines, principle 12, sixth operational guideline.
[62] Ibid, first operational guideline.
[63] Ibid, fifth operational guideline.
[64] CBD Decision VII/11 on Ecosystem Approach, Annex,, Principle 3.

• establishing a general obligation for mitigation of harmful activities; and
• listing key threatening processes and requesting a recovery plan for affected wildlife.

Sustainable Use

The law plays a fundamental role in regulating different uses of wildlife and ensuring that these are sustainable. Besides the need for accordance with management planning, there are several specific legal tools that can be used to ensure sustainable use by regulating hunting, recreational, traditional/subsistence and scientific use of wildlife, as well as trade. These tools include the use of administrative instruments (quotas, licences/permits and concessions) or contractual arrangements (agreements) to be adapted on a case-by-case basis, as well as general provisions on the regulation of the quantity, time and methods for specific uses.

The word "take" usually refers to both the direct extraction of a given wildlife specimen (i.e.,through harvesting, trapping, hunting, etc.) or the indirect extraction or significant harm (i.e.,though the destruction of habitat from agricultural practices, mining, or industrial development – already addressed in Principle 15). The first part of the definition is typically regulated through hunting legislation, although there is often overlap with endangered species regulation. For clarity, this section outlines the principles for regulating take in the context of hunting game animals, and not endangered species. More specifically, we discuss those elements of law designed to control what species may be harvested, how harvest levels for particular populations and areas are determined, as well as hunting seasons, payments types and amounts, and harvest methods.

Providing a secure environment for the conservation of endangered species and reducing the potential for illegal hunting includes the elimination of market opportunities and incentives to international and national trade. In virtually all countries, a flourishing domestic and international market for wildlife products exists targeting several species some of which are internationally recognised as endangered or threatened with extinction. Most laws apply few, if any, controls on domestic wildlife trade and only limited control on international trade, reducing the chances that a hunting and wildlife conservation regime will be successful.

Principle 16: Defining and regulating different types of wildlife use and of hunting
According to the ecosystem approach, the objectives of sustainable use should be determined in order to provide policy guidance, and inform management and planning.[65] Defining and regulating different types of wildlife use, thereby including hunting (i.e., subsistence/cultural, recreational, and scientific) and non-hunting uses (such as eco-tourism, game ranching and breeding) is common in regulatory schemes, but regrettably rarely useful. The most frequent problem is the failure of the distinctions to make a connection between the defined types of use, the procedural mechanisms that implement them, and the associated values, quotas, and areas where they may take place.
With specific reference to hunting types, it is not enough to simply define subsistence hunting as "customary and traditional" uses without also establishing a specialized management regime. In other words, the definition of any hunting type should result in specific limits and controls targetting a specific area and particular individuals belonging to an identified group.
With reference to non-consumptive uses, consideration should be given, on the one hand, to incentives (or otherwise encouraging legal measures) and conservation concerns (in order to avoid potential adverse impacts on other species or the environment).

Legal options:
• Where the law considers the use of different *hunting* types:
  - Define each type;
  - Attach specific procedures for the determination of which individuals may hunt for which purposes; and
  - Require the appropriate government agency to establish limits and controls for each type of hunting.

[65] Ecosystem approach, Principle 10.6.

• Furthermore, the law should also recognise *non-consumptive uses* of wildlife, while providing minimum requirements to ensure that such use does not negatively affect biodiversity or the environment (such as wildlife disturbance avoidance,[66] cautions for eco-tourism, general obligation for operators to monitor and prevent negative impacts on the environment). Specific permitting requirements for operators involved in facilitating third parties' non-consumptive uses should also be provided for.

Principle 17: Accurately identifying game and non-game species in the law

To avoid confusion, international best practice dictates that hunting legislation should specifically identify (using common names and scientific names) not only what can be hunted, but also what cannot. Many hunting regulations use only common names and catchall categories that can result in confusion and possible management gaps. This is especially true for birds where catch-all categories such as "waterfowl" or "ducks and geese" are used to regulate hunting of all birds that fall within that category. In either of these examples, the category includes several species some of which may be globally threatened and/or listed in a particular country's Red Book. A failure to make the necessary distinctions may inadvertently result in legally authorizing the take of species not intended by the drafters.

Often, trophy animals are missing from hunting laws and handled separately through high-level decrees or ministerial orders. The result is a parallel set of hunting laws that typically do not have the level of detail provided by all-encompassing legislation, and can result in confusion and conflicts.

Legal options: This principle can be incorporated using the following:

• including all common names (if known by different communities under different names) and the scientific name for the species;
• where there is only one common name for different species, adding definitions that more specifically identify the species. This may include legal descriptions of where the species occurs and/or drawings of the species incorporated into regulations for distribution;
• specifically listing all species that may be hunted and state that any unlisted species may not be hunted. This type of provision can help close the door on activities authorized by other forms of legislation; and
• explicitly clarifying that different hunting types are subject to different rules.

Principle 18: Providing for an adaptive, science-based determination of hunting quotas

One of the typical legal tools for ensuring the sustainability of hunting is setting up a well-structured, flexible and science-based system for setting limits to the quantity of animals to be harvested. Legislation typically does not mandate specific scientific methods, but rather sets a process, together with standards or guidelines that should be followed to ensure that hunting activities conform to the management objectives of the species and area in question. For example, if the objective within a buffer zone is to increase a given species population, quantitative limits should be set at a level that, according to the best available scientific information, will achieve this goal. Quotas should be assessed periodically and state with specificity the number of animals and, where appropriate, which sex may be hunted in a given area, per hunter. The same system should also be capable of stating which animals may not be hunted and the reasons for this; i.e. population declines, breeding or migratory route, international or national protection status, etc.

The primary lesson learned in many countries is that often the determination and setting of quotas is less science-based and more demand-driven. In a typical legal format, the law requires political sub-divisions or organizations to submit requests for harvest quotas. These requests are later reviewed by a scientific authority, but generally no scientific study forms the basis either for the request or the review. For trophy animals, the demand-driven nature of the process is even more apparent, where high-level government entities (e.g., a Cabinet Ministry or Minister) have the authority to set quotas for all trophy species at levels greater than those authorized by the scientific authority. Furthermore, as highlighted by the Addis

[66] Council Directive 79/409/EEC (EU Birds Directive), Arts. 4,(4) and 5(d), with special reference to the "Risk of Disturbance" in the Commission's Guidance Document under: http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting_guide_en.pdf

Ababa Principles and Guidelines, the law should ensure that quotas are set according to scientific information that is regularly updated through a monitoring system, and should not be based on the economic needs of management planning.[67]

In order to ensure that quantitative limitations to hunting are understood and respected by users, quota-setting systems should be transparent and participatory, with a view to including consideration of traditional knowledge. In addition, the participation of wildlife users in this type of decision-making may helo them better understand the long-term aims of setting quantitative restrictions. Legal options presented below should, therefore, be read in conjunction with Principle 23.

Legal options: It is a difficult task to conduct accurate and reliable assessments for wildlife populations. It is, however, a fundamental principle for the sustainable harvest of any natural resource that a limit needs to be set that will not negatively affect the continued viability of the resource. Flexibility should therefore be retained in the law. Legislative options that can help achieve this task include:
- Clearly delineating a transparent, science-based and accountable process and procedure for establishing periodic hunting quotas (drawing on the Aarhus Convention). There may be different policies or procedures for different species or stakeholders (private landowners, communal land areas or concessions), but in all cases quota-setting requirements should be established according to a set procedure and under some kind of supervisory control by central government, while involving key stakeholders;
- Linking quota setting with management planning and an appropriate monitoring system;
- Legally requiring the incorporation of local knowledge in the assessment and determination of harvest levels; and
- Empowering local stakeholders to contribute to wildife assessments where sufficient capacity exists.

Principle 19: Establishing procedural mechanisms for flexible and adaptive hunting seasons
Based on the concept of adaptive management, the length of seasons may be periodically adjusted with a view to controlling hunting activities that may have negative impacts on declining species. Seasons are thus usually reviewed on an annual basis to assess the impact on wildlife population levels and the ability of the management regime to meet defined population management goals for specific areas.
Lessons learned from countries in the Central Asian region reveal there are typically three major problems with the way hunting seasons are determined. First, many hunting seasons are statutorily defined and thus inherently inflexible. Because hunting seasons are defined directly in the legislation, they are unlikely to be changed on an annual basis (or even mid-season) and certainly not with the speed necessary to react in a timely manner to a changing resource. Second, where the authority to alter seasons has been granted, this authority is often arbitrarily limited to a specific time frame. Often, it has not been granted in time and therefore the opportunity for flexibility is lost. Third, many seasons are directed at certain species only and not at specific populations.

Legal options: Managers should enjoy a certain degree of authority to shorten or extend seasons to manage populations and hunting impacts as needed, on the basis of scientific assessments. Ultimately, managing authorities also need the right to institute a "total ban" on hunting. Seasons can and should be defined for specific populations within a specific region. Population-based seasons can better account for the individual management needs in specific areas. This is a particular concern in areas with reduced populations or special management objectives, such as national parks.
Overall, the law should be explicit in all elements of the procedure and basis for setting seasons, i.e. by defining:
- how and when seasons will be defined;
- which organization will be responsible;
- the basis for establishing such seasons (science-based approach with due account of traditional practices): and
- appropriate inter-governmental dispute resolution mechanisms that ensure fair administration of the process.

[67] Addis Ababa Principles and Guidelines, practical principle 13, second operational guideline.

Regulation of effort may be another useful legislative tool for hunting seasons. It limits the amount of time that may be spent in a given area for hunting. The premise is that scarce resources mean greater effort (i.e., more days spent hunting) must be expended to reach quotas. Limiting the level of effort can therefore limit the number of animals harvested and serves to automatically react to changing population levels which may not be predictable in advance of the season. It is not, however, an easily recommended provision as it is far more difficult to enforce than generally applicable hunting seasons, which can serve the same purpose (i.e., shorter seasons applicable to all hunters will result in fewer animals harvested). Level of effort is in essence a "season" that is personally attributed to the hunter and can only be enforced if there are adequate methods for monitoring individual activities. Should this legal tool be adopted, legislation should also delegate authority to the appropriate agency to set levels of effort as needed.

Principle 20: Clearly defining hunting areas

Hunting area regulations typically define both areas that are open to hunting and areas closed to it. Hunting areas are defined in the law using the form and method of legally describing property boundaries customary in the country, typically in text form. Critical to the resource user and law enforcement is the publication of a map consistent with the legal descriptions and available for use in the field. Further regulation establishes the types, volumes, seasons, and species that may be hunted within the hunting area. Closed areas are similarly defined, but remain closed to hunting in any form regardless of the species or season. Closed areas are typically selected for their importance to wildlife as breeding grounds, migratory routes, and over-wintering areas, as well as for safety concerns for local communities. Closure results in a "zero-take" management strategy for the area, but is also used to prevent undue disturbance of wildlife during critical times to enhance overall survival rates and increase population levels.

A closed area provision should not be confused with the use of a blanket closure of all areas unless opened by government decree. This is a common regulatory format in Central Asian legal systems held over from the Soviet era that does not in fact restrict the opening of any particular areas. In essence, it simply says, "everything is closed that is not opened." It causes problems typically because it sets no standards for when, how, or why an area may be opened. To the extent it can potentially open any area, this kind of provision is likely in conflict with the protected areas or other legislation restricting the use of wildlife.

Legal options: In general, the legal creation of hunting areas should also stipulate that the following must be in place prior to operating:

- a clearly defined area;
- sufficient resources to support the type of hunting permitted;
- a designated management authority, whether government, a private operator or a local community;
- trained managers within those organizations; and
- a management plan with clearly defined requirements for its development, renewal, and legal status.

A final note should be added with regards to hunting areas on privately owned land. Private land owners should have a say about the inclusion of their land into hunting areas. The law should therefore recognize land owners the right to close their land to hunting. By the same token, private land owners must agree to the initial inclusion of their lands into a private hunting area.

Principle 21: Regulating hunting methods

Hunting laws around the world typically prohibit various techniques that are likely to result in higher harvest levels. Among them is the use of automatic weapons, pursuing animals by vehicle, destroying nests or dens, and the use of pits, triggered guns, fishing nets, chemicals, explosives, or other indiscriminate hunting techniques. To provide an additional layer of protection, laws may prohibit not only the use of these techniques, but also the possession of these instruments when a person is on hunting grounds. While these restrictions may be considered appropriate and clearly outlined under the regulatory framework, concerns are often raised over the need for adequate enforcement of the legislation.

Legal options: In addition to these standard prohibitions are a few additional restrictions commonly accepted internationally that can be used to decrease the effect of hunting pressure. They are not as easy to use and are likely best included in a regulation with reference by organic legislation. These include:

- establishing size limits where appropriate to avoid taking animals that are too young. Size limits are often applied in fishing regulations. They may also be effectively used for other species such as deer or elk, where the existence and/or size of antlers can be determined and used to restrict the take of female or young, or with wild boar, where size can be roughly estimated to control the take of either younger or older members of the population. Using size limits effectively will require some scientific basis for their determination. The law can require the determination of appropriate size limits and delegate the authority to impose harvest restrictions based on them;
- instituting sex-based limitations: sex-based limitations concern the number of male or female animals that may be taken by a given hunter; and
- to avoid placing too great a burden on the implementing agency, allowing a grace period for the determination of either of the above and leaving their use entirely up to the implementing agency.

Principle 22: Ensuring a transparent and effective allocation of hunting rights

Wildlife laws should, first and foremost, clearly recognize property rights over wildlife resources. Such recognition should comprise the allocation of responsibility for damage caused by wildlife to third parties' property, as well as responsibility for the sustainable management of the resources.

Once property has been clearly identified in wildlife laws, hunting rights over wildlife should be regulated. There are several instruments that can be used to allocate these rights, and the choice may depend on whether there is public or private property over resources. Usually, permits or licences are used to allocate the right to hunt certain species ("right to hunt"), whereas concessions are used for longer-term rights over a certain area and the wildlife resources that can be found there (these are often referred to as right to manage "hunting farms" or "hunting enterprises" in Central Asia). Whatever the instrument, or combination of instruments, available for allocating hunting rights, wildlife laws should ensure that the process for their allocation is transparent based on certain guarantees, linked to management planning and quota-setting, and provides some degree of security for the right holders. Indeed, there can be no long-term interest in the sustainable use of a resource, which is one of the ultimate goals of the sustainable wildlife management, in the absence of security of allocated rights. The law should specify clearly the rights and obligations of wildlife users, as well as the causes for the suspension, termination or renewal of their permits/licenses/concessions. The concession holder needs a reasonably long term to recoup investments made in developing the concession. On the other hand, the laws should ensure that the government can exercise control over the concession holder's performance.

Legal options include the following:

- wildlife laws should specify the rights and duties of hunting rights holders (be they rights to hunt or rights to manage a hunting enterprise), with a view to creating a situation of shared responsibility among wildlife managers, users and authorities. Authorities should be responsible for ensuring the conditions (necessary legal and administrative action) under which users can sustainably use wildlife resources, as well as provide technical advice when necessary. Users should be specifically called upon to respect certain social and environmental requirements in the exercise of their rights (see "Establish Hunting Quality Standards" below). and
- in allocating hunting rights, the law should require consideration of third parties' rights, with a view to preventing future conflicts, including any existing use rights to use the concerned land to hunt or for any other relevant purposes (use of wood and non-wood forests products, grazing, tourism, fishing etc.).

Specifically with regard to hunting concessions ("hunting enterprises" or "hunting farms"):

- The law should develop a transparent mechanism for the allocation of hunting concessions (for the right to manage a hunting enterprise). The mechanism should allow for public participation, thus responding to the need to consider possible impacts of these allocations on the livelihoods of communities living in or near hunting areas, traditional use of wildlife or other interested stakeholders, to avoid future conflicts.

Failure to adopt a transparent and fully accountable process for the allocation of hunting concessions in government or communal land areas inevitably invites allegations of corruption, cronyism or mismanagement. The allocation of hunting concessions should respect wildlife management plans.

- Concession tender processes should allow for a high degree of competition between operators and be designed to ensure maximum financial/social benefit to public/community landowners, foreclosing on any potential for 'back door' arrangements or deals that end up rewarding individuals rather than government and/or communal stakeholders. Open tender processes and public auctions have been used successfully in different countries in the region and should be encouraged.
- The law should require demonstrable management capacity as a prerequisite to obtaining hunting management rights. For concessions, there is a need to ensure that viable and demonstrable management capacity exists for each hunting concession area ("hunting enterprises" or "hunting farms"). This requirement is especially important in instances whereby private sector concession holders are allowed to set and approve their own quotas for hunted animals and have ownership rights over their own resources.
- Develop screening criteria for hunting operators (in Central Asia, those managing "hunting enterprises" or "hunting farms") and provide for training courses. To ensure that potential hunting operators are well-qualified to finance and conduct professional hunting operations and that they will adhere to sustainable hunting practices, a series of screening criteria should be applied to all applicants who seek allocation of a concession. Application of both technical and financial criteria would necessarily make certain players ineligible for consideration. Screening practices should ensure that individuals who have violated rules and regulations in the past no longer are eligible for obtaining a concession. Linked to the screening criteria is the question of whether concessions can be transferred: the law should specifically address this point, and in case it allows such transfers, it would be wise to request prior governmental approval to ensure that the new operator also complies with minimum criteria comparable to the screening ones.
- Set hunting tenures either by law or regulations or both - The length of time that individual hunting concessions (that is, in Central Asia, "hunting enterprises" or "hunting farms") are held and the security associated with such tenure has a direct bearing on the amount operators are willing to invest in the protection of the concession and the development of community-based natural resource management programs. Long-term tenure commitments should be encouraged to promote maximum investment in the resource base and local communities. The state should be able to cancel a concession for poor performance by the concession holder. The concession holder should be allowed to withdraw due to unanticipated changes in circumstances, such as fire, disease, or other disaster destroying the value of the concession. Perhaps the government should be able to cancel a concession or demand assurances from the holder if the holder's financial condition suggests that it may soon be unable to continue management.
- The law may also wish to give guidance on how damage caused by game should be measured and who should decide the amount. It may want to declare a minimum level of damage below which there is no compensation. It may want to explain whether damage awards depend in any way on demonstrating that the game manager was at fault or that the injured person took reasonable steps to avoid or minimise the damage. It may want to discuss how to determine whether damage outside hunting areas is compensable. It should make clear whether the responsibility for paying damages rests with the concession holder, the central authority, or some other person. It could set up systems that make it more likely that funds are available to pay damages. These could include requiring concession holders to obtain insurance against liabilities or setting up some sort of Wildlife Damage Fund supported by the national budget, by money set aside from concession income, by money from hunting licensing fees, or by separate annual payments from hunters or concession holders.

<u>With specific reference to the "right to hunt":</u>

- The law should require demonstrable capacity as a prerequisite to obtaining hunting rights. To obtain a permit or a license, the applicant should demonstrate his/her capacity to respect hunting restrictions. For instance, legislation should ensure that individuals who have violated rules and regulations in the past no longer are eligible for license/permit to hunt.
- The law should establish standards for professional hunters through comprehensive programs offering both theoretical and practical training and/or examinations. Hunters that pass these examinations and/or

successfully serve an apprenticeship should become registered with the national hunting association (something that most of the countries in this review have now or have had in the past) and government before being allowed to conduct hunts professionally.

Wildlife law drafters should avoid unnecessary requirements for the allocation of hunting rights. The complexity of license requirements are usually to blame for lack of compliance generally, especially in remote communities. Often, licenses and tags are only available in central government institutions or issued through hunting societies, that are not easily accessible to all users of the resource. In general, the cost of travelling to and from license distribution centres, when weighed against the low likelihood of being caught, is too great. Most individuals faced with this problem hunt without a license and the requirements go ignored.

Legal options: The prevalence of this problem in countries with large rural populations makes this a particularly important area to concentrate on. Examples of best practices include:
- creating a subsistence category for hunting in rural populations where licenses and tags are not required, but where seasons are set so short that they act as a deterrent to over-harvests;
- setting licensing costs at a level sufficient to cover the adequate distribution of licenses; and
- tying the use of licenses and tags, where instituted, to specific penalties and fines sufficient to encourage use/discourage poaching.

In 'best case' scenarios, recreational hunting is an important industry that underpins the conservation of species and their habitats as viable land uses which contribute to the livelihoods of many people and the national economies of sport hunting countries. Benefits from this industry are increasingly being distributed to rural poor through community-based natural resource management programs and those communities are showing a greater commitment to the conservation of wildlife.
On the other hand, the management of the industry is, in many cases, still poor and open to abuse and corruption. Several elements need to be addressed in legislation before these efforts will begin to achieve what is hoped. The role of law in this respect can be that of establishing recreational hunting quality standards.

Legal options: The following are designed to address the particular needs of the sport hunting industry, again with the assumption that all prior principles are incorporated herein.
- Provide a direct conservation benefit for the species and area used (e.g. preventing habitat conversion or settlement in the hunting area). This is to ensure that hunting forms designed to generate income do not simply become another extractive use without benefit either to the community or the resource. For example, instead of merely returning funds, the establishment of a trophy hunting concession may also carry with it the creation of development restrictions and a requirement that concessionaires provide personnel to monitor and enforce such restrictions.
- Establish minimum trophy sizes for designated species. The lack of long-term tenure security over many hunting rights has prompted unsustainable over-hunting of certain lucrative species, resulting in inferior trophy quality animals, especially in State and communal land concession areas. Where they do not exist, trophy quality sizes and standards need to be established. There are a number of international organizations that can provide a basis for establishing trophy size limits. As a function of legislation, drafters should consider establishing default minimums, and in the interests of flexibility, delegating authority to the relevant agency to adjust from time to time as necessary.

Principle 23: Involving local communities in the sustainable use of wildlife
The legal reality in many countries is that local communities often have no exclusive right to use hunting resources. They compete with, and often complain of, hunters coming in from outside the community for subsistence or recreational/trophy hunting, thereby exploiting a resource on which they are to some extent dependent. It is increasingly recognized that without local people having a significant stake in the management of local resources, the efforts of under-staffed and poorly financed officials to patrol and protect wildlife will often be futile. The absence of such a stake both reduces the incentives of local people to

comply with the law, and prevents them from insisting on the compliance of outsiders, including government officials. Therefore, the needs of local communities who live with and are affected by the use and conservation of biological diversity, along with their contributions to its conservation and sustainable use, should be reflected in the equitable distribution of the benefits from the use of those resources.

Legal options:

- where possible, adopt means that aim toward delegating rights, responsibility, and accountability to the local communities who use and/or manage biological resources;
- ensure that an equitable share of the benefits remain with the local people in those cases where foreign investment is involved.[68] A useful contribution to the enhancement of local social conditions would be to encourage potential managers who are willing to offer specific advantages in this regard. For example, in selecting applicants through tenders, preference could be given to those who undertake to involve and benefit local people to the largest possible extent. Proposed "social" obligations of applicants could then become binding conditions in the contract entered into with the winner;
- in the event that the management plan dictates a reduction in harvest levels, to the extent practicable, assistance should be provided for local stakeholders, including indigenous and local communities, who are directly dependent on the resource to have access to alternatives;[69]
- provide training and extension services to enhance the capacity of local communities to enter into effective decision-making arrangements as well as in implementation of sustainable use methods;
- protect and encourage customary use of wildlife that is sustainable, in accordance with traditional and cultural practices;[70]
- establish a preferential legal discipline applying to local community members –as opposed to private companies – for managing hunting areas. Such differentiation would be justified in light of their different interests, capacities and potential role for sustainable wildlife management. In this case, such difference should be spelt out by:
  - attaching priority to local communities in the tender process for allocating hunting concessions (on the basis of geographical limitations and requirement for actual residency in areas with or adjacent to hunting grounds) and providing for more favourable concession conditions (for example, termination of the concession will only be justified when more than one violation of its conditions has taken place, rather than at the first occurrence);
  - establishing a different legal instrument specifically targeting community-based wildlife management (management agreements, for example). In this case, the law should spell out the basic elements of this instruments, as well as a transparent and equitable process for their negotiation on a case by case basis; and
  - especially as regards areas which are not attractive for commercial hunting, it would be useful if interested groups of local residents were encouraged by the administration to directly undertake the management of local wildlife in specified areas. The administration could provide necessary technical assistance and support to these collaborative wildlife management efforts. This could relieve the administration of some enforcement responsibilities, as local residents themselves would perceive compliance with management rules as being in their own interest. Legislation could encourage this type of arrangement where tender procedures have not led to the identification of interested commercial managers.

Principle 24: Provide for the regulation of both national and international wildlife trade

Both international and national trade must be regulated to maximize enforcement potential and ensure that neither trade type undermines conservation efforts. Most national wildlife laws focus only on the actual hunting and not the subsequent use, possession, or sale of the animal. In other words, once an animal or part enters the market, enforcement becomes impossible. This presents a significant management gap that makes it possible for wildlife traders to engage in activities that only become illegal at the moment they cross an international border. Once they cross that border, however, and the origin of the specimen can no longer be

[68] Addis Ababa Principles and Guidelines, principle 12, fifth operational guideline.
[69] Ibid, seventh operational guideline.
[70] Ibid, 24, principle 2, fifth operational guideline; CBD, Article 10(c).

determined, the failure of national law to regulate trade converts the illegal venture again into a legal one. In most countries (if not all), porous international borders present little to no obstacle and wildlife trade continues to thrive.

Legal options: Other than fully implementing CITES for those countries that are party to it, there are at least a few legal tools that can improve the regulation of trade nationally and internationally. These are:

- apply the same or similar restrictions and requirements to national trade that apply to international trade: i.e.,
  - requiring special permits for the transportation, possession, and trade of a wild animal or part by anyone other than the permitted hunter;
  - creating registration requirements and procedures for existing wildlife specimens;
  - setting out additional fines for violation of national trade restrictions;
  - setting trade quotas where applicable, etc;
- create a legal grace period during which existing wildlife products may be registered to ease implementation;
- apply for special listing under Appendix III for species of concern in a given country that are not listed in CITES Appendix I or II, and thereby gain cooperation from other member states. This mechanism has received significant use in many countries, but has not yet been used by the countries in this study who are more recent members to CITES.

Implementation and law enforcement

In several instances, lack of law enforcement is considered a key reason why various resource management initiatives fail. It is important, however, when looking at the legal framework to seriously consider whether the law has adequately addressed enforcement needs. More often than might be assumed, legal frameworks do a reasonably good job of providing for enforcement activities. Even very short laws grant specific and sufficient powers of investigation and arrest to enforcement bodies and set out relatively long lists of prohibitions for which penalties apply. National and local officials sometimes describe themselves as enforcers and frequently exercise enforcement rights. Government reports often focus on enforcement issues - i.e., so many arrests, this amount fined and collected, etc. Adding to this, attention should be drawn to the legal authorization to use fines as a source of income for seriously under-funded agencies and staff. While enforcement is a problem in many countries, governing legislation itself cannot as automatically be criticized for not making enforcement a priority.

These principles look at the primary elements that can help significantly improve the implementation and enforcement of wildlife legislation, focusing not only on a repressive approach, but also on an incentive-based one.

Principle 25: Providing incentives for complying with the law

The Addis Ababa Principles, in accordance with the ecosystem approach,[71] stress that laws and regulations that distort markets can contribute to habitat degradation or otherwise generate perverse incentives that undermine conservation and sustainable use of wildlife, and of biodiversity more generally. Against this background, the Addis Ababa Principles call for the identification, removal or mitigation of these perverse incentives.[72] By the same token, the Biodiversity Convention draws attention to the benefits of positive incentives, that should be economically and socially sound (art. 11).

Legal options:

- identify and eliminate incentives (economic mechanisms, subsidies) that have a negative impact on the potential sustainability of wildlife uses;

[71] CBD Decision VII/11 on the Ecosystem Approach, Annex, principle 4.
[72] Addis Ababa Principles and Guidelines, practical principle 3.

- integrate economic valuations studies of wildlife resources in decision-making, and consider them in land/use or habitat conversion tradeoffs;[73]
- provide economic incentives for resource managers, users and local communities that invest in developing and/or using environmentally friendly techniques (such as tax exemptions, lower loan interest rates, certifications for accessing new markets) or that use more efficient, ethical and humane use of wildlife resources and that reduce collateral damage to biodiversity;[74]
- provide incentives (monetary and non-monetary) for individuals that help authorities in the prevention and detection of wildlife law violations; and
- provide for the free-of-charge technical cooperation to guarantee the transfer of improved technologies to communities.[75]

Principle 26: Returning financial resources to improved wildlife management

Addis Practical Principle 13 states "[t]he costs of management and conservation of biological diversity should be internalized within the area of management and reflected in the distribution of the benefits from the use." The principle is justified on the following lessons:

- The management and conservation of natural resources incur[s] costs. If these costs are not adequately covered then management will decline and the amount and value of the natural resources may also decline. It is necessary to ensure that some of the benefits from use flow to the local natural resource management authorities so that essential management to sustain the resources is maintained.
- The promise of hunting revenues (in particular trophy hunting) to simultaneously make use of and generate adequate funding for wildlife management is the subject of many articles and studies around the world. Literature is not without examples where sport and trophy hunting have had positive impacts including, increasing revenues for wildlife conservation, decreased poaching, and conservation of habitat for species. The formula is simple: because the species has and generates recognizable value – managing authorities, local communities, and projects have been able to implement real conservation efforts; i.e., expanding and linking different types of conservation areas providing numerous benefits to other species that share or are dependent on such habitat.

But there are also examples where the accounting loop associated with recreational/trophy hunting do not return funds to the management of the resource. In worst case scenarios, they are nothing more than a business to put money in the pockets of a few wealthy individuals and have no positive effect on wildlife management or habitat conservation. In the end, they may only represent another extractive use of a dwindling resource with potentially serious consequences.

Legal options: On a practical level, there are at least two ways a government can cover the costs of wildlife management – either through direct payments in the form of license, permit, or other fee (i.e., a one time payment by the user for a specific use)[76] or through indirect payments typically in the form of taxes for particular types of uses.[77] Another, additional option is that of transferring management responsibilities to stakeholders, so that the costs of wildlife management will be partly sustained by stakeholders rather than by the government alone.

Costs of hunting management are often covered through direct payment schemes where the user pays a license fee directly to the managing authority. It is not always true, however, that these direct payments stay with the managing authority. Instead, budgeting laws require that they be channeled to a central budget for redistribution. With chronic budget shortfalls in many areas, the risk is that users pay for the use of a lucrative wildlife resource (i.e., trophy hunting), but those funds are then not made fully available for the management of the resource.

[73] Ibid, practical principle 10, first to third operational guidelines.
[74] Ibid, practical principle 11, first operational guideline.
[75] Ibid, second and seventh operational guideline.
[76] Licenses and permits are sometimes (not always) "direct payments" paid by the user to the managing authority and retained by that authority to cover costs. For example, an entrance fee paid to and used by a national park is a direct payment.
[77] Taxes constitute "indirect payments" paid to a national treasury and from their distributed to managing authorities. These may include the application of a general percentage of all taxes paid for natural resource related management activities or taxes for specific uses (e.g., taxes for resource use such as a stumpage tax for timber harvests).

To guard against this, there are really only a few legal options that may be included in wildlife and hunting legislation. More important will likely be amendments to budgeting laws that may prevent such efforts from being implemented. These include:
- providing guidelines for resource managers to calculate and report the real cost of management in their plans;
- creating "earmark" provisions that require a return of equivalent sums to the managing authority for the management of the resource; and
- requiring that fees be returned to the management of the resource usually carries with it the expectation that the resource should "pay for itself." This is rarely possible in a developing system.

The start-up costs for the creation of wildlife management system will typically exceed initial revenues. To narrow the gap between costs and revenues, there is a strong tendency among managers to set harvest quotas according to the economic needs of the system and not scientific monitoring results. To avoid this, the final decision making authority for quotas must rest with a scientific authority and be based on the best scientific information available.

Principle 27: Striking a balance between service provision and law enforcement mechanisms
Sometimes laws fail to provide a detailed picture of the rights and duties of public officers in charge of wildlife law enforcement. As a result of this approach, enforcement officers operate in a situation of uncertainty which hinders their effectiveness and undermines their legitimacy. For example, enforcement officers should be provided with sufficient powers to apprehend, detain and prosecute alleged offenders, seize allegedly illegal products, undertake routine inspections on vehicles transporting wildlife products, and suspend allegedly illegal operations. All these powers should be exercised in an overarching framework of fairness, as the legitimacy of enforcement officers depends on the extent to which they are perceived to operate transparently and fairly. Another issue that should be mentioned with a view to enhancing the accountability of wildlife authorities, is the mix of management/commercial activities and public control functions at the central or local level so that conflict of interest are avoided. Furthermore, in situations in which different authorities play a role in law enforcement – when for example hunting guards are also involved with inspection, while there are other public officers dealing with forest inspection, animal health inspection, and environmental inspection – there should be cooperation between hunting inspectors and other authorities.

Legal options:
- clearly setting out the powers of inspectors, providing for certain limits to their discretion as well as for certain duties;
- expressly requiring that inspectors have proper qualifications;
- ensuring cooperation (exchange of information, joint inspections, etc.) among law enforcement institutions; and
- limiting possible conflicts of interest by prohibiting that the same entity mixes commercial activities and public functions related to ensuring sustainable management and law compliance either at the central or at the local level.

The legal fixation on enforcement and the failure of public authorities to provide a recognizable service to resource users makes wildlife management an even more difficult task. Law enforcement officials are often perceived as those intent on obtaining fines for violations to supplement incomes, rather than to deter violators. In the extreme, law enforcement officials may often wait for a violation to occur just to be able to collect the fine. The result is often a general resistance by locals to all management efforts, not just to enforcement measures. To strike a balance, legal provisions need to address not only what types of actions will result in fines and penalties for civilians, but also the repercussions on officials for failure to provide promised services. This relates to issues of transparency and accountability.

Legal options: Establishing repercussions for public officers in wildlife law may include:
- identifying the types of services described in the law; and

• determining which types of disincentives will act both as a deterrent to the targeted behaviour and as a means of correcting the failed service or harm caused.

Generally, sanctions should be severe enough to act as a deterrent (resulting in a major increase in the cost of doing business for those in violation of the law), but not too severe or out of proportion to the nature of the offence that courts and other enforcement bodies may be reluctant to apply the penalty at all, allowing the crime to go unpunished. The law may also trigger the amount of sanctions to the gravity of the violation and the severity of the damage caused (thus possibly including compensation for damage to public good, and confiscation of illegal produce and equipment). The additional point to make here is that sanctions should always be consistent with relevant legislation. In order to ensure the continued relevance of sanctions over time, the law may provide for flexibility in setting the amount of sanctions, for example by defining classes of sanctions in the law while leaving amounts to be defined by subsidiary legislation. Here we are also referring to the penalties and procedures that come into play in the event of a violation of the law.

Legal options: Such mechanisms may be enhanced by evaluating the penalties with the following questions in mind:

• The primary justification for the application of fines is their ability to: 1) act as a strong disincentive for the targeted behaviour; and 2) compensate the State for the damage caused. Regardless of the resource in question, small fines do neither and quickly become a simple cost of doing business. For enforcement to have meaning, the fines applied must be sufficient to deter violators and to compensate for damage from year to year.
• The law should provide for the timely and easy modification of penalties to take into account the effects of inflation. A number of countries have included indexing provisions in their laws, to allow for the automatic updating of penalties rather than requiring legislative action for every penalty increase.
• The law should allow for consideration of the severity of the damage done in determining the penalty. In addition to fixing a flat penalty for a specific offence, some laws also require the offender to reimburse government for the cost of damages done to the forest estate.
• It is also essential to evaluate the procedures by which laws are enforced:
  - Expedited procedures should be available for minor offences, thus, on the one hand, helping ensure that a case does not simply get lost in the backlog of lower court cases, while on the other hand freeing up courts to focus on more severe breaches of the law. The difficulties and delays associated with public prosecutions can, in many cases, discourage forest officers from pressing forward with a case.
  - The law could provide for compounding minor offences, that is, the payment of a prescribed fine as a way of disposing of uncontested cases without the need to pursue full prosecution.
  - The law could provide for the possibility of resolving cases outside of the court system, through administrative tribunals or alternative dispute resolution mechanisms.

Finally, offences and sanctions should be coupled with provisions on mitigation, remediation, compensation and rehabilitation[78] where damage is caused to wildlife, to their habitat or to other components of the environment, as a result of violations of wildlife law and when biodiversity loss results from over-use.

Principle 28: Provide physical tools to aid in monitoring of harvests and trade

Beyond licensing (Principle 22 above), the most commonly used and accepted tool for monitoring harvests and trade involves the "tagging" of harvested wildlife. Under this system, the license or permit purchased by the hunter must be dated when an animal is harvested in a manner that cannot be changed (typically by cutting out the month and day) and is "attached" to the animal immediately upon harvest like a tag. A failure to tag the animal is a violation equivalent to poaching whether or not the hunter has purchased a license. The act of "tagging" results in the use of the license in a manner that prevents reuse of the same license at a later date.

The other common system in use is self-reporting. With self-reporting, the law requires that hunters write in harvest values on a specialized form when hunting and produce the form to inspectors upon request. The

[78] Introduction to the Addis Ababa Principles and Guidelines.

form is not attached to the animal and therefore does not serve the same function as a "tag." The system is often unused or abused by hunters who write in pencil and later erase if they are not inspected. If inspections are rare, the risks of cheating are negligible rendering the system essentially ineffective.
Tagging is preferred over self-reporting requirements because it requires the use of the license and because it immediately becomes a monitoring and enforcement tool – whether or not inspected. It is not, however, a perfect system. Problems associated with it include prohibitive implementation costs; compliance difficulties due to a lack of distribution or inability to travel to distribution centers by hunters; and corruption, where tags become another form of currency sold to the highest bidder at the local level and are no longer available for the intended groups.

Legal options:
- Use self-reporting requirements. This is not the preferred option, but may be the only one available in many countries given capacity and funding constraints.
- The preferred option would be to include a tagging system in the law with the following minimum standard elements:
  - delegation to the appropriate agency the authority to create hunting tags that must be validated in such a way that it cannot be reused; this requirement typically applies only to big game species and does not include fish or birds;
  - a requirement that the properly validated tag shall remain with the meat until consumed;
  - a requirement that tag remain attached to the hide of any game animal harvested for its skin until the hide has been tanned;
  - a requirement that all shippers of wildlife, or parts thereof, label all packages offered for shipment by whatever means including specifications for the description of the contents.

Part II: A Comparative Analysis of National Legislation

ARMENIA

1. INTRODUCTION

Sustainable wildlife management as such has only recently gained attention in Armenia. As a result, there is no comprehensive, specific legal instrument on wildlife management; rather, the legal framework directly and indirectly dealing with such issue is still scattered and fragmented.

The basic legal instrument in this regard is the "Foundations for Legislation on Nature Protection of the Republic of Armenia" (Law of 9 June 1991, amended in April 1996; hereinafter, **Law on Principles of Environment Protection**),[79] which determines the nature protection policy of Armenia, provides the overall framework for the protection and use of the environment, including fauna, and creates the necessary legal basis for the development of legislation on nature protection. Apart from general principles on environmental preservation, the law deals with the protection and use of wildlife in general (art. 23), and particularly with the establishment of "Specially Protected Natural Areas" (art. 24) and the protection of rare and endangered animals (art. 25). Article 31 contains an important general clause on the relationship between Armenian national laws and international agreements, according to which, in the event of a conflict between these two sources of laws "the requirements of the international agreement are to be applied". This clause is also recalled in other relevant legal instruments. The harmonization of national laws with the international legal framework should therefore be emphasized, as national standards could become void and/or inapplicable if not brought in line with international ones.

The Law on Principles of Environment Protection has been integrated and supplemented by other ad hoc legal instruments specifying general principles for wildlife management or dealing with other wildlife-related issues. These include:

- the **Law on Specially Protected Natural Areas** (of 27 November 2006, hereinafter Law on Protected Areas), which contains basic rules on different types of protected areas (PAs), including on their status, creation and organization;
- the **Law on Fauna** (of 28 November 2002), which regulates the protection and use of fauna;
- the **Law on Hunt and Hunting Economy** (of 9 April 2007; hereinafter Law on Hunting), which regulates hunting;
- the **Land Code** (of 2 May 2001), which regulates land use and ownership, including provisions on protected areas, forested land and management of their resources;
- the **Forest Code** (of 26 November 2005), which regulates the status, conservation and management of forests;
- the **Law on Environmental Impact Assessment** (EIA) (of 12 December 1995),[80] which embodies detailed rules on the assessment of impacts of activities including those concerning, or having potential impacts on, fauna, ecosystems and natural resources; and
- the **Law on Nature Protection and Nature Utilization Payments** (of 30 December 1998, entered into force on 1 January 1999)[81] which establishes principles and rules on "nature utilization payments", including payments for the use of biological resources in general.

[79] All legal texts are available on FAOLEX (http://faolex.fao.org/faolex/index.htm), unless otherwise indicated. FAOLEX is a comprehensive and up-to-date computerized legislative database, which is administered by FAO and offers one of the world's largest electronic collection of national laws and regulations on food, agriculture and renewable natural resources.

[80] Text available on the official website of the Parliament of the Republic of Armenia (http://www.parliament.am/legislation.php?sel=show&ID=2115&lang=eng).

[81] Text available on the official website of the Parliament of the Republic of Armenia (http://www.parliament.am/legislation.php?sel=show&ID=1447&lang=eng).

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

The fauna of Armenia is the **"absolute property" of the State** (Law on Fauna, Preamble). Legal entities and individuals can use it for industrial, social, as well as environmental, cultural, scientific investigative and educational purposes, under the conditions established by the law and according to procedures developed by the Government (arts. 5 and 23).

Use for "industrial purposes" includes hunting (see also 2.2.3.1 below) and collection of biological products deriving from fauna. It is "chargeable" and subject to a license provided by a "body authorized by the Government", on the basis of a contract, following the procedures established by the Government (Law on Fauna, arts. 5-6 and 24). **Use for "social purposes"** includes "hunt of animals that are not subject to hunt." This is a rather unclear definition: it is chargeable and subject to a contract, the procedures for which are defined by the Government (art. 25). **Use for "environmental, cultural, scientific investigative and educational purposes"** is not defined: it is free and implemented by procedures defined by the Government (art. 26).

Fauna is also considered a **"forest resource" by the Forest Code**, and its use is regulated also there (see 2.2.3 below). The relationship between the two Laws, however, is not explicitly regulated. Payments for the use of biological resources are regulated under the **Law on Nature Protection and Nature Utilization Payments** which establishes types of payments, procedures for calculating these payments, and other related matters.

2.1.2. Institutional Set-up

The **Government** is generally responsible for the development of procedures on the use of fauna and for its protection (Law on Fauna, art. 5), whereas generally **"State bodies authorized by the Government"** are responsible for the provision of licenses for wildlife use, and for the implementation of State control over wildlife use and protection (art. 6). In this regard, the administrative authority is the Ministry for Nature Protection.

2.2. Wildlife Management

The **Law on Principles of Environment Protection** generally prohibits actions interfering with natural reproduction and with preservation of animal diversity, and those damaging habitats (art. 23). The **Law on Fauna** establishes a set of "goals" (art. 3) and "objectives" (art. 16) on wildlife management, which include the protection and maintenance of the diversity of animal species, the prevention of violations of integrity of animal species and population, of their environment, their migration routes and the regulation of their utilization (arts. 3 and 16). Not all of these general principles, goals and objectives are translated into precise obligations.

2.2.1. Management Planning

The Law on Fauna establishes that the Government is responsible for the implementation of State policy on science-based protection and sustainable use of the fauna (art. 5), although no provision requires explicitly the State to adopt such policies and programmes, nor are relevant procedures and institutional responsibilities further detailed. In fact, **management planning provisions in general are absent** and this may be one of the most critical gaps in the legal framework. **No comprehensive policy on the sustainable use** of fauna is envisaged in the law either.

The Government is also responsible for the development of procedures for the **monitoring** of fauna (Law on Fauna, art. 5) to be implemented by "State bodies authorized by the Government" (art. 6) –in other words, the Ministry for Nature Protection. The Law on Fauna specifically refers to the implementation of a monitoring process for "State registration of fauna" to be reviewed at least every 5 years, and the creation of a fauna **cadastre**. The Government is also responsible for the maintenance of the cadastre (Law on Fauna, art. 5) to be implemented by the Ministry for Nature Protection (art. 6).

In the field of hunting, a **programme for development and management of hunting** economies is to be developed by private entities that manage such hunting economies and to be approved by the competent body (Law on Hunting, art. 26; see 2.2.3.1 below).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

Special protection of rare and endangered species is regulated mainly by art. 25 of the Law on Principles of Environmental Protection and by the Law on Fauna. Species that are subject to special protection are those included in the **animal "Red book"** of the Republic of Armenia (Law on Principles of Environment Protection, art. 25; the Law on Fauna, art. 14). According to the Law on Fauna, the animal Red Book should comply with international agreements, and its objective is to develop and implement science-based measures for the protection and use of listed species (art. 14).

The law **prohibits activities resulting in the reduction of population** of listed animals, as well as the **deterioration of their habitats** (art. 25 of the Law on Principles of Environment Protection; the Law on Fauna, art. 18). Several **exceptions and other possible uses** are provided by different laws. According to the Law on Principles of Environmental Protection, the following activities are allowed: reproduction for scientific purposes; and killing animals in case of threat to life, which may be permitted by the State-authorized body for nature protection (art. 25). According to the Law on Fauna, it is also permitted to use listed species "in exceptional cases, in scientific investigative, artificial and natural conditions, for reproductive purposes, by decision of the Government" (art. 27). According to the Law on Hunting, legal entities or individuals that have obtained a right to manage hunting economies have the right to keep wild animals listed in the Red Book in captivity or semi-captivity, for reproduction and reintroduction ("acclimatization") purposes (art. 25). The same Law, however, seems to allow for **hunting** of listed species for scientific purposes or under conditions set out in a Governmental Decree. This may create a conflict with the general rules mentioned above, and should be clarified. As a matter of policy, the possibility of hunting listed species should be excluded.

In addition, **land users** are obliged to take measures for the "protection and reproduction" of listed species that are present on their territory (Law on Principles of Environment Protection, art. 25). **"Users of natural resources"** in general "who harm such species during economic or other activities" must undertake measures for their protection, according to the Law on Fauna (art. 18), while **"forest users"** more specifically must ensure the protection of listed species according to the Forest Code (art. 34). Persons guilty of "**destruction**" of these species face "material, administrative and criminal responsibility" (Law on Principles of Environment Protection, art. 25). The Law on Fauna envisages also the creation of **"special nature protection belts" or "corridors"** to protect these species, which are to be defined in accordance with the law (art. 18).

The **institutional framework and procedure** managing the Red Book is complicated and somewhat unclear. According to the Law on Principles of Environment Protection, the Red Book "is authorized" by the decision of the Council of Ministers (art. 25 para. 1). The "order of conducting" the same is "established by the regulations approved by the State authorized body [...] on nature protection" (para. 5). Moreover, the Law on Fauna establishes that the Government is responsible for the updating ("adaptation") of the Red

Book (art. 5). The Ministry of Nature Protection, as the authorized State body, is the administrative authority responsible for maintenance of the Red Book (art. 6).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

The legal framework on Protected Areas (PAs), which may be relevant for wildlife management, is not entirely satisfactory, as it is scattered among different instruments which contain contradictory provisions.

Article 24 of the Law on Principles of Environmental Protection establishes that "State reserves, State sanctuaries, national natural parks, and monuments of nature" are subject to State protection. The detailed rules on PAs, however, are contained in the **Law on Protected Areas**.

The Law on Protected Areas aims at the preservation of biological diversity, scientific observation of natural processes and the "promotion of sustainable use of natural objects and bio-resources" (art. 3). To this end, it establishes **four types of PAs**, i.e. land and water areas that are of special value (from the ecological, scientific, educational, historical, medicinal, recreational, cultural or aesthetic point of view) and for which a special protection regime is established (art. 1). The types of protected areas are the following:

- **"State reserves"** are areas of national and/or international importance, created for the preservation of natural environmental processes (art. 1). Hunting, construction works (except for those necessary for the functioning of the reserves), destruction of animals' habitats, introduction of new animals as well as activities aiming at decreasing or increasing the population of specific types of animals are prohibited in the reserves (art. 6). On the other hand, scientific research, monitoring and educational activities are allowed in these reserves (art. 26);
- "**National parks**" are areas of national and/or international importance, which can be used for scientific, educational, recreational, cultural and economic purposes due to the combination of natural landscapes and cultural values (art. 1). National parks can be divided in four zones: reserve zones and wilderness zones (where the regime of reserves is applied); recreational zones (where the destruction of habitats, the introduction of new animals, or the use of animals for commercial purposes are prohibited); and economic zones (where the destruction of habitats and the introduction of new animals are prohibited, whereas the reproduction of rare animals and the use of "animal resources" in accordance with legislation are allowed) (arts. 17 and 26);
- "**State sanctuaries"** are wilderness areas created for the preservation and reproduction of ecosystems and their components (art. 1). Activities that can damage ecosystems or threaten wildlife are prohibited in these areas (art. 18);
- "**Natural monuments**" are "natural objects" of special value (art. 1). Activities that can threaten the preservation of such objects are prohibited.

PAs can be of local, national and international importance and are **established** by the Government (arts. 4 and 5). The lands of PAs of international and national importance are the **property of the State**. PAs of local importance can be also created on lands owned by the community. No lands within PAs can be privatized (unless the Government decides on changing the status of such lands) (art. 5). It should be noted that the Law does not address specifically the property of wildlife on such different types of lands.

Buffer zones are established by the Government to minimize negative impacts of human activities on PAs. Within buffer zones, economic activities that can damage ecosystems within PAs and threaten preservation of wildlife are forbidden (arts. 7 and 20).

Monitoring of PAs is carried out in order to assess the conditions of wildlife habitats and migration routes, to define changes occurred in the ecosystem and its components, to develop methods to prevent negative influence on the ecosystem and its components, and to study and assess the conditions of fauna included in the Red Book (art. 14).

Provisions on PAs are also contained in the **Land Code**. The Code establishes that lands of natural significance, "natural monuments, preserves, national parks [...] and green belts under special protection (except hunting areas)" belong to the category of lands of special PAs, and are considered "**nature protection lands**" (arts. 19-20). Procedures for their use and protection are established by the Government: economic activities may be prohibited, and lands can be taken from landowners in cases established by the law (art. 19). Activities "not connected with investigation and protection of natural complexes and objects and not envisaged by the law" are prohibited, and the same provision suggests that "enterprises and institutions" may obtain lands for use on special terms (art. 20).

The **Law on Fauna** introduces yet another set of categories of PAs – "special protected areas (State preserves, national parks, State protection belts, natural monuments)" – which are not defined (art. 7). Article 18 of the same Law establishes the possibility to create "**Special nature protection belts**" for the protection of rare and endangered species (see 2.2.2.1 above), but the issue is not further specified or referenced elsewhere.

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

The **Land Code** provides that the rights on land can be restricted for nature protection purposes, including for the protection of fauna, wild animals, migration routes and habitats. Such restrictions are defined by the law, other statutory legal acts, by contract and by court decisions (art. 49).

Forests and forestland can be owned by the State, communities and private owners (Forest Code, art. 4). Owners may run forest economy-related activities and may **use forest resources including fauna** as long as they do not harm the environment and commit to the rational use of natural resources under a forest management plan that has been approved by an "authorized body of State management" (arts. 3-6, 15, 18-20 and 35). Forests or forest land can be used specifically for "fauna reproduction and use" (art. 39), as well as for cultural, health, sport, recreation and tourism purposes, which include organization of tourism and hunting (art. 41). Users' rights may be restricted by provisions on protection of fauna, their habitats and migration routes (art. 46). The relationship between these provisions on the use of fauna in the Forest Code and in other legal instruments, such as the Law on Fauna (see 2.1.1 and 2.2.3.1), remains to be clarified.

2.2.3.1. Limitation and Regulation of Hunting

Hunting is addressed by few general laws. The **Land Code** refers to the existence of "hunting areas" (art. 20), but they are not regulated in further detail. More generally, hunting is considered a "use of fauna for industrial or social purposes" by the **Law on Fauna** (see 2.1.12.1 above) and a "forest use for cultural, health, sport, recreation and tourism purposes" by the **Forest Code** (see 2.2.3 above). However, the issue is dealt with specifically by the **Law on Hunting**.

Hunting is carried out on selected "**hunting areas**" on the basis of a list to be approved by the Government. Hunting areas can be located on forest lands or lands meant for agriculture (Law on Hunting, arts. 1 and 5). "**Hunting economies**" are established for the use of hunting areas and animals, and payments are established for hunting and relevant activities within hunting economies (art. 15). The right to manage hunting economies is given to legal entities and individuals who enter into an agreement on land use and on the use of hunting resources with the "competent body", at the end of a tender procedure carried out under the responsibility of the "competent body", with the participation of specialists from scientific and public organisations (Law on Hunting, arts. 8, 11 and 12). The holders of hunting management rights (management of hunting economies) must also develop and submit a **programme for the development and management of hunting economies** for approval to the competent body. (Law on Hunting, art. 26).

Hunting rights are granted to citizens who are at least 18 years old and who have obtained a series of permits (e.g. a license to carry hunting weapons, a hunting permit, and hunting certificate or ID which

certifies the passing of an exam and the payment of a duty) (arts. 16-19). Hunting rights are also given to foreigners who have obtained a right to hunt and carry a hunting weapon (art. 16). Hunters have a right to own the animals that they have hunted (art. 22).

Non-commercial hunting (individual or collective) can also be organized within the territory of Armenia using methods such as "hunting with dogs, hunting birds or traps" (art. 21).
Different permits are envisaged for the use of "hunting animals" (art. 28):
1) a long-term permit is issued by the competent authority for up to 50 years to allocate the right to use hunting animals according to the agreement on the use of hunting economies (which specifies also types and quantities of animals as well as hunting seasons);
2) a short-term permit, for specific places and times, that can be issued by the competent authority or by long-term permit holders ("users") for hunting which requires a special permit;
3) a personal permit issued by the competent authority or long-term permit holders ("users") in coordination with the competent body for hunting specific type of animals on specific places and for a specific period of time.

The regime on **hunting of rare and endangered species** is unclear (see 2.2.2.1 above).

As far as **hunting in PAs** is concerned, it is prohibited in State reserves, reserve zones and wilderness areas of national parks. Hunting should also be prohibited in State sanctuaries, and it is unclear whether it would be permitted in other zones of national parks and in natural monuments (see 2.2.2.2.a above). Moreover, according to article 11 of the Law on Hunting, hunting economies cannot be created on PAs.

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

The **export, import, maintenance in restricted areas and transfer into other habitats** of wild animals is subject to permission by an 'authorized body' (the Ministry for Nature Protection) in accordance with procedures defined by the law. The same rules are applicable to the export and import of zoological collections or samples (Law on Fauna, art. 21). The Law specifies that the illegal import, transfer into a different habitat, "acclimatization and selective use", as well as the "cruel treatment and torture" of animals and animal species are prohibited (art. 19).

2.2.3.3. Assessment of Processes Harmful to Wildlife

Prior impact assessment of activities that may be harmful to the environment is covered by articles 14-16 of the Law on Principles of Environmental Protection and by the more specific 1995 Law on Environmental Impact Assessment (EIA). According to the latter, EIAs are mandatory for a list of activities (e.g. in the energy or industrial sectors) which may have a negative **impact on the environment including fauna**, as well as for certain wider programmes and master plans ("concepts"). The detailed procedure is based on sound scientific assessment, transparency and public participation, and includes the consideration of all alternatives, the minimization of negative effects of activities eventually carried out, and the prohibition of those entailing irreversible damage for the environment. Article 14 of the Law on Principles of Environment Protection seems to suggest a more severe regime, as it requires that "any activity" should have "ecological substantiation" before being carried out and approved.

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

Rules on public participation and access to information for the public are crafted in very general terms.

According to the Law on Principles of Environmental Protection, citizens have a **right to receive information** about the state of the environment and a **general right to participate in decision making** related to the environment. These general principles are not further specified (arts. 10-11).

Public participation in general is one of the principles on which the **EIA** procedure is based, but once again this principle is not translated into detailed obligations (see the Law on Environmental Impact Assessment; see also 2.2.3.3 above).

The Law on Protected Areas contains rules on **public access to information on PAs**. More specifically, citizens have the right to request and receive information on the protection, use and conditions of PAs. The public can request such information from the "competent body for environment protection" or from local authorities (art. 30). The competent body may use the media, electronic communications, public hearings and responses to specific inquiries as means to provide information (art. 29).

3. CONCLUSIONS

3.1. General Considerations

Although scattered among many different legal instruments, rules on wildlife management in Armenia are, to a certain extent, sufficiently developed to require minor reforms and integration. From a general point of view, the **development of a comprehensive and coherent legal framework** on wildlife is nonetheless recommended, by either consolidating the existing, piecemeal legal framework on wildlife or explicitly ensuring coordination among the existing legal instruments.

This issue of coordination is particularly evident with regards to **hunting** (2.2.3.1), which is regulated by different laws (the Land Code, the Law on Fauna, the Forest Code and the Law on Hunting). Notwithstanding this plethora of applicable legal instruments, basic rules on quota setting, the regulation of means of hunting, hunting seasons and species are missing.

Several other problematic aspects of wildlife legislation in Armenia derive from **lack of coordination between different overlapping legal instruments** (see 2.2.2.1, 2.2.2.2.a, 2.2.3, 2.2.3.1 and 2.2.3.3) and from unclear **definitions** (see 2.1.12.1, 2.2.2.1 and 2.2.3). Similarily, the institutional set-up suffers from an **unclear identification of the mandates** of the various authorities involved in wildlife management, and from the lack of mechanisms for inter-institutional coordination, which may result in uncertainty among interpreters and wildlife users.

As far as **wildlife management** is concerned (see 2.2 above), the Law on Fauna establishes only general goals and objectives (arts. 3 and 16), which should be translated into more precise obligations. The lack of clear obligations (and related procedures) for the State to develop a **comprehensive policy on the conservation and sustainable use** of wildlife, based on sound science, should be underlined. In addition, provisions on **management planning** are lacking, although information gathering on wildlife is provided for through the establsihment of a wildlife cadastre (see in particular 2.2.1 above). Both in terms of policy-making and management planning, the ecosystem approach should inform legal provisions, and the participation of concerned stakeholders should be ensured.

Another key gap is indeed the limited consideration of the concerns of **local communities and local users**, the safeguarding of their interests (possibly through benefit sharing) and the potential for their participation in wildlife management. Rules on **public participation** and **access to information** in the field of wildlife management are unsatisfactory (see 2.3.1), as these issues are simply touched upon in limited cases. Relevant rules are crafted in excessively general terms, and without detailed procedures that should be provided to ensure their full implementation.

Furthermore, the focus of protection is placed on wildlife as such, and almost no attention is paid to the **protection of habitats outside of PAs**, despite this being one of the objectives of wildlife protection of the Armenian legal framework (see 2.2 above). Essential concepts, such as **sustainable use,** are not reflected in the legislation. Important activities potentially affecting wildlife, such as **tourism** or the introduction of **alien invasive species**, are not properly regulated. Finally, rules on offences and sanctions for violations of wildlife-related norms, as well as on incentives for sustainable wildlife management, are missing.

3.2. Detailed Recommendations

More specifically, as far as the **utilization of wildlife** is concerned (see 2.1.1 above):
- some types of uses of wildlife are not clearly defined (see in particular use "for social purposes" or use for "environmental, cultural, scientific investigative and educational purposes");
- the use of fauna is regulated by the Law on Fauna and the Forest Code (see also 2.2.3 above) in a manner that is not precisely coordinated. The law should be improved in this regard;

As far as the **protection of specific species** is concerned (see 2.2.2.1 above):
- although Armenia is not a party to the Convention on the International Trade of Endangered Species (**CITES)** yet, a provision in the Law on Fauna reflecting the main provisions of the treaty could be advisable from the perspective of future membership;
- the **relationship between the main applicable legal instruments** (the Law on Fauna, the Law on Environment Protection and the Law on Hunting) should be explicitly clarified, as in some instances overlapping provisions may provide for different requirements and institutional roles (e.g. on exceptions and other possible uses) and their implementation may not be easily coordinated;
- the **definition of activities that are prohibited** in relation to rare and endangered species should be clarified or expanded upon:
  - at present prohibited activities include those *directly* affecting wildlife and its habitats, but this term may be interpreted as not dealing with the possession, export or trade of specimen or parts of such species, which are elements that should be targeted according to international standards;
  - it is unclear whether hunting of Red Book-listed species is allowed and under what conditions. According to the Law on Fauna and the Law on Environmental Protection, it should not be allowed, whereas it may be possible according to the Law on Hunting. Coordination between these legal instruments and a clarification of the exact content of the Law on Hunting in this regard appears essential. From a policy perspective, hunting of such species should be prohibited;
- the law is vague when identifying the precise **duties incumbent upon land owners** for the protection of listed species on their lands. Duties should therefore be more clearly defined.
- the provisions on **responsibility** would need to be clarified: responsibility is triggered by "destruction" of species, which is not defined and is not coordinated with other activities. Finally, the law does not address **penalties** and other essential issues related to responsibility, which should be included, directly, or indirectly by reference to the precise legal instruments concerned;
- **"special nature protection belts" or "corridors"** for listed species should be defined; and
- the **institutional framework** on the maintenance of the Red Book of endangered species should be clarified.

As far as the regulation of **PAs** is concerned (see 2.2.2.2.a above):
- there is a **discrepancy between the categories of PAs** recalled by the different legal instruments involved (the Law on Principles of Environment Protection, the Law on Protected Areas, the Law on Fauna, and the Land Code). More generally, rules contained in these different legal instruments overlap and create inconsistencies. Coherence should be ensured for the sake of legal certainty and smoother implementation;
- the regimes of reserve zones and wilderness area zones within **national parks** seem identical. A clarification on the differences between such regimes is needed;
- the regime of **land property of PAs** contains some uncertainties which should be clarified and some aspects which could be improved:
  - the concept of land owned by communities should be clarified in detail;
  - notwithstanding the general principle that wildlife is the property of the State, the regime of property of wildlife on PA lands when such lands are owned by a community, or are privatized, could be specified further;
  - the general principle of prohibition of privatization of land belonging to PAs (for which there are exceptions) does not seem to take into account the recent evolution in the management of PAs, where there has been increased private sector involvement;
- the Law on Protected Areas does not address **the regulation and management of PAs** once established: procedures, planning or management schemes, and the relevant institutional framework should be expressly regulated;
- in those instances where the use of resources (including wildlife) is permitted within a PA, **permitted activities** are not always clearly defined and relevant **applicable rules** (e.g. on licenses) are not specified; and
- finally, and contrary to well-established international standards, the Law does not address the potential use or management of PA resources by **local communities** and **civil society**.

As far as the **impact on wildlife management and other land uses** is concerned (see 2.2.3), coordination between the Law on Fauna and the Forest Code should be ensured in order to clarify the legal framework applicable to fauna as a forest resource.

Moreover, as far as **hunting** is concerned (2.2.3.1):
- Hunting is not managed through a comprehensive policy by the State (the only duty refers to holders of rights for hunting management). Rules should be introduced in this regard.
- The regime of hunting of rare or endangered species should be clarified by an explicit prohibition (see also 2.2.2.1).
- The permissibility of hunting is uncertain in some of the PAs according to the Law on Protected Areas and appears to contradict the Law on Hunting, which prohibits hunting economies in PAs. These issues should be clarified.

As far as the **assessment of processes harmful to the environment** (see 2.2.3.3) is concerned, while the legal framework seems sufficiently developed in general, there are some **weaknesses in the assessment of impacts on wildlife**. Considering the activities that are subject to EIA, activities of **economic exploitation of wildlife in general** would not be addressed as such, although "concepts" such as major plans or complex schemes "on natural resource use" should be included. The law should be integrated to include explictly the economic exploitation of wildlife. Moreover, no specific EIA regime is established for **activities to be carried out in PAs**, either in EIA legislation or in PA legislation (see 2.2.2.2.a). This gap should be filled. Finally, the precise **relationship between the Law on Environment Protection and the Law on EIA** should be clarified.

GEORGIA

1. INTRODUCTION

The **legal framework on wildlife** in Georgia comprises the general **Law on Environment Protection** of 10 December 1996, supplemented by the **Law on Wildlife** of 26 December 1996 which is currently under review, and other laws and regulations that are relevant for specific issues.

The **Law on Environment Protection** contains general rules on the conservation of the environment, including general principles (art. 5), rights to information and participation for the public (art. 6), rules on the institutional framework (arts. 11-13) and on reporting and planning (arts. 14-15). It also establishes rules and procedures on licensing (arts. 22-25), environmental requirements, permits and environmental impact assessment (EIA) (arts. 35-39). It further provides for specific rules on the protection of wild animals in general (art. 46) and of endangered ones in particular (art. 47)[82]. It finally contains very general rules on protected areas (PAs) (arts. 48-49).

The **Law on Wildlife** regulates comprehensively the status, protection and sustainable use of wildlife and its habitat, as well as the relevant institutional framework. The Law on Wildlife addresses, *inter alia*, the status of wildlife (art. 6) and its use (arts. 25-27, 33-49 and 53-56), including hunting (arts. 28-29) and trade regulations (art. 50); the protection of wildlife and of its habitat (arts. 16-17), in particular PAs (art. 19) and endangered species (art. 20); management and planning (art. 15), monitoring and supervision (arts. 60-62) and the distribution of competences among the different institutions in the field of wildlife management (arts. 10-14).

- As far as forest wildlife is concerned:
  - provisions on wildlife protection and management, including on hunting, are contained in the **Forest Code** of 22 June 1999, which is currently under revision;
  - the **Order of the Minister of the Environment n. 98** of 4 October 2002 on the Approval of the Statute of "Rules and registry methods of animal world objects accounting on the limited territory of the State forest fund" establishes detailed rules for an inventory of wildlife in forest areas; and
  - the **Government Regulations n. 132** of 11 August 2005 contain rules and conditions for issuing forest management licenses.
- As far as hunting is concerned:
  - the **Order of the Minister of the Environment n. 512** of 7 December 2005 on the Approval of Regulations on the Animal Objects, the Rules of their Hunting according to Species, Terms and a List of Weapons and Equipment Permitted for their Hunting regulates specific aspects of hunting;
  - the **Order of the Minister of the Environment n. 97** of 4 Octo ber 2002 on the approval of "dates of commencing and completion of hunting and fishing" establishes hunting seasons; and
  - the **Order of the Minister of the Environment n. 68** of 3 June 1999 on the approval of "the List of Animal Objects assigned to Hunting Objects" establishes wildlife species that may be hunted.
- As far as licensing, issuing of permits for wildlife use and EIA are concerned:
  - Rules and procedures on licensing, permits and EIA are specified in the **Law on Environmental Permits** of 15 October 1996[83] and in the **Law on State Ecological Expertise** of 15 October 1996;[84]
  - the legal framework has been significantly reformed by the recent **Law on Licenses and Permits of 14 June 2005**[85] which may have a great impact on the overall system of conservation and sustainable use of wildlife in Georgia (see 3.1 below). A thorough review of primary legislation in light of this Law is

[82] The issue of endangered species is also addressed in the Law On "Red List" and "Red Book" of Georgia of 6 June 2003. However, since the text of the latter is not available in FAO official languages, it has not been included in the present analysis.

[83] National correspondents have informed the author of this report that the Law has been amended with the adoption of a new **Law on Environmental Permit**. However, since the text of the latter is not available in FAO official languages, it has not been included in the present analysis.

[84] National correspondents have informed the author of this report that a new **Law on Ecological Expertise** has been adopted. However, since the text of the latter is not available in FAO official languages, it has not been included in the present analysis.

[85] Unofficial translation available from the Office in Georgia of the International Monetary Fund (http://www.imf.ge/aattach/110.doc).

being undertaken;
- the framework has been further modified and integrated by successive regulations, such as the **Government regulation n. 154** of 1 September 2005 on approval of provisions, rules and conditions for issuing environmental impact permits; and
- the **Order of the Minister of the Environment n. 193** of 6 March 2007 on the procedure for conducting State ecological expertise.

• Fees for the use of natural resources are established by the **Law on the Fees for the Exploitation of Natural Resources**.
• Rules on PAs are specified in the **Law on the System of Protected Territories** of 7 March 1996 (Law on Protected Territories).
• The **Code on Administrative Violations** of 2 March 2007 regulates in details administrative offences concerning environment protection and wildlife management in its Chapter 7.
• The **Criminal Code** regulates crimes against environmental protection and exploitation of natural resources in its Section 10.

When Georgian legislation is incompatible with rules contained in international **treaties** to which Georgia is a party, the latter shall be applied, provided they do not contradict the Constitution of Georgia (Law on Wildlife, art. 65; Law on Environment Protection, art. 56).

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

The Law on Wildlife establishes that the **wildlife of Georgia is State property** and any activity encroaching upon such property is prohibited (art. 6). However, "objects of wildlife" (animals, but also their "derivatives", "vital activity products", nests, etc.) which are removed from natural habitats, reproduced in semi-free conditions or in captivity, or are obtained in observance of Georgian legislation, **may become private property**. Definitions and procedures to that end are established by the Ministry of the Environment (Law on Wildlife, art. 6 paras. 3-5). Exceptions are provided for **endangered species** (see 2.2.2.1) and for wild animals living in certain categories of **protected territories** (see 2.2.2.2.a), which can never become private property.

The **use of fauna** and of objects of wildlife (including hunting; taking; use of products deriving from animals; investigation and use for preservation, cultural, educational, recreational and aesthetic purposes) is subject to **licensing** (Law on Environmental Protection, arts. 22, 25; Law on Wildlife, arts. 6-7, 25, 27, 31 and ff., 46 and ff.). There are "one-time" licenses (i.e. those issued personally to the wildlife user) or "general" licenses (i.e. those issued on the basis of an auction to physical or juridical persons for hunting within the limits of hunting lands, creation of hunting economy, and use of special type of wildlife, for not less than 10 years). Both are issued by the Ministry of the Environment, in accordance with quotas established according to regulations elaborated and approved by the same Ministry (Law on Environment Protection, art. 25; Law on Wildlife, arts. 46-48).[86]

Different types of uses of wildlife are provided. "**Special use**" is not clearly defined, as "all types of use" of wildlife "belong to the **special use** of animals"; such use is subject to licensing and the list of animals that can be subject to this type of utilization is established by the Ministry of the Environment (Law on Wildlife, arts. 27, 31). Exceptionally, Georgian citizens as such have also a **right of "common use"** of objects of wildlife (that is not very clearly defined as the use "for the purpose of satisfaction of personal individual

[86] Due to recent legislative changes, from 2008 licenses for the use of natural resources are issued by the Ministry of Economic Development in agreement with, and with the participation of, the Ministry of the Environment.

consumption, aesthetic, recreational, health and other demands" and "for scientific, cultural, educational, recreational, restoration, veterinary purposes, also for the purpose of creation of amateur collections"). Such right is free and does not require licensing (Law on Wildlife, art. 26). Rights of **traditional users** are also recognized in general (see 2.3.2) and within protected territories in particular (see 2.2.2.2.a).

The 2005 **Law on Licenses and Permits** may have amended many of these rules. The Law establishes that licenses and permits may be required only for those activities, which are related to the use of State resources and which threaten human life and health, that are listed therein (arts. 1-2): the introduction of additional licenses and permits is explicitly prohibited (arts. 4 and 38). The only types of licenses or permits listed in the Law that may be relevant for wildlife use appear to be the "**license on hunting economy**" (a type of license for "forest use") (art. 7 para. 4.b), the "**permit on hunting**" (art. 24 para. 12) and the "**permit on import, export, re-export or transit of wild fauna at the edge of extinction**" (art. 24 para. 11), as well as the more general "**permit on impact on the environment**" (art. 24 para. 4). Licenses for wildlife resource use are issued through an auction by relevant administrative bodies which, taking into account public interests, may specify quantity, quality and time limits and regulations and shall supervise the fulfillment of license requirements by the license holder (arts. 17 and ff.). Permits are obtained through a "Simple Administrative Proceeding" in compliance with Chapter VI of the General Administrative Code of Georgia (arts. 25 and ff).

Such rules must be coordinated also with those in the **Forest Code**, whereby "forests" comprise animals living within them, which may be the object of State as well as private property (arts. 5 and 9) and may be subject to special rules on utilization (e.g. on hunting, see 2.2.3 and 2.2.3.1). Moreover, the **Government Regulations n. 132** establishes that the Ministry of the Environment issues "general licenses" for forest management and "special licenses" which allow creating "game husbandry" in forests (arts. 1 and 3). Both licenses are issued through auctions and after the Ministry determines the "quantitative, qualitative and temporal standards and rules of utilization" (art. 4). The Regulations properly address the issue of overlapping provisions and procedures contained in the Law on Wildlife with a transitory provision in article 9, whereby procedures related to the arrangement of game husbandry, whose implementation had begun before the regulation was put into effect, shall continue and end up pursuant to the rules and procedures stipulated in the Law on Wildlife and by-laws adopted on its basis.

Specified **fees** for the use of natural resources are established by the Law of Georgia on the Fees for the Exploitation of Natural Resources.

2.1.2. Institutional Set-up

"**Supreme bodies of the State**" are competent for the organization, regulation and control of wildlife management, including for the determination of State policy in this field, the definition of species allowed for use, and the establishment of quotas and procedures for issuing licenses (Law on Wildlife, arts. 10 and 58).

Although "supreme bodies" are not defined as such, other more specific provisions designate the **Ministry of Environment** as the primary entity responsible for the management of natural resources, including wildlife (Law on Wildlife, art. 57 para. 2). The Ministry of Environment:

- establishes conditions for the privatization of wildlife, determines animals which are subject to "special use" and areas where priority rights for traditional users can be implemented, and issues licenses for wildlife use (Law on Wildlife, arts. 6, 13, 27, 31 and 40; Law on Environmental Protection, art. 25; Government Regulations n. 132, arts. 1 and 3; see 2.1 and 2.3.2);
- determines the animals that can be hunted and provides authorizations for the "hunting economy" (Law on Wildlife, arts. 28-29; see 2.2.3.1);
- issues permits and licenses for wildlife trade (Law on Wildlife, art. 50; see 2.2.3.2) and for taking rare and endangered species (Law on Wildlife, art. 20; see 2.2.2.1);

- issues "environmental permits" for activities, plans and projects and carries out "State ecological expertise" (Law on Environmental Permits, arts. 3 and 7; Law on Environment Protection, arts. 35-36; Government Regulation n. 154, arts. 2-3; Order of the Minister of the Environment n. 193; see 2.2.3.3);
- is responsible for managing natural resources, environmental monitoring and information gathering, as well as for strategic planning (Law on Environment Protection, arts. 13-15 and 26-27; Law on Wildlife, arts. 15 and 59; see 2.2.1); and
- is responsible for the planning of the system of PAs and for the implementation of State policy in this regard (Law on Protected Territories, arts. 13 and 18; see 2.2.2.2.a).

Other relevant entities include the **Protected Areas Agency** and the **Forestry Department of the Ministry of the Environment**. Both entities form part of the Ministry of Environmental Protection and Natural Resources. Both have a role in managing hunting on forest land (Forest Code, arts. 15-16, 51, 56 and 86-87). The Protected Areas Agency also participates in planning and managing PAs (Law on Protected Territories, arts. 13, 15-16 and 18).

2.2. Wildlife Management

The main purpose of the law in Georgia is, *inter alia,* to ensure the **protection and rational use of natural resources**, as well as protection of habitats and ecosystems (Law on Environment Protection, art. 3). In planning and implementing activities, State authorities and physical persons must be guided by the principle of **biodiversity preservation** (art. 5). The Law on Wildlife hinges upon such principles and it expands them with reference to concepts such as **sustainable development**, **sustainable use** of resources, or the interests of **future generations** (arts. 2, 5 and 9). More specifically, a set of "**requirements for efficient wildlife consumption"** are established, which appears to be directed in some cases to individual users, while in others to State authorities (Law on Wildlife, art. 9). Wildlife use should fulfill requirements which ensure preservation of wild animals and their habitat. While taking actions which may have an impact on wildlife and its habitat, some "basic requirements" must also be observed, such as: the preservation of wildlife in conditions of natural freedom, the avoidance of negative impacts on habitat, the observance of quotas for wildlife use, and the taking into account of the possible impacts of activities on wildlife during the process of issuing environmental permission.

Wild animals may be **removed** from their environment only with a license. Any other **action which is likely to damage** wild animals, as well as their habitats, reproduction areas and ways of migration, is prohibited (Law on Environment Protection, art. 46). Rules and limitations are established also for **ex-situ** conservation of wild animals (Law on Wildlife, arts. 16 para. 1.a and 21). Since the 2005 Law on Licenses and Permits does not address these matters, it is unclear whether these prohibitions and limitations may be regarded as still valid.

2.2.1. Management Planning

"Supreme bodies" of the State have the competence for the **determination of State policy** in the field of wildlife management (Law on Wildlife, art. 10, 58).

The Ministry of the Environment is responsible for the **administration of rational and "stable use" of natural resources** as well as for organizing the process of environmental **monitoring** (Law on Environment Protection, arts. 13 and 27) and the **cadastres** of natural resources (art. 26) and of wildlife (Law on Wildlife, art. 59). In particular, the Ministry is responsible (along with other interested institutions) for the elaboration of the **national long-term strategic plan for sustainable development**, which shall be considered the foundation for environment protection actions (Law on Environment Protection, art. 15) and for planning measures for wildlife protection (Law on Wildlife, art. 15). The Ministry is also obliged to submit a national **report on the state of the environment** to the President of Georgia (Law on Environmental Protection, art. 14).

Besides the long-term strategic plan for sustainable development, planning environmental protection is also based upon the "five-year **national plan for the actions intended for environmental protection**" and the "**management plan of environmental protection**" (Law on Environment Protection, art. 15).

Article 15 of the Law on Wildlife establishes that **wildlife management planning** is carried out in accordance with the rules contained in the Law on Environment Protection described above, and includes, *inter alia,* plans, projects and programs for the protection, use and consumption of natural resources and long-term (ten-year) hunting management plans. The preliminary allotment of hunting areas for the creation of hunting economies, which is implemented by the Ministry of the Environment (see 2.2.3.1 below), is explicitly included among such planning measures (art. 15 para. 6). Management plans for wildlife protection within PAs are carried out in accordance with the Law on Protected Territories (see 2.2.2.2.a below).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

Preservation of rare species is one of the main tasks of the law (Law on Environment Protection, art. 3). Endangered wild animals are listed in **"The Red Book"** and **"The Red List"** of Georgia (the two not being defined). The publication of both is coordinated by the Ministry of the Environment (art. 47). Listed species can never be the **object of private property** (Law on Wildlife, art. 6 para. 4) and can **be caught** only for reproduction and subsequent re-introduction into the wild, as well as for veterinary purposes, subject to permission by the Ministry of the Environment (art. 20). The **Law on Licenses and Permits** requires only a permit on import, export, re-export or transit of endangered wildlife (art. 24 para. 11), so it has arguably eliminated the other limitations highlighted above.

The **Law on Environmental Protection** generally establishes that any activity leading to the decreasing of listed animals' "quality", as well as to the deterioration of their habitats or conditions is prohibited (art. 47).Similiarly, the more specific **Law on Wildlife** restates that "action, which may result in the destruction of endangered species, reduction of their number, or disturbance of their habitats, reproduction areas, survival stations, migration ways, water-reaching and watering places" shall be punished by Georgian legislation (art. 20). It specifies that physical persons and legal entities who violate rules on the protection of endangered animals will face criminal, civil and administrative liability in accordance with Georgian law (art. 63). The **Code on Administrative Violations** provides for sanctions in cases of taking listed animals or other actions leading to destruction of their habitat, including unauhtorized trade in listed species (art. 85). The wilful deterioration of wildlife habitat is considered a crime under the **Criminal Code** (art. 302).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

Article 49 of the Law on Environmental Protection lists categories of PAs and makes reference to the Law on Protected Territories as the legal basis for their administration. The Law on Protected Territories establishes a very articulated legal framework for **six categories of PAs**: State reserves, national parks, natural monuments, "prohibited[s]", protected landscapes, and territories of multi-purpose use. Other categories "included in the international network" may also be recognized, such as biosphere reserves, world heritage sites or wetlands ("ultra-humid territor[ies]") of international importance (art. 3). The purpose and objectives of the system of PAs are, *inter alia,* to protect the environment including animal species, to develop scientific research, as well as recreational, tourist and traditional economic activities and folklore (Preamble; art. 1). A **Register** of all PAs and their natural resources is maintained by the Protected Territory Service (art. 17).

- "**State Reserves"** may be established to preserve nature in an "untouched state" and conduct essentially scientific research, exploration, monitoring and educational activities (art. 4).

- "**National Parks"** are established for the protection of important ecosystems or species. They may include different zones with different régimes, ranging from strict protection zones to zones where tourist and recreation activities are allowed, to "traditional usage zones" where the conduct of economic activities related to environment protection and traditional use of renewable natural resource is permitted (art. 5).
- "**Natural Monuments"** may be established to protect important natural or cultural formations (art. 6).
- A "**Prohibited"** [Area] may be established for the protection of natural conditions which are necessary for the preservation of, *inter alia,* important, rare, unique, distinctive wild species or groups of species and their restoration, and for the exploitation of individual renewable resources (art. 7).
- "**Protected Landscapes"** may be established to protect important and distinctive landscapes and to conduct recreational, tourist and traditional economic activities (art. 8).
- "**Multi-Purpose Use Territories"** may be established for environmental needs but also for economic activities relating to the exploitation of natural resources and may be used, *inter alia,* for hunting, tourism, or for the "multiplication of wild animals" (art. 9).
- "**Biosphere Reserves"** may contain strict protection zones but also "traditional/cultural landscape zones" where traditional economic use of renewable natural resources may be permitted (art. 10).
- "**World Heritage Sites"** (art. 11) may be created in accordance with the relevant international legal framework (the UNESCO's program on "Man and the Biosphere" and the Convention on the World Heritage respectively).

Permitted activities are determined according to the different categories of PAs and to international agreements, and are regulated in the protected territory management plan (art. 20, paras. 1 and 3). Some activities, however, appear to be generally prohibited (art. 20, para. 4), such as the modification of ecosystems, the destruction or extraction of any natural resource, the introduction of alien species and pollution. Other activities, such as visitors' access, hunting, and collecting, seizing and removing animals, are subject to regulation (art. 20, para. 5). A third group of activities is subject to control: permitted scientific, educational, tourist/recreational and economic activities (art. 20, para. 6), as well as activities in buffer zones potentially affecting protected territories (art. 20, para. 8).

The **Code on Administrative Violations** provides for administrative sanctions in case of violation of rules on PAs (art. 67, 89). Violation of the regime of PAs that has caused substantial damage is considered a crime under the **Criminal Code** (art. 305).

Decisions on the **establishment, development or abolition** of protected territories are taken by the Parliament (art. 14). "**Planning of the System of Protected Territories"** is carried out by the Ministry of Environment, in particular through its Protected Areas Agency (which substitutes the Central Department of Protected Territories, State Reserves and Hunting Areas mentioned in the Law), and the Ministry of Economic Development (which substitutes the Ministry of Urbanization and Construction mentioned in the Law),. Such planning defines areas which should be protected, categories, boundaries, zones of protected territories, as well as permitted activities therein (art. 13). A "**Protected Territory Management Plan"**, developed by the Protected Areas Agency and subject to Presidential approval, must be adopted for each PA within three years from its establishment. The Management Plan defines boundaries and the territorial organization of the protected territories; programs for the protection of, and other activities related to, the PAs; steps aimed at generating local financial resources required for the functioning of protected territories; and "special programs" for buffer zones (art. 15-16). The implementation of State policy on the System of Protected Territories, the coordination and monitoring of activities related to such policy, as well as the issuing of licenses for the use of natural resources (where this is allowed in PAs) are carried out by the **Ministry of the Environment**. The management of protected territories (including the development and implementation of regulations, instructions and other normative or regulatory acts for each protected territory), in particular, is the responsibility of the **Protected Areas Agency** (art. 18). Specific implementation and enforcement-oriented responsibilities are also attributed to **Local Departments of the Protected Territory Service** (art. 18, para. 4), including the protection and restoration of protected territories, their ecosystems and fauna, the prevention of alien species' introduction, the control over natural resources use,

and visitors' interference and even the "detaining of illegally intervened persons and [the seizure of] their land, air or marine transport".

Apart from recognizing traditional land uses within PAs, the Law seems to properly take into account the **interests of civil society.** The Protected Areas Agency of the Ministry of the Environment must facilitate cooperation between governmental and non-governmental organizations and "cooperate with the public" (art. 18, para. 3). Local departments of the Protected Territory Service must cooperate with non-governmental agencies and "interest groups" of the population (arts. 18 para. 4, and 21). The public and public associations have the right to participate in the establishment, development, and abolishment of protected territories, in developing and amending management plans and regulations, in the management of PAs, in the advisory boards, and in the management of non-budgetary funds allocated for the local functioning of the protected territories (art. 22). "**National and local consultative boards**" are also established by the Protected Areas Agency (art. 18 para. 3), which may be included in Local Departments of the Protected Territory Service. These bodies are not further defined, but the Law suggests the possible participation of non-governmental entities (art. 22).

The territories of State reserves, national parks, natural monuments, prohibited(s) [areas], as well as strict protection zones and regulated protection zones of biosphere reserves are the **exclusive property of the State**. The transfer of natural resources located in such territories is forbidden (with the exception of those located in traditional use zones of national parks and certain sites of the prohibited areas). On the contrary, protected landscapes and multi-purpose use territories and their resources may be subject to other types of ownership (art. 12).

2.2.2.2.b) Habitat Protection outside Protected Areas

General principles are established in the Law on Wildlife for the protection of wildlife habitats. Activities which may have an impact on wild animals habitats, reproduction areas, survival areas, migration and water-reaching routes and watering places (including specific activities e.g. the use of forests and the establishment of tourist routes), must be undertaken so as to ensure their protection, and must be stopped or prohibited if they may have an impact upon wildlife (arts. 16 para. 1.d, and 17). The **Code on Administrative Violations** provides for sanctions in cases of violation of rules on protection of habitats, reproduction areas and migration routes (art. 85).

When in a given territory fauna has been endangered, a "**zone of ecological emergency state**" can be declared by the President (Law on Environment Protection, art. 43), the legal status of which is established in the law.

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

The Law on Wildlife establishes that the **rights of users of land, forest, and of private owners** may be restricted, if their activity harms directly of indirectly the number or habitats of wild animals (art. 24).

The **Forest Code** also requires that wildlife in Georgian forests be protected according to the Law on Wildlife (art. 37 para. 3), and that forest use be carried out in ways that are not harmful to wildlife (art. 54 para. 5). The **Government Regulations n. 132** provides for specific duties for the holder of a license for "game husbandry" in relation to forest management (art. 8; see also 2.1). The license holder shall present a forest management plan and an eco-auditor's certificate issued by a relevant organization accredited in any member State of the Organization of Economic Cooperation and Development (OECD). He/she is also obliged to present, every year, a report (issued by the same organization defined above) on the implementation of activities stipulated in the forest management plan and an inventory of wildlife. He/she shall further observe the defined wildlife quotas, ensure wildlife protection and conservation, prevent deterioration of its habitat, deter violations of the law within the territory defined in the license and inform relevant agencies about

such violations. In the event of wildlife habitat deterioration and other threats to wildlife, the license holder is to immediately cease wildlife use and take measures to avert any negative impact on wild animals and their habitat.

2.2.3.1. Limitation and Regulation of Hunting

Hunting is a "special use" of fauna that is subject to **licensing** (Law on Wildlife, art. 28; see 2.1; Order of the Minister of the Environment n. 512, art. 3 para. 1). It is permitted only for a specific **list of animals** which can be "objects of hunting" in specific **hunting seasons** established by the Ministry of the Environment, and on specific "**hunting grounds"** (Order of the Minister of the Environment n. 512, art. 3 paras. 2-3; Order of the Minister of the Environment n. 97 on the approval of hunting seasons; Order of the Minister of the Environment n. 68 on the approval of the list of animals which can be hunted). Hunting grounds are lands that are especially allotted for a **"hunting economy"**, which may be created and managed by physical persons or legal entities, after a detailed ecological and economic assessment, and subject to an authorization procedure under the Ministry of the Environment's responsibility. Upon authorization, the Ministry issues a license for hunting management on hunting grounds and for hunting within such grounds (Order of the Minister of the Environment n. 512, art. 3 para. 5). Single licenses may be issued to third parties for wildlife use within their designated hunting lands (Law on Wildlife, arts. 28-29). The adoption of **long-term (ten years') hunting management plans** is also required (Law on Wildlife, art. 15; see 2.2.1).

"**Hunting farms"** may also be established **on forest land** according to the Forest Code. Procedures for the allocation of hunting farms are similar to those for hunting grounds: an inventory of wildlife within the targeted territory must be carried out (detailed rules for such inventory are established by the Order of the Minister of Environment n. 98). The holder of a license under article 28 of the Law on Wildlife must sign also a contract for forest use, with the Protected Areas Agency of the Ministry of the Environment (which substitutes the State Department of Protected Areas Natural Reserves and Hunting Ranges) if PAs of the State Forest Fund are involved, or the Forestry Department of the Ministry of the Environment (which substitutes the State Department of Forestry) as far as the Usable State Forest Fund is concerned (Forest Code, arts. 15-16, 51, 56 and 86-87).

The 2005 **Law on Licenses and Permits** regulates licenses and permits for hunting, in a less detailed and less stringent manner (see 2.1). The extent to which these rules have amended or repealed all the rules detailed above is still not entirely clear.

As far as **PAs** are concerned, the Law on Wildlife establishes that hunting is prohibited in "natural reserves, natural monuments and zones of strict protection of nature of national parks" (art. 19), while it is permitted in "preservations" and in "zones of other categories of protected territories" that are specially allotted for it (art. 28). Such rules are not easily coordinated with the Law on Protected Territories (see 2.2.2.2.a), whereby hunting is explicitly permitted only in "Multi-Purpose Use Territories" (art. 9 para. 2), and which does not deal with "natural reserves" (the Law on Protected Territories mentions "State reserves") or with "preservations". The Order of the Minister of the Environment n. 512 establishes a prohibition of hunting within the 5 km zone around PAs (art. 3, para. 8).

Hunting with means "which **cause suffering**" to wild animals is prohibited (Law on Wildlife, art. 29 para. 5). The Order of the Minister of the Environment n. 512 establishes a list or prohibited hunting means and methods (arts. 3 para. 10, and 4-5). Hunting **endangered species** is not specifically forbidden, but it should nonetheless fall under the wide definition of prohibited activities affecting them (Law on Wildlife, art. 20; Law on Environment Protection, art. 47).

Finally, special hunting rights are established for **traditional** wildlife **users** (see 2.3.2).

The violation of rules on hunting generally entails an administrative fine (**Code on Administrative Violations**, art. 86). Illegal hunting (i.e. hunting without a license, in a prohibited area or season, by prohibited means, that has caused a substantial damage, as well as hunting of endangered species) is considered a crime (**Criminal Code**, art. 301).

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

Provisions on **trade** in wildlife are very strict (Law on Wildlife, art. 50). Trade in wild animals, their "derivatives" and "products of vital activity" takes place in accordance with the Convention on the International Trade of Endangered Species (CITES) as well as with stricter national measures. The "export, import, re-export and transit" of wild animals and derivatives require a **permit** issued by the Ministry of the Environment, subject to severe conditions which closely resemble those established in CITES for endangered species. A **license** issued by the same Ministry is necessary for the export, import, re-export and transit of products of vital activity of wild animals. The 2005 **Law on Licenses and Permits** regulates only trade in endangered species (art. 24 para. 11) and it has arguably superseded any limitation on trade in wildlife which is not endangered.

The sale of unlawfully acquired wild animals and of their products, parts or derivatives entails an administrative fine (**Code on Administrative Violations**, art. 85).

The Law on Environment Protection specifies that limits to the **use of chemicals** must be designed so as not to endanger the health of animals (art. 31).

2.2.3.3. Assessment of Processes Harmful to Wildlife

Assessment of processes harmful to the environment is regulated by the **Law on Environmental Protection** (arts. 35-38), which refers explicitly to the **Law on Environmental Permits** and to the **Law on State Ecological Expertise.** "Wildlife" as such is never explicitly mentioned, thus much of the effectiveness of the mechanism would depend upon the inclusion of the latter into the concept of "natural resources" which is explicitly covered.

As a **general principle**, in the course of planning any activity, the proponent is obliged to take into consideration and evaluate the possible effects on the environment which may be caused by the activity (Law on Environment Protection, art. 5). More specifically, any activity, development plan and project, including those for the protection and utilization of natural resources, is subject to the issuing of an **environmental permit** by the Ministry of the Environment (Law on Environment Protection, art. 35; Law on Environmental Permits, art. 3) and procedures to obtain such permit are different according to the activities listed in the Law on Environmental Permits, based on the potential impact on the environment of such activities (Law on Environmental Permits, art. 4).[87] Activities in the first category (those which due to scope, location and essence can cause serious and irrevocable impact upon the environment) include plans and projects for protection and use of forests, land and other natural resources (Law on Environmental Permits, art. 4, para. 2.k). They are subject to **prior environmental impact assessment** (EIA) (Law on Environmental Permits, art. 7; Law on Environment Protection, art. 37), which is carried out by the entity proposing the activity (the "investor"), and to a "**State ecological expertise**", which is carried out by the Ministry of the Environment following the rules in the Law on State Ecological Expertise (Law on Environmental Permits, art. 7; Law on Environmental Protection, art. 36). The EIA shall address direct and indirect impacts "on the animal world" and ecosystems, as well as on cultural values and social factors (Law on Environmental Permits, art. 14). Public participation in the EIA procedure is guaranteed extensively and properly taken into account, and the results of the EIA shall be the essential part of the decision-making leading to the issuing of the permit (arts. 14-15). The **State ecological expertise** is an independent assessment, undertaken under the responsibility of the State, of the environmental impacts of schemes and plans for the protection and use of natural resources (Law on State Ecological Expertise, arts. 1 and 3-5).

[87] The new Law on Environmental Impact Permits should be less restrictive, as it requires permits only for those activities which can threaten human health and life (thus excluding development plans, projects and use of natural resources).

The entire procedure should have been superseded to a large extent by the **2005 Law on Licenses and Permits**, together with the Ministerial Regulations (Provisions on "The Procedure and Conditions of Granting Environmental Impact Permits" and the Provisions on "The Procedure of Conducting State Ecological Expertise") adopted in implementing the latter. The procedure for environmental permits has been highly simplified and the list of activities subject to environmental permits has been reduced. This may have restricted the opportunities for public participation.

The issue has been further dealt with by Government regulations. The **Government Regulation n. 154**, which is intended to integrate the Law on Licenses and Permits, provides for a specific list of activities and projects (e.g. industrial activities like mining, waste management, oil production and storage, construction works such as hydroelectric power stations, dams or motorways, or using dangerous substances like asbestos) that are subject to an ecological assessment,, in order to obtain a license from the Ministry of Environment. (arts. 2-3). Entities which carry out the activities mentioned above are obliged to conduct an "evaluative report on influence upon the environment" of the activity, to conduct public discussion about the same, following the detailed procedure established in the regulations (which includes obligations to publish information in the media about the planned activity, to invite comments from representatives of local authorities and State bodies, and to present the "evaluative report" to the Ministry), and to consider opinions from civil society (art. 31). Decisions on granting the license or on rejecting an application in this regard are made in accordance with the procedure provided by the Law on Licenses and Permits (arts. 5 and 7-8).

The **Order of the Minister of the Environment n. 193** aims at integrating both the Law on State Ecological Expertise and the Government Regulation n. 154, by providing details on the procedure for the conduct of a State ecological expertise. This is conducted by the Ministry of the Environment, before issuing permissions for the activities listed in Government Regulation n. 154 above, having a potential impact on the environment, explicitly including impact on fauna (arts. 3-4). The Order of the Minister of the Environment n. 193 establishes that the assessment is carried out by commissions of independent experts registered within the Ministry of the Environment (art. 8) and its object shall be to document the justification for carrying out of the activities and their environmental impact (art. 7). The Order contains rules on rights and duties of entities carrying out the assessment (arts. 5-6) and documentation (art. 7), time limits and terms (art. 9), composition and functions of the experts' commission (arts. 10-15), and procedure for the development of the assessment (arts. 16-17). The expertise concludes with a positive assessment if the documentation is in accordance with Georgian environmental laws and standards, the activity does not cause "irreversible changes" to the environment and natural resources, and measures for reduction or avoidance of any environmental impact are taken into account (art. 17 para. 1). A negative assessment is issued otherwise (art. 17 para. 2). The positive outcome of the expertise is one of the grounds for permitting a given activity (art. 17 para. 2), whereas a negative conclusion of the expertise would provide the ground to refuse giving such permission (art. 17 para. 6).

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

In planning and implementing activities, the State must be guided by the principles of **public participation in decision making** and of public **access to information**. Physical persons and legal entities have the right to take direct part in wildlife protection and to make proposals and recommendations in this respect, which must be taken into account by public institutions. Physical and juridical persons also have the right to receive exhaustive, transparent, objective and timely information (Law on Environmental Protection, arts. 5-6; Law on Wildlife, art. 14). Participation is granted also through the EIA procedure (Law on Environmental Permits, arts. 14-15).

2.3.2. Rights of Indigenous People, Local People and Traditional Users

The Law on Wildlife (arts. 13 and 40) recognizes that citizens "whose existence is traditionally connected with wildlife" may be given **special rights** in the field of protection and use of wild animals and their habitats. In particular, Georgian citizens (and their unions) "whose ancestors and their native habitat and traditional right of life is connected with animals" have a right of **"priority use"** of wildlife, in the territories where they are traditionally settled. This includes a right to choose wildlife hunting lands and to establish a hunting economy and a general "exceptional right to get certain animals and products". The list of areas where such priority rights may be implemented is determined by the Ministry of the Environment.

Traditional users' rights are also indirectly recognized by the Law on Protected Territories, which regulates "traditional usage zones" within national parks (art. 5), traditional economic activities within protected landscapes (art. 8) and biosphere reserves (art. 10).

3. CONCLUSIONS

3.1. General Considerations

At present, the legal framework on wildlife in Georgia presents some **positive aspects** that effectively support sustainable wildlife management. The law reflects key principles of environmental law, such as those of "**sustainable development**", **sustainable use** of resources, and consideration of the interests of **future generations** (Law on Wildlife, arts. 2, 5 and 9), although an ecosystem approach seems to be missing. The institutional set-up seems to be quite satisfactory, as the mandate of the Ministry of the Environment (with its Agencies and Departments) as the main body entrusted with wildlife management, is quite clear.

Notwithstanding room for improvement (e.g. provisions on adaptive management and public participation in this area could be introduced), the legal framework of Georgia attempts to establish a comprehensive system of **management planning** related to wildlife, especially when compared with other countries of the region (see 2.2.1). This includes: the organization of environmental monitoring and of cadastres of natural resources and wildlife, and the preparation of a national report on the state of the environment; the determination of a State policy on wildlife management, the elaboration of a long-term strategic plan for sustainable development, of a five-year national plan of action for environmental protection and of management plans of environmental protection; and, finally, wildlife management plans and programs, including long-term (ten-year) hunting management plans and management plans for wildlife protection within PAs.

As far as PAs are concerned (see 2.2.2.2.a), compared to other countries of the region, the legal framework includes consideration of **sites of international importance**, such as biosphere reserves, world heritage sites, or wetlands, following relevant international treaties in this field (Law on Protected Territories, art. 3). Moreover, a proper system of **management planning for PAs** is established (Law on Protected Territories, arts. 13-16); and the **interests of civil society** are properly taken into account (Law on Protected Territories, arts. 18-22).

There is an attempt to take into account public participation and the interest of the public in general. Apart from what has been mentioned about PAs, the law provides for general principles of rights to information and participation for the public (Law on Environmental Protection, art. 6) and a certain degree of participation in EIA procedures and State ecological expertise (Law on Environmental Permits, arts. 14-15; Government Regulation n. 154, art. 31) This, however, will depend upon the effects on this issue brought by the Law on Licenses and Permits. The law recognizes also specific rights of **indigenous people** and **traditional users**, such as rights of priority use of wildlife, and rights to carry out traditional wildlife use or traditional economic activities in certain protected areas (Law on Wildlife, arts. 13 and 40; Law on Protected Territories, arts. 5, 8 and 10).

Among the positive aspects, one should also mention that duties of holders of licenses for "**game husbandry**" within forests are very detailed and procedural requirements seem to ensure proper sustainable management of wildlife resources (Government Regulations n. 132, art. 8).

Finally, the Code on Administrative Violations (arts. 67, 85-86 and 89) and the Criminal Code (arts. 301-302 and 305) properly address **administrative offences and crimes** in violation of rules on wildlife management, although incentives should also be introduced alongside penalties.

However, **three major shortcomings** can be identified. As a general remark, one should note that the legal framework on wildlife management (and on the environment in general) in Georgia is frequently subject to a process of rapid and extensive reform, with the adoption of several new instruments and amendments to existing ones. As a consequence, the overall framework, in particular as far as the interaction between different overlapping instruments is concerned, is not always clearly defined. Legal certainty of wildlife users is also jeopardized by such frequent changes in legislation. More specifically, the 2005 **Law on Licenses and Permits** has drastically reduced the number of permits and licenses required in order to use natural resources, and wildlife in particular, and it has simplified procedures. While this may be clearly considered as an advantage from the viewpoint of slimmer bureaucratic process and the increased "liberalization" of the sector, the control by the State over environmental protection and sustainable use of wildlife may have been too heavily reduced. Moreover, the new limited system of licenses and permits seems to fit less coherently within the legal framework on wildlife than the previous one. Finally, the Law on Licenses and Permits overlaps partially with many other different legal instruments, and the extent to which the former may repeal or amend the latter is not always clear (see 2.1, 2.2, 2.2.2.1, 2.2.3.1, 2.2.3.2, 2.2.3.3). Although the Law specifies that no licenses or permits may be issued except when in accordance with the law itself (arts. 4 and 38; see 2.1), it is unclear whether such limited Law may repeal all the previous more extensive legal régimes dealing with licenses and permits, as such and as a whole, or whether it should replace only previous incompatible provisions, leaving the other compatible ones in force. Transitional and conclusive provisions on the relationship with other legal instruments (arts. 38 and ff.) leave the question partially open. A thorough analysis of the implications of the implementation of the Law on Licenses and Permits on other legal instruments on wildlife is therefore highly recommended.

Another general issue that should be highlighted is the fact that many matters dealt with in the Law on Wildlife, and to a lesser extent in the Law on Environment Protection, are not directly regulated therein but are rather left to **specific regulations to be adopted** – usually **by the Ministry of the Environment**. Although this approach is critical in ensuring the flexibility of the legal framework in the face of rapid changes in wildlife status, the comprehensiveness of the overall legal framework may be hampered by the lack of or delay in adoption of the high number of detailed regulations of the Ministry of the Environment that are required.

It can also finally be remarked that the legal framework could be integrated with regulations on the introduction of **alien invasive species** (which at present are addressed only within the legal framework on PAs) and on **tourism**.

3.2. Detailed Recommendations

As far as **ownership and use of wildlife** are concerned (2.1), the law should be clarified in few respects:

- conditions for **private ownership** of wildlife (Law on Wildlife, art. 6 para. 3) should be clarified, as at present it seems that the simple "removal from natural habitats" of wildlife should be enough to trigger the shift in the property from the State to those who remove wildlife;
- the **ownership regime of wildlife in PAs** is not entirely clear (Law on Protected Territories, art. 12; see 2.1 and 2.2.2.2.a). In some cases wildlife living in PAs is defined as a mere "State property", thus not being different from the general rule for wildlife as such; in other cases "natural resources" living in certain PAs are defined as "exclusive property of the State", but it is unclear whether wildlife is included in such concept;

- the **framework on the "uses" of wildlife** in the Law on Wildlife (arts. 25-27) is not clear: there seems to be a general rule for any use (art. 25), together with rules on "right of common use" (art. 26) and right of "specific" (or "special") "use" (art. 27), but the definitions of the two latter concepts are not clear; and
- moreover, the legal framework on wildlife use and related licenses is further complicated by the **overlaps** between the Law on Wildlife and other legal instruments – not only the 2005 **Law on Licenses and Permits,** but also the **Forest Code** and the related **Government Regulations n. 132**. A clarification over the actual applicable legal regime, in light of the overlaps between all these concurring instruments, is clearly needed.

As far as **wildlife management** is concerned (2.2):
- the impact of the 2005 **Law on Licenses and Permits** on certain prohibitions and limitations of activities affecting wildlife should be clarified; and
- the so-called "**requirements of efficient consumption"** of wildlife appear too vague and general, and the subjects at which they are directed are unclearly defined.

As far as **management planning** is concerned (2.2.1), article 15 of the Law on Environment Protection establishes the elements of the "**system of planning environmental protection.**" While the first of them (the long-term strategic plan) is elaborated by the Ministry, the procedures and the entities involved for the other two elements (the "five-year plan, or national plan for the actions intended for environmental protection" and the "management plan of environmental protection") are unclear, especially due to the incoherent use of terms and definitions regarding such plans throughout the legal framework (which may be due to problems in translations). Such lack of clarity should affect also management planning on wildlife, as the rules mentioned above are recalled by the Law on Wildlife as well.

As far as the **protection of specific species** is concerned (2.2.2.1):
- definitions of the **Red Book and Red List**, and procedures for species' inclusion therein are missing;
- the content of individual **responsibility** for the violation of rules on the protection of endangered species should be established;
- **trade** in listed species is now specifically addressed by the **Law on Licenses and Permits** (while, before, rules on limitation of trade in wild animals and their products in general were applicable - 2.2.3.2), but the same law has apparently eliminated other previous limitations to activities affecting listed species. The regime thus appears significantly weaker.

As far as **PAs** are concerned (2.2.2.2.a) the following should be addressed:
- the **categories of PAs** listed in the Law on Environmental Protection and in the Law on Protected Territories should be coordinated;
- permitted and/or prohibited activities relating to **Natural Monuments** are not defined and the Law should therefore be integrated in this respect;
- coherence should be ensured, since some activities such as the **"extraction of any natural resource"** which appear to be prohibited in general (Law on Protected Territories, art. 20) may be, in fact, permitted in some PAs.
- "**consultative boards**" should be further defined.

As far as **habitat protection outside of PAs** is concerned (2.2.2.2.b), the general principles enshrined in article 17 of the Law on Wildlife should be further specified and the legal status of "zones of ecological emergency state" should be established.

The impact of the **Law on Licenses and Permits** the regulation of **hunting** should be addressed (2.2.3.1). Furthermore, hunting **in PAs** is regulated by both the Law on Wildlife and the Law on Protected Territories, which contain overlapping and contradicting provisions. Thus, coordination between these two laws should be ensured.

As far as the **assessment of processes harmful to wildlife** is concerned (2.2.3.3):

- the applicability of environmental permits to activities having an impact on wildlife should be clarified, through the explicit inclusion of the latter in the **concept of "natural resources"** within the relevant framework (Law on Environmental Protection, Law on Environmental Permits, Law on State Ecological Expertise);
- according to the above laws, the assessment of the **impact on fauna** is required only for activities obligatorily subject to EIA – that is, the most dangerous activities. An extension of such requirements, which seems too limited at present, is recommended;
- a thorough examination of the amendments brought about by the **Law on Licenses and Permits** is highly recommended, since the latter (which has probably superseded the previous instruments mentioned above) may have significantly weakened the entire process, from the point of view of the number of activities that may be subject to impact assessment or expertise;
- the Law on Licenses and Permits may also have reduced opportunities for **public participation**. However, Government Regulations n. 154 provide for detailed procedures on public consultation which may have properly integrated the Law on Licenses and Permits; and
- specific rules on **EIA for activities relating to PAs** should be provided.

KAZAKHSTAN

1. INTRODUCTION

The legal framework on wildlife management in Kazakhstan is the result of the interaction between the following legal instruments:

- the **Law on the Protection, Reproduction and Management of Wildlife** (Law n. 593-II of 9 July 2004; hereinafter Law on Wildlife) contains basic rules, requirements and guidelines on the protection of wildlife, on the limitation and regulation of its use, as well as on the relevant institutional framework;[88]
- the **Law on Specially Protected Natural Areas** (Law n. 175-3 of 7 July 2006; hereinafter Law on Protected Areas) regulates the management of protected areas;[89]
- the **Ecological Code** (Law n. 212-3 of 9 January 2007), which is the most recent instrument but also the most general one, deals comprehensively with different aspects of nature protection, preservation and management, including the use of natural resources, as well as the conservation of ecosystems, wildlife and protected areas;[90]
- the **Forest Code** (Law n. 477-2 of 8 July 2003) contains rules on use of forests, which include fauna; and
- the **Interim Instruction of the procedure for the conduct of an environmental impact assessment (EIA) of a planned economic activity** of 24 December 1993 contains detailed rules on EIA. However, they have been most likely superseded by those contained in the more recent Ecological Code and by the **Instruction n. 204 of the Ministry of Environmental Protection on Procedure of Impact Assessment for planned economic and other activities on the Environment** (which is approved by the Order of the Ministry) of 28 June 2007.

The legal framework is further supplemented by a series of Ministerial Decrees on specific issues. The following is a non-exhaustive list of relevant decrees:

- the **2000 Ministerial Decree n. 1692** regarding Validation of the Basic Principle of Development of Protected Areas for the Period up to 2030;
- the **2002 Ministerial Decree n. 1239** regarding the Regulation on Forest and Hunting Committee (hereinafter, Decree n. 1239);
- the **2002 Ministerial Decree n. 408** regarding the List of Endangered and Rare Wildlife Species;
- the **2003 Ministerial Decree n. 673** regarding the Regulation on Protection and Conservation of the Objects of Historical and Cultural Heritage, Objects of State Protected Areas Classified as Objects of World and National Importance;
- the **2004 Ministerial Decree n. 1457** regarding the Regulation on State Protection of Wildlife, which contains provisions that are relevant to public participation;
- the **2005 Ministerial Decree n. 267** regarding the "Program of conservation and reproduction of rare and endangered wildlife hoofed species and saiga for the period of 2005-2007";
- the **2006 Ministerial Decree n. 862** regarding the Regulation on the State Registration of Protected Areas; and
- the **2007 Ministerial Decree n. 914** establishing the "Programme on preservation and rational use of water resources, wildlife and development of the network of specially protected areas for the period from 2008-2010".

Furthermore, few Orders of the Forest and Hunting Committee may be relevant, such as: Practical guidelines on "interfarm" hunting management; Rules on issuance of hunting ID; Rules on registration, storage, issuance and use of permits; and a Standard form on the hunting organization "pass".

Finally, other instruments that regulate issues connected with wildlife management include the Tax Code, the Administrative Code, the Criminal Code and the Land Code.

[88] The English transaltion of the law was provided by the national contact point and is on file with the author.
[89] The English transaltion of the law was provided by the national contact point and is on file with the author.
[90] The English transaltion of the law was provided by the national contact point and is on file with the author.

As in other countries of the region, all laws contain coordination clauses **with international law**, which establish the prevailing of international agreements to which Kazakhstan is a party over relevant national legislation.

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

Wildlife is the **property of the State**. However, objects of fauna that are taken in accordance with the law, or that are obtained as a result of breeding, can become the **private property** of legal entities and individuals (Law on Wildlife, art. 4).

Wildlife use is regulated by the Law on Wildlife (art. 23-28) as well as by the more recent Ecological Code (art. 236). Two categories of wildlife use are envisaged: a "**special use**" (which entails the removal of fauna from habitats) and a "**general**" one (which is carried out for the "fulfillment of cultural and aesthetical needs" or for cultural and educational purposes, without such removal, and without destructing or negatively affecting animals or their habitats). While the "special use", according to the Law on Wildlife, includes the use of wildlife objects and products deriving from animals, by removing them from their habitats (art. 23), the Ecological Code establishes that the use of "useful components" or products derived from fauna is allowed only without such removal (art. 243). Since the Ecological Code should prevail over incompatible provisions of previous normative acts that regulate environmental protection and use of natural resources (Ecological Code, art. 325), the latter, more stringent solution should apply. A list of **specific types of use** are allowed, including hunting, use of animals for scientific or educational purposes, use of "animals that are not hunting objects for economic purposes", as well as the use of animal products. Special use requires a permit and is provided on a payment basis. General use is free and does not require any permit.

Limits on wildlife taking are established by the law. These are "maximum allowable amounts of animals that can be taken, so that their natural reproduction capacity and quantity is preserved", that are based on "biological grounds", i.e. on scientific research and fauna monitoring, and on the positive outcome of ecological expertise (Law on Wildlife, art. 29).

"Wildlife components" and "products of animal origins" appear to be included in the definitions, respectively, of **"forests" and "forest resources"** (Forest Code, art. 4, 9). The Forest Code establishes a very detailed regime on the use of forests and their resources, and the related institutional framework. However, it is unclear whether such regime should be applied in lieu of the general one established by the legal instruments mentioned above. On the one hand, a general coordination clause in the Forest Code seems to give priority to wildlife-specific (and protected areas-specific) legislation, since article 1 states that "Legal relations in the area of use and protection of fauna, and specially protected natural areas shall be governed by special legislation of the Republic of Kazakhstan". Moreover, permits to use fauna on the lands of the State Forest Fund shall be issued "as established by the legislation of the Republic of Kazakhstan" (art. 36) and "in accordance with a procedure established by the laws of the Republic of Kazakhstan" (art. 100). On the other hand, however, the Forest Code regulates directly and explicitly issues such as hunting and enforcement of wildlife legislation which certainly fall under wildlife legislation.

In particular, the Forest Code deals with the **rational use and protection of forest resources**. Forests can be owned by the State or can belong to private property. Forest owners must ensure conservation of wildlife and its habitats (art. 38). Destruction of fauna is considered a violation of the Forest Code (art. 113).

2.1.2. Institutional Set-up

The "**Government**" is competent for the approval of limits on taking, and of rules on restriction and prohibition of fauna use, as well as on the issuing of permits for such use (Law on Wildlife, art. 8).

The "**competent body**" issues the permits for fauna use, distributes the quotas on taking of animals (based on the limits established by the Government) and establishes restrictions and prohibitions on such use, in particular the use of wildlife products (Law on Wildlife, art. 9; see also art. 243 of the Ecological Code).

The Decree n. 1239 establishes that the "**Forest and Hunting Committee**", which is "a State body that implements, within the competence of the Ministry of Agriculture, special executive and supervisory functions as well as inter-sectoral coordination in the field of forest and hunting management, specially protected areas" (art. 1), is the competent body for State regulation of the use of wildlife (art. 2).

The **Forest Code** also establishes an institutional framework on the use of forest resources (including wildlife) which involves the Government, an "authorized agency", its territorial departments, local representative and executive authorities. Whether this institutional regime is applicable instead of the one provided by the legal instruments mentioned above is a matter of concern (see 2.1). In particular, in the field of rational use and protection of forest resources, competence is attributed by the Code to the State Forestry Agency (art. 18). The same Code contains also interesting provisions on enforcement: an "authorized agency" has the competence to examine cases of violations of wildlife legislation (art. 13), the State Forest Guarding Service prevents and suppresses such violations (chapter 11) and State control over the status, protection and use of the Forest Fund shall be implemented for the purpose of ensuring that all physical and legal entities comply with requirements of wildlife legislation (art. 19).

2.2. Wildlife Management

The Ecological Code mentions a series of **principles**, including that of environmental protection and preservation of biodiversity (art. 4), as well as sustainable development (art. 5).

Generally, activities that can affect wildlife shall be undertaken in a manner that guarantees wildlife protection. To this end, some "**Basic Requirements for Wildlife Protection**" include: biodiversity conservation; preservation of habitats, migration routes, "places of concentration of animals" and conditions for reproduction; "scientifically motivated and rational use and reproduction of fauna", "regulation of the quantity for preservation of the biological balance in nature" and fauna reproduction, including artificial animal breeding. Rules on wildlife protection include: restrictions and prohibitions on animal use, creation of specially protected areas, artificial animal breeding, protection of rare and endangered species, promotion of wildlife protection, and development of scientific research (Law on Wildlife, arts. 12-13). Allowable levels of impact on the environment, covering also wildlife, are established through **Ecological Normalization,** which is regulated in the Ecological Code. The same Code lists detailed "ecological requirements" for economic and other activities, for the use of natural resources (including wildlife) and on specially protected areas, to prevent negative effects on ecosystems, including wildlife (arts. 194 and ff.).

2.2.1. Management Planning

The Law on Wildlife generally outlines the "**aims of scientific research**" (rather than duties in this regard), including an "**annual assessment** of fauna", the observation of rare and endangered species, and the development of programs on wildlife protection (art. 22). Rules on **environmental monitoring,** including observation of fauna, are contained in the Ecological Code (arts. 137 and 142). Such rules are defined by the Government (art. 16) and the "competent body on environmental protection" manages the monitoring itself (arts. 17 and 138).

The Government is competent for the development of **wildlife policy and programmes** (Law on Wildlife, art. 8). The "competent body" implements the State policy on wildlife protection, use and reproduction, develops sectoral programmes, organizes wildlife monitoring and is responsible for control (art. 9). Beyond such distribution of competences, no rules and procedures are established in the Law for the development of these programmes, which are developed through regulations. A "Programme on the preservation and rational use of water resources, wildlife and the development of the network of specially protected areas for the period from 2008-2010" was established by the Ministerial Decree n. 914 of 8 October 2007.

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

Rare or endangered species are included in the "**Red Book** of the Republic of Kazakhstan." The list is to be established by the Government (Ecological Code, art. 249) and is detailed under. Ministerial Decree n. 1034 of 2006. Legal entities and individuals are obliged to take all **measures for the protection** of listed species and, in particular, when planning economic and other activities, measures to protect habitats, condition for animal reproduction, concentration areas and migration routes. Activities that may lead to their decrease in quantity, disappearance or to habitat deterioration are forbidden (Law on Wildlife, art. 15; Ecological Code, art. 250). **Taking** of listed species is allowed for reproduction under special conditions and for habitat release in exceptional circumstances, by a decision of the Government (Law on Wildlife, art. 15). **Introduction ("acclimatization")** of listed species into new habitats is allowed for reproduction purposes, with a special permission from the competent authority for the protection, reproduction and management of wildlife, and a positive assessment of a State ecological expertise (Ecological Code, art. 250). The competent authority may also restrict the **use** of listed species for scientific, cultural, educational and aesthetic purposes without removing them from their habitats (Ecological Code, art. 251). The competent authority may grant permission for the keeping and breeding of listed species in captivity and semi-captivity (art. 252).

Trade of listed species (as well as of their products), including export and import is allowed only with the permission of the "administrative body" designated by the Government for the implementation of the Convention on the International Trade of Endangered Species (CITES) (Law on Wildlife, arts. 8-9 and 15). Species included in Appendixes I and II of CITES can be traded only if they are obtained as a result of breeding in captivity and after registration with the administrative body (art. 19). The international trade in rare and endangered species that are obtained as a result of breeding activities in captivity and semi-captivity can be restricted by the Government (Ecological Code, art. 252), which is also generally competent for regulations concerning such species (Law on Wildlife, art. 8).

Some potentially overlapping provisions are contained in the Law on Protected Areas (see 2.2.2.2.a). This Law establishes that rare and endangered animals listed on the Red Book are included among "**objects of State Natural Reserved Fund**": actions which can lead to loss, decrease in quantity or destruction of habitats of such species are forbidden and their capture or taking is allowed only for reproduction in "special nurseries" and further liberation into their habitats, with a special permission from the Government (art. 78). Also according to the Ecological Code, specially protected areas can be created for the protection of such species in natural conditions (art. 250).

Finally, the **harvesting of wood**, leading to destruction or degradation of habitats of rare and disappearing animal species shall not be permitted, according to the Forest Code (art. 100).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

Management of protected areas is regulated by the **Law on Protected Areas** (PAs). The Law states **general principles**, such as public participation and access to information (art. 3), and introduces a set of rules for the **creation of PAs**. The decision on the establishment of a PA is based on scientific and technical-economic grounds and is taken after the positive outcome of an ecological expertise, as approved by the "competent body" (for PAs of national importance) or the regional executive body (for PAs of local importance) (arts. 8, 10, 20 and 25). Protected areas can be of **State or local importance**, and include natural reserves, national or regional natural parks, natural reservations, botanical gardens, zoological and forest sanctuaries, natural monuments, wilderness areas and reserved territories (art. 14). The majority of PAs are established as **legal entities** (either as environmental protection institutions or State enterprises), which have the right to use corresponding land (art. 15-16), except for State natural monuments, State natural wilderness areas and State reserved territories), which are simply "**under State protection**" (art. 17).

All **lands of PAs**, except for those of wilderness areas and reserved territories, are considered "lands of specially protected natural areas." These lands are the exclusive property of the State, can be taken from private landowners and cannot be privatized (art. 23). The same regime is applicable to lands where "**objects of the State Natural Reserved Fund**" are located, i.e. objects of the environment (zoological, botanical, landscape objects and complexes, or specific species, including rare and endangered species of Red Book of the Republic of Kazakhstan) that are under State protection as they have special ecological, scientific, cultural or recreational value (arts. 1-2). Wilderness areas and reserved territories can be created on private land without taking it from the owner, although restrictions on activities on such lands are established (art. 22).

"Protective zones" (which can be considered "**buffer zones**") may be established around natural reserves, national natural parks, natural reservations and regional natural parks for the protection of PAs within. Activities that might damage or negatively influence specially protected natural areas are restricted or forbidden. Regulations on the size and borders of these areas, as well as rules for nature use within such zones are established by regional executive authorities, in accordance with the Land Code (Law on Protected Areas, art. 18). The latter contains essentially the same rules (Land Code, art. 123), except for land ownership: the lands where guarded zones are established are not taken from private owners according to the Law on Protected Areas (art. 22), whereas they can be withdrawn from private owners for State needs according to the Land Code (art. 123).

The law also mentions that, in order to protect biodiversity, "**ecological corridors**" should be created to connect protected areas with "elements of the ecological network" that are related to them. The protection regimes of such corridors, which shall allow for traditional economic activities that do not damage areas, natural complexes and objects of State natural reserved fund, are established by the "regional executive bodies" (arts. 1 and 80-81).

As for the regime of different **categories of PAs**:

- **Natural reserves** are aimed at the preservation of natural processes and phenomena, wildlife elements and specific species of fauna. Permitted activities include observation or scientific research which are regulated in details (arts. 39 and 41-42). Prohibited activities include hunting and taking animals, damaging their habitats or collecting materials thereof. Tourism is regulated, as visiting the reserves is allowed with a special permit (art. 40). Hunting is also prohibited in guarded zones; however, tourism and other recreational activities, as well as traditional land uses, are allowed therein (art. 43).
- **National natural parks** are aimed at the preservation of biological and landscape diversity and use, for educational, recreational and scientific purposes, of the unique objects located therein. They are subdivided into different zones, some devoted to pure environmental protection; and others where certain activities are

allowed, including ecotourism or non-commercial hunting (art. 44). The regulation of guarded zones is similar to those surrounding natural reserves (art. 48).

- **Natural Reservations** aim to protect, preserve and reproduce biodiversity as well as historical and cultural objects. Reservations can be divided in sub-zones, either for biodiversity preservation (where the regime is similar to that of natural reserves) or for ecological activities and sustainable reproduction of biodiversity (where e.g. recreational activities or traditional uses can be allowed) (art. 50-52). The regulation of "guarded zones" is similar to those surrounding natural reserves (art. 53).
- **Zoological Parks** are created for educational, scientific, cultural and environmental protection activities or "to breed rare and endangered species in artificial conditions" and all activities not related to the fulfillment of such tasks are prohibited (arts. 54-55).
- **Natural monuments** are territories that include natural objects that are valuable in ecological, cultural and scientific content and "objects of the State Natural Reserved Fund of republican/State importance." Their regime is similar to that of natural reserves (arts. 64-66).
- **Wilderness areas** are created for "preservation and reproduction of one or several types of the objects of the State Natural Reserved Fund." Any activity that can harm such objects is prohibited, including the introduction of new types of animals, hunting, taking of animals, and other actions that can lead to loss of fauna. Scientific, recreational and other similar activities are allowed (arts. 67-69).
- **Reserved territories** are created for "preservation and reproduction of one or several types of the objects of the State Natural Reserved Fund and biological diversity" (art.70). Activities that can harm the ecosystem or negatively affect the reproduction of natural resources are forbidden (art. 72). The Ecological Code adds specific activities which are forbidden in reserved territories, such as taking animals without a special permission issued by the "State competent body on protection, reproduction and management of wildlife" (arts. 253-255).

Further rules are established by the Ministerial Decree n. 673 validating the Regulation on Protection and Conservation of the Objects of Historical and Cultural Heritage, Objects of State Protected Areas Classified as Objects of World and National Importance of 8 July 2003. The Decree regulates the protection and management of the objects of the State Nature Reserved Fund that are classified as **objects of world and national importance**. It determines guarding zones and zones of protected nature landscape, where restrictions and prohibitions on constructions works that can harm the objects of State Nature Reserved Fund are established. Activities on those territories are done generally "in accordance with the protection regime", are based on the recommendations of scientific organizations, as well as in accordance with what is established by the bodies that are responsible for environmental protection control. Sizes, borders and regimes of use of natural resources in guarding zones are established by local authorities in accordance with the "competent body" (arts. 22 and 24).

As for the **institutional framework for the management** of PAs, the Government is responsible for the designation of competent bodies, for the approval of programmes for the development of PAs, and has other administrative functions. It has also the right to own, use and manage protected areas and objects of the "State Natural Reserved Fund of republican/State importance" (art. 7). The "competent body" takes care of the implementation of State policy on PAs. It is also responsible for:

- the development of the programmes on PAs, in coordination with different scientific organizations, taking into account the opinion and interests of the public, and based on a State Cadastre for Specially Protected Natural Areas (established by the Government and managed by the competent body – arts. 7-8),
- the elaboration of rules on visiting protected areas,
- the adoption of administration plans for the protected areas, and
- carrying out scientific research and control over the protection, use and preservation of protected areas and "objects of the State Natural Reserved Fund of republican/State importance" (arts. 8, 21 and 27).

Competences of local authorities are also described (art. 9). Decree n. 1239 establishes that a "Forest and Hunting Committee" within the Ministry of Agriculture is the competent body for regulating specially protected areas (art. 2).

The legal framework on PAs is integrated by the 2000 Ministerial Decree n. 1692 validating the Basic Principle of Development of Protected Areas for the Period up to 2030, which includes the **assessment** of the network of PAs and basic principles for the management of PAs.

The Forest Fund is divided into different categories as well, including "**specially protected forest areas.**" Different forest use restriction regimes (reserve regime, wildlife sanctuary regime and regime of limited economic activity) are provided (Forest Code, arts. 44 and 92).

2.2.2.2.b) Habitat Protection outside Protected Areas

General measures and principles on habitat protection are already established, as highlighted in previous paragraphs, for wildlife users and forest owners (2.1). They are among "basic requirements" for wildlife protection (2.2) and are considered under other activities affecting wildlife (2.2.3.2), specially as far as rare or endangered species are concerned (2.2.2.1). Apart from such generic measures, when activities such as construction works or infrastructure changes are carried out, habitats, migration routes, reproduction conditions and places of animals concentration shall be preserved and "**valuable territories**" (i.e. territories that have special value as wildlife habitats) shall be kept untouched (Law on Wildlife, art. 17).

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

2.2.3.1. Limitation and Regulation of Hunting

Hunting is allowed on specific **hunting areas** defined by legislation, on the basis of a **permit**, which must be paid for. **Hunting management** areas are allocated to legal entities and individuals (called "**hunting organizations**") through decisions of the regional executive body on a competitive basis. Hunting rights are independent from land ownership (i.e. management of hunting economies is possible on lands of different status, with the exception of PAs). "Hunting organizations" have the right to hunt animals upon receipt of permits to that end. Other legal entities and individuals require a permit for hunting issued by "hunting organizations", or must enter into an agreement with these organizations. **Limitations on quantity of takings** must be introduced (based on the necessity for wildlife protection), time limits for hunting are fixed and specific hunting techniques and methods (such as with explosives or poisons) are prohibited or regulated (Law on Wildlife, arts. 14, 25, 32-33, 38 and 40).

The "**Government**" is competent for the development of hunting regulations (art. 8), while the "competent body" regulates the issuing of "**hunting certificates**" or "hunting IDs" (which certify the taking of an exam on legislation on protection, reproduction and management of wildlife – the so-called called "hunting minimum"). The "competent body" further defines categories of hunting territories (art. 9). Decree n. 1239 establishes that the "**Forest and Hunting Committee**" within the Ministry of Agriculture is the competent body for the regulation of hunting policy (art. 2).

The use of **forests** for hunting purposes is one of the permitted forest uses according to the Forest Code (art. 88). Forest areas shall be made available to physical and legal entities for hunting purposes based on an **agreement on temporary long-term forest use** in accordance with a procedure defined by the Government (art. 100).

Hunting of **rare and endangered species** is not specifically addressed, but it should be prohibited according to the definitions of permitted activities related to such species (2.2.2.1). Hunting in **protected areas** is explicitly prohibited only in natural reserves (and related "guarded zones") and wilderness areas, while non-commercial hunting is explicitly prohibited in national natural parks (2.2.2.2.a).

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

For wildlife protection purposes, the Law on Wildlife prohibits or limits a **list of activities**, such as habitat deterioration, land use closer than 20 meters to the habitats of specific groups of animals, and the use of airplanes and helicopters over areas greatly populated by animals (art. 14).

The Ecological Code adds that fauna shall be preserved when certain activities take place, such as agricultural operations, **construction, infrastructures and other economic activities** (arts. 203 and 205). Activities that can affect fauna must also be carried out in coordination with the authorities that are competent for wildlife protection, reproduction and management (art. 237).

Zoological collections are allowed only with special permits issued by the "State competent body on wildlife protection, reproduction and management" (Ecological Code, art. 244). **Relocation** of animals and introduction ("acclimatization") of new animals is allowed for scientific and economic purposes, subject to the permission of the "State competent body for wildlife protection, reproduction and management and after the positive outcome of the State ecological expertise" (art. 240).

Forest users, when using forests in areas of the State forest reserves, must ensure conservation of wildlife and its habitat (Ecological Code, art. 227).

2.2.3.3. Assessment of Processes Harmful to Wildlife

The Ecological Code establishes that **Environmental Impact Assessment**, including for impacts on wildlife, is mandatory for economic and other activities that can affect the environment, including use of wildlife. The Code details the procedure for **ecological expertise**, which defines and restricts possible negative effects of economic, administrative and other activities, and is carried out by competent body for environmental protection and local executive bodies (depending on the importance of the planned activities).

Detailed rules on EIA are established under **Instruction n. 204** of the Ministry of Environmental Protection on Procedure of Impact Assessment for planned economic and other activities on the Environment when developing pre-project and project documentation (of 28 June 2007). Accordingly, planned activities shall not cause "irreparable damage" to animals; public access to information is ensured while undertaking the EIA; and public hearings shall be organized (art. 5). The EIA is subdivided in different stages, including a "Preliminary EIA" and a post-project analysis (arts. 10-42), and provides for the analysis of all the impacts of planned economic activities on the environment, including on wildlife (art. 26). In particular, the process includes: an analysis of the initial condition of fauna; the presence of rare, endangered species and species included in the Red Book; the impact and possible negative effects on animal populations, their habitats, migration routes, reproduction conditions, places of animal concentration, and wildlife diversity fluctuations. Activities relating to the preservation and reproduction of the integrity of natural communities and fauna diversity, as well as programmes on fauna monitoring are also envisaged. Public opinion is taken into account through the obligation for the legal entity or individual that is responsible for the preparation of the documentation on the planned activity, or the developer implementing an EIA, to ensure public participation in preparation and discussion of EIA-related materials (art. 51). Such participation is implemented through the organization of public hearings or the collection of written proposals and comments from the public at large, or through specific questionnaires addressed to the population of the area where the activity is planned to take place (art. 52). The specific form of participation is chosen on the basis of the importance of the planned activity, the way it can affect the environment and people, and the interest of the public (art. 53). Detailed rules on organization of public hearings and procedures for the collection of written proposals are contained in articles 58-60. The results of public participation are attached to the documentation relating to the EIA (art. 61).

These rules have probably superseded an older instrument, namely the "Interim Instruction of the procedure for the conduct of an environmental impact assessment (EIA) of a planned economic activity" of 24 December 1993, which contained very detailed and articulated procedural rules on EIA, including for the impact on fauna.

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

Public participation in the protection and sustainable use of fauna is simply mentioned as a **general principle** in the **Law on Wildlife** (art. 6), but the issue is not further specified there. By the same token, the **Ecological Code** simply mentions rights of access to environmental information and public participation (art. 4). According to the "**Regulation on State Protection of Wildlife**", approved by Ministerial Decree n. 1457 of 31 December 2004, "State officials *coordinate activities on wildlife protection with* local authorities, hunting services of hunting organizations and *stay in contact and cooperate* with public organizations in the field of nature protection and mass media" (emphasis added).

More detailed rules on public participation are contained under **Instruction n. 204** on EIA (2.2.3.3). As far as **PAs** are concerned, individuals and legal entities are allowed to request information on PAs form competent authorities, and to participate in activities related to "protection, reproduction and use of the objects of the State Natural Reserved Fund of republican/State importance." Additionally, legal entities may conduct ecological expertise of projects and programmes that are implemented in PAs (Law on Protected Areas, arts. 12-13).

3. CONCLUSIONS

3.1. General Considerations

Kazakhstan's legal framework on wildlife management is characterized by certain positive elements. To start with, wildlife legislation is based on key concepts, such as **"scientifically motivated" and "rational" use**, as basic requirements for wildlife protection (Law on Wildlife, arts. 12-13; see 2.2), as well as on the **ecosystem approach** (Ecological Code, art. 5). Furthermore, there is a clear attempt (not always undertaken by other countries in the region) to implement **international agreements**, such as CITES (2.2.2.1), or the World Heritage Convention by the Ministerial Decree n. 673 (2.2.2.2.a). Management planning is addressed to a certain extent, and the establishment of **limits on wildlife taking** is based on scientific grounds (Law on Wildlife, art. 29; see 2.1). The uncommonly wide list of **activities** that are controlled or prohibited, since they may have a negative impact on wildlife, is also clearly spelt out in legislation (see 2.2.3.2) (although a relevant activity such as **tourism** is not properly regulated); and the procedure on **EIA** are quite detailed (see 2.2.3.3). The legal regime on PAs is particularly comprehensive and specifically includes provisions on "**ecological corridors**" to create ecological networks between protected areas (2.2.2.2.a). The current legal framework also devotes considerable attention to **law enforcement** within the Forest Code (2.1.2) and provides also for economic incentives for environmental protection in general (Ecological Code, art. 95, 103) and for sustainable use of wildlife in particular (Law on Wildlife, arts. 47-48). Regrettably, this is framed as a general principle and legislation does not provide further details.

On the other hand, there are some gaps and shortcomings, which should be tackled in order to improve the effectiveness and comprehensiveness of the wildlife legal framework. There is also an overall **lack of coordination among the different legal instruments** applicable to wildlife management: the relationship between the Forest Code and other instruments on wildlife management should be clarified, as it is uncertain whether and to what extent the former applies to wildlife management in lieu of other specific instruments (see in particular 2.1, 2.1.2, 2.2.2.2.a, 2.2.3.1). There is also **considerable overlap between the mandates of the institutions** that should be responsible for regulation of wildlife use (the Government, the Competent

Body and the Forest and Hunting Committee), as regulated in the Decree n. 1239, the Law on Wildlife and the Ecological Code, and the issue should be clarified (see 2.1.2)..

Although certain general provisions exist on **management planning** (**2.2**), they are drafted in extremely general terms, as broad "principles" or "requirements", from which it is difficult to derive more specific obligations for identifiable actors. In addition**,** primary legislation does not seem to establish clear procedures in this regard (2.2.1). Moreover, despite the reference to the ecosystem approach in the Ecological Code (art. 5), no mechanisms for adaptive management are envisaged.

While **public participation** and access to information are dealt with under specific rules on EIA, in the field of wildlife management they are only superficially considered through very broad principles and rules. Rights of **traditional users** or **local people** on wildlife are almost completely neglected, apart from the general recognition of the possibility of exercising such rights in ecological corridors, buffer zones and national reservations.

The **regulation of wildlife use** suffers from unclear definitions: for instance, **types of wildlife uses** are not clearly defined. As far as **hunting** is concerned (2.2.3.1), criteria for allocation of hunting management rights over hunting areas are not clarified, and rules and procedures for hunting "pass" and hunting "permits" should be introduced in primary legislation. No systems to ensure transparency in wildlife use rights' allocation appear to be in place.

Rules on **habitat protection outside of PAs** (2.2.2.2.b), though not limited in number as compared to other countries, do not go beyond very general principles and should be integrated.

3.2. Detailed Recommendations

The **institutional framework** (**2.1.2**) should be further specified, as general expressions are used throughout the legal instruments, which do not allow for proper identification of entities involved. A secondary legal instrument - Decree n. 1239- establishes specific competences of the **Forest and Hunting Committee** which are overlapping with those indicated in other subsequent, primary legal instruments (see e.g. 2.1.2, 2.2.2.2.a, 2.2.3.1). The relationship between these instruments is unclear, and should be clarified.

As far as **protection of specific species** is concerned (**2.2.2.1**):
- rules on the management of species in the **Red Book** (according to the Law on Wildlife) and those relating to the species included in the **list of "objects of State Natural Reserved Fund"** (according to the Law on Protected Areas) may be overlapping. Although these are fundamentally similar, there are few differences in the legal regime and institutional framework: the issue is not that of a contrast between these instruments, but rather of better coordination between them;
- moreover, while it is noteworthy that the Law on Wildlife establishes a link with **CITES**, the detailed rules implementing the Convention do not reflect fully the requirements of the Convention.

As far as **protected areas** are concerned (2.2.2.2.a):
- despite detailed rules on the ownership of land on such areas, the law is silent on the ownership of resources thereof;
- coordination between the overlapping, conflicting provisions of the Law on Protected Areas and the Land Code is needed as far as buffer zones are concerned;
- Ministerial Decree n. 673 regulates objects of the State Nature Reserved Fund in an extremely generic and thus not very effective manner. Moreover, the extent to which such Decree has "survived" the adoption of the Law on Protected Areas needs to be explored; and
- specific rules on EIA for activities relating to protected areas, which are missing, should be provided.

KYRGYZSTAN

1. INTRODUCTION

Following a pattern that is common within the region, wildlife management in Kyrgyzstan is not regulated in a single law. The legal framework is rather the result of interaction between a number of legal instruments.

The **Law on Environmental Protection** (Law n. 53 of 16 June 1999, as amended by Law n. 101 of 11 June 2003[91]) is the instrument which establishes general principles on environmental management, environmental requirements for economic and other types of activity, rights and duties of users of natural resources and the relevant institutional framework. Detailed rules on the institutional framework are also contained in the **Regulations on the Ministry of Environment Protection** (issued by Government Resolution n. 443 of 26 September 1996), which is, however, older than most of the other legal instruments considered herein. A **State Agency on Environmental Protection and Forestry** was established by Presidential Decree n. 462 of 15 October 2005.[92]

Wildlife management in particular is regulated by the **Law on wildlife** (Law n. 13 of 24 January 2002), which establishes detailed rules on the protection and "rational" use of wildlife, as well as by the **Forest Code** of 8 July 1999 (as amended by Law n. 120 of 28 June 2003), which contains certain rules on hunting.

Special protection of certain habitats and areas is provided by the **Law on Special Protected Areas** (Law n. 1561-XII of 28 May 1994)[93] and the **Law on Biosphere Territories** (Law n. 48 of 9 June 1999). A specific **Law on Mountain Territories** (of 1 November 2002) establishes the framework for sustainable socio-economic development of mountain territories, the protection of cultural heritage and the preservation and rational use of their natural resources. Finally, the assessment of impacts on the environment of planned activities are regulated by the "**Instructions on environmental impact assessment**" of 4 July 1997 and the "**Instructions on the State environmental audit**" of 15 October 1997 (both available only in Russian). Although both contain quite comprehensive provisions on these issues, they have been most probably superseded by the very recent 2007 **Law on Ecological Expertise** (also defined as "environmental review") (Law n. 54 of 26 February 2007), which, being explicitly based on the Law on Environmental Protection, regulates in details such procedure.

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

Objects of fauna (i.e. animals, their parts and products – Law on wildlife, art. 1) are the **property of the State** and any action hampering such right is prohibited (art. 5). However, those objects that are legally removed from their habitats on the basis of a license, and that are included in a list defined "by the State body of environmental preservation of the Kyrgyz Republic as agreed with other interested State bodies", can be subject to **private property**, except for endangered or rare species included in the Red Book of the Kyrgyz Republic (arts. 6 and 39; see 1.2.2.1).

Whether the ownership regime of wildlife within **protected areas** is subject to different rules is unclear (1.2.2.2.a). A special regime is provided explicitly for natural resources in **mountain territories**, which can be owned by the State, the object of municipal property, or subject to "other ownership forms" according to the law (Law on mountain territories, art. 22). Those resources that are of State or municipal property are "the property of the people" (art. 24).

[91] Not available in English.
[92] However, since the text of the Decree is not available, it has not been considered in the present report.
[93] According to the national focal point, a new Law on Protected Areas is currently being drafted.

The **granting of rights of wildlife use** and **actions relating to the implementation of property rights over wildlife** are carried out with the mandatory participation of the "Republican State body of environmental preservation" and other specifically authorized bodies in the field of protection, use and reproduction of fauna (Law on wildlife, art. 5). Rights of wildlife use are established on the basis of contracts, licenses or permits,, concluded with or issued by the same State body of environmental preservation or by "hunting users" (Law on wildlife, arts. 9, 28, 32 and ff.; see 1.2.3.1 below). This competence belongs to the Ministry of Environment Protection, according to the relevant Regulations on the Ministry of Environmental Protection (para. 8), but it should have been transferred to the State Agency on Environment Protection and Forestry.

Types of wildlife use (Law on wildlife, arts. 31 and ff.; Law on Environment Protection, arts. 10-11, 13 and 15) include:
- hunting (Law on wildlife, arts. 32-33);
- capture of fauna that is not object of hunting (which is carried out on the basis of a license - art. 35);
- the use of fauna for scientific, cultural, educational, recreational, aesthetic and other purposes. If it does not lead to the removal of the wild animal from its environment, such use is free, unless animals are kept in captivity or semi-captivity (art. 36 paras. 1-2). If it implies the removal of the wild animal from its environment, such use is subject to a license either on a gratuitous or payment basis (art. 36 para. 3);
- the capture of fauna with the purpose of keeping and breeding it in captivity or semi-captivity conditions for economic, commercial and other purposes (art. 31), and
- the use of beneficial properties of animal products (art. 37).

Wildlife use can be of a **general or special** kind (Law on wildlife, art. 30). "General use" does not entail removal of wildlife from its habitat, and aims at scientific, cultural or aesthetic purposes. It is free and it does not require a license. "Special use" is carried out with the removal of wildlife from its habitat, on the basis of a license and of the payment of a license fee. Other types of wildlife use can be established by legislation (art. 31).

The regime for the use of natural resources in **mountain territories** (Law on Mountain Territories, arts. 15 and 18) is less precise: economic use of natural resources in such territories (e.g. explicitly hunting or tourism) is subject to payment and is carried out "according to the established legal actions that determine corresponding types of use of natural resources." This may be arguably interpreted as a reference to the more general rules contained in the Law on wildlife recalled above. Moreover, wildlife use is to be carried out during the time period and according to the conditions specified in a license. Special rights and privileges are established for inhabitants of these territories (see 1.3.22.3.2 below).

The notion of "**forests**" includes wild animals according to the Forest Code (art. 1), which establishes specific rules on forest management and use. Forests may be subject to State, communal or private ownership (arts. 6 and ff.), but "forest biodiversity" shall be subject to the "exclusive property of the State" (art. 64). Forests may be used for, *inter alia*, scientific research, cultural, recreational and tourism purposes, as well as for hunting (arts. 48 and ff.; see 1.2.3.1 below). Rules and regulations on forest use, as well as control over it, are developed and implemented by the State Forest Management Body (arts. 24, 48 and 71-72). It is unclear, however, whether and to what extent this specific forest regime shall apply to wildlife in forest areas in lieu of the general one, where rules are different.

2.1.2. Institutional Set-up

Limitations on wildlife use are regulated by "State authorities competent for environmental protection" (which also develop rules, regulations, standards and guidelines for the use of natural resources in general), according to the Law on Environment Protection (arts. 10-11, 13 and 41) and by the "State body of environmental preservation", according to the Law on wildlife (art. 9). According to the Regulations on the Ministry of Environmental Protection, such competence belongs to the Ministry of Environmental Protection (para. 8).

The **Government** manages fauna and "establishes the order" of wildlife protection and use (Law on wildlife, arts. 8 and 13; similar duties are contained in the Forest Code – art. 18 – as far as forest use is concerned), while the "State body of environmental preservation" implements and carries out State **policy and control** on such protection and use as well as on ecosystems (Law on Environment Protection, art. 41; Law on wildlife, art. 9). According to the Regulations on the Ministry of Environmental Protection, competence to implement State control over use and protection of natural resources and wildlife habitats belongs to the Ministry (Regulations on the Ministry of Environmental Protection, art. 7). Local State administrations also have certain competences in wildlife protection and management, as indicated in article 10 of the Law on wildlife.

According to the **Forest Code**, many of the competences of the State body of environmental preservation highlighted above, as far as fauna in forests is concerned, belong to the State Forest Management Body (arts. 24 and 71). Significant **enforcement** responsibilities are attributed to State Forest Guards established within State Forest Management Body as far as guarding and protecting of forests are concerned (arts. 74 and ff).

With the creation of the State Agency on Environment Protection and Forestry, the State control over wildlife management should be concentrated in a single institution.

2.2. Wildlife Management

Animals, their parts, their nests and dwellings are subject to **protection and rational use** (Law on wildlife, art. 4; and also Forest Code, art. 7). Article 3 outlines some **basic requirements and principles** on such protection and use (not all of which, probably due to translation problems, are entirely clear) such as the protection and improvement of habitat ("inhabitancy"), conditions for reproduction and migration routes; preservation of integrity of "natural communities of fauna"; and observance of scientifically-based limits for use of objects of fauna. Similarly, a **list of types of measures** for fauna protection (e.g. the establishment of rules on fauna protection and use, or the establishment of protected areas) is provided under article 15. This list, however, does not appear to contain concrete obligations or principles, but rather only indirect reference to potential areas for further action. Preservation and rational use of natural resources is also a priority for **mountain territories**, where it is specifically mentioned in the legislation that resource users should ensure the protection of animals (Law on Mountain Territories, arts. 8 and 17).

2.2.1. Management Planning

Few general rules are established on management planning. The Government defines State **policy** in the field of wildlife management, approves "State **programs**" and organizes their implementation (Law on wildlife, arts. 8 and 13). Similar duties are contained in the Forest Code as far as fauna in forests is concerned. The Government is entitled to develop and implement programs on the rational use and increase of productivity of fauna to determine management and control over hunting resources to implement a State policy over hunting management and to establish a **hunting inventory** (art. 18). Other competences are delegated to the Oblast State Administration (art. 19). The "State body of environmental preservation" oversees the implementation of this policy (Law on wildlife, art. 9). The latter is also responsible for environmental monitoring (Law on Environmental Protection, art. 41) and establishes the "order of conducting" State **monitoring of wildlife** (Law on wildlife, arts. 9 and 11), as well as the **State count of fauna** and the hunting targets (arts. 9 and 12). The Government is responsible for the **State cadastre of natural resources and fauna** (Law on Environmental Protection, art. 40; Law on wildlife, art. 12). Further regulations may be adopted by the Government (Law on Environmental Protection, arts. 28-30). According to the Regulations on the Ministry of Environmental Protection, the Ministry implements State control over the maintenance of **State fauna cadastre** (para. 7 sub e), maintains the **State registry of fauna** and conducts the State monitoring over it (para. 8).

According to the **Forest Code**, many of the competences of the State body of environmental preservation highlighted above, as far as fauna in forests is concerned, belong to the State Forest Management Body (arts. 24, 82 and ff.). In addition, such body shall be competent to develop annual and long-term plans for forestry development (which could include also wildlife management, since fauna is included in the definition of forest resources) (art. 89).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

Rare and endangered species, included in the **Red Book** of the Kyrgyz Republic (which is regulated by the "State body of environmental preservation" – Law on Environmental Protection, art. 41; Law on wildlife, art. 9), are subject to a special protective regime (Law on Environmental Protection, arts. 5-6). They cannot be the object of private property (see 1.1.12.1 above). Actions which can bring to death or reduction of number of listed species are prohibited and their capture is exceptionally permitted only for scientific or reproductive purposes, subject to a "special sanction" (which is probably another definition for a permit or license) given by the State body of environmental preservation (Law on wildlife, art. 21). As with other cases (see in particular 1.1.12.1), such competence belongs to the Ministry of Environmental Protection according to the relevant Regulations (para. 8).

Listed species' habitats are also protected, since habitat deterioration (the "infringement of an inhabitancy") as well as the carrying out of economic activities having an impact upon such habitats that disrupt wildlife "life cycles", are prohibited (Law on wildlife, arts. 21 and 17). Those who carry out permitted economic activities in such territories are "responsible" for listed species preservation and reproduction (art. 21).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

Specially protected natural territories are established to protect, *inter alia*, rare or endangered species (Law on Environmental Protection, arts. 5-6). The Law on Special Protected Areas contains very basic, general rules on PAs but it does not appear to provide a precise and comprehensive framework on the issue.

The Law establishes nine **categories** of "specially protected natural territories" for which a special regime of protection and use is established (art. 2):

- national **"zapovedniks" or reserves** (arts. 7-10) are created with the purpose of, *inter alia,* preservation of the environment in natural conditions or the rehabilitation of "rare and disappearing wildlife". Economic activities conflicting with the objectives of the reserves are forbidden: they include hunting, catching and destruction of animals, disturbance of animal habitats or the "resettlement of new kinds of animals" (which may refer to the introduction of alien species).
- **natural national parks** (arts. 11-13) aim at the preservation of "natural complexes" with special ecological, historical and cultural and aesthetic value, and are intended for nature protection, recreational, educational or scientific purposes. Activities posing a threat of adverse impact on the environment of the parks (such as the "resettlement of new kinds of animals") are forbidden.
- State "**zakazniks**" (arts. 14-15), which may be established also at the provincial level, have among their primary purposes the "preservation of beneficial kinds of animals" and can be subdivided in zones including "zoological" ones, which are established with the purpose of protection of fauna and of valuable or rare species in particular. Economic activities conflicting with such purposes are forbidden, in particular hunting, capturing or any other action causing destruction of wild animals in zoological "zakazniks".
- State **nature sanctuaries** (arts. 16-17) are "unique natural objects, valuable in the ecological, scientific, historical and cultural and aesthetic respects". Their protection regime appears contradictory: the general protection regime of nature sanctuaries seems to correspond to that of State "zakazniks" (art. 17 para. 1),

but activities threatening the safety of nature sanctuaries can be *limited* and not only forbidden (para. 3). Finally, article 17 establishes vaguely that an "organization in charge of protecting the nature sanctuary is identified".
- **botanical gardens**, **forest sanctuaries** (arts. 18-19).
- **zoological parks** (arts. 18-19) are established for the "preservation and studying of objects of wild fauna in artificial conditions".
- **natural recreational territories** (art. 20) are territories "having favorable natural factors for the treatment and prevention of [wildlife] population diseases", are established for the preservation of such natural factors.

Rules on **ownership of wildlife in PAs** are unclear. As a general rule, all PA territories belong to the State (art. 3), although there seem to be exceptions for State "zakazniks" (the creation of which "does not entail withdrawal from the main user [of] the land plot" - art. 14) and for "nature sanctuaries" (for which a similar solution is provided for - arts. 16 para. 3 and 17 para. 2). The ownership regime of corresponding resources (including wildlife), however, is not clarified in any of these cases.

The issue of **buffer zones** is dealt with in a general manner, as the Law on Special Protected Areas states that "security zones" can be established (art. 2), but does not elaborate upon such general principle.

Rules on the **creation** and **management** of PAs are quite vague. State natural national parks, State botanical gardens, forest sanctuaries and zoological parks are generically created under Government regulations (art. 12), State "zakazniks" are created under Government regulations or decisions of province and "rayon State administrations" (art. 14). The Law simply states that management of the organization, protection and use of PAs is carried out by the Government, local State administrations, and "specially authorized State bodies" (Law on Special Protected Areas, art. 4; Law on Environmental protection, art. 40). A "**cadastre**" of specially protected natural territories must be established (Law on Specially Protected Areas, art. 5).

Public associations and citizens can generally **participate** in the realization of actions to organize, protect and use PAs (art. 6), but no detailed procedures have been established in this regard.

The Law on Biosphere Territories adds to the nine categories of PAs described above that of the so-called "**biosphere territories**" (biosphere reserves), i.e. sites providing "steady balance of a biodiversity, economic development and protection of corresponding cultural values" (art. 2). These are created for the preservation, restoration and use of natural territories with rich natural and cultural heritage (art. 1) and may be proposed for inclusion into the UNESCO biosphere reserves network (art. 4). A general provision in art. 2 establishes that biosphere territories "have the status of especially protected territories", which could mean that the Law on Special Protected Areas should generally apply unless otherwise explicitly provided for in the Biosphere Territories Law. Biosphere territories may be divided into different zones (art. 5):
- a "core zone" entirely devoted to environmental protection, where only scientific research or monitoring and other harmless activities can be carried out, while economic activities are forbidden;
- a "buffer zone", where traditional land use and recreational use like tourism are also allowed (although art. 5 further specifies a detailed list of permitted and prohibited activities in an unclear and contradictory manner);
- a "transitive zone" which should be used for "ecologically focused economic activities" (although, not differently from buffer zones, the specific list of permitted activities seems to contradict the general principle, as it includes e.g. "various kinds of industrial activity", "industrial and medical – recreational complexes", and "experimental sites"); and
- a "zone of sanitation" used for "regenerative measures".

Management of these territories is carried out in accordance with separate specific regulations.

2.2.2.2.b) Habitat Protection outside Protected Areas

The habitat of **endangered species** has special protection under the law (see 1.2.2.1 above). Art. 17 of the Law on wildlife establishes that **in carrying out certain activities** (e.g. construction of settlements or major transport or hydraulic engineering infrastructures, development of tourist routes or the realization of other types of economic activity), measures to preserve wildlife habitats, migration routes and reproduction areas shall be carried out. Finally, the Law on **Mountain Territories** aims at the preservation and sustainable development of mountain territories (Preamble), and identifies as a priority for State action in those territories the development, financial support and realization of State programs for natural resources protection and use (art. 8). Special regimes for certain activities (e.g. geological investigations) are provided for this particular habitat (art. 13).

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

The Forest Code establishes that **forest management** aims at the protection and rational use of forests (art. 1) and that it must ensure conservation and improvement of nature protection, *inter alia* in the interest of preservation of fauna habitat (art. 28). Forest users, that can be private entities, are obliged to preserve wildlife and its habitat (art. 39). Special funds shall be spent for the purpose of guarding and protecting wildlife (art. 104).

2.2.3.1. Limitation and Regulation of Hunting

According to the Law on wildlife (arts. 30-33), hunting (commercial hunting, as well as recreational hunting) is permitted on those wild animal species included in a **list** established by the State body of environmental preservation, within **hunting areas (or "hunting grounds"),** and should not involve the use of "dangerous facilities" and means. The right to use hunting areas, as a special use of fauna for conducting hunting "economical activities" (elsewhere defined as "hunting economy management" or "hunting farm management") is granted to legal entities ("hunting users") subject to a license issued by, and on the basis of a contract concluded with, the State body for environmental preservation. Such rights are allocated by the same State body on a competitive basis for 10 years, as agreed with "specially authorized State bodies on protection, use and reproduction of fauna" and in coordination with the main land users where these areas are located. Single hunting activities can be carried out by legal entities and individuals upon receipt of a permit, issued by the State body for environmental preservation or by the legal entities managing hunting farms.

The State body of environmental preservation "adjusts terms and ways" of hunting, establishes "**annual norms**" (including quotas) for taking fauna and carries out control over hunting (Law on wildlife, art. 9).

According to the Regulations on the Ministry of Environment Protection, some of the competences of the State body of environmental preservation belong to the Ministry, which coordinates the development of the hunting sector, regulates time periods and hunting methods, establishes "annual norms for shooting fauna" (Regulations on the Ministry of Environment Protection, art. 5), implements State control over hunting (art. 7) and allocates management rights over hunting grounds (art. 8). However, most of these competences should have been transferred to the State Agency on Environment Protection and Forestry.

Hunting is also a **type of forest use** regulated, organized, managed, supervised and controlled by the State Forest Management Body (Forest Code, arts. 24, 48 and 71-72). The latter have also an exclusive right to use wildlife through the organization of **hunting farms**, but they may lease hunting grounds to legal entities and individuals (art. 70).

As far as **hunting in Protected Areas (PAs)** is concerned, the latter is prohibited explicitly in "zapovedniks", as well as in "zoological zakazniks" and consequently also in nature sanctuaries as they follow the same regime.

It should be arguably prohibited also in "core zones" in biosphere territories (see 1.2.2.2.a above). Hunting as an "economic use of natural resources" in **mountain territories** should be subject to the general regime (2.1).

Hunting **endangered species** is not specifically forbidden, but should nonetheless fall under the wide definition of prohibited activities affecting them (1.2.2.1).

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

Rules and limitations are established for the creation of **zoological collections**, which are subject to licensing by the "State body of environmental preservation" (Law on wildlife, art. 22).

The **resettlement of fauna** and the **introduction of alien species** ("acclimatization" of new fauna) can be carried out only following the decision by the State body of environmental preservation, which may prohibit the import, export, release, resettlement and introduction of such animals (Law on wildlife, arts. 9 and 24). According to the Regulations on the Ministry of Environmental Protection, some of these competences belong to the Ministry, which has the right to prohibit the import, export, "liberation", "dissemination" or "acclimatization" of animals which may negatively impact upon those existing in the territory of the republic (para. 9). The Law on Environmental Protection adds that import of **alien species** is possible only after the positive outcomes of an "ecological expertise" (art. 21).

No specific primary rules are established for the **limitation of trade** in fauna. However, the Regulations on the Ministry of Environmental Protection establish that the Ministry shall issue permissions for the trade of fauna and its derivatives (Regulations on the Ministry of Environment Protection, art. 8)

The Law on Environmental Protection establishes that ecological requirements, including the rational use of fauna, should be followed in **construction works** and other similar types of activities (arts. 17-19).

2.2.3.3. Assessment of Processes Harmful to Wildlife

"**State ecological expertise**" for activities that can affect the environment is included among the measures to protect the environment by the Law on Environmental Protection (arts. 6 and 16). It is based on the principle of transparency, so representatives of the public may be invited to participate.

An "**ecological expertise**" is an "assessment of ecological risk and danger arising from targeted decisions" which may have an impact on the environment, according to the Law on Ecological Expertise (art. 1). It aims at preventing such impacts and assessing the compliance of activities with ecological requirements (art. 2). The concept of "environment" is sufficiently broad to include wildlife (art. 1), and the listed types of documents (rather that types of activities) that are the objects of the expertise are wide enough to include any activity with potential environmental impacts (art. 3). The State ecological expertise is carried out by an independent commission under the responsibility of the State body on protection of the environment, is mandatory and generally based on the principle of "taking into account public opinion" (arts. 4, 6-7 and 11). Any "project initiator" shall submit also an "**ecological assessment**" of the impacts on the environment for certain broadly defined activities (e.g. "plans of integrated usage and protection of natural resources"), which must be the basis for the decision on the ecological expertise (arts. 9-10). A negative statement entails a prohibition to implement the project (art. 13). An optional and additional "***public* ecological expertise**" may be organized and conducted by citizens, local administrations and public associations, which have the right to receive relevant documents, to publish the results of their expertise, and to send them to decision-makers. The statement of the public ecological expertise, however, is only recommendatory (arts. 14-17).

Furthermore, a State ecological expertise is a mandatory prerequisite for the acceptance by authorities of "economic decisions" capable of affecting wildlife (**Law on wildlife**, art. 18) and for all activities which entail the use of natural resources in **mountain territories** (Law on Mountain Territories art. 36).

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

Rules on public participation are quite general. All citizens have a right of **access to environmental information** from the competent State authorities (Law on Environmental Protection, art. 50) and a right to **participate** in environmental protection activities, including through participation in discussions on draft laws and other decision making processes (arts. 45-46). Procedures to implement these rights, however, are not specified.

2.3.2. Rights of indigenous people, local people and traditional users

The Law on Mountain Territories establishes that the improvement of living conditions and social and economic support for **mountain area inhabitants** must be one of the priorities for authorities involved in the protection and rational use of natural resources in mountain territories (art. 8). Although citizens in general have the right to use natural resources in mountain territories, the population of such territories is given priority in such use (art. 12). Following this principle, "**wildlife management privileges**" must be established for agricultural commodity producers, or public health, education and culture institutions in mountain territories, as well as for "citizens producing goods for the population of mountain territories." Details relating to such privileges are to be established by the Government or in legislation (art. 20). Many competences are also given to "institutions of local governments" in the field of protection and use of natural resources in mountains (art. 9). Specially authorized bodies working with inhabitants of mountain territories can be established (arts. 9-10), may coordinate their work with other environmental organizations, nature users and local authorities (art. 11).

3. CONCLUSIONS

3.1. General Considerations

Compared to other countries of the region, the legal framework on wildlife in the Kyrgyz Republic comprises some interesting elements, such as the Law on Mountain Territories, which aims at regulating these special areas and wildlife management therein, and the Law on Biosphere Territories, which deals with this special category of PAs in order to meet international standards. Moreover, an attempt has been made to provide for a comprehensive legal framework that includes all of the relevant aspects of wildlife management.

However, some problem areas have been identified. For example, some important **concepts and principles are not clear**. This is the case of "sanctions", licenses and contracts, or of the regime of wildlife use in mountain territories (para. 1.1.12.1). The Law on ecological expertise (1.2.3.3) and the Law on Special Protected Territories (1.2.2.2.a) are generally difficult to interpret. Essential concepts, such as **sustainable use** of resources or the **ecosystem approach** in their management, are not considered.

Coherence is not always ensured **between different laws** and even **within the same legal instrument**. This is the case of the types of wildlife use (1.1.12.1); the legal framework on State ecological expertise (1.2.3.3); ownership of wildlife in PAs and the relationship between PAs and biosphere territories (1.2.2.2.a). From the point of view of coherence between different legal instruments, a particular problem refers to the extent to which the Forest Code may cover protection and management of fauna in forests, as well as to the relationship between such Code and other legal instruments dealing with the same matter and containing overlapping provisions both from the substantial and the institutional perspectives. In this regard, issues related to wildlife ownership, use and the relevant institutional set-up (1.1.12.1, 1.1.2), hunting (1.2.3.1) and management planning (1.2.1) should be clarified.

In other instances, **rules are often too general**, as in the case of wildlife management (see the "basic requirements and principles" contained in article 3 of the Law on Wildlife, and the types of measures for fauna protection mentioned in article 15 of the same Law - 1.2) or assessment of activities dangerous to wildlife (1.2.3.3). This would entail, for example, the impossibility to derive, from excessively general norms, precise obligations of identifiable subjects, or to limit discretion of public entities in performing their duties.

The institutional framework is not always defined in a detailed manner. The use of generic expressions, the lack of coordination within legal mandates, and frequent re-organization and re-naming of institutions contribute to legal uncertainty. Such lack of clarity and coordination affects the institutional set-up on wildlife protection and management (1.1.2), and is particularly evident with reference to the licensing for, and regulation of, wildlife use (2.1and 1.1.2), the regulation of hunting (1.2.3.1), the introduction and movement of alien and invasive species (1.2.3.2), and the protection of rare and endangered species (1.2.2.1). Furthermore, no criteria are established in the law to limit the discretion of State authorities in deciding over limitations on wildlife use.

Another important gap is the lack of detailed obligations and procedures on **wildlife management and management planning** (1.2.1). Only "basic requirements and principles" and a list of types of measures are provided that do not amount to specific obligations. With regards to stakeholder involvement in wildlife management, there is no recognition of **interests of traditional and local users**, apart from those living in mountain territories (2.3.2). The rules on management planning, on the other hand, do not include opportunities for public participation. The differences between the State registry of fauna and the State cadastre of fauna, which seem overlapping instruments, are not clarified. Limitation and regulation of hunting (1.2.3.1) are not managed through a comprehensive policy or strategic plan.

Another aspect that is neglected in existing legislation is **trade** in fauna and its products (1.2.3.2). This gap is particularly relevant with reference to rare and endangered species which are protected only through the prohibition of activities directly affecting them (e.g. killing) (1.2.2.1). This is a critical gap, since the uncontrolled trade in wildlife and its products is often the main cause of wildlife loss. The legal framework could also be integrated with regulations on **tourism**.

Finally, appropriate rules on offences and sanctions for violation of norms on wildlife use, as well as provisions on incentives for sustainable use of wildlife should be introduced. Rules on **public participation** and on **access to information** (1.2.3.3, 1.2.2.2.a, 1.3.1) should be further specified and integrated.

3.2. Detailed Recommendations

As far as **ownership of wildlife and related rights and obligations** are concerned (1.1.1):

- the **general regime on wildlife use** does not seem always coherent and should be clarified:
  - the question of "granting use rights over wildlife" is dealt with in an unclear way (Law on wildlife, art. 5). For instance, while granting use rights over wildlife is carried out with the obligatory participation of the State body of environmental preservation, some uses of fauna are carried out without licensing and thus without the involvement of any authority (Law on wildlife, arts. 5, 30 and 36 para. 1). This contradiction should be clarified. Furthermore, it is unclear whether rights of wildlife use are established on the basis of a contract or a license, or both;
  - users of fauna are defined as those holding a contract or a license to that end, thus excluding those users who do not need a license, as mentioned above (arts. 28, 30 and 36 para. 1);
  - while there seems to be an exhaustive list of types of fauna use (art. 31), other types not listed therein are contemplated elsewhere (e.g. the use of fauna for scientific purposes with the removal of fauna from the environment - art. 36 para. 3); and
  - finally, the distinction in article 30 between "general use" (which does not imply removal of wildlife from its habitat, is free and not subject to a license) and "special use" (which implies the removal of

wildlife from its habitat, is subject to licensing and provided against payment) is not coherently applied throughout the Law, as there are uses of fauna without removal from habitats provided against payment (e.g. art. 36 para. 2) as well as uses with removal from habitats which are free (e.g. art. 36 para. 3).
- the specific regime of **ownership of wildlife in PAs** (see also 1.2.2.2.a) should be clarified;
- the regime of ownership of wildlife in **mountain territories** should be specified, as conditions for private ownership, categories of "other ownership forms", and the concept of "property of the people" are not further defined.

As far as **protected areas** are concerned (1.2.2.2.a), the legal framework should be significantly improved, since, as it stands now, it provides for only some general rules that may not always be clear. In particular:
- PA **establishment** and **management** systems should be elaborated in detail;
- the regime of **nature sanctuaries** should be clarified;
- Detailed rules and procedures on **public participation** should be included, as this is mentioned only as a general principle;
- rules on **buffer zones** in the Law on Special Protected Areas should be elaborated, and in the Law on Biosphere Territories should be clarified. Clarifications would be needed also for "**transitive zones**" of biosphere territories;
- More generally the **relationship between the Law on Specially Protected Areas and the Law on Biosphere Territories** (which is at present addressed by art. 2 with an ambiguous provision) should be clarified.

As far as **habitat protection outside of protected areas** is concerned, only few general provisions and principles are provided (1.2.2.2.b, 1.2.3), which should be further elaborated upon.

As far as the **assessment of processes harmful to wildlife** is concerned (1.2.3.3):
- the relationship between the detailed procedure contained in that Law on Ecological Expertise, and the more general but more severe provisions on the same matter in the **Law on wildlife** and in the **Law on Mountain Territories** should be clarified;
- prior environmental assessment should be required for activities in **protected areas;**
- with the establishment of the public ecological expertise, the role for **public participation** should be increased, as currently it is relegated in a separate procedure and only results in recommendations.

MONGOLIA

1. INTRODUCTION

The wildlife legal framework of Mongolia is the result of interaction between several instruments:

- The **Environment Protection Law** of 5 June 1995, amended on 18 November 2005, is the instrument with the widest scope of application, and touches upon every aspect of environmental protection, including wildlife management.
- The **Law on Fauna** of 5 May 2000 is the specific instrument dealing with wildlife in a comprehensive manner.
- Hunting, in particular, is regulated by the **Law on Hunting** of 5 May 2000 and the **Law on Hunting Resource Use Payments and on Hunting and Trapping Authorization Fees** of 22 May 1995.
- The **Law on the Regulation of Foreign Trade in Endangered Animal and Plant Species and Derivatives Thereof** of 7 November 2002 (Law on Trade in Endangered Animals) is the instrument devoted to the implementation of the Convention on the International Trade of Endangered Species (CITES).
- The **Law on Special Protected Areas** of 15 November 1994 is the comprehensive instrument on protected areas (PAs). The establishment and management of buffer zones around PAs are regulated by the **Law on Buffer Zones** of 23 October 1997.[94]
- The **Law on Forestry** of 31 March 1995, revised on 17 May 2007, regulates forest protection and management and is only indirectly relevant to wildlife.
- The **Law on Reinvestment of Natural Resource Use Fees for the Protection of the Environment and the Restoration of Natural Resources** of 28 January 2000 deals with specific matters regarding wildlife use fees.
- The **Ministers Resolution n. 114 on the "Nuhurluls"** regulates specific aspects of wildlife users groups.

The laws of Mongolia contain the usual **safeguarding clause for international law**, according to which if an international treaty to which Mongolia is a party is inconsistent with Mongolian domestic law, the provisions of the treaty shall prevail (Environmental Protection Law, art. 2 para. 2; Law on Special Protected Areas, art. 2; Law on Trade in Endangered Animals, art. 2 para. 2; Law on Fauna, art. 2 para. 4).

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

The land and its animals, unless owned by citizens of Mongolia, shall be the **property** of the State (**Environmental Protection Law**, art. 6 para. 1). Citizens may own the animals that they have bred on lands that they own, in compliance with existing legislation. Such ownership rights shall be issued in compliance with the existing legislation, based on the advice of the "research institution on creation of natural resources" (professional scientific institutions such as the Institute of Biology) and the recommendations of the local government and the central State administrative body in charge of nature and the environment (Environment Protection Law, art. 6 paras. 3-4).

The **Law on Fauna** provides for a stricter regime, since game animals are the **property** of the State and only unprocessed products derived from fauna hunted or trapped according to relevant permits, contracts and agreements belong to the hunter or trapper (art. 10). Persons liable for damage to fauna as a result of a violation of the Law shall reimburse the State for the damage caused, the amount for such reimbursement being double the ecological and economic value determined by the Government (art. 25).

[94] The English text of this instrument was provided by the national contact point, and is on file with the author.

Unless otherwise provided, citizens, business entities, organizations, foreign citizens and legal persons may **use natural resources** upon the payment of relevant fees in accordance with contracts, special permits, or licenses (Environment Protection Law, art. 6 para. 2). The level of payments and fees for resource use are determined with the "natural resource assessment" procedure in article 8 (see 2.2.3.3 below).

According to the **Law on Fauna**, citizens and economic entities may **possess and use** fauna (other than "extremely rare" fauna; see 2.2.2.1below) in order to protect, breed and use them, under certain conditions, according to a valid contract and following the regulations established by the Government and regulated by the Province ("Aimag") and District ("Sum") Citizens' Representative Assemblies (art. 11). Fauna may be used for scientific, cultural, artistic and aesthetic purposes, for important aspects of its natural activities (such as soil formation or pollinating of plants) and to obtain products of its living processes (art. 12). The first type of use must be conducted without causing damage to fauna or destroying its habitat, and with permissions by District and Capital City District ("Düüreg") Governors in case of "extremely rare" and rare fauna (art. 13). Using important aspects of fauna natural activities must avoid causing damage to fauna and is subject to a permit issued by District and Capital City District Governors (art. 14). The extraction of "products of fauna living processes" (e.g. honey) must be implemented without causing harm or destroying the habitats of the concerned species, and is subject to a permit to be issued from the central government organization responsible for environmental issues (art. 15). Licenses for fauna use shall be terminated by authorities for the reasons listed in article 16.

The **Law on Reinvestment of Natural Resource Use Fees for the Protection of the Environment and the Restoration of Natural Resources** defines, *inter alia,* the percentage and amount of fees for natural resource use that will be reinvested in the protection of the environment and the restoration of natural resources.

2.1.2. Institutional Set-up

According to the Environmental Protection Law (art. 13), the National Parliament ("**State Ih Hural"**) has, *inter alia,* the following powers (the Law, in fact, defines these as "plenary rights"):
- to formulate a national policy for the protection of the environment and use of natural resources (the National Development Policy - which includes environmental policy - up to the year 2025 has been recently adopted);
- to approve a national programme for environmental protection;
- to pass legislation on environmental protection and to supervise its implementation;
- to establish levels of payments and fees for the use of natural resources; and
- to approve and amend the list of endangered animal species.

According to the same Law (art. 14), the **Government** has, *inter alia,* the following powers:
- to limit the amount of natural resources that can be used, and of natural resources that can be imported or exported as well as to administer customs and quarantine control over the export and import of animals;
- to organize the development and implementation of a national programme for environmental protection;
- to prohibit citizens, business entities and organizations from carrying out activities which would have an adverse effect on the environment;
- to develop procedures for the creation and allocation of financial resources from the Environmental Protection Fund; and
- to organize education and training programmes.

The "**central State administrative body in charge of nature and the environment**" (the Ministry of Nature and the Environment), according to the Environmental Protection Law (art. 15 para. 1) has the following mandate:
- to establish limits on the annual use of animals, and to restrict the use of natural resources, taking into account ecological requirements and reserves;

- to organize the implementation of national policy and legislation on environmental protection and the proper use and restoration of natural resources;
- to decide and adopt rules and procedures on specific issues of environmental protection and to ensure their implementation;
- to co-ordinate interdisciplinary and interregional activities to protect and restore the environment and properly use its resources;
- to supervise research activities;
- to provide citizens, business entities and organizations with environmental information;
- to monitor the implementation of environmental legislation; and
- to organize activities in respect of the reparation of damage.

The mandate of the Ministry of Nature and the Environment is further defined by the Law on Fauna (art. 6), with reference to the "**central government organization responsible for environmental issues.**" Accordingly, the Ministry of Nature and the Environment shall implement measures for:
- setting limits for fauna use;
- listing "extremely rare" and rare fauna in the Mongolian "Red Books";
- ensuring normal growth of fauna;
- protecting its territory;
- ensuring that migration routes are clear;
- establishing and regulating game reserves; and
- reintroducing fauna into its indigenous habitat, scientific research and education.

It may also establish limits for the use of fauna during certain periods (Law on Fauna, art. 8).

Other central State administrative bodies have the power ("plenary right") to incorporate measures to protect the environment and on the proper use of natural resources in their sectoral policies and to administer implementation of those measures (Environmental Protection Law, art. 15 para. 2).

Province and Capital City Citizens' Representative Assemblies shall have the power to approve measures for environmental protection in their territory and to administer their implementation; to establish maximum limits for natural resources use in their territory; and to establish protection regimes and to supervise their implementation (Environment Protection Law, art. 16). **The Assemblies** also have the power to approve measures and budgets for the protection of "extremely rare" and rare fauna within their territory and to exercise control over their implementation, as well as to establish limits on fauna use within their territory (Law on Fauna, art. 4 para. 1). Lastly, the assemblies have the power to coordinate and ensure the implementation of legislation and resolutions on fauna protection, to implement within their respective jurisdictions measures to, *inter alia,* maintain the normal growth of fauna and protect fauna from threats by industrial and economic activities (Law on Fauna, arts. 4 para. 2 and 6 para. 1).

District and Capital City District Citizens' Representative Assemblies have the right to approve measures and budgets for the protection of extremely rare and rare fauna within their jurisdictions and to exercise control over their implementation (Law on Fauna, art. 5 para. 1). **District and Capital City District Governors** shall monitor the use of natural resources by citizens, business entities and organizations and approve activities carried out by such subjects, including those regarding animals bred, raised and maintained by them (Environment Protection Law, art. 17 para. 2 sub 3), as well as to implement measures for the protection of fauna within their jurisdictions and to issue permits for the use and possession of fauna to citizens and economic entities (Law on Fauna, art. 5 para. 2).

Sub-disctrict Citizens' Representative Assemblies shall have the right to supervise the protection and use of natural resources in common use, and to issue licenses for the use of natural resources as provided by law (Environment Protection Law, art. 18).

The Environmental Protection Law provides also for rules on **supervision over environmental protection and compliance** by citizens, business entities and organizations, which is to be ensured by the central State administrative body, through inspectors at the order of the Minister of Nature and Environment (arts. 26-27). The Law on Fauna, in turn, provides that **environmental inspectors** may impose specific, quantified penalties for violations of the Law that are not subject to the Criminal Code (art. 27).

2.2. Wildlife Management

The Environmental Protection Law of Mongolia protects animals including those that temporarily inhabit Mongolia (thus also migratory ones) (art. 3). In order to ensure "the **human right to live in a healthy and safe environment**" (which is also enshrined in the Constitution of Mongolia, art. 16 para. 2), the State is obliged to prevent adverse environmental impacts and maintain ecological balance (Environmental Protection Law, art. 5 para. 1). The State shall also act in accordance with a list of **principles**, including the development of an ecologically sustainable economy and maintenance of ecological balance, as well as the provision of conditions for the proper and scientifically-sound use of natural resources (Environmental Protection Law, art. 5 para. 2 sub 2-3).

Business entities and organizations "engaged in environmentally adverse production and services", are obliged "to include in their annual budget the amounts necessary to [...] reintroduce animals" and "to breed animals" in accordance with contracts (Environmental Protection Law, art. 31 paras. 4-5). In general, citizens and economic entities shall implement measures for the protection of fauna from threats by industrial and economic activities (Law on Fauna, art. 6).

2.2.1. Management Planning

The Environmental Protection Law gives the **National Parliament** competence to formulate a **national policy** for the protection of the environment and use of natural resources and to approve a **national programme** for environmental protection (art. 13). The **Government** has the power to organize the development and implementation of the national programme for environmental protection (art. 14), whereas the **central State administrative body in charge of nature and the environment** has the power to organize the implementation of national policy on environmental protection and the proper use and restoration of natural resources (art. 15).

As far as **hunting** is concerned, relevant institutions are obliged to carry out periodically "game resource management" reports, evaluations, and inventories which will be the basis for conservation and sustainable use of resources including the setting of annual limits for taking (Law on Hunting, art. 4, 8; see 2.2.3.1).

The central State administrative body shall establish and maintain an "**environmental monitoring network**" (Environment Protection Law, art. 10) for observation, measurement and research on the environment, and the development of measures against adverse environmental changes. The functions of the monitoring network are to provide the public and interested business entities and organizations with information on the environment and natural resources, and to develop proposals for the prevention of adverse effects on human health and the environment and for reparation of damages.

The State and local budgets shall fund **research** to establish the restoration, breeding and raising of endangered animals. More specifically, the central State administrative body and Governors shall request certified organizations to conduct environmental research and develop proposals, and shall fund this activities through a Science and Technology Fund and relevant budgets (Environment Protection Law, art. 11 paras. 1-2).

Information (including impact assessments) on animals shall be included in the "central State databank" (the procedure for its creation shall be established by the Government) and other local databanks, which together form the "State environmental information databank" (Environment Protection Law, art. 12). The

law establishes detailed timeframes for the publication of a consolidated State report (para. 8) and an obligation for the Government to report annually on conditions of the environment (para. 9). The Law on Fauna provides details on the content of the "Fauna databank", which is established according to the Environment Protection Law (art. 18).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

The hunting and trapping of **very rare animals** shall be prohibited (Environment Protection Law, art. 19 para. 2 sub 1). Rare and very rare animals shall be protected by listing them in the Redbook of Mongolia (sub 2). In order to ensure environmental balance, citizens, business entities and organizations using natural resources for commercial purposes shall limit the use of endangered animals species and increase their stock through, *inter alia,* their breeding and reintroduction into their natural habitats (Environment Protection Law, art. 25 para. 1). The National Parliament shall approve and amend the list of endangered animal species (Environment Protection Law, art. 13).

The Law on Fauna provides a detailed list of "**extremely rare fauna**" which may be hunted or trapped only for scientific purposes and with special permits issued by the central government organization responsible for environmental issues (art. 7 paras. 1-3). Moreover, any construction of industrial or chemical plants, power stations, railways or roads, as well as mining within the habitat of such fauna, must be approved by the Government, based on the conclusions of an environmental impact assessment (art. 7 para. 4). "**Rare fauna**", the list of which shall be approved by the Government, may be hunted or trapped only for scientific, research, cultural, artistic and medicinal purposes, or for the regulation of populations, subject to a permit issued by the central government organization responsible for environmental issues and to the payment of special fees (art. 7 paras. 5-6). The "central government organization responsible for environmental issues" shall implement measures for the listing of rare and extremely rare fauna in the Mongolian "Red Books" (art. 6). Province and Capital City Citizens' Representative Assemblies as well as District and Capital City District Citizens' Representative Assemblies shall have the right to approve measures for the protection of such species within their jurisdictions and to exercise control over their implementation (arts. 4 para. 1 and art. 5 para. 1).

Regarding **trade** in fauna, the Law on Fauna empowers the Government to issue permits for the export of extremely rare live fauna, in accordance with the treaties to which Mongolia is a signatory (art. 23). However, for trade in rare and endangered species the most relevant instrument is the **Law on Trade in Endangered Animals**, which implements the **CITES**. The Law applies to the international trade in endangered plants and animals listed in the appendix to CITES, as well as to materials derived and products made thereof (art. 3). An Administrative Council and a Scientific Council, which shall operate under the authority of the central government organization responsible for environmental issues, are responsible for the implementation of the Convention (art. 4). The Administrative Council carries out activities for the implementation of CITES, makes proposals and produces opinions about amendments to the appendixes of the Convention, issues and cancels licenses for the trade of items falling within the scope of application of the Convention and provides certificates for the re-export or introduction from the sea of the same matters, submits reports to the Secretariat of the Convention on its implementation (arts. 5, 8-9 and 12). The Scientific Council is responsible for the scientific assessments that are required for the implementation of the Convention and shall submit the relative recommendations to the Administrative Council (art. 6). The Law contains limits on trade of animals listed in the Appendixes of CITES, reflecting the requirements of the latter (arts. 7 and 10), as well as detailed procedural requirements for the export, import or re-export of endangered species covered by CITES, including the issuing of licenses and certificates under the responsibility of the Administrative Council (arts. 8-9). Implementation of the Law is monitored by the central government organization responsible for nature and environment, the customs agency and relevant local bodies (art. 13) and detailed penalties for violations of the Law are provided (art. 15).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

Protected Areas (PAs) in Mongolia are classified as "strictly protected areas", "national conservation parks", "nature reserves" and "monuments" (Law on Special Protected Areas, art. 3).

Strictly Protected Areas are territories under special State protection for the conservation of their original conditions and features, in order to represent specific traits of interested zones and their scientific importance, and to ensure environmental balance (art. 7). In such areas, certain activities are prohibited outright (art. 12), including: changing the natural features of the area (para. 1); harvesting and processing natural resources for commercial purposes (para. 2); hunting, trapping, disturbing animals or destroying their nests, hibernation dens or burrows (para. 3); constructing buildings (para. 5); carrying out activities that pollute the environment (para. 6) or establishing seasonal nomadic camps or grazing livestock without permits (para. 9). Based on their natural features and fauna characteristics, Strictly Protected Areas may be divided into:

- **Pristine Zones** (art. 9), where only protection, research and investigation activities may be carried out;
- **Conservation Zones** (art. 10), where also biotechnological measures making use of environmentally safe technologies may be implemented to enhance fauna reproduction; and
- **Limited Use Zones** (art. 11), where only certain listed activities may be carried out (e.g. animal inventories and activities to regulate animal population, ecotourism and, in the case of local residents, the collection and use of natural resources for household needs).

National conservation parks are areas under special State protection whose natural original conditions are relatively well preserved and that are of historical, cultural, scientific, educational and ecological significance (art. 13). Activities prohibited in Strictly Protected Areas according to art. 12 are prohibited also in National Conservation Parks (art. 18). Moreover, in consideration of their natural features, location of fauna, conservation requirements and conditions for the development of travel and tourism, national conservation parks may be divided in:

- **Special Zones** (art. 15), where, *inter alia*, research measures and enhancement of fauna reproduction may be undertaken;
- **Travel and Tourism Zones** (art. 16), where activities permitted in Special Zones (art. 15) and in Limited Use Zones of Strictly protected Areas (art. 11) may be undertaken; and
- **Limited Use Zones** (art. 17), where activities provided for in articles 11, 15-16 and "traditional animal husbandry" may be undertaken.

Nature Reserves are areas placed under the State's special protection in order to create conditions for the conservation, preservation and restoration of certain natural features and natural resources (art. 19). They may be classified as:

- **Ecological reserves**, for the purpose of preserving unique virgin ecosystems;
- **Biological reserves**, for the conservation of rare and endangered plants and animals; and
- **Palaeontological, Geological and Water reserves** (art. 20).

In Nature reserves, traditional household activities may be carried out provided they do not have a negative impact on natural features, condition and location of natural resources, population levels and reproduction of fauna. It is, however, prohibited to engage in any activities for commercial purposes that change the original natural conditions or that are likely to have negative environmental impacts, such as hunting and trapping animals in these reserves. (art. 21).

Monuments are areas falling under State special protection for the preservation of the heritage of natural unique formation as well as historical and cultural traces in their natural state (arts. 22-24).

Land within limited use zones of strictly protected areas, national conservation parks, nature reserves and monuments may be used by citizens and economic entities, according to a contract (indicating purposes,

terms and conditions, payment amount and terms, rights, obligations and responsibilities of parties, measures and assets used for preservation and restoration of land's original conditions, and having time limits specified in the Law), provided environmentally safe methods are applied. On the contrary, foreign legal entities, international organizations, foreign citizens, stateless persons and economic entities with foreign investment are prohibited from using such land (arts. 33-34 and 37). Citizens or economic entities shall submit their request for land use to the PA administration, or to the District or Capital City District Governor (if no PA Administration is established), which shall forward the request, along with their recommendations, to the central government organization (art. 35). The latter shall make motivated decisions based on criteria indicated in the Law (e.g. environmental impacts and expenses for environmental conservation measures, whether facilities for intended activities reach international standards) (art. 36). Users are obliged to conduct activities according to the contract and are prohibited from carrying out activities having negative impacts on the environment, otherwise their rights would be terminated (arts. 39-40).

Research organizations may carry out research activities in PAs with permission from the central government organization and on a contractual basis (art. 41).

Buffer zones may also be created around PAs by the central government organization responsible for PAs, following consideration of proposals by the relevant Citizens' Representative Assembly and its members. The status of the zones is "coordinated by a separate law" (Law on Special Protected Areas, art. 4) and the reference, in this regard, is to the *ad hoc* **Law on Buffer Zones** of 1997. According to such Law, buffer zones can be established "to minimize, eliminate and prevent actual and potential adverse impacts" to PAs (art. 3) in areas that, *inter alia,* are important for the preservation of biodiversity, rare species and migration routes (art. 4 par. 1), where the local populations are dependent from the natural resources in the PAs or where human and livestock density may have negative impacts on the PAs (art. 4 par. 2), and where there are unique natural formations and characteristics or historical and cultural monuments (art. 4 par. 3). Buffer zones are established and managed (through Buffer Zone Councils and Buffer Zone Management Plans) with the participation of central governmental and local authorities, PAs' administrations as well as local people and NGOs (arts. 3, 5-6, 8 and 10). A Buffer Zone Fund (made of, among others, revenues from projects carried out in the buffer zones) may also be established to support, *inter alia,* local people and to prevent and restore environmental damage (art. 7). A specific list of activities which may cause damage to the environment (among others, hunting) shall be subject to a "detailed environmental impact assessment" (art. 9).

As far as the **institutional framework** is concerned:

- the **Parliament** has the competence to define State policy and to decide on territories to be placed under State protection (art. 25).
- The **Government** has the power of organizing and ensuring the implementation of State policy and legislation on PAs, creating the system of PAs and regulating the activities in such areas, developing and implementing a national program on PAs, approving regulations on the protection of PAs and establishing boundaries for reserves (art. 26).[95]
- The "**central government organization responsible for special protected areas**" has the power of coordinating the implementation of State policies and legislation on PAs, approving procedures and programs, granting permissions and establishing procedures for research and investigation programs, conducting observations and hunting or trapping of animals for the purpose of regulating herd structures in PAs, defining travel and tourism routes, directions and procedures, and reviewing and approving overall planning for settlements (art. 27).
- **Citizens' Representative Assemblies of Provinces, Districts and Capital City Districts** have a right of making proposals for submission of parts of their territory under protection, and ensuring the implementation of relevant legislation in PAs under their jurisdiction (art. 28).

[95] The **Law on Government** allows for the transfer of some State responsibilities over to NGOs and this option has been used to delegate the management of a special Protected Area to an NGO. However, since the text of the Law is not available, it will not be discussed in detail in the present report.

- **Governors of Provinces, Capital City, Districts and Capital City Districts** have a right of coordinating the implementation of State policies and legislation on PAs, preparing proposals for submission of parts of their territory under protection, and managing the protection of nature reserves and monuments (art. 29).
- **PAs administrations** in strictly protected areas and national conservation parks shall ensure the implementation of legislation and regulations concerning their protection, enter into contracts with organizations authorized to conduct research and investigations, grant licenses, carry out inspection activities and control wildlife herd structures, supervise settlements and constructions and identify areas to be used by citizens and economic entities as well as the types and number of livestock permitted in authorized zones (art. 30).
- Finally, **rangers** shall contribute to monitoring the implementation of relevant legislation, and have powers of inspections, confiscation and injunctions against violators (art. 31). Monitoring and control of the implementation of the law shall also be carried out by professional inspection organizations, the protected area administration and governors at all levels within their respective areas of authority (art. 42 para. 1) and by State environmental inspectors, who shall also take action against violators (art. 42 para. 2).

Art. 43 of the Law on Special Protected Areas contains detailed **penalties** for violations of the law.

2.2.2.2.b) Habitat Protection outside Protected Areas

The Government shall establish "**natural disaster and emergency area zones**" on areas where adverse impacts and changes have occurred which pose a potential threat to the environment and animals, based on recommendations of the central State administrative body (Environment Protection Law, art. 22 paras. 1-2). In such areas, the central State administrative body, the Civil Defense Department, Governors of all levels and other relevant organizations shall jointly take measures to prevent and mitigate the effects of natural disasters and emergencies and restore the environment and natural resources. All costs for restoration of damage shall be borne by the State, which shall request full compensation from those who are found responsible (art. 22 paras. 3-4).

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

Land use by private entities within PAs is regulated in details by the Law on Special Protected Areas (2.2.2.2.a). The Law on Forestry revised on 17 May 2007 regulates ownership and management of forests, and use of timber and non-timber resources, but does not address issues that are relevant to fauna in forests.

2.2.3.1. Limitation and Regulation of Hunting

Hunting is regulated mainly by the 2000 **Law on Hunting**, whose purpose is also the sustainable use of game resources (art. 1). District and Capital City District Citizens' Representative Assemblies may **designate zones** for the hunting and trapping of game animals for commercial, household or special purposes. Citizens and economic entities may possess or use game animal habitats according to relevant laws, regulations and contracts, in order to protect or sustainably use game resources, or to derive unprocessed products from them (art. 3).

Hunting and trapping of game animals is subject to "**payments and fees"** (Law on Hunting, arts. 5, 9-11 and 13), and to obtaining a **permit** (arts. 6, 7, 10-11 and 15-16). The **Law on Hunting Resource Use Payments and on Hunting and Trapping Authorization Fees** provides for specific payment and fee amounts for hunting as well as methods and criteria for their calculation. Whether these standards are still valid, however, is a controversial matter, since such Law was issued in 1995, and the Law on Hunting of 2000 does not refer to it.

Three **types of hunting** are contemplated by the Law on Hunting (arts. 6-7):
- Hunting or trapping of game animals other than rare animals by citizens **for "household purposes"**

requires a permit from the District Governor and is subject to the payment of a fee (arts. 7 and 10).
- Hunting or trapping "**for special purposes"** by foreigners, Mongolian citizens and economic entities requires a special permit (art. 7 para. 1). Types of special permits include those "to hunt rare animals for research, cultural, or artistic and medicinal purposes", those "issued to foreigners and Mongolian citizens upon the payment of a special fee" and those "for purposes of sport hunting" (art. 11 para. 2). The central government organization responsible for nature and environment shall issue "permits for the hunting and trapping of game animals to foreign citizens who have paid fees for the hunting or trapping of rare game animals for special purposes", and District and Capital City District Governors "shall issue permits for the hunting and trapping of other game animals". Hunting of endangered species is also regulated, *prima facie* in a compatible way, by the Environment Protection Law and the Law on Fauna (see 2.2.2.1).
- Hunting or trapping **for "commercial purposes"** is subject to the conclusion of an agreement by District Governors with economic entities that meet certain criteria (e.g. the obtaining of a positive decision by the District Citizens' Representative Assembly and the development of a plan for the protection and reproduction of animals) (arts. 7 and 9).

Standard forms for stipulating contracts or requesting permits are adopted by the central government organization responsible for nature and environment (Law on Hunting, art. 7 para. 2).

"**Certificates of origin**" shall be required for citizens and economic entities intending to **sell wildlife or its derivatives**. The central government organization responsible for nature and environment shall approve the list of wildlife species and derived products for which such certificate shall be required, its format and the regulations governing it. Certificates shall be issued by District-level State environmental inspectors (art. 7 paras. 3-4). The sale and purchase of game animals, or any unprocessed products derived from them, without such certificates is prohibited (art. 15).

The Law on Hunting regulates "**game resource management**" (GRM), i.e. activities to develop frameworks for the sustainable use, conservation, and breeding of game resources by investigating and identifying game animal distributions, numbers, herd structures, fertility and game resources (art. 4). Province, Capital City, District and Capital City District Governors shall ensure, within their respective jurisdictions, that GRM reports, evaluations and inventories (which are financed from the State central budget, from game use fees and from citizens and economic entities possessing or using land on a contractual basis) are conducted once every four years and that, if hunting has been conducted for commercial purposes, game resource inventories are conducted annually (art. 4, paras. 4-5). GRM reports and evaluations shall form the basis of activities to conserve, breed and make sustainable use of game resources (para. 2). The central government organization responsible for nature and environment shall establish an **annual maximum limit** for game that may be hunted or trapped for commercial or household purposes for the territory of each Province and the Capital City, based on game animal resources and requirements. Province and Capital City Citizens' Representative Assemblies shall establish similar maximum limits for their respective jurisdictions within the limits set above (art. 8 paras. 1-2). The Government shall establish annually lists and quantities of animals that may be hunted or trapped for special purposes, based on recommendations from the central government organization responsible for nature and environment (art. 8 para. 3).

The Law on Hunting establishes also precise limits for **hunting seasons** for each species (art. 13) as well as for prohibited hunting and trapping **techniques** and **activities** (arts. 14-15). It also provides for **penalties** for its violations (art. 16).

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

The **breeding or reintroduction of non-native animals** shall be conducted only with the approval and under the supervision of the central State administrative body and other authorized organizations (Environment Protection Law, art. 25 para. 2).

The **reintroduction of fauna in general** is regulated also by article 9 of the Law on Fauna, which establishes that such activity shall be conducted by professional organizations subject to a permit issued by the central government organization responsible for environmental issues, according to the guidelines approved by the latter, and based upon the conclusions of scientific organizations.

Animal collections may be created by citizens and economic entities based on permits issued by the central government organization responsible for environmental issues. Export of such collections is subject to the same permits, in compliance with treaties "to which Mongolia is signatory" (art. 17).

According to the Law on Fauna, the central government organization responsible for environmental issues shall establish procedures for the **export of live fauna** other than extremely rare one, and the export of animal parts and research samples (art. 23). The **import** of fauna must be arranged in accordance with procedures approved by the central government organization responsible for environmental issues (art. 24).

2.2.3.3. Assessment of Processes Harmful to Wildlife

"**Natural resource assessment**" **(NRA)** and "**Environmental impact assessment**" **(EIA)** shall be conducted by citizens, business entities, and organizations which intend to use natural resources for commercial purposes (the assessments being carried out by entities that are properly authorized and licensed by State authorities), to preserve the natural State of the environment, to carry out activities aimed at sustaining environmental balance, and to regulate the use of natural resources (Environment Protection Law, art. 7).

The **NRA** (Environmental Protection Law, art. 8) is the quantitative and qualitative assessment and financial evaluation of natural resources, which shall determine the quantity of natural resources and identify measures for their protection, proper use and restoration. Based on the NRA, the central State administrative body (in co-operation with "relevant organizations") shall establish the economic value of natural resources, taking into account their ecological and commercial value. Such economic value shall form the basis for the determination of the level of payments and fees for resource use and the amount of compensation payable in the case of adverse environmental impacts and direct damage. The results of the assessments shall be included in the "State Environmental Information Databank" (arts. 8 para. 2 and 12; see 2.2.1).

The **EIA** (Environmental Protection Law, art. 9) is defined as the prior identification of possible adverse effects of production and service activities on human health and the environment, as well as of measures that would minimize or mitigate those adverse impacts. It shall be conducted for the development of proposals and programmes, as well as for the conclusion of contracts for the commencement, operation and expansion of production or services which may have adverse impacts on the environment. Entities implementing such proposals, programmes or contracts shall comply with the requirements contained in the EIA.

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

Citizens of Mongolia have a clear **right to bring claims** for compensation against the person responsible for damage to their property or health resulting from an adverse environmental impact. They may also commence legal action against persons whose conduct may cause an adverse environmental impact or jeopardize the enforcement of environmental protection legislation (Environmental Protection Law, art. 4 paras. 1-2). Citizens, business entities and organizations may claim, against those in breach of environmental legislation, compensation for expenses for restoration of impaired ecological balance and natural resources or the moving of animals and livestock (art. 37 para. 2).

Citizens have also the right to **establish non-governmental organizations** (NGOs) for the protection of the environment (Environmental Protection Law, art. 4 para. 3). They may further require authorities to restrict

or prohibit actions which may cause adverse environmental impacts and to prohibit the establishment of new business entities or organizations whose activities may cause adverse environmental impacts (para. 5).

As far as the right of **access to information** is concerned, citizens have the right "to obtain accurate information about the environment from relevant organizations" (Environmental Protection Law, art. 4 para. 4). Such organization seems to be mainly the "central State administrative body in charge of nature and the environment" (art. 15). The State is also obliged to act in accordance with the principle of **public access to activities and decisions** in respect of environmental protection and the use of natural resources (Environmental Protection Law, art. 5 para. 4).

NGOs whose purpose is the protection of the environment and natural resources may conduct **public supervision and inspection** over the implementation of environmental protection legislation and **demand compensation** for breaches of environmental legislation. They may submit matters to authorized organizations and proposals on environmental protection to relevant authorities. The **Government may delegate special functions** of the State executive body for environmental protection (at present the Ministry of Nature and the Environment) to such NGOs by way of contract and shall fund their implementation (Environmental Protection Law, art. 32). The same approach is followed by the Law on Fauna, according to which NGOs may implement fauna protection and breeding measures, according to contracts concluded with local governors and to permits issued by the central government organization. NGOs may carry out activities such as making proposals on measures to protect and use fauna, and on law enforcement (art. 21).

Moreover, the Law recognizes the rights of citizens to be organized in **user groups** ("nukhurlul"), to conserve specific natural resources within their community boundaries and to contractually own and use those resources in a sustainable manner (Environmental Protection Law, arts. 3 para. 2 sub. 8 and art. 4 para. 1 sub 6). The State, its organizations and their officials may delegate their responsibility for conservation, use, and possession of specific natural resources to such user groups on a contractual basis (art. 19, para. 2 sub 7). The **Ministers Resolution n. 114** on the "Nuhurluls" establishes definitions of such user groups, the creation of their organizations as well as their rights (e.g. to participate in decision making regarding forest protection and control and prevent illegal activities therein).

2.3.2. Rights of indigenous people, local people and traditional users

Citizens shall **acquire and use traditional knowledge** and skills to protect the environment (Environmental Protection Law, art. 4 para. 2 sub 2). Rights of traditional users are promoted by establishing that local community members can take part in conservation activities by organizing **user groups** (in compliance with the art. 3 para. 2 sub 8) and shall have **privileged rights** for the use and possession of specific natural resources within their territory. They are responsible for the conservation for such resources according to the contract (art. 31). Furthermore, local residents may collect and use natural resources for household needs in Limited Use Zones of Strictly Protected Areas (Law on Special Protected Areas, art. 11 para. 10). Finally, local people and NGOs have a role in the establishment and management of Buffer Zones (see 2.2.2.2.a).

3. CONLCUSIONS

3.1. General Considerations

The legal framework on wildlife protection of Mongolia, although scattered in different instruments, is very comprehensive. It recognizes a "**human right to a healthy and safe environment**" (Environmental Protection Law, art. 5 para. 1) and **other general principles** such as "ecologically sustainable economy" and "scientifically-sound use of natural resources" (Environment Protection Law, art. 5 para. 2 sub 2-3). The legal framework also pays great attention to **rights of citizens and NGOs** in wildlife protection from different points of view, including participation in decision making, access to information and right to seek redress for environmental damages (Environmental Protection Law, art. 4).

The role of non-environmental State administrative bodies in protecting the environment and in ensuring the proper use of natural resources in their sectoral policies is clearly recognized (Environmental Protection Law, art. 15 para. 2). Such a **cross-sectoral approach** to the institutional set-up for environmental protection is particularly useful in ensuring sustainable wildlife management.

There are certain rules on periodic information gathering and reporting on wildlife, that are intended to provide the framework for the sustainable use, conservation, and breeding of game resources in a certain territory (2.2.1). Although the term "management planning" is not used explicitly, "**Game Resource Management**" activities such as reports, evaluations and inventories (Law on Hunting, art. 4) serve to establish an annual maximum limit for hunting (2.2.3.1), and can be considered a concrete expression of the principle of sustainable use of resources (see 2.2.3.1).

Hunting regulations are very detailed and comprehensive, including requirements to obtain "certificates of origin" in order to sell wildlife or its derivatives (Law on Hunting, arts. 7 and 15). Furthermore, laws often contain **measures for compliance monitoring** and clearly provide for offences and **penalties** for their violation (see for example: Law on Hunting, art. 16; Law on Fauna, art. 27; Law on Trade in Endangered Animals, arts. 13-15; Law on Special Protected Areas, art. 43). Economic incentives for environment protection are envisaged, but only in principle (Environment Protection Law, art. 34).

Detailed provisions have also been framed for the **implementation of CITES** (the Law on Trade in Endangered Animals –2.2.2.1) and for a **comprehensive regime on PAs** with the Law on Special Protected Areas.

Among the shortcomings of the current legal framework, it should be noted that an important activity potentially affecting wildlife, such as **tourism**, is dealt with only under the regime of PAs. More general rules applicable also outside PAs should be introduced. In addition, an essential concept such as the **ecosystem approach** could be better reflected in management planning.

3.2. Detailed Recommendations

Rules on the **ownership and use of wildlife** are regulated differently by the Environment Protection Law and the Law on Fauna (2.1.1). The relationship between the two instruments should be clarified and synergies ensured.

The same problem arises for the protection and management of **endangered species**, which are regulated differently by the Environment Protection Law and the Law on Fauna. Disparate definitions are also provided in this respect ("very rare" or "extremely rare" animals) as are different institutional frameworks (2.2.2.1). The relationship between the two instruments should be clarified in this instance too.

As far as **hunting** is concerned (2.2.3.1):
- The regulation of hunting "for special purposes" and, in particular, types, objectives and procedures of "special permits" to that end are unclear and should be specified.
- The issue of whether rules on payments and fees for hunting contained in the Law on Hunting Resource Use Payments and on Hunting and Trapping Authorization Fees of 1995 are still valid after the adoption of the Law on Hunting of 2000 should be clarified.

The **EIA procedure** is generally well designed, but the activities and the impacts that are subject to the procedure are defined in excessively general terms (2.2.3.3). The precise scope of application of the procedure should be clarified, in particular impacts on wildlife. Moreover, while EIA is required for activities carried out in buffer zones, it is not provided for those in PAs.

As to the **Law on Special Protected Areas**, overlapping competencies in the monitoring of the Law's implementation (arts. 31 and 42) should be addressed.

Habitat protection outside PAs (apart from buffer zones) is almost completely neglected (2.2.2.2.b): an integration of the legal framework in this regard is advisable.

As far as peoples' rights in wildlife management is concerned, the provisions on the **right of access to information** and of **participation in decision making** (2.3.1) could be strengthened, with the introduction of procedural specifications.

RUSSIA

1. INTRODUCTION

As with other countries of the region, the legal framework on wildlife in the Russian Federation is the result of interaction between different legal instruments. Compared with other States that have been analyzed in the present report, the number of legal instruments directly or indirectly dealing with wildlife management is very high. Apart from the Law on Wildlife, which is an unusually comprehensive instrument that attempts to deal almost comprehensively with wildlife, many other laws, decrees and orders have been adopted which touch upon more specific wildlife-related issues. As a result, the legal framework is quite complex and rich.

The main laws, in this regard, include:
- **Federal Law n. 33-FZ on protected areas** of 14 March 1995 (Law on PAs), as amended by Federal Law n. 37-FZ of 23 March 2007;
- **Federal Law n. 52-FZ on Wildlife** of 22 March 1995 (**Wildlife Law**) is the main instrument for wildlife management, to regulate the conservation and sustainable use of wildlife. The Law establishes that if an international treaty to which the Russian Federation is a party provides for rules that are incompatible with those contained in the Law, the rules of the international treaty shall be applied (Wildlife Law, art. 60);
- **Federal Law n. 7-FZ on Environmental Protection** of 10 January 2002 (as amended by Federal Law n. 93-FZ amending Federal Law n. 7-FZ on environmental protection of 24 June 2008).

Many instruments specifically address hunting. These include:
- Ministerial Decree n. 1548 on hunting and game husbandry of 10 October 1960 (as amended on 19 December 1994);
- Order n. 302 of the Ministry of Agriculture regarding the validation of the Regulation on issuing hunting cards (amending Ministerial Decree n. 1548 on hunting) of 25 May 1998;
- Decree n. 146 of the Chief Directorate of Hunting and Protected Areas regarding the issuance of hunting permits for scientific research, cultural and economic purposes of 6 July 1961;
- Decree of the Chief Directorate of Hunting and Protected Areas validating the Regulation on hunting of wild fauna in accordance with a hunting permit (license) of 22 October 1971;
- Model Hunting Regulation of the Russian Federation (validated by order of the Chief Directorate of hunting and wildlife reserves subordinated to the Council of Ministers of the Russian Federation as of 4 January 1988 n. 1, as amended by orders of 3 May 1988 n. 111, 23 May 1989 n. 156, 26 April 1990 n 146, and 30 May 1991 n. 157; consolidated text of 23 August 1995) (**Model Hunting Regulation**);
- Order n. 24 of the Ministry of Environmental Protection and Natural Resources validating hunting regulation on the territory of protected areas for regulatory and scientific research purposes of 8 December 1992;
- Ministerial Decree n. 728 on artisanal and sport hunting of 26 July 1993;
- Regulation of the Ministry of Agriculture regarding the Department for the Protection and Rational Use of game (Hunting Department) of 11 October 1994;
- Ministerial Decree n. 13 enforcing the regulations on hunting of endangered wildlife species protected by the Russian Federation. of 6 January 1997, as amended by Ministerial Decree n. 240 regarding amendments of some wildlife regulations of 24 April 2003;
- Ministerial Decree n. 314 amending Ministerial Decree n. 13 enforcing the regulations on hunting of endangered wildlife species protected by the Russian Federation of 26 April 2008;
- Order n. 438 of the Ministry of Agriculture regarding validation of the Model Regulation on local department for the protection of game of 22 October 1997;
- Fishing and Hunting Instruction of 16 June 1998; and
- Order n. 799 of the Ministry of Environmental Protection and Natural Resources validating the Regulation on the issuance of permits for hunting and capture of endangered species listed in the Red Book of the Russian Federation of 3 September 2003 (consolidated on 28 June 2006).

Other relevant laws, decrees and orders include:

- Ministerial Decree n. 48 validating the Regulation on State natural reserves of 18 December 1991 (as amended by Ministerial Decree n. 527 of 23 April 1996);
- Order n. 14 of the Ministry of Environmental Protection and Natural Resources validating General Regulation on Federal Nature Reserves of 25 January 1993;
- Ministerial Decree n. 593 on setting up the Department of Conservation and Rational Use of Wildlife Species at the Ministry of Agriculture of 23 June 1993;
- Ministerial Decree n. 769 regarding the validation of the Regulation on National Parks of 10 August 1993;
- Ministerial Decree n. 669 regarding the arrangements for the implementation of Convention on Biological Diversity of 1 July 1995;
- Order n. 40 of the Ministry of Environmental Protection and Natural Resources regarding validation of the Regulation on the modalities of decision-making concerning issuing licenses for exporting wildlife and plant issued by the Ministry of External Economic Relations of 5 February 1996;
- Ministerial Decree n. 156 regarding the modalities of issuing permits (administrative license) for the management of wildlife species listed in the Red Book of the Russian Federation of 19 February 1996, as amended by Ministerial Decree n. 240 regarding amendments of some wildlife regulations of 24 April 2003;
- Order n. 109 of the Ministry of Environmental Protection and Natural Resources regarding arrangements for the implementation of the Ministerial Decree n. 156 regarding the modalities of issuing permits (administrative license) for the management of wildlife species recorded in the Red Book of the Russian Federation of 26 March 1996;
- Ministerial Decree n. 158 on the Red Book of the Russian Federation of 26 February 1996; Order n. 119 of the Ministry of Environmental Protection and Natural Resources regarding the arrangements for the implementation of the provisions of Ministerial Decree n. 158 of 1996 on the Red Book of the Russian Federation of 29 March 1996;
- Ministerial Decree n. 997 validating the Requirements for the prevention of annihilation of wildlife species in working processes, in the process of exploitation of arterial roads, pipe-lines, communication lines and power lines of 13 August 1996;
- Ministerial Decree n. 1574 regarding the modalities of issuing long-term licenses for wildlife biodiversity of 27 December 1996;
- Ministerial Decree n. 1010 on strengthening the protection of wildlife species and their natural habitat on forest lands of 13 August 1997;
- Ministerial Decree n. 67 regarding special authorized State institutions in the field of protection, control and regulation of wildlife species and their natural habitats of 19 January 1998;
- Order n. 569 of the Ministry of Agriculture regarding the validation of the Regulation on the modalities of issuing long-term licenses of 26 June 2000 (as amended by Order n. 678 of the Ministry of Agriculture of 29 December 2007);
- Federal Law n. 104-FZ on general principles of organization of communities of sparsely distributed indigenous population of the North, of Siberia and of the Far East of the Russian Federation of 20 July 2000;
- Ministerial Decree n. 901 regarding the validation of the Statute of the Ministry of Agriculture of 29 November 2000;
- Federal Law n. 49-FZ on territories of traditional nature management of sparsely distributed indigenous populations of the North, Siberia and the Far East of 7 May 2001;
- Ministerial Decree n. 170 regarding the sphere of competence of the Federal Forestry Agency of 6 April 2004;
- Ministerial Decree n. 183 regarding the sphere of competence of the Federal Agency on Agriculture of 7 April 2004;
- Ministerial Decree n. 400 validating the Regulation on the Federal Service for Nature Management Supervision of 30 July 2004 (consolidated on 24 May 2007);
- Order n. 9 of the Ministry of Natural Resources regarding the issuance of authorizations by the Federal Service for Nature Management Supervision of 2 September 2004;

- Ministerial Decree n. 303 delineating the mandate of Federal executive bodies in the sphere of biological and chemical protection of the national territory of 16 May 2005;
- Ministerial Decree n. 404 validating the Regulation on the Ministry of Environmental Protection and Natural Resources of 29 May 2008;
- Ministerial Decree n. 450 validating the Regulation on the Ministry of Agriculture of 12 June 2008; and
- Ministerial Decree n. 843 validating the Regulation on State control in the sphere of protection, stock enhancement and management of wild fauna and its natural habitats of 24 November 2008.

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

Wildlife within the territory of the Russian Federation is the **property** of the State. In particular, rare and endangered species, species inhabiting protected areas (PAs) of federal significance, species that are covered by international treaties concluded by the Russian Federation, particularly protected and valuable species, and migratory species on the Federation's territory, are **federal property**. However, wild animals that are removed from their natural habitats in accordance with established procedures may pertain to **private and other forms of property** (Wildlife Law, art. 4).

The Government bodies authorized to exercise owner's rights on behalf of the Russian Federation and of the subjects of the Russian Federation may allocate **legal entities** rights for **long-term use** of wildlife, through long-term licenses, and to **citizens for short-term use**, through personal one-time licenses (Wildlife Law, art. 33). The competent State body for the protection, supervision and regulation of the use of wildlife and natural habitats (State wildlife management bodies) may allocate the right to use **wildlife pertaining to federal property** in accordance with a decision by the Government of the Federation, and the right to use **wildlife not pertaining to federal property** in accordance with the decision of the executive body of a subject of the Russian Federation[96] (hereinafter, regional government) (Wildlife Law, art. 36).

Long-term licenses are issued by the State wildlife management bodies, in accordance with the decision of the Federal Government or the regional government. Applications for such licenses are submitted to the regional government, which shall make decisions on concessions of areas for wildlife use, in accordance with the conclusions reached by the corresponding State wildlife management bodies, and after coordination with landowners, forest owners and other relevant State bodies. Tenders for wildlife use and use of relevant areas are to be organized and carried out by the regional government, jointly with State wildlife management bodies, publicly in order to ensure consideration of the interests of the local population. The regional government and wildlife users shall then conclude an agreement on the allocated use of wildlife (Wildlife Law, arts. 36-38). **Personal one-time licenses** are issued by the State wildlife management bodies (Wildlife Law, art. 37).

Ministerial Decree n. 1574 of 1996, which implements the Wildlife Law, establishes that long-term licenses can be issued by the **Ministry of Agriculture** for **wildlife species designed for hunting**, and by the **State Committee for Environmental Protection** for species **not designed for hunting**. Order n. 569 of the Ministry of Agriculture of 2000 (as amended in 2007), which implements the Wildlife Law and Ministerial Decree n. 1574 of 1996, sets out a detailed procedure in this regard. It establishes that the applicant for a long-term license must submit to the regional government an "ecological substantiation" containing, among others, plans for protection, reproduction and use of wildlife on the area applied for. The licensing authority must then prepare an "expert opinion" on the possibility of issuing the license and establish conditions for wildlife use. The regional government decides on the allocation of the area, in accordance with the conclusion

[96] The expression "subjects of the Russian Federation" includes different legal entities that are part of the Federation, according to the federal structure outlined in the Constitution.

of the corresponding licensing body, after coordination with landowners and forest owners in the indicated territory. The concession may be issued against the payment of a fee or free of charge in accordance with legislation.

Types of wildlife use include: hunting, capture of wildlife that is not designated for hunting, use of properties and products deriving from the vital functions of wildlife, as well as wildlife use for scientific, cultural, educational, recreational and aesthetic purposes (Wildlife Law, art. 34).

Wildlife use can be carried out with or without the removal of animals from their natural habitats. A list of **animals that cannot be removed from their habitats** without a license is established by the competent State bodies (Wildlife Law, art. 34). The right to remove and use these animals is to be allocated against the payment of a fee established by the regional government in accordance with the procedure and within the limits established by the Federal Government. Wildlife that is not included in the above-mentioned list may be used free of charge if it is not subject to a license or permit (Wildlife Law, art. 35).

Hunting is regulated by articles 40-41 of the Wildlife Law, and several other orders, regulations and decrees (see 2.1.2 and 5.2.3.1 below). The **capture of wildlife that is not designed for hunting** may be authorized through permits issued by the State wildlife management bodies (Wildlife Law, art. 43). Use of wildlife for **scientific, cultural, educational, recreational and aesthetic purposes without removal** of animals from their habitats is free of charge and does not require special permits if it is carried out without damaging wildlife and its habitats and does not infringe the rights of other wildlife users, landowners or forest owners. The **same type of use with removal** of animals from their habitats is instead subject to permission by the State wildlife management bodies, and it is free of charge or subject to the payment of a fee in accordance with articles 34-35 of the Wildlife Law as indicated above (Wildlife Law, art. 44). **Use of the properties deriving from the vital functions of wildlife** must be authorized even when it does not entail the removal of animals from their habitats, except for cases established by legislation (Wildlife Law, art. 45). Obtaining **products deriving from the vital functions of wildlife** is allowed if it does not entail the removal of animals from their habitats or the disturbance of their natural habitat. Rules on such use must be established by State wildlife management bodies (Wildlife Law, art. 46).

For the conservation of wildlife and habitats, certain **wildlife uses may be restricted, suspended or completely prohibited** in certain areas or for certain periods by decision of the federal government or regional government within their sphere of their respective competence, upon a proposal by State wildlife management bodies. For the same purposes, types of wildlife use may be **changed** and the removal of animals from their habitats may be prohibited (Wildlife Law, arts. 21 and 40).

Rights over wildlife must be exercised within the **conditions** and **limits** established by the law, the respective license and contract for wildlife use and in compliance with other federal and territorial standards, rules, limits and norms (Wildlife Law, arts. 33 and 35). **Specific rights and duties of users** are explicitly established by the Wildlife Law. These include: ownership rights over wild animals and their products; the right to issue personal one-time licenses for wildlife use according to established norms, quotas and limits; and the duty to prevent disturbance or deterioration of wildlife habitat, to ensure protection of wildlife, and to adopt "humane" methods in using wildlife (Wildlife Law, art. 40). Users' rights shall cease in specific cases established by the law (Wildlife Law, art. 47).

2.1.2 Institutional Set-up

The **Law on Environmental Protection** establishes that the Federal Government is competent, *inter alia*, for setting up PAs of federal significance, ensuring management of nature reserves and sanctuaries, and keeping the Red Book of the Russian Federation.

According to the Wildlife Law, **State management** in the field of protection and use of wildlife is to be carried out by the President of the Russian Federation, the Federal Government, regional government and competent State bodies (Wildlife Law, art. 11).

Federal bodies in charge of wildlife management have, among others, the following competences (Wildlife Law, art. 5):
- state policy-making and law-making, setting federal standards, rules, limits and norms;
- coordinating actions by regional governments;
- organizing and implementing protection, supervision and regulation of the use of wildlife qualified as federal property and its natural habitat;
- establishing procedures for issuing licenses for the use of wildlife qualified as federal property, and of procedures for wildlife trade;
- determining fees and quotas for wildlife use;
- implementing scientific and technical uniform policies;
- keeping the Red Book of the Russian Federation;
- participating in the creation of PAs;
- establishing a uniform system for wildlife surveyance, registration and monitoring;
- ensuring the implementation of State expertise, including State ecological expertise; and
- protecting rights and traditional way of life of sparsely distributed indigenous populations and ethnic communities.

State competent bodies for the protection, supervision and regulation of use of wildlife and natural habitats (**State wildlife management bodies**) consist of federal bodies and their local subdivisions, whose competence and structure is established by the Federal Government. Ministerial Decree n. 67 of 1998 establishes that the **Ministry of Agriculture**, the **State Committee for Environmental Protection**, the **Federal Forest Service**, the **Federal Frontier Service** and their local subdivisions are **State wildlife management bodies**. They shall ensure the protection and sustainable use of wildlife and natural habitats (Wildlife Law, art. 11). Basic functions of these State bodies include (Wildlife Law, art. 13):
- regulating, organizing, implementing, and supervising the protection and use of wildlife and natural habitats;
- organizing and maintaing State wildlife records and inventory, and monitoring wildlife;
- maintaining the Red Book of the Russian Federation;
- "rate setting" in the field of use and protection of wildlife and habitats;
- organizing State ecological expertise;
- implementing international cooperation in the field of wildlife management; and
- implementing international treaties concluded by the Russian Federation in the field of protection and use of wildlife.

Competence and procedures of State wildlife management bodies are established by the Federal Government (Wildlife Law, arts. 16 and 19).

Regional bodies in charge of wildlife management have, among others, the following competences (Wildlife Law, art. 6):
- adopting laws and other legal acts within their competence;
- participating in the elaboration and implementation of federal programmes, and implementing local programmes on management and sustainable use of wildlife and habitats;
- setting local standards, rules, limits and norms;
- allocating rights of use of wildlife pertaining to their property;
- taking into account the interests of wildlife users with those of users of other natural resources;
- ensuring wildlife and natural habitat protection;
- keeping their Red Book;
- organizing and keeping State records of wildlife;
- introducing restrictions on wildlife use for protection purposes;
- creating PAs and ensuring supervision over wildlife use within their sphere of competence;
- implementing State expertise; and

• ensuring protection of the rights of the indigenous population, their traditional way of life, and their traditional methods of wildlife use.

Local self-government bodies may also be vested by law with certain State powers in the sphere of protection and use of the objects of wildlife in accordance with legislation (Wildlife Law, art. 8).

Ministerial Decree n. 669 of 1995 establishes that the **Ministry of Environmental Protection and Natural Resources** is the authorized institution for the implementation of the Convention on Biological Diversity (CBD) in the Russian Federation. To this end, an Inter-departmental Commission is also established for the purpose of coordinating activities of federal and regional executive bodies to ensure the sustainable use and conservation of biological resources and the "ecologically safe" management of wildlife. The Ministry of Environmental Protection and Natural Resources is the federal executive body responsible for the elaboration of State policy and normative and legal acts in the field of management and protection of natural resources, including wildlife (except for game) and their natural habitats. The Ministry shall adopt legislative acts in the following spheres: State nature reserves, national parks, State nature sanctuaries, State nature biosphere reserves and nature monuments of federal significance; and regulation of wildlife population (except for game) (Ministerial Decree n. 404 of 2008).

According to Ministerial Decree n. 1010 of 1997, the **Federal Forest Agency** and its local branches are responsible to carry out protection of wildlife and habitats on forest lands, in coordination with other authorized State institutions for wildlife management, and on PAs under the jurisdiction of the Agency. The Federal Forestry Agency must ensure the sustainable management of wildlife, except for wildlife designated for hunting (Ministerial Decree n. 170 of 2004).

The **Ministry of Agriculture** appears to be the main institution in charge of game management. As the authorized State body for the protection, control and regulation of the use of game and its natural habiats (Ministerial Decree n. 1574 of 1996 and Order n. 569 of the Ministry of Agriculture of 2000 - see 2.1.1 above; and Ministerial Decree n. 901 of 2000), the Ministry of Agriculture has, among others, the following tasks:
• implementing State policy, and ensuring management and control in the filed of protection, reproduction and management of game and its natural habitats;
• managing State nature reserves under the jurisdiction of the Ministry;
• ensuring management of wildlife, game husbandry and supervision over hunting economies under its competence;
• jointly with the Ministry of Natural Resources, "rate setting" in the field of management and protection of game and natural habitats,
• validating hunting rules, norms, limits, standards, instructions, methodical, normative and technical documents;
• ensuring surveying, registration and monitoring of game;
• setting jointly with the Ministry of Natural Resources hunting quotas and the list of animals who cannot be removed from their habitats without license;
• restricting or suspending wildlife use; and
• issuing long-term, personal one-time and general licenses for the use of game, hunting permits and establishing the procedure for their issuance.

Previously, Ministerial Decree n. 593 of 1993 established, within the Ministry of Agriculture, a Department for the Conservation and Rational Use of Wildlife Species to supervise the application of regulations on hunting and to issue hunting authorizations and hunting permits. The subsequent Regulation of the Ministry of Agriculture on the Hunting Department of 1994, established within the Ministry of Agriculture, a Department for the Protection and Rational Use of Game (**Hunting Department**) as a special State institution whose activity is coordinated by the Ministry of Environmental Protection and Natural Resources. The Hunting Department is in charge of game management comprehensively (including elaboration of

arrangements for sustainable game management; supervision over compliance with hunting rules and their enforcement; issuance of hunting permits and license; elaboration of hunting legislation and rules; establishment of quotas, identification, jointly with the Ministry of Environmental Protection and Natural Resources, of the list of wildlife designated for hunting; validation of areas allocated for commercial hunting; and game protection). Neither the Decree of 1993 nor the Regulation of 1994 have been repealed explicitly, therefore it is unclear whether the Department is still the competent entity within the Ministry of Agriculture.

Moreover, according to the more recent Ministerial Decree n. 183 of 2004, the **Federal Agriculture Agency** within the Ministry of Agriculture is to carry out monitoring of game and ensure the protection, reproduction, use, introduction, repopulation, hybridization, keeping and breeding in semi-captive conditions of game. According to the subsequent Ministerial Decree n. 450 of 2008, the **Ministry of Agriculture** is in charge, among others, of the: protection, conservation and reproduction of game (except for those animals inhabiting PAs or listed in the Red Book) and their natural habitats, adoption of hunting regulations, State surveys, registration and monitoring of game, and game management in captive and semi-captive conditions.

Ministerial Decree n. 161 of 2004 establishes that the **Federal Service for Nature Management Supervision** carries out State supervision over the use and reproduction of wildlife and its habitats; compliance with the legislation on game in PAs; the organization and functioning of PAs of federal significance; and compliance of license holders with licensing terms and conditions. The Service is also responsible for the issuance of permits and licenses concerning trade of wild animals species listed in Red Book of the Russian Federation. According to the subsequent Ministerial Decree n. 400 of 2004, the Federal Service for Nature Management Supervision is to control and supervise the protection, management and reproduction of wildlife not designated for hunting and its habitats, as well as over the organization and functioning of PAs of federal significance. It is also to carry out functions of the administrative body for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service issues licenses for: obtaining and trading objects of wildlife listed in the Red Book; obtaining products from wildlife species that are not designated for hunting; keeping and breeding in semi-captive and artificial environments wildlife that is not hunting; international trade of zoological collections, wild animals, their parts and derivatives (except for game), and endangered wild fauna; and exporting wild animals. The Service also supervises and controls protection and management of wildlife not designated for hunting and its habitats (Ministerial Decree n. 303 of 2005).

2.2. Wildlife Management

The **Law on Environment Protection** establishes that wildlife should benefit from environmental protection against destruction, degradation or negative environmental impact and that environmental quality standards must be set for the purpose of conservation of natural ecosystems and wildlife.

The Wildlife Law lists a series of **basic principles** for wildlife management and habitat conservation to be followed by public authorities. These include ensuring the **long-term existence** and **sustainable use** of wildlife, **avoiding cruel treatment** of animals and the prevalence of the international law over conflicting national rules in this field (Wildlife Law, art. 12).

Legal entities and citizens guilty of offences listed in the Wildlife Law are generally subject to **civil, administrative and criminal liability** in accordance with legislation (Wildlife Law, art. 55). The same entities that have caused damage to wildlife and its habitats must provide due **compensation** (Wildlife Law, art. 56). Wild animals that have been illegally removed from their natural habitats must be seized or **confiscated** and reintroduced into their natural habitats. All legal **transactions** involving wildlife in violation of legislation must be invalidated (Wildlife Law, arts. 56 and 58-59). The Wildlife Law lists also **economic incentives** that may be adopted to encourage proper management and protection of wildlife (e.g. tax privileges and other preferential terms accorded to legal entities and citizens ensuring protection, reproduction and sustainable use of wildlife, or concession to legal entities of preferential credits to carry

out arrangements for the protection and reproduction of wildlife). The functioning of such system of economic incentives is to be ensured by special legislation (Wildlife Law, art. 54).

2.2.1. Management Planning

State **inventory** and **cadastre** of wildlife (including data on population, geographic distribution, habitat characteristics, and wildlife use) and State **monitoring** of wildlife, are carried out by State wildlife management bodies in accordance with procedures adopted by the Federal Government (Wildlife Law, arts. 5 and 13-15).

The elaboration and implementation of special **State programmes** for the protection of wildlife and its habitats are to be carried out. Federal programmes are to be adopted by the Federal Government, while territorial and local programmes are to be elaborated and implemented in accordance with the procedures envisaged by legislation (Wildlife Law, art. 18).

The **organization of wildlife protection** is to be carried out by the Federal Government, regional governments and local self-governments within their respective sphere of competence (Wildlife Law, arts. 5-6 and 19), as well as by State wildlife management bodies (Wildlife Law, art. 13).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

Rare and endangered wildlife must be listed in the **Red Book** of the Russian Federation and (or) Red Books of the subjects of the Russian Federation (Law on Environmental Protection). The Red Book is kept by the Ministry of Environmental Protection and Natural Resources on the basis of periodically updated data. The Ministry of Environmental Protection and Natural Resources, in coordination with the Ministry of Agriculture, the Federal Fisheries Committee, the Federal Forest Agency, regional governments and the Russian Academy of Sciences, makes decisions on whether to record or remove wildlife from the Red Book as well as on modalities and measures for their protection (Ministerial Decree n. 158 of 1996).

The economic use of listed species and activities leading to the **reduction of their numbers** or **degradation of their habitats** isprohibited (Law on Environmental Protection; Wildlife Law, art. 24). Legal entities and citizens carrying out **economic activities on areas inhabited by listed species** are responsible for their conservation in accordance with the law. Regional governments must create the necessary conditions for the **conservation and breeding** of listed species (including through the creation of zoological parks and breeding reserves). **Keeping** the listed species in captivity and releasing them into the environment have to be authorized in exceptional cases established by the Federal Government (Wildlife Law, art. 24).

Trade of wildlife listed in Red Book can be carried out in exceptional cases through a permit issued by the authorized State body for environmental protection, in accordance with the procedure envisaged by the Federal Government (Wildlife Law, art. 24). Import, transit and transport through the territory of the Russian Federation, and also transactions of rare and endangered animals covered by international agreements to which the Russian Federation is a party, are regulated by legislation in accordance with globally accepted principles and norms of international law (Law on Environmental Protection). Detailed procedural requirements for trade in species listed under CITES are provided in few orders of the Ministry of Environmental Protection and Natural Resources. These include, in case of export, the duty to obtain an authorization issued by the Ministry of Environmental Protection and Natural Resources and, in case of import, the duty to obtain and carry documents attesting the legality of its import. Export of hunting trophies and samples of wildlife that is not listed under CITES nor listed in the Red Book for non-commercial purpose may be permitted by the local branches of environmental institutions (Order n. 40 of the Ministry of Natural Resources of 1996). The Federal Service for Nature Management Supervision serves as CITES

administrative body and issues authorizations for export, import and re-export of animals and derivates covered by the treaty (Ministerial Decree n. 400 of 2004; Order n. 9 of the Ministry of Natural Resources of 2004).

Legal and natural persons interested in the **management of wildlife species listed in the Red Book** may apply to the Ministry of Environmental Protection and Natural Resources to obtain a permit to this end; in particular, the Department for the Protection of Biological Resources issues such permits (Ministerial Decree n. 156 of 1996, as amended; Order n. 109 of the Ministry of Environmental Protection and Natural Resources of 1996). **Hunting** and **removal** from natural habitat of Red Book-listed wildlife may be authorized, by the same Department, only in exceptional cases and in accordance with the modalities established by legislation (Ministerial Decree n. 158 of 1996; Order n. 119 of the Ministry of Environmental Protection and Natural Resources of 1996). According to Ministerial Decree n. 13 of 1997, as amended, **obtaining** endangered wildlife species is subject to an authorization issued by the Ministry of Environmental Protection and Natural Resources, which is also entitled to elaborate and validate regulations regarding the modalities of issuing hunting licensees for endangered species. **Seasons and methods of hunting** of endangered species may be established, provided that they are not harmful to natural populations of the species and their natural habitats and that they ensure selectivity and reduce physical and psychological trauma for the animals. Order n. 9 of the Ministry of Environmental Protection and Natural Resources of 2004 states that hunting and capture of endangered species can only be carried out with hunting authorizations issued by the Federal Service for Nature Management Supervision. Hunting and capture of endangered species may be authorized only in exceptional cases, for the purpose of species conservation, regulation of their number, protection of human health, prevention of diseases of agricultural and domestic animals, and for traditional needs of sparsely distributed indigenous population (Ministerial Decree n. 314 of 2008 amending Ministerial Decree n. 13 of 1997). Hunting and capture of endangered wildlife on the territory of PAs must be coordinated with the PA administrative authorities.

Rare and endangered species, particularly economically valuable species and species of special scientific interest are protected in specific **"protected grounds"** within PAs (Wildlife Law, art. 22) (see 5.2.2.2.a).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

According to the Law on PAs of 1995, **PAs shall be be classified** as follows:
- State nature reserves, including biosphere reserves;
- national parks;
- natural parks;
- State nature sanctuaries;
- natural monuments;
- forest reserves and botanical gardens; and
- health-improving areas and health resorts.

PAs may be of federal, regional and local significance. **State management** and control over PAs of federal significance is ensured by the Government and State environmental protection institutions. State management and control over State nature reserves, natural monuments, forest reserves, and botanical gardens, health-improving areas and health resorts of regional significance is ensured by regional governmnets and by State environmental protection institution (Law on PAs).

State nature reserves may be devoted to the conservation and reproduction of rare and endangered animal species, including species of economic, scientific and cultural value, in combination with limited management of other natural resources (Law on PAs; Order n. 14 of the Ministry of Environmental Protection and Natural Resources of 1993). Management of State nature reserves is carried out by the State

environmental protection body, that appoints directors to this end (Ministerial Decree n. 48 of 1991). Protected wildlife species are not subject to any economic exploitation in these areas (Law on PAs). Commercial, sport and artisanal hunting and all other uses of wildlife (except for cases envisaged by the law and other regulations), as well as the introduction of alien species, are prohibited in such reserves (Ministerial Decree n. 48 of 1991; Order n. 14 of the Ministry of Environmental Protection and Natural Resources of 1993). Capture of animals for scientific and regulatory purposes is subject to a permit issued by the State bodies under whose jurisdiction the nature reserves are placed (Ministerial Decree n. 48 of 1991). According to Order n. 24 of 1992 of the Ministry of Environmental Protection and Natural Resources, hunting and capture of wild animals on the territory of State wildlife reserves can be carried out in accordance with orders and permits issued by Directors of State wildlife reserves, on the basis of special authorizations issued by the Department of Wildlife Reserves subordinated to the Ministry of Environmental Protection and Natural Resources.

Any activity that may damage wildlife, including commercial hunting, is prohibited within **national parks** (Law on PAs). According to Ministerial Decree n. 769 of 1993, **management** of national parks is carried out by the authorized State bodies established by the Council of Ministers, which appoints park directors to that end. Within such parks, functional areas for sport and artisanal hunting may be established, while the introduction of alien species is prohibited.

The **Federal Service for Nature Management Supervision** is responsible for State control of PAs regarding issues that are not specifically regulated by PA legislation, in order to ensure the observance of national and regional legislation on protection and management of wild fauna and its natural habitats (Ministerial Decree n. 843 of 2008).

"Protected grounds" of local significance, within PAs, can be established (upon a proposal by State wildlife management bodies) for the reproduction, feeding, resting and migration of rare and endangered species, particularly economically valuable species and species of special scientific interest. Economic activities on such protected grounds can be prohibited or regulated if they disturb the reproduction, feeding, rest and migration of rare and endangered species (Wildlife Law, art. 22).

2.2.2.2.b) Habitat Protection outside Protected Areas

The Law on Environmental Protection prohibits any activity that could cause degradation of natural ecosystems. Any activity entailing the alteration of habitats, migration routes, and of reproduction, feeding and resting grounds can only be carried out in compliance with requirements ensuring wildlife protection. More specifically, in carrying out certain listed activities (e.g. the construction of residential areas, airfields, railway lines, highways, pipelines and dams, the introduction of new technological processes, land reclamation, forest use, mining or designation of tourist routes) and other economic activities, arrangements must be put in place for the conservation of habitats, migration routes, feeding, resting, breeding and wintering grounds, and areas of permanent concentration for wildlife. Moreover, economic activities related to wildlife use can only be carried out in such a way that habitats are not deteriorated (Wildlife Law, art. 22).

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

2.2.3.1. Limitation and Regulation of Hunting

A **list of wildlife species designated for hunting**, as well as numbers, types and quality of the products obtained from game must be compiled by the State wildlife management body in agreement with regional governments, and must be validated by the Federal Government (Wildlife Law, art. 41). The **Hunting Department** of the Ministry of Agriculture, as the competent State wildlife management body (Model Hunting Regulation, para. 21) elaborates **rules,** determines **seasons** and compiles lists of authorized **hunting**

gear and hunting methods (Wildlife Law, art. 40). Specifically, use of leg-gripping traps is prohibited by the Wildlife Law (art. 40). The **Model Hunting Regulation** lists other specifically prohibited hunting gear and hunting methods (paras. 22-33), specific hunting seasons and other detailed procedures to be followed while hunting for specific species (paras. 34 and following).

The Regulation distinguishes between commercial hunting, amateur and sport hunting (which is characterized by the use of hunting products for the hunter's individual needs) (Model Hunting Regulation, para. 5), and hunting for scientific research, cultural, educational, aesthetic and economic purposes (Model Hunting Regulation, para. 19). Hunting is permitted on condition that the hunter holds a **hunting permit** (issued by State hunting management bodies), a hunting **membership card** (issued by hunting associations), and either a special **authorization**, an authorization of the manager of hunting grounds, or an authorization from State hunting management bodies (Model Hunting Regulation, para. 12).

According to Ministerial Decree n. 1548 of 1960, as amended, **hunting grounds** (i.e. all natural habitats of wildlife species designated for hunting) may be assigned to the State, cooperatives and hunting associations, by the Councils of Ministers, upon recommendation by the Chief Directorate of Hunting and Wildlife Reserves, for a period of not less than 10 years. The same Chief Directorate establishes procedures for the allocation of hunting grounds, terms and conditions of allocation, procedures and modalities of hunting management, and common plans for stock enhancement, repopulation and capture of beneficial wild animals (Ministerial Decree n. 1548 of 1960), as well as to coordinate the elaboration of hunting regulations (Model Hunting Regulation, para. 97). Hunting in State, cooperative and hunting association hunting grounds is to be carried out in conformity with the conditions of the hunting permits issued by these organisations. Rights to hunt in other hunting grounds for general use may be granted to all citizens. Hunting in biosphere reserves, game reserves and "green areas" is prohibited (Ministerial Decree n. 1548 of 1960). According to Decree n. 146 of 1961 of the Chief Directorate of Hunting and Protected Areas, the Chief Directorate may issue hunting permits for scientific research or economic activity, which must be issued free of charge for all species except for hoofed animals (for which fees are instead applicable). The Decree of the Chief Directorate of Hunting and Protected Areas of 1971 establishes modalities of hunting of such hoofed animals.

"Artisanal" and sport hunting are to be carried out on the basis of:
- permits issued by hunting associations and other legal entities and natural persons, for hunting in hunting grounds managed by these entities, and
- permits issued by State hunting management bodies in other hunting grounds (Ministerial Decree n. 728 of 1993).

Permits for **hunting for scientific research purposes**, or for the implementation of programs for the **conservation and reproduction of wildlife** may be issued for any area and for any season, and may envisage the use of prohibited hunting gear and prohibited hunting methods. In the latter cases a specific note shall be made within hunting permit (Fishing and Hunting Instruction of 1998).

Local hunting departments are to determine scientifically substantiated hunting **quotas** and supervise compliance therewith. They may impose **bans** on hunting in single hunting reserves or hunting single animal species (Order n. 438 of the Ministry of Agriculture of 1997).

Hunting and capture of wildlife in **PAs** is to be coordinated with the PA administration (Fishing and Hunting Instruction of 1998). Obtaining wildlife that is not designated for hunting nor listed in Red Book can be allowed subject to permits issued by local hunting management bodies (Fishing and Hunting Instruction of 1998). According to Order n. 302 of the Ministry of Agriculture of 1998, the Hunting Department (and its local branches), subordinated to the Ministry of Agriculture, is the authorized institution entitled to issue hunting authorization to **foreign hunters**.

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

The Law on Environmental Protection establishes that **breeding of alien animal species** can only be carried out on the basis of efficient arrangements for the prevention of their uncontrolled reproduction, a positive conclusion of State environmental audit and with a permit issued by federal executive bodies for environmental protection.

Introduction of wildlife into new habitats and the **resettlement** of fauna have to be authorized by the State wildlife management bodies, provided considerations of ecological safety recommended by the competent scientific organizations are met (Wildlife Law, art. 25).

Keeping and breeding wildlife in **semi-captive conditions** and **artificially created habitats** is subject to a license issued by State wildlife management bodies. Legal entities and citizens carrying out such activities have to ensure humane treatment of fauna and comply with applicable sanitary, veterinary and hygienical requirements. Non-compliance with these requirements entails administrative and criminal liability, and confiscation of the objects of wildlife (Wildlife Law, art. 26). **Zoological collections** regardless of their form of ownership, are subject to State registration. Procedures for registration, storage, trade, export and import of such collections are established by the Federal Government (Wildlife Law, art. 29).

Legal entities and citizens have a duty to prevent diseases and loss of wildlife in the course of **agricultural and other potentially harmful industrial processes**. Certain specific activities (e.g burning of vegetation, and storage of toxic chemicals, fertilizers, wastes and other materials harmful to wildlife and its habitats) are prohibited unless specific arrangements are put in place ensuring prevention of diseases, loss of wildlife and habitat deterioration. Requirements to this end are elaborated by the State wildlife management body, and have to be validated by the Federal Government and regional governments (Wildlife Law, art. 28). Ministerial Decree n. 997 of 1996 further prohibits continuous fencing that interrupts mass **migratory routes** of wild animals.

2.2.3.3. Assessment of Processes Harmful to Wildlife

According to the Wildlife Law, a **State ecological expertise** is to be carried out in accordance with relevant legislation, before the adoption by regional governments of economic decisions that may have an impact on wildlife and its habitats. Procedures for carrying out the ecological expertise are set by the Federal Government. State ecological expertise related to the protection and use of wildlife is to be carried out by State wildlife management bodies in accordance with federal laws and other normative acts of the subjects of the Russian Federation (Wildlife Law, art. 20).

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

The involvement of citizens and associations in decision-making related to the protection, reproduction and sustainable use of wildlife is among the **basic principles** of State wildlife management (Wildlife Law, art. 12). More specifically, citizens and legal entities, including social associations and religious organizations can **participate** in the conservation and use of wildlife and its habitats. They have the right to **receive information** from government bodies, carry out **public ecological expertise** and **public control**, contribute to the realization of **State programmes** and carry out **arrangements** for the protection of wildlife and habitats. Moreover, Government bodies, carrying out their duties in the field of protection and use of wildlife and habitats have to **take into consideration the proposals and recommendations** of citizens and legal entities. Finally, participation of international organizations and associations in the protection and sustainable use of wildlife is regulated by the international treaties concluded by the Russian Federation (Wildlife Law, art. 10).

2.3.2. Rights of Indigenous People, Local People and Traditional Users

Traditional users, indigenous populations and ethnic communities are granted **special rights**. Citizens whose subsistence and earnings are totally or partially dependent upon traditional ancestral systems (including hunting) have the **right to use, individually or collectively, traditional methods of wildlife use** (if such methods do not lead to the reduction of the number and sustainable reproduction of wildlife, do not disturb natural habitats, are not harmful to man and are not incompatible with the sustainable use of the wildlife). "Sparsely distributed" indigenous populations and ethnic communities whose culture and way of life include traditional methods of protection and use of wildlife, are granted **rights of priority use** of wildlife on their traditionally inhabited lands, including priority in the choice of hunting areas, preferences as regards hunting seasons, sex, age and number of the objects of wildlife authorized for hunting and other types of wildlife use in coordination with wildlife management bodies (Wildlife Law, arts. 9 and 48-49).

Special rights and procedures for indigenous peoples are also provided in the Model Hunting Regulation. Sparse indigenous populations of the North, other ethnic groups (the Komi, the Yakuts, the Buryats) and populations of other ethnicities inhabiting Northern areas and leading a nomadic life can be authorized to hunt all year round in all areas, using hunting gear as established by hunting regulations, for the purpose of ensuring family subsistence. They are further exonerated from the payment of license fees. The number of hunting licenses to be issued to a traditional hunter is established by the local councils of people's deputies, in consideration of the available wildlife stock in a given locality and the number of dependent family members of the hunter (Model Hunting Regulation, para. 98).

Sparsely distributed indigenous populations have the right to use traditional hunting methods (Fishing and Hunting Instruction of 1998) and can be granted the right to use wildlife for traditional economic activities (community management) and traditional hunting (Federal Law n. 104-FZ of 2000).

Traditional management is intended as historically developed methods of wildlife management ensuring sustainable use of wildlife by sparsely distributed indigenous populations of the North of Siberia and of the Far East of the Russian Federation. The area subject to traditional nature management is to be classified as a protected area of federal, regional and local significance by a decision of the Federal Government in agreement with the State bodies of the corresponding subjects of the Russian Federation, upon an application submitted by the representatives of sparsely distributed indigenous population. Within such territories, hunting grounds and hunter's bivouacs are allotted (Federal Law n. 49-FZ of 2001).

3. CONCLUSIONS

3.1. General Considerations

A few **positive elements** of the Russian legal framework on wildlife should be highlighted. The Wildlife Law is a very comprehensive instrument that covers almost all issues relating to wildlife management, thus facilitating the understanding of applicable legal rules in this area. As far as institutional set-up is concerned, attention is devoted to **inter-institutional coordination** by the Government (Wildlife Law, art. 5) through the establishment of an ad hoc commission for the coordination of activities for the implementation of the CBD (Ministerial Decree n. 669 of 1995). Unlike other countries of the region, relevant laws explicitly aim at **sustainable use** of wildlife (i.e. the use of wildlife which does not result in its exhaustion in the long term and preserves its reproduction ability - Wildlife Law, arts. 1-2 and 12). The **treatment of animals** is also taken into account: "humane" methods and treatment are required and physical and psychological trauma of animals must be reduced in the process of wildlife use (Wildlife Law, arts. 12, 26 and 40; Ministerial Decree n. 13 of 1997). The law also addresses **liability and compensation** for violation of wildlife-related norms (Wildlife Law, arts. 26, 55-56 and 58-59), and provides also for **economic incentives** to encourage compliance (Wildlife Law, art. 54). Management of **rare and endangered species** is addressed in detail, including through proper implementation of CITES (para. 5.2.2.1) and the involvement of scientific institutions to provide expert input in decision making (Order n. 799 of the Ministry of Natural Resources of 2003).

Another issue that is not always confronted in the region – namely, the **introduction of alien species**, is addressed in the Russian Federation legislation, which requires scientific considerations to be taken into account. In accordance with the **precautionary principle**, activities that are dangerous for wildlife and habitats are prohibited unless arrangements are taken in order to avoid harm. Finally, an attempt is made to address the issue of **public participation** in wildlife management (Wildlife Law, arts. 10 and 12), and the rights of **indigenous peoples, local and traditional users** are also specifically addressed (Wildlife Law, arts. 5-6, 9, 37 and 48-49; Model Hunting Regulation, para. 98; Federal Law n. 104-FZ of 2000; Federal Law n. 49-FZ of 2001; Order n. 799 of the Ministry of Natural Resources of 2003 and Ministerial Decree n. 314 of 2008).

Among the **negative aspects** of the Russian legal framework, one should mention the fact that there are **many overlaps between different instruments**, particularly in the field of institutional set-up, licensing and hunting. The relationship between these instruments is not always clear, especially as older instruments are seldom explicitly repealed, although they are sometimes amended or consolidated once newer instruments are adopted. As a consequence, in the above-mentioned fields, the overall legal framework appears fragmented and complicated by the unclear interaction between different layers of applicable instruments. Moreover, one should mention the scarce and excessively general provisions on the **assessment of processes harmful to wildlife**.

3.2. Detailed Recommendations

As far as **ownership of wildlife and related rights and obligations** are concerned:

- the procedure for the issuance of **long-term licenses** (Wildlife Law, arts. 36-38) is very detailed, but in some instances slightly unclear. In particular:
  - while there are express provisions on the involvement of more than one institution (State wildlife management bodies and the executive body of a subject of the Russian Federation), the logical sequence of the procedure and the exact role for each of the institutions mentioned is not spelt out clearly; and
  - while the Wildlife Law mentions the involvement of the Government or the executive body in the procedure, it regulates only the procedure involving the latter;
  - authorities in charge of authorizations for obtaining **products resulting from the vital functions of wildlife** and **use of useful properties of the vital functions of wildlife** are not identified. The legal framework should be integrated so as to fill this gap.

As far as the **institutional set-up** is concerned:

- while it is suggested that the **President** may have a role in wildlife management (Wildlife Law, art. 11), its functions are not further defined;
- the different overlapping instruments in the field of **hunting management** create confusion as to the precise institutional set-up relating to hunting management. According to some instruments, the entity in charge of management of hunting resources, including issuing licenses, is the Ministry of Agriculture (Ministerial Decree n. 1574 of 1996, Order n. 569 of 2000, Ministerial Decree n. 901 of 2000 and Ministerial Decree n. 450 of 2008); while according to others it is the Hunting Department within the same Ministry (Model Hunting Regulation of 1988, Ministerial Decree n. 593 of 1993, Regulation on the Hunting Department of 1994, Order n. 302 of 1998); and according to yet other instrument, it is the Federal Agriculture Agency (Ministerial Decree n. 183 of 2004). According to others, it is the Chief Directorate of Hunting and Protected Areas under the Council of Ministers (Ministerial Decree n. 1548 of 1960);
- the same problem may be highlighted as far as management of **wildlife not designated for hunting** is concerned (including issuing of licenses). In this regard, overlapping competences may be highlighted between the State Committee for Environmental Protection (Ministerial Decree n. 1574 of 1996), the Federal Forestry Agency (Ministerial Decree n. 170 of 2004), the Federal Service for Nature Management Supervision (Ministerial Decree n. 400 of 2004; Ministerial Decree n. 303 of 2005) and the Ministry of Environmental Protection and Natural Resources and Ecology (Ministerial Decree n. 404 of 2008).

As far as **management planning** is concerned, procedural details on the adoption of wildlife management plans, based on proper scientific input, should be introduced.

As far as **protection of specific species** is concerned, despite the very detailed legislation, two difficulties may arise in the institutional setting:

- the responsible institution for the implementation of **CITES** is the Ministry of Environmental Protection and Natural Resources according to Order n. 40 of the Ministry of Natural Resources of 1996, while it is the Federal Service for Nature Management Supervision according to Ministerial Decree n. 400 of 2004 and Order n. 9 of the Ministry of Natural Resources of 2004 (see 2.1.2 and 5.2.2.1 above). The solution adopted in the last two instruments is most probably the current one, but since previous instruments have not been explicitly repealed or amended by the subsequent ones, doubts may arise. A clarification in this regard is recommended; and
- the responsible institution for the issuance of permits for **hunting and capture of endangered species listed in the Red Book** is the Ministry of Environmental Protection and Natural Resources according to few instruments (Ministerial Decree n. 156 of 1996, as amended; Order n. 109 of the Ministry of Environmental Protection and Natural Resources of 1996; Ministerial Decree n. 158 of 1996; Order n. 119 of the Ministry of Environmental Protection and Natural Resources of 1996; Order n. 40 of the Ministry of Natural Resources of 1996; Ministerial Decree n. 13 of 1997, as amended), while it is the Federal Service for Nature Management Supervision according to others (Ministerial Decree n. 400 of 2004 and Order n. 9 of the Ministry of Natural Resources of 2004) (see 2.1.2 and 5.2.2.1 above). In this case, it is particularly confusing, as old instruments have been amended more recently than newer instruments (e.g. Ministerial Decree n. 13 of 1997 is older than Ministerial Decree n. 400 of 2004, but the former has been amended in 2008).

Consideration is given to **habitat protection outside protected areas**, but provisions seem excessively general to be effectively implemented. More detailed requirements and arrangements should be introduced.

Regulation of **hunting** is complicated by the coexistence and unclear interaction of several overlapping instruments, in particular Ministerial Decree n. 1548 of 1960 as amended in 1994, the Wildlife Law of 1995, and the Model Hunting Regulation of 1988, which was consolidated in 1995. A clarification of such relationship is strongly encouraged.

Legislation related to permits for **hunting for scientific research purposes**, or for the implementation of programs for the **conservation and reproduction of wildlife** is quite vague, and simply call for a specific justification to be included in the hunting permit (Fishing and Hunting Instruction of 1998). More specifications and procedural safeguards could be introduced to ensure that hunting for scientific research purposes becomes significantly detrimental for sustainable wildlife management.

As far as **people and wildlife** are concerned:

- **public participation** in wildlife management is addressed, including the right to receive information and to participate in decision making. However, these rights are regulated only generally, so more specific provisions and procedures should be introduced; and
- moreover, in regulating the **rights of indigenous people, local people and traditional users**, legal rules are vague possibly inherently contradictory with regards to the possibility of allowing traditional wildlife use systems (including hunting), as long as they do not lead to a (any?) reduction in the number of wild animals.

TAJIKISTAN

1. INTRODUCTION

The legal framework of the Republic of Tajikistan in the area of wildlife protection is based on three main instruments:

- the **1992 Law on Protection and Management of Wildlife** (amended by law n. 223 of 1996, law n. 488 of 1997 and by law n. 354 of 5 .January 2008) (Law on Wildlife), which regulates wildlife use, types and limitations on such use (arts. 15-16, 18 and 28-32).[97] It establishes the obligations of wildlife users and competent authorities (arts. 4-6, 38 and 59-64), as well as rules for the protection of rare and endangered species (arts. 47-49), habitats and migration routes (art. 43). It should be noted that such Law, however, does not cover wild animals in captivity or semi-captivity for economic, scientific or other purposes and protection of migratory species (art. 1);
- the **1993 Law on Environmental Protection** (amended by law n. 223 of 1996, law n. 30 of 2002, law n. 75 of 2002 and law n. 58 of 2004), which regulates the use of natural resources and other components of the environment, the responsibilities of different bodies (arts. 7-9), ecological requirements (arts. 38-53) and standardization (arts. 23-32), as well as economic measures (arts. 14-23). The Law deals also with protected areas (PAs), rare and endangered species (arts. 58 and 63) and public participation (arts. 69-72).
- the **1996 Law on Specially Protected Natural Areas** (Law on Protected Areas), which establishes rules for the management and protection of such areas including on institutional structure.[98]

Other relevant laws and decrees include:

- **1992 Ministerial Decree n. 362** providing the Regulation on the Ministry of Environmental Protection, which details the Ministry's responsibilities;
- the **1993 Forest Code** (amended by law n. 421 of 1997);[99]
- the **1996 Land Code** (amended by laws n. 498 of 1997, n. 746 of 1999, n. 15 of 2001, n. 23 of 2004 and n. 199 of 2006);
- the 1997 **Ministerial Decree n.** 324 on the arrangements for the improvement of hunting management;
- the **1999 Ministerial Decree n. 134** providing the Regulation on the State Forest Service;
- the **2003 Law on Ecological Expertise**.

Like in other countries of the region, several laws contain **safeguard clauses for international law**, according to which if provisions of national laws are in conflict with international agreements, the latter should prevail (Law on Protected Areas, art. 41; Law on Wildlife, art. 71). Moreover, the principle that national law is subordinate to international rules should be generally applicable, since it is embodied in the national Constitution.

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1Ownership of Wildlife and Related Rights and Obligations

According to the Law on Wildlife, wildlife is the **property of the State**, which ensures its protection and efficient management in the interest of the people (art. 2). The Law on Protected Areas establishes that "specially protected natural areas are the property of the State and common property of the people" (art. 3), but the law is silent about the legal status of wildlife upon such territories.

[97] Please note that the articles numbers of the Law on Wildlife refer to such Law as amended until 1997.

[98] The Law on Protected Areas has been amended in 2006. However, since the text is not available, it has not been possible to discuss it in detail in the present report.

[99] The Forest Code is in the process of being revised.

"Objects of wildlife" are managed by local authorities ("local Madjlis of deputies") which can allocate to citizens and organizations the **right to use** such objects without time limits. Priority for wildlife use is given to users of land plots, holders of hunting grounds, and other areas where the habitats of "animals that are not hunting objects" are located. The right to use wildlife within specified time limits (including its "renting", which is not defined) can be given to various State, private and foreign organizations or individuals (Law on Wildlife, art. 15), although the conditions and procedures upon which such right is granted are not included in the law.

The **property of wildlife as such can be transferred** as well: the right to own wildlife objects, on lands established for hunting, is given to those organizations for which such hunting grounds are established. Moreover, similarly to the allocation of use rights, "priority" for allocating the right to own wildlife objects in general is given to the owners of land plots, hunting grounds and areas where the habitats of animals that are not hunting objects are located (Law on Wildlife, art. 15). The law does not enter into the details of conditions and procedures for the granting of such rights.

A "competent State body" issues written **permits (including licenses)** to owners and users of wildlife, where their rights are acknowledged. Such owners and users are allowed to enter into **agreements with other third parties** to give the latter permits for the use of wildlife (art. 15). Objects of wildlife can also be **rented** by local authorities ("Madjlis of deputies"), owners and users of such objects. The terms of such renting are regulated by contract (art. 15).

General **limitations on the use of natural resources** relating to specific territories or to the amount of take can be established by the competent State bodies of environment protection (Law on Environmental Protection, art. 18). **Payments** are required for the right to use natural resources (including wildlife) as well as for the protection and reproduction of such resources, and penalties are envisaged for their use above established limits ("irrational use"). Levels of payments are established by the Government: part of the income is attributed to the national or local Funds for Nature Protection, which are created to cover unexpected expenses on environmental protection (arts. 19-20). Similar rules are found in the Law on Wildlife, according to which ownership and use of fauna are subject to a fee. The "renting fee" is based on an agreement between the parties. The payments go to the State or Local Funds and are meant for determining quotas, ensuring wildlife monitoring and other activities connected to wildlife preservation. An exception is provided for organizations, entities or citizens which own or use degraded hunting grounds and which need to contribute with their own financial resources to their reinstatement: for these subjects use is free. The same exception applies to some protected areas (PAs) (reserves, national and zoological parks and zoological gardens) (Law on Wildlife art. 18).

Wildlife use can be general (i.e. use of wildlife species and wildlife products without removal from their habitats) or special (i.e. use of wildlife species and wildlife products after such removal). Special use is subject to a license issued following the procedure established by national legislation and is subject to the payment of a fee. Authorizations for wildlife use are issued by authorized State institutions in agreement with local self-government institutions (Law on Wildlife). Several more specific **types of wildlife use** are defined, including hunting, the taking of animals that are not designated for hunting, use of animals for scientific, cultural, educational purposes and animal use to obtain "useful components of wildlife vital functions" (Law on Wildlife, art. 16). Organizations, institutions and citizens are allowed to take animals that are not designated for hunting with a special permit issued by the "competent State bodies for wildlife protection and management". A list of animals the taking of which is forbidden is also defined by the same State bodies (art. 28). The use of wild animals for scientific, education, aesthetic or cultural purposes, without removing them from their habitats, is allowed if it does not damage them or their habitats. The use for the same purposes, but with such removal, is allowed only with a permit issued by the competent State bodies for wildlife protection and management. This permit can only be issued to organizations and institutions having scientific, aesthetic, educational or cultural objectives (art. 30). Use of "useful components of wildlife's vital functions" is allowed without removing animals from their habitats (art. 31). Use of animals for the

obtaining of products from them is allowed only without removing them from their habitats and without destroying the latter. State competent bodies for wildlife protection and management further regulate such use (art. 32).

Wildlife user obligations are listed in the legislation, and include the preservation of habitats, the maintenance of animal reproduction reports, the registration of animal numbers and the preservation of animals not meant for use (Law on Wildlife, art. 37). The right to use and own objects of the "animal world" can be revoked by the State competent body in several specific cases (for instance, upon expiry of the term for use, due to the "systematic inobservance of the rules and requirements for management, reproduction and protection of wildlife", due to the failure to pay fees for wildlife use and the need to take measures to protect wildlife or other natural resources) (arts. 38 and 63).

2.1.2 Institutional Set-up

According to the Law on Wildlife (art. 6) and the Law on Protected Areas (art. 7), the **Ministry of Environmental Protection** is the competent body for the protection and management of wildlife and PAs. The responsibilities of the Ministry are also defined by the 1992 Ministerial Decree n. 362 validating the Regulation on the Ministry of Environmental Protection and include: establishing a common policy on the protection and use of fauna and PAs; providing ecological information to the public and other State organizations; developing standards and rules in the field of nature observation and use; developing environmental education programmes; setting up (together with other ministries) databases on the condition of nature and regulating the Red Book on rare and endangered species (arts. 5-6).

The "**State competent body for wildlife protection and management"** implements State control in the area of wildlife protection and management. It controls "the observance of the rules, norms, terms and other requirements for wildlife protection and management", develops activities for the preservation of habitats, migration routes and reproduction conditions, and performs other related duties (Law on Wildlife, art. 61). It is also responsible for the interruption or suspension of unauthorized and unlawful wildlife use and of activities that may damage reproduction sites or migratory routes (art. 63), for the adoption of rules on wildlife protection and management (art. 64) and of quotas for wildlife use, as well as for wildlife monitoring (Law on Wildlife).

Local authorities are responsible for the establishment of "ecological programmes" (Law on Environmental Protection, art. 9).

2.2. Wildlife Management

The Law on Environmental Protection establishes "**general requirements**" for natural resources use and fees for such use (art. 14). It envisages the setting by the Government of "**ecological standards**" (including standards on pollution, radiation, use of pesticides and other chemicals), i.e. the maximum level of negative impact on the environment that is allowed in order to guarantee the ecological safety of people and the preservation of natural resources, including wildlife (arts. 7 and 23-32). In addition, "**ecological requirements**" (including requirements for the protection of the environment or rational use of natural resources) are established for different types of construction works that can affect the environment (arts. 38-42) and for other activities, such as those in the agricultural and forestry sectors (for the forestry sector, for example, measures to protect wildlife are mandatory), or in city planning (special zones where economic activities are restricted are created around cities) (arts. 43-53).

The **conservation of biodiversity** in general is among the objectives of the Law on Wildlife (art. 1). The Law defines requirements for the rational use of wildlife, including the preservation of biodiversity, the protection of habitats of wild animals and the "scientifically grounded, rational use of the objects of the animal world" (art. 9). It further establishes obligations for citizens to prevent animal loss caused by the use

of vehicles or when performing other activities (art. 45). Requirements for wildlife protection shall be taken into account also when using fertilizers or chemicals. In order to prevent negative impacts on animals and their habitats, agricultural and forestry organizations shall follow rules for transportation and storage of such chemicals (Law on Wildlife, art. 53).

2.2.1. Management Planning

The legal framework in Tajikistan contains few rules on information and data collection for natural resources. According to the Law on Environmental Protection, a **State natural resource cadastre** is established, the management of which is under the competence of the "competent State body" (art. 8). The Law on Wildlife provides for rules in the field of monitoring and information gathering with specific reference to wildlife. **"Wildlife monitoring"** is defined as the observation, assessment and monitoring of wildlife and of its conditions, with the aim of preventing negative impacts on it. It is based on data provided by the State "**wildlife cadastre**", which contains information on quantity and types of animals as well as other useful data that must be gathered by organizations and institutions (Law on Wildlife, arts. 57-58 and 62). State registration of the number of wild animals on the national territory shall be carried out once every three years (Ministerial Decree n. 324). Finally, a **State Cadastre for Specially Protected Natural Areas** containing information such as geographical characteristics of areas, their regime, and information on environment users should also be established according to the **Law on Protected Areas** for the "assessment of the condition of Natural Reserved Fund of the Republic of Tajikistan" (Law on Wildlife, art. 11).

As far as planning is concerned, **a State ecological programme** of the Republic of Tajikistan as well as other **State, regional** and **local programmes** are established, in order to regulate the effective management of the environment and cover, *inter alia,* general measures to protect the environment and the rational use of natural resources (Law on Environmental Protection, art. 6). Ecological programmes are approved by local authorities (Law on Environmental Protection, arts. 8-9; Law on Protected Areas, art. 6), whereas regional, local and national programmes are developed by the "State competent body for environmental protection" (Law on Environmental Protection, arts. 8-9) and regulated by the Government (Law on Environmental Protection, art. 6).

Activities for the protection and rational use of wildlife are included in the "**prospects of economic development**" and shall be based on data deriving from monitoring or form the cadastres; the law mentions also "**prospects of protection and rational use of wildlife**", that are developed by ministries and other State bodies (Law on Wildlife, art. 8). **Other planning instruments** that must be developed by the Ministry of Environmental Protection include schemes for natural resources use; programmes on prevention and restoration of damage to the environment in relation to natural disasters, and control of their implementation; coordination of scientific programmes for the rational use of natural resources and the "prevention of negative influence of economic activities" (Ministerial Decree n. 362, art. 6).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

The Law on Wildlife envisages the adoption of the **Red Book** of the Republic of Tajikistan (by Ministerial Decree) for the protection of rare and endangered species. Economic and other uses of such species and activities that can reduce their numbers (Law on Environmental Protection, art. 61) as well as activities that can lead to loss or destruction of their habitats (Law on Wildlife, art. 47) are forbidden. Organizations and other users of lands and territories where habitats of such species are located are obliged to protect the rare and endangered species therein (Law on Environmental Protection, art. 61). Moreover, if natural reproduction of such species is impossible, the competent State bodies for wildlife protection and management are obliged to create the necessary conditions for their breeding (Law on Wildlife, art. 48). The taking of migratory, rare and endangered species for breeding and further liberation into natural habitats and for scientific and

other purposes is allowed with a special permit issued by the competent State bodies for wildlife protection and management (art. 49).

The **trade** of fauna objects included in the Red Book is not comprehensively disciplined: relevant legal instruments seem to limit themeselves to list required documentation in this regard (1999 Ministerial Regulation n. 309 regarding adoption of the Temporal List of required documents for export/import operations in Republic of Tajikistan by Customs Committee).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

To protect biodiversity, the legal framework of Tajikistan establishes different types of **"specially protected natural areas"** or areas that have special ecological, scientific, cultural and aesthetical value. These areas are under a special protection regime whereby economic exploitation is partially or completely prohibited. All such territories form the **Natural Reserved Fund** of the Republic of Tajikistan (Law on Protected Areas, art. 2).

PAs are **administered** by the Ministry of the Environment, which also creates, organizes and manages their monitoring (Law on Protected Areas, art. 5), whereas local authorities are responsible for the development of ecological programmes for such areas (art. 6). According to article 8 of the Law on Protected Areas, "the planning of protection and management measures for specially protected areas are presented in the programmes, prospects for social and economic development, based on the State ecological programme and general plan for economic and production development and allocation".

Hunting and other activities that are incompatible with the objectives of reserves are forbidden therein, and in other PAs specific use of wildlife and other activities that are incompatible with the objectives of the areas can be restricted or prohibited (Law on Wildlife; Law on Protected Areas, art. 46). According to the Land Code, any activity that is incompatible with the aims of certain PAs (reserves, national and forest sanctuaries, botanical gardens, wilderness areas, except for hunting wilderness areas, and natural monuments) are forbidden (art. 88).

Buffer zones ("Guarding zones") can be created around PAs. In such zones, economic activities are planned taking into account PAs and can be restricted or prohibited (Law on Protected Areas, art. 2). "Guarding zones" are provided also for some PAs (reserves, national and forest sanctuaries, botanical gardens and wilderness areas except for hunting wilderness areas) in the Land Code, which establishes that activities that can negatively affect the preservation of the areas are forbidden therein (art. 88).

The Law on Protected Areas creates a detailed regime for the different **categories of PAs** (art. 2):

- **"State natural reserves"** (including **"State biospheres"** and **"biosphere reserves"** listed in the UNESCO international system of biosphere reserves[100]) are created with governmental decisions for the preservation of, *inter alia,* biodiversity, natural processes and phenomena or wild fauna. Natural resources located in the reserves belong to the State on a permanent basis and cannot be rented. The bodies that control such PAs also regulate the use of the resources (Law on Protected Areas, arts. 13-16). According to the Law on Environmental Protection, economic exploitation of reserves is prohibited on a permanent basis (art. 59), whereas the Law on Protected Areas establishes that economic and other activities that can negatively affect the environment and that are incompatible with the objectives of the reserve are forbidden. Some activities, such as scientific ones, those connected to fire prevention and to environmental protection are explicitly allowed, while visiting reserves is subject to a special permit (Law on Protected Areas, arts. 18-19). An Environmental Impact Assessment for activities that can harm reserves and/or their buffer zones is required (Law on Protected Areas, art. 14). If biosphere reserves are created in populated areas, special

[100] No such biosphere reserves have been established yet in practice.

territories can be allocated for traditional use of nature. Within buffer zones, economic and other activities that can harm natural resources within the reserves are forbidden. Construction works and other economic activities on the territories adjacent to the reserves must be undertaken in coordination with competent bodies for environmental protection (Law on Protected Areas, art. 18).

- **State national and regional natural parks** are "nature protection enterprises" that have a special ecological, historical and aesthetic value and that are created (by decisions of the Government or of local authorities, respectively) for environmental protection, recreational, educational, scientific, aesthetic and cultural purposes (Law on Protected Areas, arts. 20-21). National parks are divided into "reserved zones" (to which the regime of State reserves is applied) and "wilderness zones" ("guarding zones of historical and cultural objects", zones for economic, recreational and other use that are meant for activities that are compatible with the objective of the park). Activities that can harm protected natural, historical and cultural objects are prohibited, as well as specifically mining, logging, unsustainable use of wildlife, road and infrastructure constructions and others (art. 22).

- **State wilderness areas of national and local importance** (created, respectively, by a decision of the Government or of local authorities and establish specific tasks and regimes for the areas), are meant for conservation of natural systems or its components (Law on Protected Areas, art. 23). Lands can be categorized as wilderness areas without changing their status, thus without being taken from the owners (art. 24). According to the **Law on Environmental Protection,** hunting and forest organizations may also create wilderness areas, on the lands allocated to them, for the preservation of valuable objects of the environment (art. 60). Activities that are incompatible with the objectives of wilderness areas shall be prohibited or restricted. All entities located on the territories of wilderness areas are obliged to follow the applicable legal regime (Law on Protected Areas, art. 25).

- **State natural monuments of national and local importance** (created, respectively, by a decision of the Government or of local authorities) are objects of a high ecological, cultural, aesthetic and scientific value. Lands can be categorized as natural monuments without changing their status, thus without being taken from the owners. However, users and owners (whether individuals or legal entities) of the lands on which the monuments are located are under a duty to protect them. In general, activities that can harm the monuments are prohibited (Law on Protected Areas, arts. 24, 26 and 28).

- **Ecological ethnographical zones** are territories of indigenous populations, created by the Government, that shall be used in such a manner as to avoid hampering the traditional way of living of such populations and in order to preserve natural resources within such areas. The Government controls such zones and creates special regulations for them. Economic activities are allowed if they do not harm the habitat of indigenous populations or destroy the biological resources therein. In the areas where these populations are located permanently, activities other than "traditional restricted economic activities of that population" are prohibited (Law on Protected Areas, arts. 29-30).

- **Natural recreational zones**, created and regulated by the Government, are meant for tourism and recreational activities that do not "negatively influence" the environment. Utilization of such zones is carried out on the basis of an agreement concluded between tourist or other organizations and "permanent users of the areas", in coordination with the competent bodies for environmental protection (Law on Protected Areas, arts. 35-36).

Other PAs include forest sanctuaries, botanical gardens, natural medical zones and resorts (Law on Protected Areas, art. 2).

Although the **Law on Environmental Protection** contains different categories of PAs (art. 5) and a different definition of the "Natural Reserved Fund of the Republic of Tajikistan" (art. 58), it can be assumed that this regime has been replaced by the more recent and more specific one created by the **Law on Protected Areas**.

2.2.2.2.b) Habitat Protection outside Protected Areas

The Law on Environmental Protection defines as **zones "of emergency ecological situations"** those where critical changes to the environment as a result of economic and other activities or natural processes are occurring which can harm ecosystem, including wildlife. In these zones, activities that negatively influence the environment are forbidden, and measures to reproduce natural resources must be taken. The Law also defines as **zones of "ecological disasters"** those where critical changes have occurred that have actually significantly damaged ecological systems, including wildlife: there, restrictions on the use of the environment are established and measures to reproduce natural resources are mandatory (arts. 54-55).

Measures to preserve habitats and wildlife reproduction conditions shall be taken in several cases including in planning and developing of cities and enterprises, in forest use, mining, development of tourist routes and organization of recreational activities. Measures to preserve wildlife migration routes shall be taken while undertaking activities such as construction works in the transport sector (Law on Wildlife, art. 43).

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

Rights of landowners and forest owners can be restricted and obligations can be introduced for them for the purpose of wildlife protection (Law on Wildlife, art. 56). More specifically, use of forest areas is allowed in a manner that does not harm wildlife, and activities in forest areas "should be carried out taking into account the necessity of preservation of favourable conditions for the habitat of wild animals" (Forest Code, art. 33).

2.2.3.1. Limitation and Regulation of Hunting

Hunting may be carried out by professional, artisanal and sport hunters (Law on Wildlife), individually or collectively (Ministerial Decree n. 324). Two **types of hunting**, commercial and non-commercial, are envisaged. State, public and private organizations and institutions (including social and cooperative organizations) have the right to use wildlife for hunting within **hunting grounds** that are assigned to them on a contractual basis, and they must take all measures to protect wildlife within such areas (Law on Wildlife, art. 20; Ministerial Decree n. 324). According to the **Forest Code**, hunting areas can be established also in forests for State, private and public organizations which shall take all necessary measures to comply with hunting rules (art. 33). Hunting **permits and licenses** are issued by the Forestry Institution and hunting bodies (Ministerial Decree n. 324).

The use of "dangerous" weapons and methods for hunting is forbidden (Law on Wildlife, art. 19). Hunting rules and regulations are established by the Government. For the purpose of conservation and reproduction of wildlife, restrictions on hunting seasons, methods, gears and quotas may be imposed (Law on Wildlife). Ministerial Decree n. 324 specifies authorized and prohibited hunting gear and hunting methods, establishes authorized hunting periods and sets quotas of maximum catches. Beyond what is already established in the Decree, hunting quotas and seasons are established by the Ministry of the Environment.

State control over hunting management is the responsibility of the Ministry of Environment and the Forestry Institution (Ministerial Decree n. 324). In this regard, the **Ministerial Decree n. 134** establishes the State body for forest protection, which controls the observance of hunting rules and limits. State control over compliance with hunting rules and regulations is ensured by the Ministry of Interior, hunting and fishing associations, environmental protection associations and social inspectors (Ministerial Decree n. 324). The same Decree imposes sanctions and penalties for the infringement of hunting regulations and establishes rates of payment for damages caused by illegal hunting or capture of wildlife.

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

Zoological collections can be created or enlarged by **legal entities** on the basis of a permit, issued by the competent State bodies for wildlife protection and management. The creation and enlargement of zoological collections by **citizens** is forbidden "except for collection consisting of hunting trophies, and wildlife use that is in accordance with the established requirements" (Law on Wildlife, art. 50).

The **introduction or moving of new species** (defined as "acclimatization")**, the repopulation, changing of habitats and interbreeding** are allowed only for scientific and economic purposes and upon the issuance of a permit by the competent State bodies for wildlife protection and management, in accordance with the conclusions of the competent scientific research organizations (Law on Wildlife, art. 13).

2.2.3.3. Assessment of Processes Harmful to Wildlife

Article 89 of the 1993 Law on Environmental Protection establishes that an "**environmental impact analysis**" or a control over planned economic and other activities that may have an impact on the environment and people, must be undertaken. This must be done by legal entities and individuals prior to decision making over such activities in order to establish an effective ecological policy and ensure the sustainable use and protection of natural resources, environmental quality and human health. The public shall be involved in the discussion over the risks of such planned activities, although the Law does not provide for substantial requirements nor procedures in this regard.

The 2003 Law on Ecological Expertise appears to have amended this regime. An "Ecological Expertise" is introduced with the aim of analyzing and assessing the negative impacts on natural resources, the environment and population of planned activities with a view to prevent such negative impacts (2003 Law on Ecological Expertise, art. 4). The same Law mentions, albeit very briefly, the concept of Environmental Impact Assessment (EIA) (which has probably replaced the "environmental impact analysis" in the previous Law) by stating that the planning of new "objects" or activities that can affect the environment must be based on the documentation of the EIA, which is subject to the procedure of ecological expertise (Law on Ecological Expertise, art. 26). EIA is required for activities that can harm reserves and/or their buffer zones (Law on Protected Areas, art. 14; see). The overlapping of these many procedures, whose differences are not always clear, may create problems of implementation.

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

Cooperation with public organizations and citizens in environmental issues is one of the principles of the Law on Environmental Protection (art. 4) and is dealt with also under the Law on Wildlife. Citizens have the right to **receive information** on the environment, including on wildlife, which is published by the "competent State bodies" (Law on Environmental Protection, art. 12; Law on Wildlife, art. 14). Such body is the Ministry of Environmental Protection according to the Law on Wildlife (art. 6), whereas this is not specified in the Law on Environmental Protection.

Citizens are also allowed to **participate in, and control the development and implementation of, decisions** that may have an impact on the environment. This general principle is specified only to a limited extent. Projects that are vaguely defined as "important for the environment" are generically "discussed in public" and they are subject to a "public ecological expertise" for which no procedural details are provided. The "competent bodies" (which are not further defined) must take into consideration citizens' suggestions (Law on Environmental Protection, art. 13).

Youth organizations, labor unions, societies for environmental protection, scientific societies and other public organizations may **participate in activities** for the protection and rational use of wildlife and they may **contribute** to the implementation of such activities (Law on Wildlife, art. 10). No further details, however, are provided on the content of, or procedures for, such "participation" and "contribution". In particular, citizens are allowed to suggest measures to protect the environment and inform public authorities about violations of laws on wildlife protection (Law on Wildlife, art. 12). Public organizations, trade unions and citizens in general are allowed to make suggestions which shall be taken into account by State bodies (Law on Wildlife, art. 13). The Law on Environmental Protection envisages also a "public ecological control" of the implementation of environmental requirements by ministries, organizations and other institutions, although no more details are provided on the matter (art. 68).

2.3.2. Rights of indigenous people, local people and traditional users

The only consideration for indigenous or traditional users is the possibility to create "**ecological ethnographical zones**" where they can manage resources according to their traditional way of living (Law on Protected Areas, arts. 29-30; see).

3. CONCLUSIONS

3.1. General Considerations

The legal framework on wildlife of Tajikistan, like in other countries of the region, is scattered across different laws and regulations. Among the positive aspects of such framework, one should mention the well-developed legislation in the field of **PA** management and the attempt to address the issue of **public participation** (which could nonetheless be improved).

On a critical note, as it happens in other countries of the region, the **institutional framework** is not always clear: in many cases, generic expressions are used, which do not allow a precise identification of the entities involved. This may lead to the problematic situation in which overlapping competences may be attributed to similarly generally identified institutions. Mandates of such institutions are not always clear, and no provisions for inter-institutional coordination are established.

Furthermore, the regulation of some of the most critical issues for wildlife management is sometimes excessively general, not comprehensive or unclear. This is the case of the procedures and requirements on **wildlife use** (which do not seem to provide for a clear and transparent system for use rights allocation), on management planning and on the **assessment of impacts on wildlife**. Moreover, an important activity potentially affecting wildlife, such as **tourism** and **trade in wildlife and wildlife products** (), should be regulated. An essential concept such as the **ecosystem approach** in the management of natural resources should be considered.

Public participation () is considered in the legal framework, but only at a general level. Projects that are subject to public participation are not precisely defined, and no procedural details are provided to give substance to the general principle of participation. Proper definitions and procedures should be introduced. Apart from the possibility to create "ecological ethnographical zones" for the protection of their environment and culture, the **rights and interests of indigenous peoples and traditional users** of wildlife are not taken fully into consideration (). In addition, a comprehensive system of offences and sanctions for violations of the legal regime on wildlife, as well as of incentives for the sustainable use of wildlife, should be introduced, although certain penalties envisaged for the overexploitation of resources already exists (see 2.1.1).

3.2. Detailed Recommendations

The regime of ownership of wildlife in PAs in general is also not clear (Law on Protected Areas, art. 3), since no specific rules are provided for legal status of wildlife in such areas.

The regime of **wildlife use** (2.1.1) is also generally unclear. Key legal concepts and procedures should be introduced or clarified in the law, in order to build a clear regime for wildlife property and use and the transfer of both, which will provide guarantees for, and detail the responsibilities of, users. The following specific observation can be formulated in this respect:

- specific issues such as the conditions and procedures for the granting of wildlife use and its transfer by agreement, as well as for the transfer of ownership, or rules on licenses and permits, are not detailed;
- some concepts, such as "priority rights" in the field of wildlife use and ownerships (Law on Wildlife, art. 15), wildlife "renting" and related "renting fee" (Law on Wildlife, arts. 15 and 18), or the "payments" for protection and reproduction of resources and for their "irrational use" (Law on Environment Protection, arts. 19-20), are not clarified; and
- "useful components of wildlife's vital functions" and "use of animals for the obtaining of products from them" (Law on Wildlife, arts. 31-32) are not clearly defined.

As far as wildlife management in general is concerned (),

- **"general requirements"** on natural resources use in the Law on Environmental Protection (art. 14) should be specified: and
- the same Law provides for **ecological "standards"** (arts. 7 and 23-32) and **ecological "requirements"** (arts. 38-53) which are not clearly defined and differentiated.

As far as management planning is concerned,

- The concept of State, regional and local **"programmes" and** "**ecological programmes**" (2.1.2,) should be clarified: definitions, responsibilities and procedures for such programmes should be introduced.
- The other planning tools mentioned in the Law, such as the "**prospects of economic development**" or "**prospects of protection and rational use of wildlife**" (), as well as the "**prospects for social and economic development**" (), should also be clarified.
- Moreover, "**organizations and institutions**" entrusted with the duty to gather information and data on wildlife for the "wildlife cadastre" (Law on Wildlife, arts. 57-58 and 62) are not identified ().

Protection of **specific species** () is provided in general terms, and fundamental rules on the limitation of the regulation of trade of rare and endangered species are missing. Moreover, references to international standards in this regard are included only in vague terms.

As far as **PAs** are concerned (),

- Conditions upon which private forest and hunting organizations may create wilderness areas on their territories (Law on Environmental Protection, art. 60) should be detailed.
- Moreover, the concept of "permanent users" of natural recreational zones and their responsibilities in such zones (Law on Protected Areas, arts. 35-36) should be clarified.

With regards to the rules on **hunting** (),

- different types of hunting are mentioned, but there are no specific legal consequences attached to each type;
- the existence of "hunting grounds" is mentioned, but these are not regulated; and
- conditions and procedures for obtaining hunting rights are not specified.

The **assessment of activities that are potentially harmful to wildlife** () is regulated in an unsatisfactory way. Rules on "environmental impact analysis", "ecological expertise" and "environmental impact assessment" are very general, do not provide for specific and detailed procedures and conditions, do not address the impact on wildlife in particular, and do not provide for public participation. Moreover, overlaps between these procedures may create problems of interpretation.

TURKEY[101]

1. INTRODUCTION

Turkey has abundant wildlife resources, which play an important role in public life and are of important economic value, especially for rural people. From medieval times, Turkish society has paid special attention to management, protection and use of game and wildlife in general. Initially, however, laws were not adopted specifically to address wildlife management, as public values, morals and beliefs on the matter already provided a substantial degree of protection and sustainable use of wildlife resources. Legal instruments were adopted only in the late nineteenth century, starting from the *Tanzimat* Decree of 1839, the Land Law of 1858 and the Forest Decree of 1869, which contained some important provisions dealing with wildlife protection and management. In the era of Turkish Republic, the first "terrestrial" hunting law was enacted in 1937 and several other statutes and regulations were adopted. The Constitution enacted in 1982 also embodies specific articles directly dealing with wildlife issues.

Several other laws, regulations and orders were adopted and enacted. At present, the relevant legal framework on wildlife includes the following laws:

- The **Law on the Protection of the Environment n. 2872** (of 11 August 1983, as amended by Law n. 5491 of 26 April 2006) which is the main instrument on environmental protection in general.
- The **Law on Animal Protection n. 5199** (of 1 July 2004), which covers several issues relevant to the protection of all animals, including wild species.
- The **Terrestrial Hunting Law n. 4915** (of 1 July 2003) (the Hunting Law) which deals with essential issues relating to hunting, including management, planning and protection of game. It covers, among others: definitions of key concepts relating to hunting activities and hunting resources and of game animals, institutional aspects of wildlife management, establishment and types of hunting areas, hunting tourism, licenses and penalties.
- The **Law on National Parks n. 2873** (of 10 August 1983), which addresses the designation and management of PAs. The Law is supplemented by two regulations: the **Regulation on National Parks** (of 12 December 1986) and the **Regulation on the National Parks Fund** (of 13 May 1987).
- The **Forest Code** (Law n. 6831 of 31 August 1956, subsequently amended by Laws of 18 November 2003, 2 July 2004 and 3 July 2004), which was enacted for the purpose of managing all forest resources of the Country. The Code contains provisions on the protection, planning and management of all forestlands, which are the habitat of about 40% of all hunting resources.
- The **Law on the Institution of the Ministry of Environment and Forestry** (of 8 May 2003), which delineates the institutional set-up for wildlife management in Turkey.

These Laws are integrated by few regulations:

- The **Regulation on Environmental Impact Assessment** (of 17 July 2008), which sets up an environmental impact assessment (EIA) procedure for specific activities.
- The **Regulation regarding the Setting and Managing of Hunting Areas** (of 16 May 2004), which regulates areas devoted to game management.
- The **Regulation on the Implementation of the Convention on the International Trade of Endangered Species (CITES)** (of 6 August 2004), which was adopted to implement the Convention at the domestic level.
- The **Regulation on Wildlife Protection Areas and Wildlife Development Areas** (of 8 November 2004), which regulates these specific protected areas.
- The **Regulation on Hunting Procedures and Principles Applicable to Local and Foreign Hunters** (of 8 January 2005) which addresses certain specific issues relating to hunting.
- The **Regulation on Wetlands** (of 17 May 2005), supplemented by the **Circular n. 1 on the Protection of**

[101] This country report was prepared with the substantial contribution of Prof. Yusuf Güneş of the University of Istanbul, to whom the author wishes to express his sincere gratitude. Any errors or mistakes, however, fall solely under the responsibility of the present author.

Wetlands (of 11 January 1993), which was adopted to implement the Convention on Wetlands of International Importance (Ramsar Convention) at the national level.
- The **Regulation on Breeding and Trading Game and Wild Animals and their Products** (of 16 June 2005), which establishes rules on breeding and trading of game and wild animals as well as their products.
- The **Regulation regarding the Protection of Game and Wild Animals and their Habitats** (of 24 October 2005), which provides rules on the protection of wild animals and of their habitat.

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

According to article 168 of the Turkish **Constitution**, all natural resources (and thus also wildlife resources in general and hunting resources in particular) **belong to the State**, which has the right to exploit them. However, the State may **transfer** such right to individuals or public corporations, for a specific period of time, and in accordance with the law (art. 168).

Parts of animals that are hunted legally, both by foreign tourist hunters and nationals, become **privately owned**. In particular, foreign hunters can send to their home countries parts of hunted animals, as long as provisions of relevant international treaties to which Turkey is a party are respected (Hunting Law, arts. 15-18).

Individuals and other private entities may **breed wild animal species** (in private hunting areas or otherwise) and may thereafter release them into the wild, upon receiving a permit by the Ministry of Environment and Forestry, if the activity is carried out in accordance with the law (Hunting Law, arts. 2 and 19). Procedural details in this regard are contained in the **Regulation on Keeping and Trading of Game and Wild Animals and of their Products**: breeders are obliged to establish and maintain a healthy environment for animals, to keep a breeding log, and to subject to a health examination animals to be released. Provisions on how to handle a disease outbreak in breeding sites are also included. Individuals may also be allowed to **keep live game and wild animals** as a hobby, provided that the number of animals does not exceed specific limits indicated in the Regulation.

2.1.2. Institutional Set-up

The institutional set-up on management of wildlife resources in Turkey is mainly regulated by the **Law on the Institution of the Ministry of Environment and Forestry**. The main institutions dealing with wildlife management include:

- The **Ministry of Environment and Forestry** which is the highest governmental authority that administers all terrestrial wildlife resources and hunting activities.
  - Within the Ministry of Environment and Forestry, a **General Directorate of Nature Protection and National Parks** is established, with the task of managing and administering wildlife resources and hunting issues. Within the General Directorate, three Departments are created:
    - a **Department of Hunting and Wildlife**, which manages and administers all wildlife resources and hunting issues.
      - the Department is further subdivided in a **Hunting Management Branch** and a **Wildlife Management Branch**
    - a **Department of Nature Protection**, which deals with all nature protection and biodiversity conservation issues (other than hunting issues) and works in coordination with the Department of Hunting and Wildlife.
    - A **Department of National Parks**, which is entitled to plan and manage protected areas.

- The **Central Hunting Commission**, which is an independent decision-making body composed of 21 members (representing relevant public bodies involved in hunting management as well as hunters' organizations and private hunting areas) that decides on animals that can be hunted, hunting seasons, areas and quotas, hunting methods and weapons (Hunting Law, art. 3). Decisions of the Commission are binding. The Minister of the Environment and Forestry, however, may repeal a decision of the Commission. This may be challenged in turn by relevant interest groups, stakeholders before the administrative courts. The Central Hunting Commission may delegate some of its tasks relating to hunting management to local institutions, such as:
  - **Provincial Hunting Commissions** (public councils representing the State at province level), and
  - **County Hunting Commissions** (the lowest level hunting body which is organized, if necessary, by City Mayor, and is authorized to deal with hunting issues at county level).

- **Local people** and **Village Councils** are authorized to protect wildlife resources, to notify law enforcement agencies of any illegal hunting activities and to assist such agencies in the fight against poachers. Similarly, **hunters** are organized within their hunting federation and under local assemblies (Hunting Law, art. 20).

It should be also highlighted that the Law on the Protection of the Environment of 2006 establishes the **Supreme Environment Board**. This institution, headed by the Prime Minister and composed of Ministers appointed by the Prime Minister, is responsible for the development of objectives, policies and strategies for effective environmental management and for the integration of environmental consideration into economic decisions, based on the principle of sustainable development (art. 5). Wildlife management falls implicitly under such environmental management and sustainable development mandate.

2.2. Wildlife Management

2.2.1. Management Planning

The **Constitution** of Turkey establishes that exploitation and management of natural resources are performed under the supervision of the State (art. 168).

The Ministry of Environment and Forestry is authorized to adopt **wildlife management and hunting plans** for hunting development areas and other hunting reserves (Hunting Law, art. 11), but no further details are provided for such plans. The Regulation regarding the Protection of Game and Wild Animals and their Habitats adds that appropriate survey, inventory and monitoring activities to determine the species and populations of game and wild animals, must be organized by the General Directorate. Similarly, the General Directorate of Nature Protection and National Parks is responsible for the adoption of **action plans for the protection of specific species** (see below 2.2.2.1), but no substantial or procedural details are provided for these plans.

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

As a **general principle**, rare and endangered species and their habitats must be protected, and wild species should not be captured (Law on Animal Protection, art. 4; Law on the Protection of the Environment, art. 9).

According to the **Regulation regarding the Protection of Game and Wild Animals and their Habitats**, and the **Hunting Law** (arts. 4 and 21), the General Directorate of Nature Protection and National Parks is authorized to make a **list of wild species** that require special protection (e.g. endangered, threatened, rare, vulnerable, endemic or migratory species) and is responsible for the adoption of **action plans** for the protection of these species. When preparing theses lists and action plans, the General Directorate may consult

other relevant public institutions as well as private ones and NGOs. The Central Hunting Commission also decides, in conjunction with the Ministry of the Environment, on the **list of game animals** that must be protected and is the responsible institution for their protection. The General Directorate is also authorized to organize **resettlement and/or stock increase activities** and to grant licenses for **scientific research**.

The **hunting and catching** of protected animals is prohibited, except for the purpose of scientific research or for breeding. Other prohibited activities include pursuing, injuring, killing, or removing animals from their habitats, damaging their life-cycle environment, nesting or breeding sites and refuges, and destroying or taking eggs. **Zoo** managers are only allowed to catch wild animals and/or collect their eggs if such animals are not found in other zoos, rescue centers or breeding stations, and only one pair of each species may be caught for conservation purposes. The Regulation aims at the protection of wild species also by regulating their **reintroduction and transfer**, the management of their **predators** and the control of **diseases** and **pests**. The Regulation addresses also **sanctions** for activities damaging protected species.

The **trade of endangered animal species** is prohibited according to the Law on the Protection of the Environment of 2006 (arts. 9 and 20). The **Regulation on the Implementation of CITES** properly implements such general provision in details, by reflecting the requirements of the Convention as far as endangered species are concerned. The trading (both import and export) of endangered species is subject to the issuance of CITES certificates by the Ministry of Agriculture and the Ministry of Environment and Forestry (depending upon the species concerned and the list in which they are included). These species may be included in List I (species whose trading is allowed only under exceptional circumstances), List II (species that could be endangered unless appropriate restrictive measures are taken) and List III (species regulated by one country, where collaboration with other countries is needed for trade restrictions) of the Regulation. Individuals and companies involved in the trading of species covered by the Regulation are subject to registration by the above-mentioned Ministries. The Regulation also requires the respect of relevant international agreements for the transportation of live animals included in its scope of application. The Regulation further provides for rules on confiscation of illegally traded species and on recovery centers for confiscated animals. Finally, according to article 17 of the Hunting Law, foreign hunters can send parts of hunted animals to their home countries if provisions of relevant international treaties to which Turkey is a party are respected.

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

Provisions on the establishment and management of PAs are contained in the Forest Code (art. 25) and in the Law on National Parks. Categories of PAs in the Turkish legal system include the following (Law on National Parks, art. 2):

- **National Parks** are natural areas having both natural and cultural features of rare national and international value from the scientific and aesthetic points of view, as well as natural, recreational and tourist sites;
- **Nature Parks** are natural areas containing characteristic vegetation and wildlife features, that are suitable for recreation activities and leisure;
- **Natural monuments** are natural areas having the natural and scientific characteristics that must be protected in accordance with the principles applicable to national parks;
- **Nature reserve areas** are natural areas designated to be used only for scientific and educational purposes containing rare, threatened or endangered ecosystems and/or species, and outstanding natural features.

Such areas are **declared** as PAs by the Council of Ministers, following a proposal by the Ministry of Environment and Forestry, consulting other Ministries as appropriate if the areas do not include forestlands (Law on National Parks, art. 3), whereas the General Directorate of Forestry is authorized to declare PAs that include forestlands (Forest Code, art. 25). The Ministry of Environment and Forestry is required to prepare and implement **development plans for PAs** (obtaining also the views of other relevant Ministries such as

the Ministry of Tourism) and is the **responsible authority** for their management (through, in particular, the General Directorate of Nature Protection and National Parks) (Law on National Parks, art. 4).

As far as **permitted activities** in PAs are concerned, the Ministry of Environment and Forestry shall issue permissions for the implementation of plans, projects and investments to be carried out by public institutions and organizations in PAs, and shall monitor the conformity of such activities with the development plan for the PA (Law on National Parks, art. 7). The Ministry may also issue permissions to individuals and other private legal entities for the construction of buildings and facilities carried out in conformity with the PA's development plan (art. 8). Concessions may be granted for the exploration and operation of oil and mines by the Council of Ministers. The Ministry of Environment and Forestry may establish conditions to be complied with during such operations, in order to protect the environment (art. 11). Technical activities to ensure protection and improvement of the environment may be carried out. Production, hunting and grazing in certain areas and during certain periods may be permitted within the framework of scientific management plans to be prepared on the basis of a report by the Ministry of Environment and Forestry (art. 13). More generally, in PAs natural and ecological balance and natural ecosystem values may not be spoiled, wildlife may not be destroyed, interferences which may cause changes to the characteristics of PAs as well as activities that create pollution or "similar environmental problems" may not be performed. Hunting which may spoil the natural equilibrium may not be carried out (unless in detailed circumstances listed in the law) (art. 14). Finally, the Law on National Parks establishes **penalties** for activities that violate other legal instruments (such as the Forest Law or the Hunting Law) carried out within PAs (arts. 20-21).

In addition to the areas identified above, also **Wildlife Protection Areas** and **Wildlife Development Areas** may be declared by the Ministry of Environment and Forestry if they are not on forestlands, or by the Government if they include forestlands (Hunting Law, art. 4). Detailed provisions about these areas can be found in the specific Regulation on Wildlife Protection Areas and Wildlife Development Areas, and in the Regulation regarding the Protection of Game and Wild Animals and their Habitats. According to these instruments, Wildlife Protection Areas are areas in which wildlife species and resources must be strictly protected and where no human interference (unless carried out for protection purposes) is allowed. They are managed by the Regional Directorate of the Ministry of Environment and Forestry, in accordance with management and development plans. On the other hand, Wildlife Development Areas are areas in which wildlife species must be protected, but where hunting activities are allowed in accordance with special hunting plans. Moreover, according to the Hunting Law, within wildlife protection and development areas, wildlife shall not be damaged, ecosystems shall not be destroyed, no constructions may be completed which may create potential threats or damages to the such areas and no wastes may be disposed of (art. 4).

Several protected areas (national parks, wildlife development areas and nature parks) are established within or next to **human settlement areas**. If human settlement has a potential negative impact on wildlife, the State may seize private properties within the said areas (Law on National Parks, art. 5) or remove and transfer the settlements to more appropriate places by exchanging their properties with public land (Forest Code, art. 2(a)).

2.2.2.2.b) Habitat Protection outside Protected Areas

Wildlife resources are not limited to protected areas. Several habitats and ecosystems, such as high mountain grasslands, forestlands, pastures, steppes, farmlands and even settlement areas are the habitats of important wildlife populations. Of these areas, management of **forestlands** is regulated by the Forest Code, which requires considering wildlife values when harvesting or carrying out afforestation activities. Furthermore, **pastures, steppes and high mountain grasslands** are protected under the provisions of the Law of Pasture of 1998, which establishes controlled and planned management for activities such as grazing, hay collection, and building construction. Beyond that, wildlife in **farmlands** is protected by controlling the means and methods of hunting, as well as the use of chemicals and pesticides for farming purposes.

The **Regulation regarding the Protection of Game and Wild Animals and their Habitats** is also relevant on the matter, since it aims at the protection of game and wild animals also by protecting their habitats, which should not be damaged (art. 23). According to the Regulation, the Ministry of Environment and Forestry shall prepare area management plans to ensure wildlife protection, population sustainability and preservation of natural resources (art. 25), and is responsible for the organization of the restoration of deteriorated habitats of wild animals (art. 27).

The **Regulation on wetlands** (as supplemented by the Circular n. 1 on the Protection of Wetlands) which implements the Ramsar Convention on wetlands, requires that all wetlands that meet the criteria of the Convention and that are declared as Ramsar sites by an ad hoc National Wetland Commission, are to be protected and managed (including consideration of species population levels and hunting activities) in accordance with the conditions established by the Convention.

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

2.2.3.1. Limitation and Regulation of Hunting

According to the Hunting Law, hunting is limited to specific **species**, hunting **seasons** and **areas** as decided by the Ministry of the Environment and Forestry (together with the Central Hunting Commission), which determines also possible hunting **methods** and **weapons**. There are four categories of hunting areas, namely: general hunting areas, private hunting areas, sample hunting areas and State hunting areas (art. 2). In addition, specific means and methods of hunting are also prohibited directly by the Hunting Law, e.g. using explosives, electronic or electrical stunning devices, dazzling devices, devices for illuminating targets, nets, non-selective traps, gassing, speed boats or certain semi-automatic or automatic weapons (art. 6). The Central Hunting Commission (subject to endorsement of its decisions by the Ministry of the Environment and Forestry) may also decide on the list of game species to be included in the **protection list**: hunting of these species may be prohibited or limited. The Commission's decisions are taken on a yearly basis and they are communicated to the central hunting, wildlife and forestry authorities in order to make them publicly available. Moreover, the General Directorate of Nature Protection and National Parks may adopt **hunting action plans** (Hunting Law, art. 11).

Hunting by individuals is possible upon receiving from the Ministry of Environment and Forestry a one-time hunting **license** and a yearly **permit** against payment (Hunting Law, art. 13). As mentioned above, also **private hunting areas** may be established upon the conclusion of a lease contract with the Ministry of the Environment and Forestry (Hunting Law, art. 2). In order to hunt in such areas, a special permission will be required from the private owners.

The Hunting Law contains also several detailed provisions on **crimes** and other **offences**, as well as **sanctions** (including imprisonment, fines, or revocation of licenses), for the violation of relevant legal provisions and for activities that may damage wildlife, hunting resources and their habitats (Law on Hunting, arts. 4 and 21). Sanctions are doubled if the crime or offence is committed in a PA (Law on National Parks, art. 20).

The **Regulation on Hunting Procedures and Principles applicable to Local and Foreign Hunters** establishes rules and principles on hunting tourism carried out by both national and foreign hunters, among other by regulating travel agencies' hunting organizations, training and education, wildlife watching tours, or taking photos and films.

The **Regulation regarding the Setting and Managing of Hunting Areas** is also relevant in this regard. The objective of the Regulation is to define principles for the setting and managing of hunting areas. Hunting is permitted in specific areas, such as forests, soil preservation and forestation areas, State agricultural enterprises, or ponds, subject to the authorization of the competent Authority. Such areas must be mapped

and registered by the General Directorate of Nature Protection and National Parks, which must also develop management plans for them. The Central Hunting Commission shall decide over restrictions and conditions applicable to such areas, as well as on rules governing hunting activities.

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

All activities such as **farming, forestry, and industry** are controlled by the State with a view to contributing to wildlife management. Farming and forestry practices adversely affecting wildlife (e.g. using chemical such as DDT) are prohibited. Likewise, deforestation is strictly limited to particular tree species and areas in order to prevent the depletion of wildlife habitat. (Forest Code, art. 2).

The **breeding and the import of foreign wildlife species** is possible only if domestic species are not harmed and upon receiving a permit from the Ministry of Environment and Forestry. Carrying out these activities in violation of applicable rules shall be considered as a crime (Hunting Law, art. 19). Other rules on wildlife trade are established by art. 18 of the Hunting Law: the **domestic and international trade** of wild animals (including products deriving from them) that have been captured or hunted in violation of the Hunting Law, or traded in violation of relevant international treaties, is forbidden. Moreover, the Ministry of Environment and Forestry may prohibit, partially or totally, and impose fees on, all transactions on wildlife that is captured or hunted legally. According to the **Regulation on Breeding and Trading of Game and Wild Animals and their Products**, individuals and companies who wish to be involved in the domestic and international trading of wild animals should apply to the Provincial Directorates of the Ministry of Environment and Forestry. The Regulation provides for other detailed rules on such trading. Those who wish to be engaged in wild boar trading should apply for a permit from the Ministry. A permit is necessary also for the trade of animals that are hunted for their fur.

Zoos or circuses may be set up by individuals or companies only after obtaining a permit from the Ministry of Environment and Forestry (Regulation on Breeding and Trading Game and Wild Animals and their Products).

2.2.3.3. Assessment of Processes Harmful to Wildlife

The **Regulation on Environmental Impact Assessment** aims at regulating the EIA procedure which must be carried out for specific projects listed in an Annex to the Regulation, subject to the decision by the Ministry of Environment and Forestry. Projects having a direct impact on wildlife are not specifically included, but some types of project that may be indirectly relevant are covered (for example, forestland conversion or mining projects) and potential impacts on wildlife must be included in any project description. Moreover, the Regulation requires to consider "sensitive areas" when preparing the EIA Report, such as PAs, Wildlife Development and Protection Areas, forests, Ramsar wetlands sites, habitats of endemic species and Natural and Cultural Heritage Areas. The EIA is carried out by a Committee, composed of representatives from relevant State institutions and agencies (in particular from the Ministry of Environment) and project proponents, as well as of representatives of civil society organizations (e.g. universities, research agencies, unions) which may be invited when necessary. A local community meeting must also be organized to discuss the project. Beyond that, public participation is ensured throughout the procedure, insofar as the public has the right to present opinions and proposals. The Committee's report is submitted to the Ministry of the Environment which adopts a final decision on the proposed project. Evaluation and monitoring of the project is required also during project implementation and in the post-project phase.

2.3. People and Wildlife

The **Law on the Protection of the Environment**, as amended in 2006, contains only general principles of public participation and access to information for the public in environmental matters (arts. 3 and 30). The right of access to information is specifically guaranteed by the **Law on the Right of Access to Information**

(Law n. 4982 of 24 October 2003) which recognizes that everyone has a right to information and imposes a duty on State agencies to provide information to the public when requested.

3. CONCLUSIONS

3.1. General Considerations

In general, as it happens in other countries analyzed in this report, in the Turkish legal system there is **not a single law** covering wildlife management, but the issue is dealt with under several different instruments, with potential overlapping problems.

A few **positive aspects** of the legal framework may be underlined. The **institutional set-up** is quite clear and appears effective, insofar as almost all functions related to wildlife management are attributed to the Ministry of Environment and Forestry and its Directorates and Departments, thus reducing the risk of overlap and incoherence. Moreover, the Central Hunting Commission should play a very positive role in terms of inter-institutional coordination. Rules on the protection of **specific species** also appear to be quite comprehensive and, in particular, the regulation of trade of endangered species fully reflects international standards in this field (i.e. the CITES Convention). The same positive aspect may be underlined as far as habitat protection is concerned, as the **regulation of PAs** is also quite comprehensive. A Regulation specifically implements the Ramsar Convention on **wetlands**. Finally, several rules on **offences and sanctions** are included throughout the entire legal framework, although incentives for compliance with the legal framework are not considered.

However, some **negative aspects** should also be noted. The regime of **wildlife ownership** should be better defined, and more comprehensive rules on **wildlife use** and on the allocation of rights in this regard should be introduced, as the legal framework is not particularly detailed on the matter. Rules on **wildlife use** and the allocation of wildlife rights are very scarce, with the exception of those on hunting and a few other activities affecting wildlife which are uncommon in the region (e.g. rules on wildlife watching and filming, or on hunting travel agencies' organizations, training and education). These aspects should be integrated in the legislation. The same can be said as far as **management planning** is concerned. Existing legal provisions make reference to "wildlife management and hunting plans" (adopted by the Ministry of Environment and Forestry) and "action plans for the protection of specific species" (adopted by the General Directorate of Nature Protection and National Parks), but no further substantial nor procedural details are provided in this regard. Finally, there is very little consideration for **public participation** in decision-making and wildlife management (apart from the general principle contained in the Environment Protection Law and the role of public participation in the EIA procedure), or for the interests of **local people** and **traditional users**, which should be taken into account.

3.2. Detailed Recommendations

As far as **institutional set-up** is concerned,
- the **Central Hunting Commission** (the key decision-making body in the field of hunting management) comprises representatives of some important stakeholders (e.g. hunters associations), but its membership should be expanded in order to include other interests, such as representatives from NGOs that are active in the field of wildlife conservation and local users; and
- more generally, as already highlighted above, the institutional set-up should be reformed in order to allow for participation by the public and all relevant stakeholders to decision-making and wildlife management. In this regard, local people and Village Councils are simply and generally authorized to protect wildlife resources, but rules on their participation in the management of such resources should be introduced.

As far as **management planning** is concerned,
- rules on the adoption of a comprehensive policy on wildlife management should be introduced; and

- substantial and procedural details to ensure adaptive management and the adoption of an ecosystem approach for those management plans that are provided in the law ("wildlife management and hunting plans" for hunting areas or "action plans for the protection of specific species") should be introduced.

As far as the **protection of specific species** is concerned,
- in preparing the list and action plan for wildlife to be protected, the General Directorate of Nature Protection and National Parks has the option to consult relevant stakeholders, including NGOs. This option should be transformed into a procedural obligation.

As far as **protected areas** are concerned,
- the permissibility of oil and mining operations should be revised, as these are activities that are hardly compatible with the protection of the environment; and
- no consideration for traditional users or local people in the management of wildlife within PAs is included in the legal framework.

As far as the **assessment of processes harmful to wildlife** is concerned,
- projects having a direct impact on wildlife should be specifically included in the EIA procedure; and
- the possibility for representatives of civil society to be invited to participate in the procedure should become a mandatory requirement.

TURKMENISTAN

1. INTRODUCTION

The legal framework of Turkmenistan for wildlife management is based on four main instruments:

- **Law n. 600-XII on Nature Protection** of 12 November 1991, which regulates environment protection in general (art. 2), economic measures to protect the environment (arts. 7-10), ecological requirements (arts. 16-21), ecological expertise (art. 13), protected areas (PAs) (art. 21) and public participation (arts. 28-31).

- **Law n. 702-XII on State Specially Protected Natural Areas** of 19 May 1992 (Law on Protected Areas) which establishes types of PAs and their regimes.

- **Law n. 230-I on Protection and Rational Use of Wildlife** of 12 June 1997, amended in 1999 (Law on Wildlife) which defines wildlife use, its types and limitations, as well as obligations of wildlife users (arts. 10-11, 13, 15-20 and 30-31). The Law covers also the protection of habitats, migration routes and areas and conditions for reproduction (arts. 25-26), protection of specific species (arts. 28-29) and public participation (arts. 8-9). It does not, however, cover the protection and use of wild animals kept in captivity or semi-captivity for economic, cultural, scientific, recreational, aesthetic and other purposes, which is regulated generally "by relevant legislation" (art. 1).

- **Law n. 312-I on Hunting and Hunting Management** of 15 September 1998 (Law on Hunting), which defines areas, types, methods and limitations for hunting (arts. 12, 15-18 and 20-22), and it regulates hunting management (arts. 30-34).

Other laws and regulations which deal with wildlife include:

- the **Forest Code** of 12 April 1993;

- the **Law n. 54-I on State Ecological Expertise** of 15 June 1995 (also referred to as the Law on State Ecological Audit);

- The **Law on Tourism** of 24 November 1995;

- specifically on hunting: **Regulation n. 2422 on Hunting and Hunting Management** of 15 December 1995 (Regulation n. 2422 on Hunting) and the **Presidential Decree n. 2422 on Approval of Regulation on Hunting and Hunting Management** of 15 December 1995 (Presidential Decree n. 2422 on Hunting);

- specifically on PAs: **Regulation n. ПБ - 1137 on State Reserves** of 15 December 1995 (Regulation n. ПБ -1137 on State Reserves); **Regulation n. ПБ - 1137 on Guarding Zones of State Reserves** of 15 December 1995; **Regulation n. ПБ - 1137 on State Wilderness Areas** of 15 December 1995; and **Regulation n. ПБ - 1137 on State Natural Monuments** of 15 December 1995;

- specifically on rare and endangered species: **Regulation n. ПБ - 1137 on State Nurseries of Rare and Endangered Animals and Plants** of 15 December 1995 and **Presidential Decree on the Red Book** of 25 March 1997;

- the **Law on Licensing of Some Types of Activity** of 16 June 1999 (Law on Licensing); and

- the 2004 **Land Code**.

As in other countries in the region, the law in Turkmenistan provides that if norms of national law are in **conflict with international agreements**, the latter should apply (Law on Wildlife, art. 1). Similar rules are included in the Law on Protected Areas (art. 21) and in the Law on Nature Protection (art. 42), but these laws further specify that international agreements should apply unless the national law of Turkmenistan contains stricter rules.

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

Wildlife is the **absolute property** of the State according to the **Law on Wildlife** (art. 2). A more nuanced provision is to be found in **Regulation n. 2422 on Hunting**: according to the latter, wild animals in their natural state that are "hunting objects" are the property of the State and form the "State Hunting Fund". However, animals that have been released into the wild by organizations or institutions for reproductive purposes are considered as the property of such organizations or institutions. The use of such animals is allowed upon the issuance of a license by such organizations and institutions (Regulation n. 2422 on Hunting, art. 1). It is unclear, however, whether this exception to the general rule on State property under the Law of Wildlife is valid, as the exception is contained in a Regulation and pre-dates the Law. The Law on Wildlife allows users to own "wildlife objects that have been taken" and products deriving from them (art. 13).

As far as **wildlife in PAs** is concerned, according to the Land Code, lands of PAs are absolute properties of the State, but legislation is silent about ownership of wildlife therein (arts. 22 and 86). Moreover, "natural objects" located on reserves are taken from economic exploitation on a permanent basis according to the Regulation n. ПБ -1137 on State Reserves (art. 1). It is not clear whether wildlife can be included among these "objects", or whether this permanent absolute prohibition of exploitation amounts to absolute property of the State over fauna on PAs.

According to the **regime on wildlife use:**

- The following **types of wildlife use** are allowed, provided the requirements of the law are observed: hunting, capture of animals "that are not hunting objects", the use of products derived from animals, and their use for economic, scientific, cultural, educational, recreational and aesthetic purposes (Law on Wildlife, art. 11). It is unclear whether this is an exhaustive list, as the Law does not use these categories consistently (the legal framework regulates wildlife use beyond these categories).

- Wildlife use can also be carried out with or without removing animals form their habitats (Law on Wildlife, art. 11):

  - **use without removing wildlife from its habitat** or damaging it in some other way, is free and does not require a permit (Law on Wildlife, art. 11). The principle, however, is restated in a more restrictive manner elsewhere in the Law, as the only use of wildlife for economic, scientific, cultural, recreational and aesthetic purposes without removing animals from their habitats, harming them, their habitats, or the rights of other users is allowed without special permits and free of charge. (art. 18).

  - As a general principle, the **use of wildlife by removing it from its habitat** is subject to the payment of a fee as established by the Cabinet of Ministers (Law on Wildlife, art. 37) and to obtaining a license (art. 11). However, the capture of animals "that are not hunting objects" is subject to a specific regime and is generally allowed without further specifications under art. 16 of the same Law. Specific lists are created by the Ministry of Nature Protection and approved by the Cabinet of Ministries: a list of wildlife objects the removing of which from their habitats is prohibited without a license (Law on Wildlife, art. 11) and a list of animals that are "non-hunting objects", the capture of which is allowed only with permits issued

by the "competent body on wildlife protection and use", as well as a list of animals the capture of which is forbidden all together (Law on Wildlife, art. 16).

- Finally, according to the **Law on Licensing**, "activities that are connected to the use of fauna" are subjects to licensing (art. 18). According to the **Law on Hunting**, the capture of animals "that are not hunting objects", the use of useful components of animals and the obtaining of products deriving from animals on hunting areas is allowed with a special permit issued by the Ministry of Nature Protection (art. 10). The use of products derived from animals and "useful components of wildlife vital functions" is allowed without removing wildlife from habitats and harming them, with permits issued by the Ministry of Nature Protection (Law on Wildlife, art. 19).

Users have the obligation to observe rules on wildlife use, to prevent habitat destruction and to use methods that do not harm animals "not meant for use" and organize activities for reproduction of animals (Law on Wildlife, art. 13). The rights of wildlife users can be revoked or restricted in several specific cases, e.g. in cases of violations of relevant rules on wildlife protection or upon the expiry of the term for use (Law on Wildlife, arts. 15 and 32). The Ministry of Nature Protection, in coordination with the Cabinet of Ministers, may restrict or prohibit different types of wildlife use or the use of specific animals on a specific territory and for specific period of time for the aims of wildlife protection (art. 23). These uses can be permanent and temporary (Law on Wildlife, art. 14).

2.1.2. Institutional Set-up

The **institutional framework** in the field of wildlife protection comprises the Cabinet of Ministers, the Ministry of Nature Protection, local executive bodies and other competent bodies (Law on Wildlife, art. 4; Law on Hunting, art. 3).

The **Cabinet of Ministers** is competent for:
- implementing State policy in the field of protection and rational use of wildlife;
- approving State programmes on protection and rational use of wildlife and development of hunting;
- establishing standards, rules and limits on wildlife use;
- approving the regulation of the Red Book of endangered species of Turkmenistan (the Red Book) and its management; and
- ensuring international cooperation (Law on Wildlife, art. 5).

The **Ministry of Nature Protection** is competent for:
- developing and implementing State programmes on the protection and rational use of wildlife and the development of hunting,
- undertaking "State ecological expertise",
- regulating hunting,
- ensuring State monitoring,
- setting quotas and issuing licenses for wildlife use, including rare and endangered species, and
- supporting scientific research, including on protected areas (PAs) (Law on Wildlife, art. 6).

The responsibilities of **local authorities** include supporting the implementation of State programmes and the development of regional programmes on protection and rational use of wildlife and hunting development, supporting public organizations and providing education in the field of wildlife protection and rational use (Law on Wildlife, art. 7, Law on Hunting, art. 6).

2.2. Wildlife Management

The **Law on Wildlife** establishes that, when implementing **activities that can affect wildlife conditions and habitats**, the preservation of biodiversity, habitats, migration routes and reproduction conditions must be

ensured (art. 3). The same Law also mentions "**general measures to protect wildlife**", including limits and prohibitions on its use, the preservation of habitats, migration ways and reproduction conditions, breeding in captivity of rare and endangered animals, scientific research and promotion of wildlife protection (art. 22).

The **Law on Nature Protection** includes fauna among the objects of the environment that shall be protected (art. 2). "**Ecological requirements**" are established for different types of economic and other activities: generic measures to protect the environment must be taken during the planning and realization of infrastructures and "exploitation of enterprises", and projects of economic and other nature must be accompanied by an Environmental Impact Assessment (EIA) (art. 16). Legal entities and individuals are obliged to observe **requirements** for production, storage, transportation and use of hazardous materials and take measures to prevent and eliminate negative consequences of their use on the environment (art. 17). Legal entities whose activities may have a "biological impact" on the environment are required to adopt **preventive measures** to avoid such impact (art. 18). They should also take measures to prevent and eliminate the negative impacts of vibrations, magnetic fields and other harmful physical impacts on places of wildlife concentration and reproduction (art. 19). Technical **requirements and standards** (e.g. maximum allowable concentration and emission of polluting substances) for general environmental protection (art. 11). Activities of organizations, enterprises or industries can be restricted or terminated by the "unions of deputies" and State bodies for nature protection in case of negative influence on natural resources, specially PAs (art. 35).

Requirements for wildlife protection are provided also in the Law on Wildlife. These requirements must be taken into account when using fertilizers, chemicals and other substances, in order to prevent negative impacts on wildlife and their habitats (Law on Wildlife, art. 30). Measures to protect animals shall be taken also when using vehicles (art. 26).

2.2.1. Management Planning

Management planning is addressed under the Law on Nature Protection. The **aims** of management planning are the "harmonious interaction of nature and society based on scientifically grounded combination of ecological, economic and social interests", the identification of effective measures for the rational use and preservation of the environment and natural resources, as well as the prevention of negative impacts on them. Nature protection planning is also included in **State plans for economic and social development**. **Territorial planning** relating to environmental protection is implemented by the "unions of deputies" (with the participation of State and public bodies for nature protection), whereas **sectoral planning** relating to environmental protection is implemented by ministries, institutions and other bodies, in coordination with bodies of the State Committee on Nature Protection (Law on Nature Protection, art. 8).

The Law on Wildlife also mentions the **distribution of competence** of different authorities over State and regional programmes for the protection and rational use of wildlife (including the State Hunting Fund) and development of hunting (Law on Wildlife, arts. 5-7; Law on Hunting, arts. 4-6). The development of programmes on environmental protection is generally included among the rights of public environmental protection organizations (Law on Nature Protection, art. 30) and that of ecological programmes is listed among the responsibilities of local (regional) "unions of deputies" (Law on Nature Protection, art. 5).

Although specific obligations are not specified, **wildlife monitoring** includes observation of wildlife conditions, quantity and habitats, and aims at the prevention of negative impacts on wildlife, preservation of biodiversity, scientifically motivated use of wildlife objects and creation of favorable conditions for wildlife (Law on Wildlife, art. 34; Law on Nature Protection, art. 26).

A **State cadastre and registration of wildlife**, which includes information on types, quantity, habitats and other relevant data, is established for wildlife protection and rational use by the Cabinet of Ministers and managed by the Ministry of Nature Protection (Law on Wildlife, arts. 5-6 and 33). A **State Cadastre of Protected Areas** is also established by the Cabinet of Ministers, containing information about ecological,

scientific, educational, economic, cultural conditions, status and characteristics of these areas (Law on Protected Areas, art. 6).

Scientific research in the field of nature protection must aim at, *inter alia*, the effective and rational use of nature and its resources, "defining possible measures to prevent and minimize the consequences of negative impact on the environment", tourism development and international cooperation (Law on Nature Protection, art. 33).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

To protect **rare and endangered species,** the **Red Book** of Turkmenistan is adopted by the Cabinet of Ministers and managed by the Ministry of Nature Protection and the Academy of Science (1997 Presidential Decree on the Red Book, arts. 1 and 10).

According to the Law on Wildlife, to preserve rare and endangered species the reproduction of which in natural conditions is impossible, State bodies for the protection and use of wildlife are obliged to create the necessary conditions for **breeding** of such animals in captivity or semi-captivity. Moreover, the keeping of animals in semi-captivity and artificially created habitats, and their breeding in such places and conditions, is allowed only with a permit issued by the Ministry of Nature Protection (arts. 22, 28 and 29).

Any activities that can lead to loss or decrease in quantity of rare and endangered animals are forbidden. The taking of animals included in the Red Book and their reintroduction into their habitats is allowed in exceptional cases with a permit issued by the Ministry of Nature Protection (Law on Wildlife, arts. 28-29). A similar provision can be found in the 1997 Presidential Decree on the Red Book, according to which capture of rare and endangered species included in the Red Book and the taking of products deriving from them, as well as the import of animals that can endanger such species, are allowed only in exceptional circumstances and upon the issuing of permits by the Ministry of Nature Protection (art. 18). Finally, the 1995 Regulation n. ПБ - 1137 on State Nurseries of Rare and Endangered Animals and Plants establishes basic rules on nurseries created for the reproduction and breeding of rare and valuable species.

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

PAs are regulated under several different pieces of legislation. "**State specially protected natural areas**" are natural complexes that have special ecological, scientific, cultural, educational, recreational and aesthetic value that are kept under State protection with the aim of, *inter alia,* preserving biological diversity and natural resources (Law on Protected Areas, art. 8). The Law on Protected Areas establishes few categories of PAs (reserves, including biosphere reserves; State wilderness areas; State natural monuments; and natural areas for medical purposes) and "guarding zones" (probably another definition for "buffer zones") that can be created around them (Law on Protected Areas, art. 4). They can be of international, State and local value (Law on Protected Areas, arts. 1 and 4). Other legal instruments provide for different categories of PAs: the Law on Nature Protection refers to State reserves; national, natural and memorial parks; wilderness areas; natural monuments; and botanical and zoological gardens (art. 21). The Land Code includes among "lands meant for nature protection" State natural reserves, national parks and forest sanctuaries, botanical gardens, wilderness areas and natural monuments, which are the absolute property of the State and are under a special protection regime (art. 86). The creation of PAs and the establishment of their borders are defined by the Government according to the Law on Nature Protection (art. 21). The regulation of different categories of PAs by different legal instruments may raise issues of interpretation and implementation of the legal framework regarding PAs management.

Wildlife use on the territories of PAs is forbidden or restricted, and so are activities incompatible with the aims of wildlife protection (Law on Wildlife, art. 27). The protection of PAs is implemented by "special nature protection services", the nature of which is unclear (Law on Protected Areas, art. 18).

According to the Law on Protected Areas, different PAs are regulated as follows:

- **State reserves** are created for the preservation and observation of, *inter alia,* "genetic fund of fauna" and landscapes, as well as for the "development of scientific basis for nature protection." They aim at, *inter alia,* preserving the environment in its natural conditions and at protecting rare and endangered animals (Law on Protected Areas, arts. 8-9). According to Regulation n. ПБ -1137 on State Reserves, the creation of new reserves is done by the Cabinet of Ministers. All lands and natural objects located on the reserves are "taken from economic exploitation" on a permanent basis (art. 1). Economic and other activities that are incompatible with the aims of the reserves and that can negatively influence the environment (including hunting, capture and killing of animals, damaging their habitats, "acclimatization" or introduction of new animals) are forbidden (Law on Protected Areas, art. 10). Scientific and other activities aiming at the preservation of biodiversity and rational use of natural resources (e.g. activities to prevent fire and sanitary activities) are explicitly permitted (Law on Protected Areas, arts. 10-11). Buffer zones ("Guarding zones") around reserves can be created by decisions of the Cabinet of Ministers, and animal capture or killing (as well as other activities, such as logging or economic activities that can negatively impact the environment) can be restricted or prohibited therein. Lands of such zones cannot be taken from private owners (Regulation n. ПБ -1137 on Guarding Zones of State Reserves, arts. 2-3 and 5).

- "**State wilderness areas**" are created to preserve and reproduce specific components of the environment. Activities that are incompatible with the tasks of wilderness areas can be restricted or prohibited and, when creating wilderness areas, lands cannot be taken from land owners and users (Law on Protected Areas, arts. 12-13). The regime of such areas is defined by relevant regulations (Law on Protected Areas, art. 13), in particular the Regulation n. ПБ -1137 on State Wilderness Areas. According to the latter, wilderness areas are created by the Cabinet of Ministers (art. 2) with different objectives, including preservation and reproduction of valuable natural landscapes and complexes, or biological and zoological functions (e.g. for the preservation and reproduction of valuable animals for economic, scientific and cultural purposes, as well as rare and endangered species) (art. 4). Land use, hunting, specific types of forest use, and tourism can be restricted therein (art. 5).

- **"State natural monuments"** are natural objects that have a special ecological, scientific, geological, historical, cultural and aesthetic value. They are created by the Cabinet of the Ministers (Regulation n. ПБ -1137 on State Natural Monuments, art. 3). When creating natural monuments, lands cannot be taken from landowners or users (Law on Protected Areas, art. 14). The State bodies that decide on the creation of natural monuments are responsible for the establishment of the protecting regime, issuing a "certificate" to this effect and designating organizations that are responsible for the protection of natural monuments. Activities that are potentially dangerous for the preservation of monuments or zones around such areas can be restricted or forbidden (art. 15).

- Finally, "**natural areas for medical purposes**" are regulated by articles 16-17 of the Law on Protected Areas, but do not seem relevant for wildlife management purposes.

2.2.2.2.b) Habitat Protection outside Protected Areas

Measures for the preservation of habitats of wildlife shall be taken in many cases, including during forest use, development of tourist routes and organization of recreational activities (Law on Wildlife, art. 24). Measures to preserve migration routes shall be taken while implementing activities such as construction works (Law on Wildlife, art. 25). The protection of habitats, reproduction sites and migration routes is also included among the principles of Hunting Fund use (Law on Hunting, art. 9).
The Law on Nature Protection distinguishes between:

- **Zones "of emergency ecological situations"** where critical changes to the environment as a result of economic and other activities or natural processes and catastrophes have occurred which can harm the ecosystem, including wildlife; and
- **Zones of "ecological disasters"** where critical changes, due to economic and other activities or natural processes and catastrophes, have occurred that have significantly damaged ecological systems, including wildlife (art. 23).

The Law on Nature Protection, however, does not specify the legal consequences deriving from the establishment of such zones.

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

Land owners are obliged to prevent exhaustion of natural resources as a result of their economic activities (otherwise their property rights will be revoked). In addition, land can be expropriated from private owners for State or public needs in exceptional circumstances, including circumstances relating to PAs (Land Code, arts. 29-30 and 40). Owners of plots of the "forest fund" have a right to use objects of wildlife in accordance with the legislation (Forest Code, art. 15) and are responsible for loss of "fauna that is useful for forest" (Forest Code, art. 29).

2.2.3.1. Limitation and Regulation of Hunting

"**Animals that are hunting objects**", as decided by the Ministry of Nature Protection in coordination with the Union of Hunters and Fishers Societies, are considered as the "**State Hunting Fund"** (Law on Hunting, arts. 2 and 5; Presidential Decree n. 2422 on Hunting, art. 3), which can be used for hunting but also for cultural, scientific, educational and economic purposes (Law on Hunting, art. 10).

The Law on Hunting establishes a series of **general principles on hunting**, including the preservation of species' diversity in the use of the Hunting Fund (art. 9), the "protection and rational use of animals over the interests of hunting", "close contacts" with public organizations and the public, and international cooperation in the field of protection and rational use of the State Hunting Fund (art. 30).

Hunting and hunting management is only possible on **"hunting areas"** (Law on Hunting, art. 11). **Rights of hunting management** within such areas are granted to legal entities and individuals by the Ministry of Nature Protection (arts. 2 and 31-33). Hunting users must maintain the State Hunting Fund, habitats, migration ways and reproduction sites (art. 34). **Different types of areas** are established in relation to hunting rights (art. 12):

- hunting areas established for organizations, institutions and public associations, where hunting is allowed with permits issued by such users (art. 17);
- "areas of common use", where hunting is allowed with permits issued by the Union of Hunters and Fishers Societies (Regulation n. 2422 on Hunting, art. 10);
- "wilderness areas" of national or local importance, where hunting is forbidden for all or some types of animals for a specific period; and
- areas where hunting is forbidden (reserves, buffer zones around reserves, green zones around cities and populated areas).

Other types of wildlife use on hunting areas (e.g. capture of animals that are not hunting objects, use of useful components of animals and obtaining products derived from animals and others) are regulated according to the Law on Hunting, art. 10 (see 2.1.1).

Hunting rights are given to members of the Union of Hunters and Fishers Societies (defined as the "main hunting user" - art. 7), foreign citizens and to those who obtain licenses for hunting in hunting areas upon the payment of a fee (Law on Hunting, art. 16). The payment of such fee is restated in the Law on Hunting as a pre-requisite for "**commercial" hunting** (hunting to obtain useful products for economic purposes)

(art. 17), but is not addressed when dealing with "**non-commercial"** one (hunting for the satisfaction of personal needs). Although **non-commercial hunting** appears to be free of charge according to the Law on Hunting, a fee must be paid for the same activity according to the Regulation n. 2422 on Hunting (art. 22); while, the same Law on Hunting establishes that all users of the Hunting Fund must pay a fee for such use (art. 44). Regardless of the nature (commercial or non-commercial) of hunting, hunting "**valuable types of animals"** is allowed with a special license issued by the Ministry of Nature Protection and is subject to a fee (Law on Hunting, art. 15).

The Law on Hunting establishes limits for **hunting weapons and methods** (arts. 18 and 20-22). It also establishes that the **export and import of hunting trophies** is allowed only with permits issued by the Ministry of Nature Protection in coordination with the State Veterinary Service (art. 23). The products of unauthorized hunting are confiscated or compensation is required (arts. 24-25).

Hunting is mentioned among the types of **forest use** established by the Forest Code, which does not, however, provide further specifications. Rules on the rights to use forest grounds for hunting needs are established by the Cabinet of Ministers (Forest Code, arts. 20 and 22).

As far as the **institutional framework** is concerned, hunting is managed by the Cabinet of Ministers, the Ministry of Nature Protection and local authorities. The **Cabinet of Ministers** approves the State programmes on protection and rational use of the State Hunting Fund. The Cabinet is also competent for: hunting development; regulation of monitoring; and the establishment of standards, rules and limits in the field of hunting, as well as rules on payments for the use of the State Hunting Fund (Law on Hunting, art. 4). The **Ministry of Nature Protection** is tasked with the development of hunting, as well as for the definition of hunting objects, hunting areas and hunting seasons. According to the Law on Hunting, the Ministry of Nature Protection is also responsible for the development and implementation of State programmes on protection and rational use of the State Hunting Fund and hunting development, the establishments of quotas and rules on taking, and the issuing of permits (licenses) for hunting, as well as the preparation of proposals on the establishment of hunting areas (Law on Wildlife, arts. 5-6, Law on Hunting, arts. 27-28). **Local authorities** are also competent in the development of hunting and the establishment of hunting areas (Law on Wildlife, art. 7; Law on Hunting, art. 6), as well as for the regulation of forest use for the needs of hunting (Forest Code, art. 11).

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

The creation and enlargement of **zoological collections** is allowed with permits issued by the Ministry of Nature Protection (Law on Wildlife, art. 20). The introduction or moving of new species (defined as "acclimatization"), altering habitats and interbreeding, as well as the **export and import** of wildlife are allowed for scientific and economic purposes, upon the issuing of a permit by the Ministry of Nature Protection based on the advice of relevant scientific organizations (Law on Wildlife, art. 31).

Tourist organizations and entities are responsible for the preservation of natural objects that they use in accordance with the legislation (Law on Tourism, art. 23).

2.2.3.3. Assessment of Processes Harmful to Wildlife

The "**State ecological expertise**" (SEE) is provided by the Law on Nature Protection and the Law on State Ecological Expertise to assess processes harmful to wildlife. The SEE is mandatory for economic and other activities "connected with changes in the environment" (Law on State Ecological Expertise, art. 3). The **aims of the SEE** include "defining the level of ecological danger of planned or implemented economic or other activities that can directly or indirectly negatively affect environment and people", assessing compliance of economic and other activities with requirements of legislation for the protection of nature, and monitoring the adoption of environmental protection measures for implemented projects (Law on State

Ecological Expertise, art. 4; Law on Nature Protection, art. 13). "Projects of programmes in the economic sector", and project documentation on development of economic and other activities are subject to SEE (Law on State Ecological Expertise, art. 6; Law on Nature Protection, art. 14).

As to the relevant **institutional framework**, the SEE is undertaken by State bodies for nature protection with the participation, if necessary, of other State and public organizations (Law on Nature Protection, art. 13). According to the Law on State Ecological Expertise, decisions on the undertaking of the expertise are taken by the Cabinet of Ministers and local executive bodies, though the exact distribution of competences is not clear (arts. 8-11). The Law on Licensing distributes the competence over the expertise among the Cabinet of Ministers, the Ministry of Nature Protection and local authorities (arts. 8-10).

Economic projects and other activities are subject to an **Environmental Impact Assessment** that is undertaken by the entity proposing the project and that must include information on the impact and measures to protect the environment. The impact assessment is implemented taking into account, *inter alia,* perspectives of socio-economic development of the region, types of potential impacts on the environment, and the requirements of environmental legislation of Turkmenistan (Law on Nature Protection, art. 16). EIA is required also for projects that are subject to ecological expertise (Law on Ecological Expertise, art. 7).

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

According to the **Law on Wildlife**, wildlife users generally have the **right to participate** in the decision-making process regarding wildlife protection and use (Law on Wildlife, art. 13). Rights of citizens in the field of wildlife protection include the **right to obtain information** on wildlife and to "**make suggestions** on wildlife protection measures" (art. 9). Citizens and public organizations **provide support** to State competent bodies in the field of wildlife protection and rational use (art. 8). Similar rules can be found in the Law on Hunting: public organizations have a right to **support** State bodies in the organization of activities for the protection and rational use of the State Hunting Fund and hunting management (art. 7). Public organizations and citizens are also allowed to **participate** in the realization of activities for the protection and use of PAs. In addition, State bodies that control PAs must take into account the suggestions on protection and use of such areas formulated by such organizations and citizens (Law on Protected Areas, art. 7).

Rights of citizens and public organizations are also contemplated by the **Law on Nature Protection**: they include the **right to participate** in the discussion over draft legal acts, to **receive information** on environmental conditions, to **organize public ecological expertise** (art. 28), to **participate** in activities aimed at preventing violations of environmental legislation and to provide **support** to public organizations in the field of nature protection (Law on Nature Protection, art. 29). Public environmental protection organizations have a right to develop, establish and promote their own **programmes** on environmental protection, to **implement activities** for the protection and reproduction of natural resources, to preserve the environment, to create public funds on nature protection, to **demand information** on environmental condition and State plans, programmes and activities on nature protection and receive relevant information (art. 30). "Unions of deputies", State bodies on nature protection and other competent bodies are obliged to "provide **support to citizens** and public environmental protection organizations in realization of their rights and obligations in the field of environmental protection", to take into consideration suggestion on organization of environmental protection activities and to ensure that information on environmental conditions and results of ecological expertise are publicly available (art. 31). The creation of duties for public authorities in relation to public participation is an uncommon, positive aspect of the legal framework of Turkmenistan.

Public monitoring of the protection and rational use of wildlife is implemented by public organizations which may adopt "recommendations" in this regard (Law on Wildlife, arts. 38-40). Public control for observance of hunting legislation is performed by the Union of Hunters and Fishers Societies (Law on Hunting, arts. 35-37).

3. CONCLUSIONS

3.1. General Considerations

As with other countries of the region, the legal framework of Turkmenistan is dispersed in several laws, decrees and regulations. Among the positive aspects of such framework one should underline the fact that rights for **public participation** are clearly provided for (2.3.1). The legal framework of Turkmenistan includes several provisions on the rights of access to information and of participation in decision making and in implementation of environmental protection activities. Moreover, it provides for duties of public authorities in relation to public participation. However, statements of principle are not always accompanied by procedures and modalities to implement effectively the rights that are mentioned in principle. Details on how such rights may be substantiated should be included.

Unlike in other countries, the **institutional framework** is often detailed enough to identify different mandates, and specific provisions on inter-institutional coordination are also included. The regulation of hunting is particularly detailed, although some key aspects (such as transparent procedures for allocation of hunting rights) appear to be missing, while some specific issues should be clarified (as will be shown below in the "detailed recommendations"). Significantly, the Turkmen legal framework also seeks to address the impacts of tourism on wildlife and, more generally, it attempts (although probably in an excessively general way) to limit all activities that may have an impact on the environment, including wildlife, by envisaging the adoption of ecological, technical and other requirements and standards, as well as preventive measures, for such activities (2.2).

However, there are some gaps and difficulties that should be dealt with. Some may derive from problems of **unclear definitions and incoherence within the legal framework** (for example regarding the regime of wildlife ownership in general and in PAs in particular, the different categories of wildlife use, or the regime of non-commercial hunting). Others may be due to excessively general or broad provisions which are not capable of being translated into specific obligations. This is the case of the "requirements", "standards" or "measures" for environmental protection envisaged for certain activities by the Law on Nature Protection (arts. 11 and 16-19) and the Law on Wildlife (arts. 26 and 30). This is also the case of the general principles for hunting management mentioned in the Law on Hunting (arts. 9 and 30).

Major gaps can also be identified in the absence of specific obligations and procedures on management planning (although a system of wildlife monitoring and data collection is provided), of rules on trade of rare and endangered species, in the total lack of consideration for traditional or local users, and in the insufficiently developed rules on the assessment of activities that are harmful to wildlife. Moreover, essential concepts such as the sustainable use of resources or the ecosystem approach in management planning should be considered.

3.2. Detailed Recommendations

The **Law on Wildlife** explicitly avoids the issue of protection and use of wild animals kept in captivity or semi-captivity for economic, cultural, scientific, recreational, aesthetical and other purposes (art. 1). Reference is made to "relevant legislation" to this end, but there appears to be no relevant legal instrument in this regard. The legal framework should be integrated accordingly.

As far as **wildlife ownership and use** are concerned (2.1.1):

- the **relationship between the Law on Wildlife (art. 2) and the Regulation n. 2422 on Hunting (art. 1)** on the issue of wildlife property should be clarified as the validity of the exceptions contained under Regulation n.2422 are uncertain.
- The regime of **ownership of wildlife in PAs** in particular is unclear, as rules on the ownerships of lands of PAs and of natural objects located therein are not accompanied by clear rules on the ownership of corresponding wildlife (see Land Code, arts. 22 and 86; Regulation n. ПБ -1137 on State Reserves, art. 1; see also 2.1.1, 2.2.2.2.a).
- The regime on **wildlife use** has a number of ambiguities:
  - the **categories of possible wildlife uses** are unclear, as the lists of possible uses provided by the Law (Law on Wildlife, art. 11) are not consistently used throughout the legal framework;
  - the category of **wildlife use "without removing it from its habitat"** is regulated in an incoherent manner (see Law on Wildlife, arts. 11 and 18);
  - the **use of wildlife by removing it from its habitat** is regulated in a contradictory manner. Firstly, it is unclear whether this type of use is always subject to a license and the payment of a fee, and whether it is limited only to a specific list of wildlife objects (Law on Wildlife, art. 11). Secondly, it is unclear whether the capture of animals "that are not hunting objects" is allowed generally (Law on Wildlife, art. 16) or,allowed only for animals included in a specific list and upon the issuance of a permit by the "competent body on wildlife protection and use" (Law on Wildlife, art. 16), or whether it is allowed only upon the issuing of a special permit by the Ministry of Nature Protection (Law on Hunting, art. 10). Thirdly, the relationship between the general rule on taking of wildlife (Law on Wildlife, art. 11) and the specific rule on capture of wildlife "that is not a hunting object" (Law on Wildlife, art. 16) is unclear, especially considering that hunting and "capture of animals that are not hunting objects" should be the only instance of wildlife use considered (Law on Wildlife, art. 11); and
  - the very broad provision in the **Law on Licensing** requiring a license for all "activities that are connected to the use of fauna" (art. 18) may contradict those cases in the Law on Wildlife in which wildlife use is allowed without such license. The relationship between the two instruments should therefore be clarified.

As far as **wildlife management** is concerned (2.2), the Law on Wildlife and the Law on Nature Protection contain generic references to "requirements", "standards" or "measures" for wildlife protection which are crafted in very vague terms that cannot be translated into more specific obligations for identified entities.

As far as **hunting** is concerned (2.2.3.1):

- the definition of **wildlife use for purposes other than hunting**, in hunting areas (Law on Hunting, art. 10) needs to be more precise;
- **general principles on hunting** are very broad and it is unclear to whom they are addressed (Law on Hunting, arts. 9 and 30). The principles should specify what obligations arise and who is responsible for their implementation;
- the concept of **"close contacts with public organizations"** is unclear (Law on Hunting, arts. 9 and 30);
- the law does not address the **conditions upon which rights relating to hunting and hunting management are granted** (see in particular Law on Hunting, arts. 2, 11 and 31-34); and
- The **regime of "non-commercial hunting" is contradictory**, as it appears to be free of charge according to the Law on Hunting, whereas a "duty" must be paid for the same activity according to the Regulation n. 2422 on Hunting (art. 22). Moreover, the same Law on Hunting establishes that all users of the Hunting Fund must pay a fee for such use (Law on Hunting, art. 44).

As far as regulation of other activities affecting wildlife is concerned (2.2.3.2), although the introduction of rules on regulation of **tourism** is welcome, such rules are excessively broad (Law on Tourism, art. 23) and should be specified.

Regarding **rare and endangered species** (2.2.2.1), the issue of trade in these species and their products is neglected. Relevant rules, in conformity with international standards in this regard (the Convention on the International Trade of Endangered Species - CITES), should be introduced.

On the **assessment of activities that are harmful to wildlife** (2.2.3.3), the legal framework provides for a SEE with very broad definitions, tasks and objectives and no detailed procedures or rules. The same remark can be formulated on EIA, which is barely mentioned in the legislation. Moreover, responsibilities of the different institutions involved are unclear. Finally, no public participation is envisaged for either procedure. The legal framework should be adjusted accordingly.

As far as **management planning** is concerned (2.2.1), the law simply identifies the aims of such planning and the distribution of competences among different institutions on the matter. It does not, however, specify precise obligations and procedures relating to planning, which should be integrated into the legal framework. The same can be said with regard to wildlife monitoring, data collection and scientific research.

Various categories of **PAs** (2.2.2.2.a) are provided by different legal instruments (the Law on Nature Protection, the Law on Protected Areas and the Land Code). These instruments should be coordinated. In addition, the Law on Protected Areas assigns a role to **"special nature protection services"** (art. 18); however, the responsibilities of these services are not defined by the law and should be clarified.

Habitat protection outside PAs (2.2.2.2.b) is addressed only in very general terms, with reference to generic measures for habitat protection that should be taken (Law on Wildlife, arts. 24-25, Law on Hunting, art. 29). These general principles should be revised into more detailed obligations relating to specific habitats and specific entities. Moreover, specific legal consequences should be established for the designation of zones "of emergency ecological situations" and zones of "ecological disasters", which are simply outlined in very general terms under the Law on Nature protection (art. 23).

UZBEKISTAN

1. INTRODUCTION

The legal framework of Uzbekistan on wildlife is the result of the interaction between a few legal instruments:

- the Law of the Republic of Uzbekistan n. 754-XII of 9 December 1992 on Nature Protection (**Law on Nature Protection**) (as amended by laws of 6 May 1995, 25 April 1997, 25 December 1998, by paragraph V of the Law of the Republic of Uzbekistan of 26 May 2000 and Item 2 of the Law of 31 August 2000) is the general instrument for the protection of the environment;

- the Law of the Republic of Uzbekistan n. 545-I of 26 December 1997 on the Protection and Usage of the Animal World (**Law on Fauna**) is the specific instrument on wildlife protection and management;

- the Law of the Republic of Uzbekistan "On Protected Natural Territories" of 3 December 2004 (**Law on Protected Territories**) (which repeals the Law "On Especially Protected Natural Territories" of 1993) is the legal instrument on the creation, functioning and management of Pas;

- the **Law on Ecological Expertise** of 25 May 2000;

- the Law n. 770-1 of 15 April 1999 on Forests (**Law on Forests**);

- the Ministerial Decree n. 111 of 3 April.2002 on Approval of the Regulation on State monitoring of the environment in the Republic of Uzbekistan (Ministerial Decree n. 111);[102] and

- the Ministerial Decree n. 508 of 28 October 2004 on the control over rational use, export and import of biological resources (Ministerial Decree n. 508).[103]

A clause safeguarding international law, i.e. establishing that rules contained in international treaties would prevail over incompatible domestic provisions, is contained in several instruments (e.g. the Law on Protected Territories art. 3; Law on Fauna, art. 1, Law on Nature Protection, art. 53).

2. ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

2.1. Ownership and Institutional Set-up

2.1.1. Ownership of Wildlife and Related Rights and Obligations

According to the **Law on Nature Protection**, land and terrestrial wildlife (referred to in the laws of Uzbekistan as the "animal world") are part of the "national wealth", are subject to rational use and are protected by the State (art. 5). Similarly, the **Law on Fauna** (art. 3) clarifies that wildlife is the **property of the State**, is subject to rational use and is protected by the State. Wildlife **users have the right of ownership** of apprehended animal "objects" (i.e. animal organisms, "animal communities", rare and endangered species, or products of the activity of live animals) and products obtained from them (art. 16). Ministerial Decree n. 508 regulates the matter in a similar manner (arts. 2-3). Lands and natural objects of **protected natural territories** are the property of the State but a right to use them can be allocated to legal and physical persons according to the Law on Protected Territories (art. 6; see 2.2.2.2.a below).

[102] The Russian transaltion of the Ministerial Decree was provided by the national contact point and is on file with the author.
[103] The Russian transaltion of the Ministerial Decree was provided by the national contact point and is on file with the author.

Use of nature can be general (which is free of charge and without the need to obtain special permissions) or special (which provides entities with the possession, use or lease of natural resources based on special permissions and subject to payment, with the purpose of implementing industrial and other activities), according to the Law on Nature Protection (art. 6). The Law on Fauna follows the same principles: wildlife use can be "general" or "special." **General use** is free of charge, while **special use** is subject to the payment of a fee and is based on permissions to be issued in accordance with an order adopted by the Cabinet of Ministers (Law on Fauna, art. 15). **Ministerial Decree n. 508** restates the same general principles as far as "general" and "special" uses are concerned, but further specifies that "general" use is carried out without removing animals from their habitats, and without harming them (art. 6). It also provides (in an Annex) details on the payments required for "special" use and the conditions and procedures for granting wildlife use permits. Permits for special use are granted on the basis of quotas established by the **State Committee for Nature Protection** (in coordination with the Academy of Science) (art. 9), which also issues the relevant permits. The use of rare species (see 2.2.2.1) and of wildlife under the State Forest Fund, however, requires a permit from the Cabinet of Ministers (art. 10).

Wildlife users can be legal or physical persons that exercise the right to use wildlife objects, subject to the conditions established by the law (Law on Fauna, art. 14), and in conformity with the "conditions of their allocation for use" (Law on Fauna, art. 16).

Types of wildlife use include: hunting (2.2.3.1); use for scientific, cultural, educational and aesthetic purposes; for "useful properties of animal living patterns"; and for "obtaining products of live wild animal activities." These uses can be carried out with or without removal of wildlife from their environment (Law on Fauna, art. 17). Uses for scientific, cultural, educational, and aesthetic purposes are allowed with or without removal of wildlife from their habitats under the Law on Fauna (art. 21). "Useful properties of animal living patterns" (such as soil generation or plant pollination) should be used if they involve the removal of animals from their habitats, harm to animals or their environment (art. 22). Similarly, the use of live animals to obtain products from their activities is allowed as long as the animals are not harmed or removed from their habitats and their environment is not disturbed (art. 23). Use for the creation of zoological collections is also envisaged (art. 28; see 2.2.3.2 below).

Users are obliged to respect limits established for wildlife use, to ensure protection of fauna, to use wildlife in such a manner as to ensure the preservation of animals and their habitats, to register wildlife population numbers, and to adopt measures for the restoration and reproduction of fauna (Law on Fauna, art. 16). The Law on Nature Protection establishes that the use of nature is allowed provided that a suitable natural environment is preserved, that the use of natural resources is carried out within the limits established by appropriate standards, and that the renewal capacity of natural resources is ensured (art. 16). Wild animals can be used on condition that their reproduction ability, specific diversity and "stability of communities" are preserved (art. 21).

Wildlife **use rights can be revoked** in a series of cases specifically listed in art. 27 of the Law on Fauna (e.g. renunciation, expiring of term, violation of the law, liquidation of the user - legal person). The Law on Nature Protection also establishes that the rights of users who systematically violate the requirements for use of natural resources can be revoked (art. 23).

2.1.2. Institutional Set-up

The **Supreme Council** of the Republic of Uzbekistan has exclusive competence over the definition of the State policy on environmental protection, the approval of State ecological programs, the development and adoption of legislation in the field of nature protection, the coordination of activities relating to control over the implementation of nature protection legislation, and the setting of payments for the use of natural resources (Law on Nature Protection, art. 7).

Public functions related to **environmental protection** and natural resources use pertain to the Cabinet of Ministers, the State Committee for Nature Protection and local government bodies (Law on Nature Protection, art. 8).

The **Cabinet of Ministers** has competence over the implementation of nature protection policies, the regulation of natural resources use, the establishment of procedures and management of State registries of natural resources, as well as the "establishment of payments" and limits for the use of natural resources (Law on Nature Protection, art. 9).

The **State Committee for Nature Protection** is an entity directly subordinate to the Supreme Council It controls the implementation of State functions in the field of wildlife use and protection, and ensures compliance with environmental law by ministries, State committees, departments, enterprises, institutions and organizations, as well as individuals. Its decisions are mandatory for State bodies, enterprises, institutions, organizations and citizens (Law on Nature Protection, art. 11).

In the field of wildlife management, the competence of **local government bodies** includes:
- defining strategies for nature protection on their relevant territories;
- approving territorial ecological programs;
- registering natural resources;
- providing "logistical support" in the field of nature protection;
- issuing (and canceling) permissions for natural resources use and the collection of payments thereof; and
- ensuring nature protection and taking decision on the suspension of activities negatively affecting the environment (Law on Nature Protection, art. 10).

Article 31 of the same Law generally lists other bodies that may implement "State control in the field of nature protection".

Public functions specifically related to wildlife management pertain to the **Cabinet of Ministers**, the **State Committee for Nature Protection**, the **State Forestry Department** (defined in the Law as the "State Forestry Committee") and **local government bodies** "within the limits of their respective competence" (**Law on Fauna**, art. 6). State control over wildlife protection and use is implemented by **local government bodies** and the **State Committee for Nature Protection** in accordance with legislation (art. 10). The State Committee for Nature Protection may in particular approve quotas to regulate the number of wildlife objects and may impose limitations or prohibitions on use of certain animal species to protect them, based on the data and advice of the Academy of Sciences (Law on Fauna, art. 24).

The **State Committee for Nature Protection** and **local public authorities** are also responsible for State control in the field of protection and use of PAs (**Law on Protected Territories**, art. 9; see 2.2.2.2.a below).

2.2. Wildlife Management

The **purposes of nature protection** include the preservation of ecological balance, **rare species** and unique natural objects, diversity of ecosystems and landscapes, cultural heritage "related to objects of nature", as well as the **rational use of nature** "in the interests of the effective and sustainable socio-economic development of the Republic" and the maintenance of ecological safety (Law on Nature Protection, art. 3).

The Law on Nature Protection provides a series of **principles** to guide all entities and individuals in carrying out their activities (art. 4):
- preservation of the stability of the biosphere and its ecosystems;
- the right of citizens to a "favorable natural environment" (a right that is recalled in article 12 of the same Law);
- scientifically-based combination of ecological, economic and social interests of society;
- compulsory ecological assessment;

• promotion of the rational management of nature;
• prohibition of harmful and irreversible impacts on the natural environment; and
• openness and transparency in decision-making nature protection issues.

Unfavorable impacts of economic activities on the environment should be limited, according to norms and standards defining environmental quality, and guaranteeing ecological safety, as well as the protection and renewal of natural resources. **Maximum permissible standards of impacts on the environment** are established for activities such as the development of industry, agriculture, construction and renovation of cities and other settlements (Law on Nature Protection, art. 14). Enterprises, organizations and institutions are obliged to develop **ecological and other criteria** regulating maximum permissible environmental impacts. **Ecological standards** are approved by the State Committee for Nature Protection, the Ministry of Public Health, and the State Committee for the Supervision of Secure Management of Activities in Industry and Mining according to their respective competence (art. 15).

The **Law on Fauna** regulates in particular the protection, use, restoration and reproduction of wildlife with the purpose of "maintaining conditions for its existence, the preservation of specific variety, and the integrity of natural communities and habitats" (art. 2). The Law refers to **"main requirements"** for the protection and use of wildlife and its habitat. This includes: preservation of the variety and integrity of animal communities in conditions of natural freedom; preservation of habitats, conditions of reproduction and migration routes of animals; rational use, restoration and reproduction of fauna; and regulation of fauna populations (art. 11).

Wildlife protection is ensured through the establishment of rules, standards, limitations and prohibitions on the protection, rational use and reproduction of fauna, the prevention of unauthorized wildlife use; the protection of habitats, conditions for reproduction and migratory routes, the prevention of wildlife destruction in the course of economic and other activities, the creation of special protected nature areas; the breeding in captivity of rare and endangered species, and the organization of scientific research (Law on Fauna, art. 30).

The Law on Nature Protection (art. 37) envisages the use of **economic incentives**, such as the granting of taxation privileges to enterprises, institutions, organizations and citizens when they implement measures to ensure rational use of natural resources, or the granting of "credits (loans)" for the implementation of measures to ensure rational use of natural resources. These incentives are also provided for the protection and rational use of wildlife in particular, including through the granting of taxation-related and other privileges to legal and physical persons who comply with protection requirements (Law on Fauna, art. 13).

Citizens are obliged to use rationally natural resources and to preserve nature (Law on Nature Protection, art. 12) and **those who cause damage to the environment are obliged to compensate** it (art. 49). Those responsible for specific violations of the Law on Nature Protection (including "unauthorized use of natural resources" or violation of the legal regime of specially protected territories) "shall be subject to **disciplinary, administrative, criminal and other responsibility** pursuant to the legislation of the Republic of Uzbekistan" (art. 47). As far as wildlife is concerned, legal and physical persons are obliged to **compensate for damage** caused by the violation of the legislation on the protection and use of wildlife. Illegally procured "objects of the animal world", products derived from them, and instruments used for illegal procurement are subject to seizure or confiscation, or their costs are to be paid by those found guilty (Law on Fauna, arts. 39-40).

2.2.1. Management Planning

The Law on Nature Protection provides that a **system of State monitoring** of the natural environment shall be established to observe, register and assess environmental conditions and resources. Monitoring shall be implemented by "specially authorized bodies", as well as by enterprises, organizations and institutions engaged in activities that may affect the environment.. The structure, content and procedure of monitoring shall be developed by the State Committee for Nature Protection and shall be approved by the Cabinet of Ministers (art. 28). In particular:

- an "**ecological control**" shall be established to monitor environmental conditions and changes resulting from economic and other activities, as well as environmental programs and their activities aiming at the protection of the environment (art. 29).
- a "**governmental monitoring service for natural environment**" (art. 30) shall be organized to monitor changes caused by physical, chemical or biological processes, as well as pollution and its effects on animals. Environmental information deriving from such system shall be publicly available and regularly published.
- Moreover, "**State cadastres" of natural resources** shall be kept for the registration of quantitative and qualitative characteristics of natural resources and their use. The structure, organization, and activities of State services for environmental monitoring and for the maintenance of State cadastres of natural resources shall be established by the Cabinet of Ministers.

The **Law on Fauna** provides that, in order to ensure the protection and rational use of wildlife, **State registration of animals** and documentation of the extent of their use shall be carried out (art. 8). A **State cadastre of wildlife** is provided for (containing information on numbers and geographical distribution of species, characteristics of their habitats, and use modalities). Wildlife users are obliged to conduct annual registrations of fauna that they use and to submit the data to the State Committee for Nature Protection and bodies of State statistics. The order for the State registration of wildlife and the management of the State cadastre shall be approved by the Cabinet of Ministers. Monitoring, collection, compilation and analysis of the information on fauna and their habitats shall be carried out by "the unified system of State monitoring" of natural environment in accordance with legislation (Law on Fauna, art. 9).

A specific legal instrument (Ministerial Decree n. 111 on environmental monitoring) has been adopted in this regard. The Decree delegates to a list of governmental entities (among others, the State Committee for Nature Protection) the duty to develop and submit a program of environmental monitoring to the Cabinet of Ministers for approval. The monitoring, which is to be conducted at the local, regional and national level, aims at, *inter alia,* assessing and predicting pollution levels, developing recommendations on environmental protection, providing information to be used for State control over the environment and the rational use of natural resources, including fauna (arts. 3-6). Monitoring is implemented by different bodies depending on the relevant ecosystem: wildlife should fall under the mandate of the State Committee for Nature Protection as the latter is responsible for the monitoring of terrestrial ecosystems. The Committee also coordinates the activities of other bodies in this field (art. 12).

2.2.2. Wildlife Protection

2.2.2.1. Protection of Specific Species

Rare and endangered species are recorded in the Red Book of Uzbekistan (Law on Fauna, art. 36). Animals included in the "international Red Book" and Red Book of the Republic of Uzbekistan are considered "specially protected" by the Law on Nature Protection (art. 2). "Operations" which can result in the loss, reduction in the population or disturbance of the habitats of wildlife are prohibited (Law on Fauna, art. 36). The State Committee for Nature Protection and the State Forestry Department are obliged to create conditions for breeding those species that cannot be reproduced in natural conditions (art. 37). The capturing of such species for their breeding and subsequent release, for research or other purposes, is allowed upon permission granted by the Cabinet of Ministers, on the basis of the opinion of the State Committee for Nature Protection and the advice of the Academy of Sciences (Law on Fauna, art. 38; Ministerial Decree n. 508, arts. 10, 13-14 and 64). The export and import of such species is allowed with the permit issued by the State Committee for Nature Protection in coordination with the Academy of Science (Decree n. 508, art. 34).

Permits for the export and import of "sample of types of animals" included in the Appendixes of the Convention on the International Trade of Endangered Species (CITES) are issued to individuals and legal entities by the CITES administrative body of the Republic of Uzbekistan (the "State Biocontrol" under the State Committee for Nature Protection), based also upon a request presented to the Scientific bodies of

CITES of the Republic of Uzbekistan (the Institute of Zoology and the NGO "Botanica") (Decree n. 508, arts. 41-43). Use of wildlife included in CITES Appendixes in general is allowed if it respects the terms and conditions of the Convention (art. 66).

In order to protect rare and endangered species of animals and their habitats, **access by citizens to relevant parts of PAs** may be prohibited (Law on Protected Territories, art. 8) and *ad hoc* "**biological sanctuaries**" may be designated for their conservation (arts. 31-32) (see. 2.2.2.2.a below).

2.2.2.2. Area-Based Protection

2.2.2.2.a) Protected Areas

PAs in Uzbekistan are regulated by the **Law on Protected Territories** of 2004. According to this Law, "Protected Territories" are, *inter alia,* sites of ecological importance in which economic exploitation is partially, permanently or temporarily prohibited. Interestingly, the Law emphasizes that such territories constitute "the unified ecological system" designed to ensure biological and landscape diversity and to maintain an ecological balance (art. 4).

Protected natural territories are the **property** of the State, but rights over lands and natural objects can be allocated to legal entities and individuals for the creation of "private sanctuaries and natural nurseries" (art. 6). The granting of ownership, use, or rent rights for these land sites is allowed only upon positive conclusion of a State ecological expertise (art. 12). If right holders do not comply with their responsibilities in protecting PAs, their rights over lands that are occupied by them can be revoked (art. 7).

Activities that frustrate the targets and purposes of PAs are forbidden, while activities having a negative impact on such areas may be limited (art. 7), and activities which threaten the conservation of designated natural objects and complexes are either limited or prohibited (art. 12). **Access to PAs**, which can be allowed against a payment, is generally allowed for citizens, except for areas devoted to the protection of endangered species and their habitat, which may be inaccessible.

PAs are **created** by a decision of the Cabinet of Ministers and local government authorities "in the order established by the legislation" (art. 13). **State "control"** in the field of protection and use of PAs is carried out by the State Committee for Nature Protection, as well as by local public authorities (art. 9). **State "management"** of protected areas is carried out by the Cabinet of Ministers, local government authorities and "specially authorized bodies" (art. 11). State bodies, legal entities and individuals who are entitled to manage PAs shall establish "**plans of management of protected natural territories**", i.e. the "complex of organizational, [...] technical and other measures for the protection and use of natural objects and complexes." The drafts of such management plans are subject to State ecological expertise, the procedure for which is established by the State Committee for Nature Protection (art. 16). Article 17 of the Law on Protected Territories indicates in details the different entities in charge with the protection of the different categories of PAs.

A State "**cadastre**" of PAs containing all relevant information is kept by the State Committee for Nature Protection jointly with the Academy of Science (art. 14). A document containing information characterizing the territory, the regime and management of PAs (called "**passport**") must be issued by State bodies and legal and physical persons which have the PAs under their authority (art. 15).

The Law on protected Territories also recognizes certain rights and prerogatives of **citizens, NGOs and local traditional settlers and users** (arts. 8 and 10; see 2.3.1 and 2.3.2 below).

The different categories of PAs are as follows:

- "**State reserves**" (arts. 18-20) are protected territories "of general public significance" subject to a strict regime of protection, which allows only for conservation and research activities. They are created in the form of "State nature protection scientific and research establishment" by decisions of the Cabinet of Ministers, based on proposals made by a specially authorized State body. As a legal entity, State reserves can act on the basis of Provisions established by the Cabinet of Ministers. Coordination of scientific research in State reserves is carried out by the Academy of Sciences. The results of scientific research obtained with funds from the State budget are the property of the government, whereas property rights for the results of scientific and research activities obtained with private funds of legal and physical persons are established by agreement between the State reserves and the above-mentioned persons;

- "**Complex (Landscape) Sanctuaries**" (arts. 21-22) are designated for the conservation of natural objects and complexes, having special ecological value, in their natural conditions. They are created in the form of "State nature protected establishment" by decisions of the Cabinet of Ministers, based on proposals made by specially authorized State bodies. As a legal entity, sanctuaries can act on the basis of the Provision approved by the Cabinet of Minister. Any activity, apart from a specific list of exceptions (e.g. scientific research, environmental monitoring or grazing), is forbidden in these areas;

- "**Natural parks**" (arts. 23-25) are designated for conservation and use of natural objects and complexes which have a special ecological, cultural and aesthetic value, as well as for recreational, scientific and cultural purposes. They are created in the form of "State nature protected establishment" by decisions of the Cabinet of Ministers, based on proposals made by a specifically authorized State body. As a legal entity, parks can act on the basis of Provisions approved by the State bodies under whose authority these parks are placed. Natural parks may be sub-divided into reserve zones, where the regime of State reserves applies, resort zones, recreational zones, as well as zones of economic and other use, where human settlements and activities that do not damage natural objects and complexes are allowed. A list of prohibited activities in these areas (e.g. activities causing degradation of fauna or the introduction of alien species) is provided under article 25. The same article provides for the general principle that other types of activities that may cause damage to natural objects and complexes may be prohibited or restricted;

- "**State monuments**" (arts. 26-28) are protected natural territories with unique, irreplaceable natural objects of ecological, scientific, cultural and aesthetic significance. Activities which threaten their conservation are prohibited;

- **"Biological sanctuaries"** (arts. 31-32) can be designated for the conservation, reproduction and restoration of valuable, rare and endangered animal species, as well as for the protection of their migration routes. Sanctuaries are created by a decision of the Cabinet of Ministers, based on a proposal made by specifically authorized State body. Sanctuaries may also be established upon request of legal entities and physical persons. Sanctuaries may be public or private. Any activity that may cause damage to natural objects and the environment of a sanctuary may be either prohibited on a permanent basis or temporarily restricted. Sanctuary land is not taken from landowners or land users. However, landowners and land users are obliged to observe the regime established for the sanctuary, which is determined by the Provisions approved by the State bodies or by the legal entities or physical persons under whose authority the sanctuaries are placed;

- "**Natural nurseries**" (art. 33) aim to create the necessary conditions for the conservation, reproduction and restoration of animal species. Nurseries may be public or private, and are established by decisions of local government bodies. Any activity on the territory of a nursery that may prejudice the conservation, reproduction and restoration of animals is prohibited;

- "**Protected landscapes**" (arts. 35-41) include "resort natural territories" that are areas possessing "medical and treatment properties", "recreational zones", that are areas suitable for tourism and public recreation and "water protected zones";

- "**Territories for the Management of Separate Natural Resources**" (arts. 42-43) include areas for "hunting facilities" designated for the rational use of fauna. On such territories, the introduction of alien species and subspecies and other activities which may cause damage to fauna are prohibited. Moreover, the use of fauna is only allowed in accordance with legislation.

- "**State biosphere reserves**" (art. 44) are protected territories designated for the conservation of biological diversity and the rational use of natural objects. These reserves can be created by a decision of the Cabinet of Ministers (which also approves the provisions on their regime) for the "economic and social development" of the concerned area. These reserves can be sub-divided in: "reserve zones", where the regime of national parks is applied; "buffer zones", where any activity that may negatively influence the reserve zone is prohibited; and "transition zones", where economic and other activities that do not cause environmental damage are allowed. These reserves may also be included in the international network of "biosphere reserves".

- The Law on Protected Territories also includes an interesting provision on "**Intergovernmental protected natural territories.**" Intergovernmental PAs may be created on the basis of international agreements to which Uzbekistan is a party, and their regime is defined in accordance with the legislation of Uzbekistan and international agreements to which Uzbekistan is a party (art. 45).

The Law also provides for buffer zones (referred to as "**protected zones**" under art. 46 of the Law), i.e. territories bordering State reserves, sanctuaries and monuments of nature, where economic and other activities are restricted or prohibited to prevent negative impacts to the PA. The size and regime of protected zones are designated when the protected natural territories are established.

Also the **Law on Nature Protection** establishes a list of "specially protected natural territories", which includes "State reserves, national, historical-natural and memorial parks, zakazniks, monuments of nature, botanic and zoological gardens, and forest reserves" (art. 2). The relationship between this list and the regime of PAs regulated by the Law on Protected Territories is not clear.

2.2.2.2.b) Habitat Protection outside Protected Areas

When locating, designing and constructing transport lines, electric-power transmission lines and communication facilities, as well as hydropower facilities, measures should be taken to ensure the **preservation of migration routes, habitats and reproduction grounds of wild animals** (Law on the Animal World, art. 35).

2.2.3. Wildlife Use and Impacts on Wildlife of Other Land Uses

The Law on Forests (art. 1) refers to "relevant legislation" with regards to **forest use** associated with the use of wildlife. In addition, forest users are obliged to conduct their activities in such a way as not to cause negative impacts on wildlife (art. 21). Land users or forest users can be subject to a limitation of their rights in order to pursue the interests of wildlife protection (Law on Fauna, art. 32).

2.2.3.1. Limitation and Regulation of Hunting

Hunting is defined by the Law on Fauna as the search, tracing and chasing with the purpose of taking (shooting, capturing), or attempting to taking, animals living in conditions of natural freedom, and can be classified as commercial, amateur or recreational (art. 18). The implementation of "generally **hazardous instruments and methods**" in hunting, as well as the hunting of wildlife during "a disaster or in unnatural conditions" are prohibited (art. 20).

Hunting is allowed on "hunting grounds", i.e. lands or forests that are wildlife habitats (with few exceptions,

such as areas for nature protection or populated areas) (Ministerial Decree n. 508, arts. 51-52). Hunting grounds are managed by different types of legal entities, which establish "hunting economies" or "hunting farms" therein: State and forest hunting farms are managed by State organizations; non-commercial or sport hunting farms are managed by public associations and other non-governmental organizations; private hunting farms are managed by individuals and private entities (arts. 53-54). The allocation of rights relating to the management of these hunting grounds is determined by the State Committee for Nature Protection, or by the Main Department of Forestry (if the hunting grounds are established on forest land), upon the conclusion of an agreement by these governmental bodies with the relevant entities mentioned above (arts. 55-57). Such an agreement is valid for up to ten years and includes rights and obligations of the managers of the hunting grounds (including the duty to take wildlife monitoring and protection measures, and to report relevant information to governmental bodies in this regard) (arts. 57-58).

Individuals or legal entities responsible for the management of hunting grounds have the right (within the limits established by the law and the quotas established by the relevant governmental bodies) to **issue permits** to physical persons for the use of wildlife objects. They may also conclude contracts with legal and physical persons on the use of such objects for commercial purposes, to process hunting products and goods and to sell them. In addition, they may provide for the use "artificially bred species" of animals which are released into their habitats (Law on Fauna, art. 16; Ministrial Decree n. 508, art. 59).

Management of hunting is implemented by **legal and physical persons** "on the basis of" a series of factors: State ecological expertise of hunting projects, data of the registration of animals and condition of hunting resources, quotas and permissions, as well as contracts for the implementation of activities aiming at the protection, use and reproduction of fauna and its environment. Regulations for hunting and management of hunting activities are approved by the **Cabinet of Ministers** (Law on Fauna, art. 25) and "established by" the State Committee for Nature Protection (Ministerial Decree n. 508, art. 62).

Specific rules are also established for hunting by foreign citizens (Ministerial Decree n. 508, arts. 25-32).

2.2.3.2. Limitation and Regulation of Other Uses and Activities Affecting Wildlife

The **movement (resettlement) of animals** to new habitats, the **introduction** ("acclimatization") of new species of fauna, as well as measures for their **crossbreeding,** are allowed for research and economic purposes, subject to permission by the State Committee for Nature Protection, and based on the advice of the Academy of Sciences (Law on Fauna, art. 26). The **export, import and transportation** of wildlife and parts of it, of zoological collections or trophies is allowed subject to permission by the State Committee for Nature Protection (Ministerial Decree n. 508, arts. 33-35).

The use of wildlife to create and replenish **zoological collections** by removing animals from their habitats must be "implemented in accordance with the established rules." The "order for" creation, replenishment, storage, use and registration of zoological collections, rules on trade in zoological collections and rules for the transfer and export of objects of zoological collections outside Uzbekistan "are determined by legislation" (Law on Fauna, art. 28). Zoological collections "representing scientific, cultural, educational or aesthetic value" are subject to registration with the State Committee for Nature Protection. Owners of such collections are obliged to observe rules applicable to storing, registration and use of collections containing fauna (art. 29). Accordingly, Ministerial Decree n. 508 establishes that zoological collections can be created, and exported, only with permits issued by the State Committee on Nature Protection (arts. 71-72).

Activities affecting wildlife, habitats and migration routes must abide by requirements for wildlife protection (Law on Fauna, art. 31). In particular, legal entities and physical persons are obliged to ensure the prevention of disease and death of animals in the course of **any kind of economic or other activities**. Supervision and control are ensured by bodies of the State Veterinary Service and State Sanitary and Epidemiological Control. Specific **activities posing a danger to wildlife** and habitats are prohibited. For example, the storage of

hazardous substances, materials and wastes without measures to protect animals and animal habitats are prohibited (art. 33). Moreover, "while locating, designing and constructing human settlements, enterprises, facilities and other objects", in relation to new technologies and economic development processes, such as land reclamation, forestry, exploration, mining, grazing, development of tourist routes and the establishment of recreation facilities, **measures for nature preservation and protection** of habitats and conditions of reproduction of animals should be implemented, and the **inviolability of sites representing special wildlife habitats** shall be ensured (Law on Fauna, art. 34).

While locating, designing, constructing, or renovating enterprises, facilities and "other objects", "requirements of ecological safety" should be fulfilled and measures for the protection of nature should be designed (Law on Nature Protection, art. 41). **Activities having even a potential negative effect on natural resources** can be limited or suspended, and when it is impossible to eliminate their negative effects, they can be discontinued. Decisions on on these matters are made by States bodies in charge of "authorities and control" and of nature protection, according to their competence (i.e. the State Committee for Nature Protection and local government bodies; see 2.1.2) (Law on Nature Protection, art. 48).

2.2.3.3. Assessment of Processes Harmful to Wildlife

The **State ecological expertise** is regulated by the Law on Nature Protection (arts. 24-27). The expertise or assessment is defined as "a mandatory measure designed for the protection of natural environment, prior to acceptance of an economic decision". Implementation of projects without a positive conclusion of the State ecological expertise is prohibited. A "**public ecological expertise**" is also implemented by independent groups of specialists, upon the initiative of public associations. Conclusions of the public ecological expertise form independent recommendations. Decisions on the development of large national-scale "economic objects", which can have serious ecological impacts on the environment, are made by the Supreme Council on the basis of the conclusions of the State ecological expertise (art. 41).

As far as **wildlife** in particular is concerned, the **State ecological expertise** is mandatory for "materials justifying selection of sites for all kinds of construction", for documentation relating to projects which may affect wildlife or its habitat, for projects to establish hunting areas, for the introduction and cross-breeding of animals, and for activities related to "plant protection" that are potentially dangerous for fauna or its habitat. The State ecological expertise in the field of protection and use of wildlife is implemented by the State Committee for Nature Protection (Law on Fauna, art. 7).

The **Law on Ecological Expertise**[104] was adopted in 2000. Ecological expertise must be carried out to determine whether economic and other activities are compliant with ecological requirements and environmental standards. They must also assess the level of ecological impact of such activities and whether arrangements for environmental protection and rational use of natural resources are adequate. The Law also refers to an "**ecological audit**", which is an independent ecological expertise, carried out by ecological auditors (companies), over enterprises and other objects that have a negative impact on the environment.

2.3. People and Wildlife

2.3.1. People's Involvement in Wildlife Management

People's organizations (defined as "**self-government institutions of citizens**"), non-governmental organizations (**NGOs**) and individual citizens may **assist State bodies** in carrying out measures for the management, protection and use of PAs, by putting forward proposals that State bodies should "take into account." The public also has the right to **request and receive information** on PAs from relevant State bodies. Furthermore, the public can **carry out public ecological expertise** and **public ecological control** (Law on Protected Territories, art. 10).

[104] Not available in English.

According to the Law on Nature Protection, citizens have the right to **establish public organizations** for nature protection, and to **demand and receive information** on the state of the environment and on measures taken for its protection (art. 12). Public associations and citizens can also generally **monitor** environment protection (art. 32).

The Law on Fauna establishes a series of rights and duties for citizens and public associations in the field of wildlife management. They shall carry out measures and **contribute to State programs** on the protection of wildlife and their habitats, **conduct public ecological expertise**, and "**execute public control**". They shall **receive information** in the field of wildlife protection and may **bring claims for compensation** of damage to wildlife and its habitat. Citizens and the public may also have "other rights and responsibilities" according to the legislation (art. 5). Wildlife users may also **develop programs and measures** for the protection and use of wildlife, which "are coordinated with" the State Committee for Nature Protection (art. 12).

2.3.2. Rights of indigenous people, local people and traditional users

Traditional settlements ("Historically developed residence") **within PAs** may be maintained if traditional inhabitants and users respect the protective regime established for the relevant PA (Law on Protected Territories, art. 8). Moreover, **"advisory commissions"** may be created by local government authorities to represent citizens' self-government institutions, NGOs and citizens. Decisions on the creation of PAs which affect the interests of the population living in these territories shall take into account the advice of these commissions (Law on Protected Territories, art. 10).

3. CONCLUSIONS

3.1. General Considerations

Among the **positive elements** of the wildlife legal framework of Uzbekistan, the comprehensive regulation of wildlife use (including types of use, conditions and procedures for the allocations of use rights and limits to such use; see 2.1.1) and of hunting (2.2.3.3) should be highlighted. Moreover, as far as wildlife management is concerned (2.2), some interesting and important concepts and principles have been introduced (although they are not always translated into specific obligations), such as the preservation of ecological balance and ecological safety, diversity of landscapes, and cultural heritage, the rational use of resources, the scientifically-based integration of ecological, economic and social interests, and openness and transparency in decision-making (Law on Nature Protection, arts. 3-4; Law on Fauna, art. 11).

Furthermore, it is noteworthy that the concept of **protected territories as a "unified ecological system"** designed to ensure biological and landscape diversity and to maintain ecological balance is enshrined in the Law on Protected Territories (art. 4). More generally, the **regulation of the management of PAs** under this Law is quite detailed, and includes the **consideration of rights of civil society and local users** (Law on Protected Territories, art. 10; see 2.3.1 and 2.3.2).

In Uzbekistan, an attempt was made to regulate and impose limits upon specific activities that may affect wildlife (such as the resettlement of fauna, the introduction of new species, or the creation of zoological collections), but also to any activities threatening to wildlife or even having a potential negative effect on natural resources (Law on Fauna, arts. 31-34; and Law on Nature Protection, arts. 41 and 48). Finally, the legal framework also provides for incentives to encourage the sustainable use of resources (Law on Nature Protection, art. 17; and Law on Fauna, art. 13) and outlines (albeit in general terms) the principle of disciplinary, administrative, and criminal responsibility for violations of the Law on Nature Protection (art. 47), as well as the duty to compensate damage to wildlife (Law on Fauna, arts. 39-40).

Among the general **negative** elements, one may mention the absence of clear obligations on wildlife management planning and the fact that important activities potentially affecting wildlife, such as **tourism**, or habitat protection outside PAs, are not properly regulated. An essential concept such as the **ecosystem approach** in management planning is not reflected in the legislation.

In addition, the **institutional setup** in the field of wildlife protection and management according to the Law on Fauna (art. 6, 10) should be clearly defined, as it is excessively general at present (2.1.2). Mechanisms for inter-institutional coordination are missing.

Although the issue of public participation is dealt with at a general level, and basic principles have been incorporated in the legal framework, detailed procedures and obligations to ensure participation in decision making and management in wildlife-related issues should be introduced. The interests of indigenous peoples and of traditional and local users in wildlife management are only considered within PAs, but they should be taken into account at a more general level.

3.2. Detailed Recommendations

As far as **wildlife protection and management** are concered (2.2):
- "Main requirements" for the protection and use of wildlife and its habitat, provided by the Law on Fauna (art. 11), are quite undetermined, so that they cannot be translated into specific obligations with a clear content, addressed to identifiable subjects;
- the same can be said for the list of means of implementation of wildlife protection included in article 30 of the Law on Fauna.

As far as the regulation of specific **activities affecting wildlife** are concerned (2.2.3.2) the Law requires users to adopt generally "measures for nature preservation and protection of habitats" while implementing certain activities (Law on Fauna, arts. 31-34). Such "measures", however, should be more clearly identifiable.

As far as the protection of **rare and endangered species** is concerned (2.2.2.1), there are no explicit limits on hunting of such species, which would be essential to effectively safeguard them.

As far as the assessment of **processes harmful to wildlife** is concerned (2.2.3.3), a significant gap can be identified in the absence of substantial regulations and procedures on environmental impact assessment. Participation in the "ecological expertise" by the public is not provided for, and citizens may organize their own expertise but they can only make recommendations that may or may not be taken into account.

As far as **management planning** is concerned (2.2.1), the legal framework is very detailed on obligations regarding data collection, information gathering and monitoring, but there are no obligations of State bodies in the field of wildlife management planning. Such obligations should be introduced.

As far as **PAs** are concerned (2.2.2.2.a), the legal framework appears to be sufficiently comprehensive and effective. However, some minor flaws could be identified as follows:
- the Law on Protected Territories mentions "State ecological expertise" in few instances (arts. 12 and 16) but no procedures are included in the legal framework to that end;
- the Law mentions "specially authorized bodies" in a few instances, but they are not defined in detail (arts. 11 and 18-25); and
- the Law on Nature Protection establishes a list of "specially protected natural territories" (art. 2), which are different from those regulated by the Law on Protected Territories. Coordination between the two instruments should be ensured.

Habitat protection outside PAs (2.2.2.2.b) is almost completely neglected.

As far as **people's involvement in wildlife management** is concerned (2.3.1), sufficient attention is devoted to rights of citizens and NGOs. However, these are often drafted in a generic manner and without precise procedural support, and would therefore require further specification. In particular:

- rights and duties of citizens and public associations in the Law on Fauna (art. 5) are drafted in an exessively generic manner, without adequately specifying the obligations and rights. This applies to expressions such as "carry out measures on the protection" of wildlife, "contribute to State programs" on wildlife protection, "execute public control" and "receive information" in the field of wildlife protection.
- The same can be said regarding the generic potential to assist State bodies in managing PAs, the right to receive information, and the potential to carry out ecological expertise and public ecological control mentioned in the Law on Protected Territories and in the Law on Nature Protection.

CONCLUSIONS: EMERGING TRENDS IN SUSTAINABLE WILDLIFE MANAGEMENT LEGISLATION IN WESTERN AND CENTRAL ASIA

Although the normative and institutional frameworks on wildlife management in Western and Central Asian countries may vary from several points of view, some common emerging trends can nevertheless be clearly underscored.

1. General Issues related to the Normative and Institutional Frameworks

1.1. Fragmentation and Contradictions

In almost all countries in the region, **the very structure of the normative frameworks** on wildlife management is **fragmented**, with several different legal instruments, often of a different nature (laws, regulations, decrees, orders, and so on and so forth), directly and indirectly dealing with the subject matter. Typically, any such legal framework would include a general law on environment protection (containing some relevant provisions on wildlife management), a law on wildlife, a law on protected areas, a land code (which may include provisions on protected areas and property rights over fauna), a forest code (possibly dealing with management of wildlife as a forest resource) and other more specific laws, regulations and orders (e.g. on hunting, on licenses for wildlife use, on environmental impact assessment or on institutional set-up). None of the States under consideration has a comprehensive legal instrument to address all of the implications of wildlife management.. This may have an impact on the overall clarity and effectiveness of the legal framework. In fact, **while fragmentation is not a problem *per se*, it may become one if legal instruments are not properly coordinated**.

More specifically, fragmentation may create problems of **harmonization between different legal instruments**. Wildlife management is sometimes regulated by overlapping and contradictory provisions in different instruments that cannot always be interpreted in a coordinated way. Difficulties may arise in particular when old instruments are not explicitly repealed by new ones, or when new more general rules are adopted after more specific ones. Incoherence may be even more evident when "secondary" sources of law (e.g. Ministerial Decrees or Orders or other administrative acts) contain rules that contradict a primary source (Law). The first kind of rules should be used to specify or integrate general provisions contained in laws, while fully respecting them, and therefore should not derogate from them.

This may also cause problems **at the institutional level**. Separate legal instruments may identify different institutions as competent to address the same specific matters, thereby creating overlapping mandates.

1.2. Lack of Institutional Clarity

Legal instruments in the region do **not always identify the specific institution** to address a specific matter, either by not mentioning an institution at all, or by using generic references such as "the authorized body", "the body authorized by the government", or "the government", so that the institution is identified at a later stage, most commonly by secondary legislation. It can be argued that the precise identification of competent institutions is not an essential element of all legal frameworks, and that a generic institutional reference in the law would leave more **flexibility** for authorities to decide over their internal organization and in the face of institutional changes. However, a precise identification of institutions in the laws could **improve the effectiveness** of the legal framework from more than one point of view. It would clarify from the outset the duties of an institution in a given field. It would enhance legal certainty and reduce discretionary power. It would avoid institutional overlaps or conflicts which may arise from incoherent decisions made by authorities over the designation of institutions.

One way to ensure institutional coherence and avoid some of the above-mentioned problems is through the adoption of mechanisms for **inter-institutional coordination.** However, these mechanisms are lacking in the region and have been established only on rare occasions.

1.3. The Prominent Role of International Law

In almost all of the countries concerned, the relevant legal framework is accompanied by **safeguarding clauses for international law**. These provide, with different wording, that in the event of a conflict between domestic norms and international ones, the latter would prevail. This is a very positive, important normative solution that should not be underestimated: from a normative policy perspective, this means that harmonization of national laws with the international legal framework in the field of wildlife management should become a priority in all the countries concerned, as the development of national standards that are not in line with international ones may be challenged.

2. Specific Trends and Shortcomings

Wildlife in the region is always the property of the State, who gives the right to use it to individuals or entities. Problems may arise from several shortcomings in the legislation: types of uses are not always clearly defined (apart from hunting); procedures and conditions for wildlife use (e.g. licenses and permits) are not always comprehensively regulated; and the legal regime may suffer from institutional and substantial fragmentation and overlapping. Moreover, the decisions of authorities on granting wildlife use rights are not necessarily based on sound science nor guided by a sustainable use objective.

Some **essential concepts** (that stem from international law in this field) should be at the very basis of any legal framework on wildlife management, but are often missing in the legislation of the countries covered by this study. These include the concept of "sustainable use" of wildlife, and the adoption of the "ecosystem approach" to ensure that wildlife management is "adaptive". To the contrary, the fundamental role of science-based decision making is often overlooked. As a result, legal frameworks in the region often contain only few general rules on **management planning** for wildlife protection. Even when they do, these are crafted in very vague terms. They usually establish rules on wildlife-related information gathering and monitoring, and may identify competences of different institutions on the matter. However, critical elements are frequently missing: any effective legal framework should include clear duties for identified public bodies to develop comprehensive strategies, policies, plans and programs for wildlife management based on sound science, in order to ensure its sustainable use, while ensuring the possibility for public participation.

Regulation of **hunting** is often the main focus of national legal frameworks on wildlife management. On the one hand, this means that the issue is never completely neglected. On the other, it means also that this is one of the issues that suffers the most from overlapping of norms and institutional mandates. As a consequence, the system of licensing for hunting (which often entails the involvement of different entities and institutions at different levels), is frequently complex and unclear. Despite the attention that the issue of hunting receives in the countries of the region, the latter rarely include, in their legal frameworks, rules for the adoption of comprehensive hunting policies aimed at sustainable use, and seldom provide for adequate scientific input into the hunting management process (including in decision making regarding the setting of quotas and other limitations).

The **assessment of processes harmful to wildlife** is not among the strongest elements of the legal frameworks. Environmental Impact Assessment (EIA) procedures are generally established, but often in very broad terms. In addition, they usually only cover projects and not wider programmes and policies. Not all activities that are relevant to wildlife are subject to EIA. EIAs do not always address the impacts on wildlife and public participation in the EIA process is rarely allowed. Finally, the legal consequences arising from the outcome of the EIA procedure are rarely specified.

Activities that potentially affect wildlife, such as tourism or the introduction of invasive alien species, are generally regulated in an incomplete manner or not regulated at all. Protection from other harmful processes (such as trade in wildlife – except for rare species on which see below) and from negative impacts of other land uses (e.g. forestry) is also frequently neglected.

Rules on **habitat protection** generally concentrate on Protected Areas, albeit without regulating in detail essential issues such as the establishment, management and administration of PAs and the role of public participation. Moreover, limited attention is devoted to the protection of wildlife habitats outside of protected areas, either in general or with reference to more specific habitats (e.g. wetlands or migratory routes).

The role of **people and non-State actors** in wildlife management is rarely addressed. Rules on public participation in decision-making processes, on access to information and justice on environmental matters, according to international standards, are not common. Moreover, there is rarely consideration for the role and interests of local communities, indigenous groups and local users in wildlife management. There is also little consideration for the role of the private sector in this regard.

The **protection of specific species** focuses almost exclusively on rare and endangered ones. National legislations address mainly hunting or killing of these species and do not always take into account other activities that affect sustainable wildlife management. Other activities with an important impact, such as trade is only rarely regulated according to international standards (the CITES Convention). Only in exceptional cases are migratory species taken into consideration, and then only in very general terms.

Finally, not all countries in the region address sufficiently the issue of **implementation and law enforcement**. Some national legal frameworks provide for rules on individual responsibilities and liabilities but in most cases these are lacking, and only in exceptional cases economic or other incentives are contemplated.

Annex: Full text of the Addis Ababa Principles and Guidelines[105]

Sustainability in the use of biological diversity will be enhanced if the following practical principles and related operational guidelines are applied:

Practical principle 1: Supportive policies, laws, and institutions are in place at all levels of governance and there are effective linkages between these levels.
Rationale:

There is need to have congruence in policies and laws at all levels of governance associated with a particular use. For example, when an international agreement adopts a policy regarding the use of biodiversity, national(1) laws must be compatible if sustainability is to be enhanced. There must be clear and effective linkages between different jurisdictional levels to enable a "pathway" to be developed. This will allow for a timely and effective response to unsustainable use and will enable the sustainable use of a resource to proceed from collection or harvest through to final use without unnecessary impediment. In most cases, the primary means for achieving congruence between local and international levels of governance should be through national governments.

Operational guidelines

Consider local customs and traditions (and customary law where recognized) when drafting new legislation and regulations;
- Identify existing and develop new supportive incentives measures, policies, laws and institutions, as required, within the jurisdiction in which a use will take place, also taking into account Articles 8(j) and 10(c), as appropriate;
- Identify any overlaps, omissions and contradictions in existing laws and policies and initiate concrete actions to resolve them;
- Strengthen and/or create cooperative and supportive linkages between all levels of governance in order to avoid duplication of efforts or inconsistencies.

Practical principle 2: Recognizing the need for a governing framework consistent with international/national(2) laws, local users of biodiversity components should be sufficiently empowered and supported by rights to be responsible and accountable for use of the resources concerned. (3)

Rationale:

Uncontrolled access to biodiversity components often leads to over-utilization as people try to maximize their personal benefits from the resource while it is available. Resources for which individuals or communities have use, non-use, or transfer rights are typically used more responsibly because they no longer need to maximise benefits before someone else removes the resources. Therefore, sustainability is generally enhanced if Governments recognize and respect the "rights" or "stewardship" authority, responsibility and accountability to the people who use and manage the resource, which may include indigenous and local communities, private landowners, conservation organizations and the business sector. Moreover, to reinforce local rights or stewardship of biological diversity and responsibility for its conservation, resource users should participate in making decisions about the resource use and have the authority to carry out any actions arising from those decisions.

Operational guidelines

- Where possible adopt means that aim toward delegating rights, responsibility, and accountability to those who use and/or manage biological resources;

[105] http://www.cbd.int/sustainable/addis.shtml

- Review existing regulations to see if they can be used for delegating rights; amend regulations where needed and possible; and/or draft new regulations where needed. Throughout local customs and traditions (including customary law where recognized) should be considered;
- Refer to the programme of work related to the implementation of Article 8(j) with regard to indigenous and local community issues (decision V/16), implement and integrate tasks relevant for the sustainable use of biodiversity components, in particular element 3, tasks 6, 13 and 14;
- Provide training and extension services to enhance the capacity of people to enter into effective decision-making arrangements as well as in implementation of sustainable use methods;
- Protect and encourage customary use of biological resources that is sustainable, in accordance with traditional and cultural practices (Article 10(c)).

Practical principle 3: International, national policies, laws and regulations that distort markets which contribute to habitat degradation or otherwise generate perverse incentives that undermine conservation and sustainable use of biodiversity, should be identified and removed or mitigated.(4)

Rationale:

Some policies or practices induce unsustainable behaviours that reduce biodiversity, often as unanticipated side effects as they were initially designed to attain other objectives. For example, some policies that encourage domestic over production often generate perverse incentives that undermine the conservation and sustainable use of biological diversity. Eliminating subsidies that contribute to illegal, unreported and unregulated fishing and to over-capacity, as required by the WSSD Plan of Implementation in order to achieve sustainable fisheries, is a further instance of the recognition of the need to remove perverse incentives.

Operational guidelines

- Identify economic mechanisms, including incentive systems and subsidies at international, national levels that are having a negative impact on the potential sustainability of uses of biological diversity;
- Remove those systems leading to market distortions that result in unsustainable uses of biodiversity components;
- Avoid unnecessary and inadequate regulations of uses of biological diversity because they can increase costs, foreclose opportunities, and encourage unregulated uses thus decreasing the sustainability of the use.

Practical principle 4: Adaptive management should be practiced, based on:

a. Science and traditional and local knowledge;
b. Iterative, timely and transparent feedback derived from monitoring the use, environmental, socio-economic impacts, and the status of the resource being used; and
c. Adjusting management based on timely feedback from the monitoring procedures. (5)

Rationale:

Biological systems and the economic and social factors that can affect the sustainability of use of biological diversity are highly variable. It is not possible to have knowledge of all aspects of such systems before a use of biological diversity begins. Therefore, it is necessary for management to monitor the effects of that use and allow adjustment of the use as appropriate, including modification, and if necessary suspension of unsustainable practices. In this context, it is preferable to use all sources of information about a resource when deciding how it can be used. In many societies, traditional and local knowledge has led to much use of biological diversity being sustainable over long time-periods without detriment to the environment or the resource. Incorporation of such knowledge into modern use systems can do much to avoid inappropriate use and enhance sustainable use of components of biodiversity.

Operational guidelines

- Ensure that for particular uses adaptive management schemes are in place;
- Require adaptive management plans to incorporate systems to generate sustainable revenue, where the benefits go to indigenous and local communities and local stakeholders to support successful implementation;
- Provide extension assistance in setting up and maintaining monitoring and feedback systems;
- Include clear descriptions of their adaptive management system, which includes means to assess uncertainties;
- Respond quickly to unsustainable practices;
- Design monitoring system on a temporal scale sufficient to ensure that information about the status of the resource and ecosystem is available to inform management decisions to ensure that the resource is conserved;
- When using traditional and local knowledge, ensure that approval of the holder of that knowledge has been obtained.

Practical principle 5: Sustainable use management goals and practices should avoid or minimize adverse impacts on ecosystem services, structure and functions as well as other components of ecosystems. (6)

Rationale:

For the use of any resource there is a need to take into account the functions that resource may fulfil within the ecosystem in which it occurs, and recognize that use must not adversely affect ecosystem functions. For example, clear felling in a watershed could lead to erosion of soil and impairment of the water filtration function of the ecosystem. Avoidance of this situation would involve setting conservative cutting quotas with appropriate harvesting techniques and monitoring the effects of the harvest as it occurs. As another example, the shrimping industry has developed nets that can separate out juveniles and by-catch and also reduce negative effects on benthic and other associated communities.

Operational guidelines

- Ensure management practices do not impair the capacity of ecosystems to deliver goods and services that may be needed some distance from the site of use. For example, selective cutting of timber in a watershed would help maintain the ecosystem's capacity to prevent soil erosion and provide clean water;
- Ensure that consumptive and non-consumptive use does not impair the long-term sustainability of that use by negatively impacting the ecosystem and species on which the use depends, paying special attention to the needs of threatened components of biological diversity;
- Apply a precautionary approach in management decisions in accordance with principle 15 of the Rio Declaration on Environment and Development;
- Identify successful experiences of management of biodiversity components in other countries in order to adapt and incorporate this knowledge in their efforts to resolve their own difficulties;
- Where possible consider the aggregate and cumulative impact of activities on the target species or ecosystem in management decisions related to that species or ecosystem;
- Where previous impacts have degraded and reduced biodiversity, support formulation and implementation of remedial action plans (Article 10(d)).

Practical principle 6: Interdisciplinary research into all aspects of the use and conservation of biological diversity should be promoted and supported.

Rationale:

International conventions and national decisions that affect use should always apply the best information on which to base decisions and be aware of the local circumstances where a use is undertaken. In addition,

there is need to ensure that research is supported into the biological and ecological requirements of the species to ensure that the use remains within the capacity of the species and ecosystem to sustain that use. Further, to enhance incentives that promote sustainability, there would be value in investing in research to open up new economic opportunities for stakeholders.

Operational guidelines

- Ensure that the results of research inform and guide international, national policies and decisions;
- Invest in research into techniques and technologies of management of biodiversity components that promote sustainability in both consumptive and non-consumptive uses of biodiversity;
- Encourage active collaboration between scientific researchers and people with local and traditional knowledge;
- Encourage international support and technology transfer, relating to both consumptive and non-consumptive uses of biodiversity;
- Develop cooperation between researchers and biodiversity users (private or local communities), in particular, involve indigenous and local communities as research partners and use their expertise to assess management methods and technologies;
- Investigate and develop effective ways to improve environmental education and awareness, to encourage public participation and to stimulate the involvement of stakeholders in biodiversity management and sustainable use of resources;
- Investigate and develop means of ensuring rights of access and methods for helping to ensure that the benefits derived from using components of biodiversity are equitably shared;
- Make research results available in a form which decision makers, users, and other stakeholders can apply;
- Promote exchange programmes in scientific and technical areas.

Practical principle 7: The spatial and temporal scale of management should be compatible with the ecological and socio-economic scales of the use and its impact. (7)

Rationale:

Management of sustainable use activities should be scaled to the ecological and socio-economic needs of the use. If, for example, fish are harvested from a lake, the owner of the lake should be in charge of, and accountable for, the management of the lake subject to national or, as appropriate, subnational policy and legislation

Operational guidelines

- Link responsibility and accountability to the spatial and temporal scale of use;
- Define the management objectives for the resource being used;
- Enable full public participation in preparation of management plans to best ensure ecological and socio-economic sustainability.
- In case of transboundary resources, it is advisable that appropriate representation from those states participate in the management and decisions about the resources.

Practical principle 8: There should be arrangements for international cooperation where multinational decision-making and coordination are needed.

Rationale:

If a biodiversity resource is transboundary between two or more countries, then it is advisable to have a bilateral or multilateral agreement between those states to determine how the resource will be used and in what amounts. The absence of such agreements can lead to each state implementing separate management regimes which, when taken together, may mean that the resource is over-utilized.

Operational guidelines

- Make arrangements for international cooperation when the distribution of populations or communities/habitats being used span two or more nations;
- Promote multinational technical committees to prepare recommendations for the sustainable use of transboundary resources;
- Have bilateral or multilateral agreements between or among the States for the sustainable use of transboundary resources;
- Establish mechanisms involving the collaborating states to ensure that sustainable use of transboundary resources does not negatively impact the ecosystem capacity and resilience.

Practical principle 9: An interdisciplinary, participatory approach should be applied at the appropriate levels of management and governance related to the use.

Rationale:

Sustainability of use depends on the biological parameters of the resources being utilized. However, it is recognized that social, cultural, political and economic factors are equally important. It is therefore necessary to take such factors into consideration and involve indigenous and local communities and stakeholders, including the private sector and people with experience in these different areas, at all levels of the decision-making process.

Operational guidelines

- Consider providing mechanisms that encourage interdisciplinary cooperation in management of biodiversity components;
- Set standards for resource management activities that promote interdisciplinary consultations;
- Facilitate communication and exchange of information between all levels of decision-making;
- Identify all relevant stakeholders and seek their participation in planning and executing of management activities;
- Take account of socio-economic, political, biological, ecological, institutional, religious and cultural factors that could influence the sustainability of the management;
- Seek guidance from local, traditional and technical specialists in designing the management plan;
- Provide adequate channels of negotiations so that potential conflicts arising from the participatory involvement of all people can be quickly and satisfactorily resolved.

Practical principle 10: International, national policies should take into account:

a. Current and potential values derived from the use of biological diversity;
b. Intrinsic and other non-economic values of biological diversity and
c. Market forces affecting the values and use.

Rationale:

Recent work in calculating the potential costs of replacing natural systems with man-made alternatives has shown that such natural systems should be valued very highly. It follows that international and national policies that guide trade and development should compare the real value of natural systems against any intended replacement uses before such development is undertaken. For instance, mangroves have the function of fish-spawning and nursery sites, erosion and storm-surge alleviation and carbon sequestration. Coral reefs provide protection for juvenile fish and many species, as well as coastal zone protection.

Operational guidelines

- Promote economic valuation studies of the environmental services of natural ecosystems; *Incorporate this information in policy and decision making processes, as well as educational applications;
- Consider this principle in relation to land use/habitat conversion tradeoffs. Recognize that market forces are not always sufficient to improve living conditions or increase sustainability in the use of components of biological diversity;
- Encourage governments to take into account biodiversity values in their national accounts;
- Encourage and facilitate capacity building for decision makers about concepts related to economic valuation of biodiversity.

Practical principle 11: Users of biodiversity components should seek to minimize waste and adverse environmental impact and optimize benefits from uses.

Rationale:

Users should seek to optimize management and to improve selectivity of extractive uses through environmentally friendly techniques, so that waste and environmental impacts are minimized, and socio-economic and ecological benefits from uses are optimized.

Operational guidelines

- Eliminate perverse incentives and provide economic incentives for resource managers to invest in development and/or use of more environmentally friendly techniques, e.g., tax exemptions, funds available for productive practices, lower loan interest rates, certification for accessing new markets;
- Establish technical cooperation mechanisms in order to guarantee the transfer of improved technologies to communities;
- Endeavour to have an independent review of harvests to ensure that greater efficiencies in harvest or other extractive uses do not have a deleterious impact on the status of the resource being used or its ecosystem;
- Identify inefficiencies and costs in current methods;
- Conduct research and development into improved methods;
- Promote or encourage establishment of agreed industry and third party quality standards of biodiversity component processing and management at the international and national levels;
- Promote more efficient, ethical and humane use of components of biodiversity, within local and national contexts, and reduce collateral damage to biodiversity.

Practical principle 12: The needs of indigenous and local communities who live with and are affected by the use and conservation of biological diversity, along with their contributions to its conservation and sustainable use, should be reflected in the equitable distribution of the benefits from the use of those resources.

Rationale:

Indigenous and local communities and local stakeholders often shoulder significant costs or forgo benefits of potential use of biological diversity, in order to ensure or enhance benefits accruing to others. Many resources (e.g., timber, fisheries) are over-exploited because regulations are ignored and not enforced. When local people are involved as stakeholders such violations are generally reduced. Management regimes are enhanced when constructive programmes that benefit local communities are implemented, such as capacity training that can provide income alternatives, or assistance in diversifying their management capacities.

Operational guidelines

- Promote economic incentives that will guarantee additional benefits to indigenous and local communities and stakeholders who are involved in the management of any biodiversity components, e.g., job opportunities for local peoples, equal distribution of returns amongst locals and outside investors/co-management;
- Adopt policies and regulations that ensure that indigenous and local communities and local stakeholders who are engaged in the management of a resource for sustainable use receive an equitable share of any benefits derived from that use;
- Ensure that national policies and regulation for sustainable use recognize and account for non-monetary values of natural resources;
- Consider ways to bring uncontrolled use of biological resources into a legal and sustainable use framework, including promoting alternative non-consumptive uses of these resources;

Ensure that an equitable share of the benefits remain with the local people in those cases where foreign investment is involved;
Involve local stakeholders, including indigenous and local communities, in the management of any natural resource and provide those involved with equitable compensation for their efforts, taking into account monetary and non-monetary benefits;
In the event that management dictates a reduction in harvest levels, to the extent practicable assistance should be provided for local stakeholders, including indigenous and local communities, who are directly dependent on the resource to have access to alternatives.

Practical principle 13: The costs of management and conservation of biological diversity should be internalized within the area of management and reflected in the distribution of the benefits from the use. (8)

Rationale:

The management and conservation of natural resources incurs costs. If these costs are not adequately covered then management will decline and the amount and value of the natural resources may also decline. It is necessary to ensure that some of the benefits from use flow to the local natural resource management authorities so that essential management to sustain the resources is maintained. Such benefits may be direct, such as entrance fees from visitors to a national park paid directly to, and retained by, the park management authority or indirect, such as stumpage tax revenue from timber harvesting paid by loggers that flows through a national treasury to a local forest service. In some cases licence fees for fishing rights are paid directly to the management authority, or to the national treasury.

Operational guidelines

- Ensure that national policies do not provide subsidies that mask true costs of management;
- Ensure that harvest levels and quotas are set according to information provided by the monitoring system, not the economic needs of the management system;
- Provide guidelines for resource managers to calculate and report the real cost of management in their business plans;
- Create other alternative mechanisms to invest revenues from biodiversity management;
- Provide economic incentives for managers who have already internalized environmental costs, e.g., certification to access new markets, waiver or deferral of taxes in lieu of environmental investment, promotion of “green-labelling” for marketing.

Practical principle 14: Education and public awareness programmes on conservation and sustainable use should be implemented and more effective methods of communications should be developed between and among stakeholders and managers.

Rationale:

To ensure that people are aware of the connectivity between different parts of biological diversity, its relevance to human life, and the effects of uses, it is advisable to provide means to engage people in education and awareness of the opportunities and constraints of sustainable use. It is also important to educate people on the relationship of sustainable use and the other two objectives of the Convention. An important way to achieve sustainable use of biological diversity would be to have in place effective means for communications between all stakeholders. Such communications will also facilitate the availability of the best (and new) information about the resource.

Operational guidelines

- Plan education and public-awareness activities concerning: management, values of sustainable use, changing consumptive patterns and the value of biodiversity in the lives of people;
- Ensure that public-awareness programmes also inform and guide decision makers;
- Target all levels of the chain of production and consumption with such communications;
- Report lessons learned about sustainable use activities to the clearing-house mechanism of the Convention on Biological Diversity;
- Encourage and facilitate communication of lessons learned and best practices to other nations;
- Ensure that resource users report to government on their activities in a manner that facilitates broader communications;
- Increase awareness of the contributions of knowledge, practices and innovations of indigenous and local communities for the sustainable use of biological diversity.

Notes:

(1) It is recognized that, throughout the principles, rationale and operational guidelines, the term “national” may mean either national or, as appropriate in some countries, subnational

(2) Where consistency with international law is referred to, it is recognized that: a) there are cases where a country will not be a party to a specific international convention and accordingly that the law will not apply directly to them; and b) from time to time countries are not able to achieve full compliance with the conventions to which they are a party and may need assistance in reaching their goals.

(3) See principle 2 of the ecosystem approach

(4) See principle 4 of the ecosystem approach

(5) See principles 9 and 11 of the ecosystem approach

(6) See principles 3, 5 and 6 of the ecosystem approach

(7) See principles 2 and 7 of the ecosystem approach

(8) See the operational guidance for the application of the ecosystem approach (decision V/6, annex, section C, para. 11).