

**WILDLIFE LEGISLATION AND THE
EMPOWERMENT OF THE POOR
IN ASIA AND OCEANIA**

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Executive Summary

This study analyses and compares national legislation on wildlife management in twelve countries in Asia and Oceania, with the aim of identifying strengths and weaknesses of legal frameworks in the promotion of sustainable wildlife management and in allowing disadvantaged people, particularly indigenous and local communities, to directly benefit from it.

The study is divided in two parts. Part I presents a comparative analysis of wildlife legislation in Asia and Oceania, highlighting relevant international legal instruments and regional trends, and pointing at the strengths and weaknesses of national legislation with respect to pro-poor wildlife management. A series of chapters examine institutional issues; wildlife tenure and use rights; requirements for wildlife management planning; wildlife conservation through area- and species-based mechanisms, and environmental impact assessment requirements; requirements and conditions for wildlife use, including hunting, eco-tourism and breeding; issues related to law enforcement and access to justice; and other relevant issues, including gender, food security and human-wildlife conflicts. The final chapter formulates recommendations and proposes specific legal options to improve legal frameworks related to wildlife management in Asia and Oceania with a view to supporting environmental sustainability, socio-economic development and the empowerment of the poor.

Part II presents country studies on national legislation from twelve countries in Asia and Oceania, highlighting the main legal provisions affecting wildlife management and use by local

communities and aiming at highlighting specific legal tools for pro-poor sustainable wildlife management. The individual country studies cover: Australia, Bangladesh, China, India, Japan, Jordan, Lao PDR, Malaysia, New Zealand, Philippines, Tonga and Vietnam. Each country study starts with an overview of the relevant legal framework, and continues with an analysis of legal provisions related to: the institutional set-up and public participation in decision-making, including enforcement and access to justice, wildlife tenure and use rights, wildlife management planning, wildlife conservation and requirements for wildlife use.

The analysis undertaken has identified that ownership or management rights over wildlife resources and security of tenure are key legal tools for the empowerment of the poor, including indigenous and local communities usually living in close proximity with wildlife and who are mostly affected by poverty and marginalization from decision-making. Furthermore, public participation in decision-making and in management planning, as well as access to justice, are significant contributing factors in ensuring that governance of wildlife resources is transparent, authorities are accountable, and that the diverse interests of society – in particular those of the poor, particularly local and indigenous communities – are duly taken into account. This study thus showcases pro-poor legal provisions that create and/or facilitate the exercise of rights related to sustainable wildlife management, and highlights legal tools that facilitate the implementation of policies that directly empower communities to conserve and use wildlife sustainably.

Introduction

i. Overview

Legal tools may ensure that local or indigenous communities will be able to benefit from wildlife management in a way that promotes biodiversity conservation, supports livelihoods and reduces poverty. Restrictive or flexible approaches to wildlife conservation, institutional arrangements for wildlife management, and related rules on tenure, management planning and requirements to ensure sustainable wildlife use form the basis of legal arrangements that establish how wildlife will be managed in a particular country and whether benefits from such management will reach local communities. This study seeks to analyse and compare national legislation on wildlife management in twelve countries in Asia and Oceania, with a view to identifying strengths and weaknesses in ensuring the environmental sustainability of wildlife management, as well as in allowing disadvantaged sectors of society, to directly benefit from wildlife management. The analysis is thus carried out from the perspective of "legal empowerment of the poor."¹ On the basis of common trends identified in the national legal frameworks in the region, the final objective of this study is to provide useful guidance to legislators with a view to effectively regulating wildlife management for environmental sustainability, socio-economic development and the empowerment of the poor.

This is the fourth legal study focusing on wildlife legislation and the empowerment of the poor, following two studies of national legislation in Sub-Saharan Africa and one in Latin America published in 2009 (see FAO Legal Papers Online No.'s 77, 79 and 80, available at www.fao.org/legal). Previously, legislation on wildlife management in Western and Central Asia had also been reviewed and a set of design principles on how to develop effective national legislation on sustainable wildlife management had been developed (www.fao.org/legal/prs-ol/lpo75.pdf). These principles aimed to provide tools for the analysis of the comprehensiveness and effectiveness of existing legal frameworks, as well as provide guidance for amending or

developing new wildlife management legislation based on existing international guidelines and best practices. In addition, the principles were devised to build the capacity of decision-makers, legal drafters and resource managers to understand wildlife legislation, engage in participatory and inter-disciplinary legislative drafting and use legislation to support sustainable wildlife management. Currently, the principles are being refined, taking into account the challenges faced and lessons learnt by wildlife legislators in different regions of the world and using the concept of empowerment of the poor.

According to the Commission on the Legal Empowerment of the Poor, four pillars sustain the concept of legal empowerment: access to justice and the rule of law; property rights; labour rights; and business rights. Adequate wildlife management legislation may contribute to the implementation of at least three of these pillars: it may set out measures to promote equality under the law, clear rights and obligations and facilitate access to justice; it may allocate property rights, or related use rights, in such a way that benefits are equitably shared, taking into account subsistence requirements, traditional titles and practices and disadvantages faced; and it may regulate contracts and other arrangements for utilization so that opportunities are available for all.

In particular, ownership of wildlife resources or other management rights over wildlife resources, and security of their tenure, are key for the empowerment of the poor. Legal tools to ensure overall good governance for the recognition, allocation and possible revocation of these rights have also an important role to play. Public participation in decision-making and in management planning, as well as access to justice, are significant contributing factors in ensuring that governance of wildlife resources is transparent, authorities are accountable, and that the diverse interests of society – in particular those of the poor, and of local and indigenous communities – are duly taken into account. Finally, legal tools that may facilitate easy and affordable setting-up of business operations, as well as the exit from a business as necessary, have been, to a lesser extent, detected in the legislation of some of the countries analysed in this study. The question of benefit-sharing is also critical in having the poor profiting from or being

¹ As developed by the Commission on Legal Empowerment of the Poor, established under the aegis of the United Nations between 2005 and 2008. The Commission completed its mandate in 2008. See www.undp.org/Legalempowerment/.

compensated for the conservation and management of wildlife resources.

Building upon the findings of the previous legal studies, the present paper thus identifies further legal tools for empowering the poor in sustainable wildlife management, as well as singling out shortcomings and challenges that may provide useful food for thought for wildlife legislators in Asia and Oceania. It will thus showcase pro-poor wildlife legal provisions that create and/or facilitate the exercise of rights related to sustainable wildlife management. It will highlight those legal tools that facilitate the implementation of policies that directly empower communities to conserve and use wildlife sustainably, or, at a minimum, channel the benefits of sustainable wildlife management to communities who are most affected by poverty and marginalization from decision-making.

ii. Contents and Methodology

The study is divided in two parts. Part I presents a comparative analysis of wildlife legislation in Asia and Oceania, highlighting regional trends and pointing at the strengths and weaknesses of national legislation with respect to pro-poor wildlife management. Chapter 1 addresses international legal instruments, including global wildlife-related treaties and their influence on wildlife legislation. Chapter 2 briefly presents relevant institutional arrangements that are most common in the region highlighting avenues for stakeholder participation in decision-making. Chapter 3 evaluates the importance of wildlife tenure and use rights in channelling the benefits of sustainable wildlife use to local and indigenous communities. Chapter 4 examines the requirements for wildlife management planning. Chapter 5, in turn, focuses on wildlife conservation through area- and species-based mechanisms, as well as protection from harmful activities through the environmental impact assessment. Chapter 6 analyses requirements and conditions for wildlife use, including hunting, eco-tourism and breeding. Chapter 7 addresses issues related to law enforcement and access to justice that may be significant in empowering local communities to participate in sustainable wildlife use. Chapter 8 briefly addresses other relevant issues such as

consideration of gender equity issues and human wildlife conflicts. Finally, Chapter 9 formulates recommendations and proposes specific legal options to improve wildlife legal frameworks in Asia and Oceania.

Part II of the study presents country studies on national legislation from twelve countries in Asia and Oceania, highlighting the main legal provisions affecting wildlife use by local communities. The individual country studies cover: Australia, Bangladesh, China, India, Japan, Jordan, Lao PDR, Malaysia, New Zealand, Philippines, Tonga and Vietnam. They start with an overview of the relevant legal framework, and continue with an analysis of legal provisions related to: the institutional set-up and public participation in decision-making, wildlife tenure and use rights, wildlife management planning, wildlife conservation, requirements and limits for wildlife use, and enforcement and access to justice.

Most legislation cited in the paper is available on FAO's legislative database – FAOLEX, which is available for consultation at www.fao.org/faolex. In some cases, the authors used additional legislation available on national websites or databases. In order to cross check the findings of the desk review of legal texts available and to discuss implementation and enforcement issues, e-mail communication was conducted with national wildlife management authorities and experts.

Descriptions of country legal frameworks only intend to provide an overview, including references for further detailed analysis of particular elements or tools. This paper is thus not intended as a comprehensive evaluation of relevant legal frameworks, rather it focuses on the legal tools that enable and support participatory wildlife management and promote the enjoyment of benefits deriving from sustainable wildlife use, particularly among disadvantaged people. It takes into account both existing measures that are likely to be successful in facilitating access to benefits and measures which may constitute a hindrance to this end.

PART I - COMMON TRENDS IN WILDLIFE LEGISLATION IN ASIA AND OCEANIA

Wildlife management can be defined as the process of maintaining certain wildlife populations, including endangered species, at desirable levels on the basis of scientific, technical and traditional knowledge. *Sustainable* wildlife management adds to this definition the objective 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. References to wildlife management in this study, therefore, are meant to include both the conservation and sustainable use of wildlife.

The present study starts by identifying the key international instruments influencing national wildlife management policies in Asia and Oceania. It then identifies general trends, as well as best practices and shortcomings commonly found in the region on: institutional arrangements and stakeholder participation in decision-making; wildlife tenure, traditional rights and human-wildlife conflicts; wildlife management planning; wildlife conservation (including area- and species-based approaches, and the environmental impact assessment); wildlife use (focusing on hunting, eco-tourism and breeding); law enforcement; and other issues which may sometimes affect wildlife management regulation including consideration of gender equity issues, animal health and food security. In each case, the analysis of existing legislation will identify relevant legal tools for public participation, community-based management, and for channelling the benefits of wildlife use to the communities living in the proximity of wildlife, in order to assess whether national wildlife legislation in Asia and Oceania contributes to empowering the poor.

1. The influence of international legal instruments

As Table 1 shows, countries covered in this study are active participants in international legal regimes related to wildlife. All of them are parties to the Convention on Biological Diversity and the World Heritage Convention, as well as (with few exceptions) to the Ramsar Convention on Wetlands and the Convention on International Trade in Endangered Species. Participation in the Convention on Migratory Species is, conversely, uneven. 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 direct the manner in which countries must regulate certain aspects of wildlife use and conservation, or because they call for the putting into operation of specific principles, methods and processes for the management, protection and use of wildlife.²

² For a more detailed discussion of the relevant international legal framework, see Morgera, E. and Wingard, J. 2009. "Principles for developing sustainable wildlife management laws," FAO Legal Paper Online #75; and Birnie, P. and Boyle, A. 2002. *International Law and the Environment*, Oxford University Press.

Table 1:

Wildlife Treaties and Agreements in selected countries of Asia and Oceania (date of entry into force).³

	CBD	WHC	CITES	Ramsar	CMS
Australia	1993	1974	1976	1975	1991
Bangladesh	1994	1983	1982	1992	2005
China	1993	1985	1981	1992	
India	1994	1977	1976	1982	1983
Japan	1993	1992	1980	1980	
Jordan	1993	1975	1979	1977	2001
Lao PDR	1996	1987	2004		
Malaysia	1994	1988	1978	1995	
New Zealand	1993	1984	1989	1976	2000
Philippines	1994	1985	1981	1994	1994
Tonga	1998	2004			
Viet Nam	1995	1987	1994	1989	

³ Sources: www.cbd.int/convention/parties/list/; <http://whc.unesco.org/en/statesparties/>; www.cites.org/eng/disc/parties/alphabet.shtml; www.ramsar.org/cda/ramsar; www.cms.int/about/part_1st.htm (last visited on 03 August 2009).

This section will therefore first concentrate on global wildlife-related treaties, looking at species-based and area-based instruments, and then at the Convention on Biological Diversity. It will then provide a brief overview of regional treaties and agreements in Asia and Oceania.

1.1. Global wildlife-related treaties

Among the species-based conventions, the **Convention on International Trade in Endangered Species of Wild Flora and Fauna** (CITES, Washington, 1973) prohibits commercial trade of species listed in Appendix I and establishes strict requirements for any other trade that is not for primarily commercial purposes. Species listed in Appendix II require export permits which are granted upon a finding that such export "will not be detrimental" to the survival of that species. CITES, therefore, requires countries to undertake **non-detriment finding procedures** to allow the commercial export of Annex II species. This often results, at the national level, in the development of management plans for species that are subject to international trade. Species listed in Appendix III may be exported upon confirmation of the legality of origin of the specimen or product to be exported. CITES also requires countries to have in place scientific and administrative authorities, which generally also regulate non-CITES-listed species.

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 endangered species in Appendix I, states must prohibit their taking and conserve and restore their habitats, removing or minimizing impediments to their migration. With regard to species with an unfavourable conservation status listed in Appendix II, range states undertake to conclude global or regional agreements to improve the situation of these species. Agreements for international collaboration in migratory species conservation range from legally binding agreements to less formal instruments, such as memoranda of understanding (MoU). Several such agreements and MoU have been concluded so far under CMS auspices, including: the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), which

provides for coordinated and concerted action to be taken by the range states of hundreds of species of birds ecologically dependent on wetlands in Africa and Eurasia, including the Middle East, Greenland and parts of Asia and Canada, throughout their migration system⁴; the Agreement on the Conservation of Albatrosses and Petrels (ACAP), which seeks to conserve albatrosses and petrels by coordinating international activity to mitigate known threats to albatross and petrel populations⁵; the MoU concerning Conservation Measures for the Siberian Crane, which covers Western, Central and Eastern Asian populations of Siberian cranes⁶; and the MoU on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia, focusing on promoting regional cooperation, reducing threats and conserving critical habitat of marine turtles in the IOSEA region.⁷

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** (UNESCO World Heritage Convention, Paris, 1972). Area-based international obligations are usually implemented at the national level through the creation of protected areas legislation, as well as with legislation ensuring the prevention or minimization of negative interferences in or near these areas. Area-based conventions are regarded by management authorities as positive instruments to raise the profile of protected areas, as well as to ensure and attract international cooperation and funding.

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 thus 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,

⁴ AEWA has 62 parties as of November 2008, including Jordan.

⁵ ACAP has 13 parties as of January 2009, including Australia and New Zealand.

⁶ The Siberian Crane MoU currently has 12 signatory states, including India and China.

⁷ The IOSEA Marine Turtles MoU has 30 signatory states as of 1 March 2009, including Australia, Bangladesh, India, Jordan, the Philippines and Vietnam.

between species and of ecosystems" (art. 2). Although successive to the other wildlife-related international agreements described above, the CBD has become an "umbrella" framework for the global biodiversity-related international regime providing opportunity to coordinate and promote synergies among earlier agreements.

The main obligations under the CBD that have a bearing on national wildlife legislation include the requirements to:

- engage in planning exercises, establish a system of protected areas, rehabilitate and restore degraded ecosystems and promoting the recovery of threatened species (art. 8);
- identify and control all potential sources that may have an adverse impact on biodiversity and carry out environmental impact assessments (art. 14);
- conserve animals outside their natural habitats ("ex-situ conservation", such as in zoos, parks, etc.), with a focus on facilitating recovery and rehabilitation of threatened species and reintroducing them into their natural habitats under appropriate conditions, while at the same time avoiding threatening ecosystems and in-situ populations of species (art. 9);
- protect and encourage customary use of biological resources, in accordance with traditional cultural practices, that are compatible with conservation or sustainable use requirements, support local populations to develop and implement remedial action in degraded areas, and encourage cooperation between governmental authorities and the private sector in developing methods for sustainable use (art. 10); and
- build incentives for conservation and sustainable use objectives (art. 11).

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 its long-term decline. The Addis Ababa 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 applying to both

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, although their operation will require a flexible and adaptable legal and policy framework adjustable to local realities and specific ecosystems. Indeed, Principle One 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 incentive measures. Moreover, they underline the need to resolve any overlaps, omissions and contradictions in existing laws and policies. They further highlight the benefits of creating cooperative and supportive linkages between all levels of governance in order to avoid duplication of efforts or inconsistencies. In the following sections, specific principles and their operational guidelines will be cited when appropriate.

1.2. Regional wildlife-related agreements and initiatives

Among regional wildlife-related treaties and initiatives, the South Pacific Regional Environment Programme (SPREP),⁸ the Convention on Conservation of Nature in the South Pacific, and the Agreement on the Convention of Nature and Natural Resources of the Association of Southeast Asian Nations (ASEAN)⁹ can be singled out.

The **Agreement resulting in the creation of the South Pacific Regional Environment Programme** (1995) established SPREP as an intergovernmental organization with the objectives to: promote cooperation and coordination in the South Pacific region, provide assistance in order to protect and improve the environment and to ensure sustainable development through an action plan adopted from time to time. The action plan includes monitoring and assessment of the state of the environment in the region, including the impacts of human activities on the ecosystems; promotion and development of programmes, including research programmes, to protect terrestrial, freshwater, coastal and marine ecosystems and species, while ensuring

⁸ Source: www.sprep.org/sprep/about.htm: last visited on 6 August 2009.

⁹ Source: www.aseansec.org/1490.htm: last visited on 6 August 2009.

ecologically sustainable utilization of resources; and promotion of integrated legal, planning and management mechanisms (art. 2). SPREP operates two programmes: Island Ecosystems and Pacific Futures. The former has the following goal: Pacific island countries and territories will be able to manage island resources and ocean ecosystems in a sustainable manner and that support life and livelihoods. The goal of the latter is that Pacific island countries and territories will be able to plan and respond to threats and pressures on island and ocean systems.¹⁰

The **Convention on Conservation of Nature in the South Pacific** (Apia Convention, 1976) established a broad framework for nature conservation in the South Pacific region, particularly in relation to migratory and endangered species and the preservation and management of wildlife habitat and terrestrial ecosystems. It includes provisions on the establishment of protected areas (art. 2). It calls on parties to prohibit hunting and commercial exploitation of species in national parks (art. 3) and to maintain lists of indigenous fauna and flora in risk of extinction for their full protection (art. 5). It further notes that provision may be made as appropriate for customary use of areas and species in accordance with traditional cultural practices (art. 6).¹¹

The **ASEAN Agreement on the Conservation of Nature and Natural Resources** (1985) has the objectives of maintaining essential ecological process and life-support systems, preserving genetic diversity and ensuring the sustainable utilization of harvested natural resources (art. 1(1)). It provides for species and ecosystem conservation through extensive management measures, including species sustainable use (art. 4) and for environmental planning measures with a view to integrating natural resource conservation into the land use process, including by the establishment of protected areas (art. 13) and impact assessments (art. 14). It also addresses public participation in planning and implementation of conservation measures (art. 16). Ordinary meetings of the parties are to be held at least once every three years, in as far as possible in conjunction with appropriate meetings of ASEAN (art. 21). An appropriate national agency or institution is to be designated

¹⁰ SPREP has 25 member countries, including Australia and New Zealand.

¹¹ As of April 2008, the Apia Convention has five parties, including Australia.

by each party for coordinating matters and channelling communications between parties or with the Secretariat (art. 23).¹²

The **Agreement on the Establishment of the ASEAN Centre for Biodiversity** (2005) establishes the Centre to facilitate cooperation and coordination among ASEAN members and with relevant governments and international organizations, on the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising from the use of such biodiversity in the region (art. 2). The Centre is composed of a governing board, an executive director and necessary staff and committees or subsidiary bodies, as deemed necessary by the governing body (art. 3).¹³

Trends in national legislation

2. Institutions and stakeholders

Institutional arrangements for wildlife management vary from one country to another. Key legal issues concern the clear allocation of institutional mandates, the need to create mechanisms for inter-institutional coordination when more than one administrative entity is in charge of wildlife management or closely related issues and the need to ensure public participation in decision-making. This section will focus on the last two points, as institutional coordination and public participation in decision-making are essential prerequisites to empowering the poor in wildlife management by increasing transparency and accountability of wildlife management and taking into account the concerns of various stakeholders and communities' traditional knowledge. This section will further address legal issues related to decentralization, delegation and funding.

2.1 Inter-institutional coordination

There is a wide variety of approaches in the selected countries with regard to ensuring coordination among different administrative

¹² Ratified by the Philippines, but not yet in force; requires ratification by six out of the ten ASEAN member countries.

¹³ The ASEAN Centre for Biodiversity was established by the ten ASEAN member countries, including Lao PDR, Malaysia, the Philippines and Vietnam.

entities responsible for wildlife management. In several countries **inter-sectoral advisory bodies** have been created to this end. In India, the National Board for Wildlife as well as a species-specific coordination entity – the National Tiger Conservation Authority – have been established. The National Board for Wildlife promotes wildlife and forest conservation and development by framing policies and advising the central government and state governments, making recommendations on the setting up and management of protected areas and on matters relating to restriction of activities in those areas, and carrying out impact assessment of various projects and activities on wildlife or its habitat. In addition, state wildlife boards advise the state governments with regard to the selection of areas to be declared as sanctuaries and national parks and their administration; policy formulation for wildlife conservation; and amendments of the Schedules of the Wildlife Protection Act. Significantly, state wildlife boards suggest measures to be taken for harmonizing the needs of tribal and other forest dwellers with wildlife conservation; and any other matter on wildlife protection.

In Japan, the government has established the Nature Restoration Promotion Conference, including officials from several ministries and government agencies, and the Nature Restoration Expert Panel, including individuals with specialized knowledge of the natural environment with advisory functions, to oversee implementation of the Law for the Promotion of Nature Restoration. In the Philippines, a National Wildlife Management Committee was created to provide technical and scientific advice regarding the collection or use of wildlife for trade, bioprospecting, conservation breeding or propagation of threatened species, scientific research and special uses. It is composed of representatives from the wildlife administration, Department of Agriculture or Palawan Council for Sustainable Development, Environmental Management Bureau, other concerned government agencies and local scientists with expertise on various fields of wildlife. Stakeholders may be invited as resource persons, when considered necessary.

In New Zealand, a Wildlife Enforcement Group has been formed as a partnership under a Memorandum of Agreement between three government departments: the Customs Service, the Ministry of Agriculture and Forestry, and the

Department of Conservation. Its aim is to stop organized illegal trade in wildlife involving import, export, and related domestic activity. This includes live fauna and flora and their derivatives.

These advisory bodies may also be created **at the local level**. In Japan, for instance, the establishment of prefecture and municipal environment councils is also provided for, to be stipulated by prefecture or municipal ordinances. Similarly, in the Philippines, regional wildlife management committees are created by the regional offices of the wildlife administration or Department of Agriculture. In New Zealand, Conservation Boards focus on a defined geographical area¹⁴ with tasks related to planning, providing strategic direction on conservation management strategies and advising on their implementation, developing and reviewing national park management plans, considering the impact of concessions for tourism on conservation land, and advising on proposals to change the protective status or classification of areas of national or international importance. Every board consists of no more than 12 members appointed by the relevant minister following a public nomination process, having regard to the particular features of land administered by the Department in the area of the board's jurisdiction and interest in nature conservation, natural sciences, recreation, tourism, the local community and Māori perspectives, following consultation with the Minister of Māori affairs. Overall, these advisory bodies at the local level may facilitate coordination at a level of governance closer to the resource and can therefore more effectively tackle local-level management issues.

2.2 Public participation in decision-making

Cross-sectoral coordination arrangements may also serve another purpose: advisory bodies not only facilitate inter-institutional coordination when mandates related to wildlife management are shared among different authorities, they also constitute a permanent avenue for stakeholder participation in decision-making when non-governmental entities and representatives of local and indigenous groups are included in the membership of these bodies.

In India, the above-mentioned state boards for wildlife consist not only of state government

¹⁴ www.doc.govt.nz/getting-involved/nz-conservation-authority-and-boards/conservation-board-information.

officers, but also of three NGO representatives and ten persons to be nominated by the state government from among eminent conservationists, ecologists and environmentalists, including at least two representatives of the Scheduled Tribes.¹⁵ Similarly, the National Board for Wildlife consists not only of government agencies, but also of five NGO representatives, conservationists and scientists. In addition, the National Tiger Conservation Authority consists not only of ministries and parliament representatives, but also of eight experts or professionals having prescribed qualifications and experience in conservation of wildlife and welfare of people living in tiger reserves, of which at least two must be from the field of tribal development, and six chief wildlife Wardens from the tiger reserve states in rotation.

In Australia, an Indigenous Advisory Committee was established to advise the Minister for the Environment, Heritage and the Arts on operation of the Environment Protection and Biodiversity Conservation Act, taking into account the significance of indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity. All committee members, to be appointed by the minister, are indigenous Australians and are selected for membership on the basis of their expertise in indigenous land management, conservation and cultural heritage management.

These examples show, on the one hand, that legislation may clearly prescribe participation of stakeholders, particularly indigenous and local communities' representatives, in advisory bodies, as well as explicitly require these bodies to address communities' issues related to wildlife management. Legal provisions on public participation in decision-making may, however, be extremely vague, thus providing unlimited discretion to authorities. This is, for instance, the case in Malaysia, where legislation simply states that the National Parks Advisory Council must consist of representatives of government departments as well as six "other persons" to be appointed by the minister.

¹⁵ The term "Scheduled Tribes" refers to specific indigenous peoples, recognized in India's Constitution (art. 342), generally characterized by geographic isolation, distinctive culture, language and religion, and increased poverty.

Conversely, with a stronger stance on public participation stakeholders can be also included in administrative structures with **decision-making powers**. This is the case in Bangladesh where the National Biodiversity Authority is an autonomous regulatory body comprised of representatives of the public sector, scientists, women's organizations, environmental NGOs, and representatives of local and indigenous communities. Community representatives are selected by the Authority itself, based on a defined set of criteria.

In New Zealand, the Conservation Authority – an independent authority responsible for a variety of advisory and regulatory tasks – approves conservation management strategies and plans; reviews the effectiveness of general policies; investigates nature conservation matters of national importance; and makes proposals for the change of status or classification of areas of national and international importance. It consists of five members appointed after consultation with the Ministers of Māori Affairs, Tourism, and Local Government: one appointed on the nomination of *Te Runanga O Ngai Tahu*¹⁶; three appointed on the recommendations of the Royal Society of New Zealand, Royal Forest and Bird Protection Society, and Federated Mountain Clubs; and four appointed from public nominations, in accordance with a process provided. In this case, one can also underline the bottom-up approach to the selection of stakeholder representatives, which can also contribute to empower communities by allowing them to appoint their own representatives.

Public participation may otherwise be ensured through general clauses in wildlife law, which create an obligation of wildlife administrations to ensure public participation. In the Philippines, for instance, public participation is explicitly mentioned in the Environment Code, which tasks the Department of Natural Resources, to establish a system of rational exploitation and conservation of wildlife resources and encourage citizen participation in the maintenance and/or enhancement of their continuous productivity. Also in the Philippines and with similar vague language, legislation provides that the National Environment Protection Council may, whenever it deems necessary, conduct public hearings on issue of environmental significance. Along similar

¹⁶ The tribal council representing the Māori people of the southern islands of New Zealand.

lines, in Vietnam, environmental legislation provides that the state should "encourage and facilitate all organizations, population communities, households and individuals to participate in environmental protection activities." In addition, in Vietnam, it is up to the Prime Minister to decide to establish national-level conservation areas, after a collection of opinions from concerned ministries and ministerial-level agencies, people's committees of all levels and inhabitants lawfully living in the planned place of the conservation area and its adjacent area. The stringency of these obligations is critical in ensuring that public participation is actually ensured in practice.

2.3 Decentralization and delegation

Coordination is also necessary **between different (central/local) levels of government**, particularly in federal states or in countries with wide territories, where legislation addresses the division of labour and competence among different territorial levels of administration in detail. In China, for instance, legislation clarifies that local administration of relevance to wildlife management is organized at three levels (province, prefecture and county), while the State Forestry Administration, at the central level, is responsible for the nationwide management of terrestrial wildlife. Along similar lines, in India the power of the central and state governments to regulate wildlife management are clarified in the Wildlife Protection Act. The central government may regulate issues such as those related to the Central Zoo Authority, and centrally-declared sanctuaries and national parks, whereas the state government is in charge of the wildlife use permitting system.

In Japan, legislation empowers the state to formulate and implement fundamental comprehensive policies with regard to environmental conservation and take legislative, financial and other measures; while local governments, i.e. prefectures and municipalities, in accordance with the natural and social conditions in their jurisdiction, are responsible for the formulation and implementation of wildlife management plans and for the implementation of hunting regulations; and can establish several types of prefectural protected areas.

In Lao PDR, the Ministry of Agriculture and Forestry is responsible for developing strategic policies, regulations and laws on wildlife, whereas

provincial and prefectural divisions, in coordination with the Ministry, have the competence to determine natural reserves and types of wildlife which must be preserved, within their area of responsibility. Finally, village administrative authorities have a wide array of responsibilities relevant for wildlife management: they draft specific administrative regulations for the preservation of forests and wildlife; appoint people to administer forests within their village area; establish fixed occupations for people living in villages, in order to restrict and progressively cease cutting and destruction of forests; monitor, inspect and prevent hunting and illegal trade in wildlife; and engage in timely fighting of illegal logging, forest fires and other activities causing negative impacts to forest resources and wildlife. Overall, it is critical for legislation to allocate different responsibilities among different levels of government and to establish ways to coordinate action at the local level.

In Australia, an intergovernmental agreement was adopted in 1992 in order to facilitate a cooperative national approach, better define the roles of the respective governments, and reduce the number of disputes between the Commonwealth and the states and territories in environmental matters. In accordance with the agreement, each level of government has responsibilities for the protection of fauna and habitats, and ensuring the survival of species and ecological communities. States have primary responsibility in the general area of nature conservation, but the Commonwealth has a particular responsibility in relation to management of areas within its own jurisdiction, obligations under international law, exports, imports and quarantine, and cross-jurisdictional coordination. A national approach should be taken to rare, vulnerable and endangered species, which should be kept into consideration by all levels of government when taking environmental management and resource use decisions. Cooperative activities are promoted for native species and habitats occurring in more than one jurisdiction, as well as for improved intergovernmental arrangements for regulating commercial use of native wildlife including setting of nationally sustainable harvesting levels, establishment of national standards in marketing of wildlife products, and streamlining of permits and regulatory controls and enforcement. Management of parks and protected areas is largely a function of states.

Delegation of public authorities' powers to non-governmental stakeholders may also be possible. This is the case of Jordan, where the Ministry of Agriculture and the Ministry of Environment delegated significant powers to an **NGO**. The Royal Society for the Conservation of Nature, a voluntary organization that was established in 1966 under the patronage of the King, has been delegated power by the Minister of Agriculture to implement wildlife legislation, regulate hunting and manage protected areas. By virtue of a recent Memorandum of Understanding between the Ministry of Environment and the Royal Society for the Conservation of Nature, the latter is also entrusted to establish and manage nature reserves and to act for their development in a sustainable way. A bilateral committee is envisaged to lay down plans and programmes for the establishment of nature reserves, approval of new ones and extending the existing ones. In more general terms, in Japan, the Minister of the Environment or the prefecture's governor may designate a foundation or a non-profit organization recognized by the minister as capable of performing the required operations as the park management organization.

2.4 Funding

Lack of financial resources to ensure effective wildlife management is often a significant barrier for the implementation of wildlife laws, and in some cases funds have been created by wildlife or general environmental legislation to earmark certain financial resources to support the work of authorities on wildlife management. In Jordan, for instance, an environmental protection fund has been created with the goal of protecting the environment and its components, thus arguably being possible to fund wildlife management-specific initiatives. Similarly, funds for wildlife conservation and management have been established in the Philippines, Lao PDR and Vietnam. In the Philippines, the Wildlife Management Fund has been established as a special account in the National Treasury to finance habitat rehabilitation or restoration and support scientific research, enforcement and monitoring activities, as well as enhancement of capacity of relevant agencies. Funds should be derived from fines, fees, charges, donations, endowments, and administrative fees or grants in the form of contributions, whereas contributions to the fund are exempted from all taxes. In Lao PDR, on the other hand, the Forest and Forest Resource Development Fund is also operating as

a fund for wildlife conservation and protection, to be used for purposes such as wildlife surveying and classification, habitat preservation, breeding activities and information dissemination. In Vietnam, funds for biodiversity conservation and sustainable development come from the state budget, investments and contributions of domestic and international organizations and individuals and proceeds from environmental services.

A species- and reserve-specific approach is exemplified in India, where tiger conservation foundations are operating at the state level and under the Tiger Conservation Authority, as trusts for fund generation to foster conservation, eco-tourism and sustainable development activities, also involving the local people. An example for funding of community-based wildlife conservation and management efforts on public lands can be identified in the Community Conservation Fund in New Zealand, which aims to promote indigenous biodiversity values, species and habitats. It is complemented by the biodiversity advice and the biodiversity condition funds, as well as the Nature Heritage Fund focusing on private lands; and the Nga Whenua Rahui and the Mataranga Kura Taiao funds, supporting protection of indigenous ecosystems on Māori land, and traditional Māori knowledge and its use in biodiversity management.

A "business approach" is taken in Australia, where the "Caring for our Country" initiative has incorporated a range of prior natural resource management funding programmes and elements, including the Natural Heritage Trust. The initiative is run by Australian Government Land and Coasts, a cross-departmental team comprising staff from the Departments of the Environment, Water, Heritage and the Arts, and Agriculture, Fisheries and Forestry. A business plan is released each year, inviting proposals from relevant organizations and partnerships to undertake activities in six priority areas, including, among others, a national reserve system, biodiversity and natural icons, natural resource management in remote and northern Australia, and community skills, knowledge and engagement.

3. Wildlife tenure and use rights

Tenure over wildlife is not often clearly spelt out in legislation in the selected countries. In China, wildlife is the **property of the state**, with the clear legal consequence that compensation for damage caused by wildlife under special state or local protection will be provided by the local government. The latter in fact is responsible for preventing such harm so as to guarantee the safety of human beings and livestock and ensure agricultural and forestry production. Similarly, in Lao PDR, wildlife living naturally in the territory of the state is "the property of the national community, of which the state is the central administrative representative", so an authorization is required for the possession of specific species of wildlife. In Bangladesh, the legislation does not include clear and specific statements on wildlife tenure but clarifies that any wild animal, trophy or meat shall be **presumed** the property of the government until the contrary is proven. In Malaysia, the Sabah Wildlife Conservation Enactment states that all protected animals and their products are the property of the government, unless they have been lawfully imported or obtained upon a valid license or permit.

In New Zealand, indigenous wildlife is the property of the state until it is lawfully taken or killed at which point it becomes the property of the person who took or killed it. This general statement is coupled with consideration of Māori ownership over their natural resources: the Conservation Act must be "interpreted and administered as to give effect to the principles of the Treaty of Waitangi",¹⁷ which includes Māori ownership and control of their lands, estates, forests, fisheries and other properties. Similarly, in the Philippines, the Constitution provides that wildlife is owned by the state, but the Congress may, by law, allow **small-scale utilization** of natural resources by Filipino citizens and, to protect the **rights of indigenous cultural communities to their ancestral lands**, may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

¹⁷ The 1840 Treaty of Waitangi, signed by representatives of the British Crown, and various Māori chiefs, established a British governor in New Zealand, recognised Māori ownership of their lands and other properties, and gave Māori the rights of British subjects.

In Vietnam, wildlife tenure is **linked with forest tenure**. The state manages and disposes of natural and planted forests and forest wild animals, allocating rights and obligations to forest owners, whereas ownership over planted production forests includes the forest owners' right to possess, use and dispose of animals within the planted forest.

Overall, legal provisions on individual's property over wildlife seem scarce. In Japan, wildlife legislation clarifies that **individual possession** of certain protected specimens (such as those bred) is subject to registration and entails the duty to conserve and treat them properly. In the Philippines, no person or entity is allowed possession of wildlife unless they can prove financial and technical capability and facility to maintain it, and is obliged to register them.

3.1 Traditional rights

Legal recognition of traditional rights over land and natural resources, including wildlife, as highlighted in a couple of cases mentioned above, may be a powerful tool to support traditions of local and indigenous communities, and to provide them privileges or priority in use when this is conducive to sustainable practices. In the Philippines, ancestral lands and customary rights are recognized in the 1992 National Integrated Protected Areas System (NIPAS) Act. In addition, the 1997 Indigenous Peoples Rights Act recognizes the **indigenous concept of ownership**, i.e. that ancestral domains and all resources found therein serve as the material bases of cultural integrity. According to this concept, ancestral domains are the indigenous peoples' private community property, which belongs to all generations and therefore cannot be sold, disposed or destroyed. The rights to ancestral domains include rights of ownership over traditional hunting grounds, the right to develop lands and natural resources within the ancestral domain, manage and conserve natural resources, and benefit and share the profits from allocation and utilization of natural resources, and the right to resolve land conflicts in accordance with customary laws. Corresponding responsibilities are also detailed, such as the maintenance of ecological balance by protecting fauna. Processes for delineation and recognition of ancestral domains, giving a decisive role to the communities concerned are also addressed. For instance, the sworn statement of the elders as to the scope of the territories and agreements made

with neighbouring communities is considered essential for the determination of the traditional territories. Ancestral domains found necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by the appropriate agencies with the full participation of the indigenous peoples concerned are to be maintained, managed and developed for such purposes. Primary responsibility to maintain, develop, protect and conserve such areas rests with the indigenous peoples concerned; however, this is supplemented by the full and effective assistance of the government agencies. Any community decision to transfer the responsibility over the areas must be made in writing on the basis of customary laws regarding consent, without prejudice to the basic requirement on free and prior informed consent. In any case, such transfer of responsibility can only be temporary and will ultimately revert to the community in accordance with a program for technology transfer. No community can be displaced or relocated for wildlife and natural resources management and conservation purposes without the written consent of the specific persons authorized to give consent.

As a result, indigenous peoples in the Philippines have **priority rights** in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the community concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding 25 years (the period being renewable for not more than 25 years), on the basis of a formal and written agreement or a decision by the community concerned pursuant to its own decision-making process. Collection of wildlife by indigenous peoples, except threatened species, may be allowed for traditional use and not primarily for trade.

Along similar lines, in Bangladesh, the rights of indigenous and local communities over ecosystems that are directly linked to their livelihood practices are recognized by the state, so that access to biological wealth, including wildlife, for survival needs and traditional uses is ensured.

Less wide-ranging provisions can also be found in other selected countries. In Lao PDR, **customary hunting rights** are recognized for "family use and other customary uses", provided that use does not

cause damage to forests or forest resources and does not prejudice the rights and benefits of individuals or organizations. Such use is further subject to regulations issued by village administrative authorities. In Malaysia, traditional and native rights to wildlife use are recognized upon conditions and in differing degrees in Peninsula Malaysia, Sabah and Sarawak. In Peninsula Malaysia, for instance, any member of an aboriginal community may hunt wild animals and birds described in schedules for the purpose of subsistence reasons.

In Australia, in accordance with the 1993 Native Title Act, holders of **native title rights** covering certain activities do not need authorization as required by other laws to engage in those activities, including hunting, for the purpose of satisfying their personal, domestic or non-commercial communal needs, and in exercise or enjoyment of their native title rights and interests. Similarly, the Environment Protection and Biodiversity Conservation Act does not prevent an indigenous person from continuing in accordance with the law the traditional use of an area for hunting and food gathering (except for the purposes of sale) or for ceremonial and religious purposes.

3.2 Human-wildlife conflicts

Human-wildlife conflicts are generally addressed in the national legislation of the countries covered by this study, by allowing certain killing and providing certain limitation or at least controls. In Malaysia (Sabah), it is allowed to take **"reasonable" measures** to defend human life, livestock, crops or other property from attack or damage by protected animals, although the use of a firearm may only be resorted where no alternative is possible. For totally protected animals listed in a schedule, only the defence of human life applies. The facts and circumstances must then be reported immediately to the nearest authorized officer. The latter provision is quite useful in deterring abuse. Similarly in Peninsula Malaysia, officers may shoot any wild animal or bird, if it is a danger to human life or property and land owners or occupiers may shoot a wild animal or bird causing serious damage to crops and domestic animals, provided reasonable efforts to drive the animal away are used first. This must be reported to the authorities. In Sarawak, dangerous animals can be hunted or killed by a warden in defence of human life and property. Along the same lines, in Bangladesh, legislation clarifies that

it is not an offence to kill animals that threaten human life or damage crops or livestock outside of protected areas.

The situation is quite similar in Vietnam, where forest animals threatening to harm people's property or life must first be driven away, without being harmed. Outside special-use forests, and following lack of success of such measures, these cases should be reported in writing to presidents of people's committees to obtain a permission to trap or hunt such animals. For particularly precious and rare animals, such as the elephant, rhino, tiger and leopard, the consent of the Agriculture and Rural Development Ministry and the Natural Resources and Environment Ministry is further needed.

In Lao PDR, a differentiation is clearly made between **protected and non-protected species**. In the latter case, citizens have the right to capture or kill restricted animal species, in case such animals are threatening human lives. Before or at least after killing, approval must be requested or a report must be sent to the relevant authorities. In case restricted animal species cause damages to livestock, cultivation and other property, this must be reported to the local forestry and environment management authorities, who will provide an adequate solution.

Interestingly, to prevent abuse of permitted killing in cases of human-wildlife conflicts, in Lao PDR and Malaysia (Sarawak and Sabah), the animal killed remains the property of the state.

A more **preventative approach** is adopted in China, where local governments must prevent and control the harm caused by wildlife so as to guarantee the safety of human beings and livestock and ensure agricultural and forestry production.

4. Wildlife management planning

Legal provisions on wildlife management planning are quite developed in the selected countries, with the exception of Bangladesh, Jordan, Malaysia and Tonga. In China, for instance, central and provincial forestry departments must regularly carry out **surveys** of wildlife resources and keep records of them so as to provide the basis for the planning of the protection and development of

wildlife resources and the preparation of the list of wildlife species under special protection by the state or local authorities. General surveys of the wildlife resources must be conducted once every ten years and approved by the competent departments.

In Japan, a whole **system** for wildlife planning has been set up. The "Specified Wildlife Management Planning System" provides for the national government to set up the overall policy on wildlife protection, including designation of protected areas, captive breeding and control of dangerous wildlife. Then prefectures draw long-term management plans focusing on wildlife populations that are rapidly increasing or decreasing. The plans must state specific goals for the target species, and prescribe concrete measures for properly controlled hunting, preventing negative impacts and conserving habitat. They should be drawn on the basis of population studies, in consideration of local circumstances. Each prefecture can establish comprehensive wildlife protection project plans to actively promote wildlife protection projects, including on wildlife management, control of populations and conservation and management of habitats, as well as specified wildlife management plans at the local level, to control local populations of specific wildlife species.

In Lao PDR, legislation clearly assigns **responsibility** for wildlife management planning to the Ministry of Agriculture and Forestry, and specifies the various steps in the planning process: the study and preparation of strategic plans, policies and regulations on wildlife management and use, to be adopted by the Council of Ministers; the adoption of elaborate provisions for implementation of the Council of Ministers regulations; control of implementation; and coordination with local authorities for wildlife protection and use in accordance with state regulations. Institutional responsibility for planning is also assigned in Bangladeshi legislation, but the sequence of steps is not.

In Australia, responsibility for wildlife management planning is **shared** between the federal, and state and territory governments. The Natural Resource Management Ministerial Council develops national approaches to natural resource management and ensures inter-governmental coordination. The relevant minister may, on behalf of the Commonwealth, cooperate with, and give financial and other assistance to, any person for the

purpose of identifying and monitoring biodiversity components. The minister may prepare a **bioregional plan** for a bioregion that is within a commonwealth area, following public consultation on the draft in accordance with the regulations. In the plan's preparation, the minister may cooperate with a state or territory agency for a bioregion that is not wholly within a commonwealth area. A bioregional plan may include provisions about: the components of biodiversity, their distribution and conservation status; important economic and social values; mechanisms for community involvement in implementing the plan; and measures for monitoring and reviewing the plan. In addition, the minister may make and implement a **wildlife conservation plan** for the protection, conservation and management of a listed migratory species or a conservation-dependent species. The minister may also adopt the plan made by a state or a self-governing territory, or adopt **joint wildlife conservation plans** with states and territories. Public consultation and taking the advice of the Scientific Committee are also provided for in the plan. The plan must provide for the research and management actions necessary to support survival of the species concerned, seek to minimize any significant adverse social and economic impacts, and have regard to the role and interests of indigenous peoples.

In New Zealand a differentiation is made between wildlife planning for conservation purposes and for recreational use, and a process for public participation is specifically provided for both in the Conservation Act. Thus, **statements of general policy** are drafted by the Director-General of the Conservation Department, after consultation with the New Zealand Fish and Game Council in the case of sports fishing and game policy, or with the Conservation Authority in any other case. The statements are made available for public inspection and submission of comments may be made by interested persons and organizations and regional councils, before their approval by the relevant minister. Then, on the one hand, **conservation management strategies** are developed to implement general policies and establish objectives for the integrated management of natural and historic resources, including any species, under several acts, and for recreation, tourism or conservation purposes, as well as **conservation management plans** to implement these strategies and establish detailed objectives for integrated management within a specific area. Consultation with the conservation

boards of the area concerned, and other persons and organizations the Director-General considers appropriate, are carried out. Draft strategies and plans are notified to appropriate regional councils and territorial and Māori authorities; and are made available for public inspection and submission of comments. Public hearings must also be organized. On the other hand, **sports fish and game management plans** aim to establish objectives for such management within any region or part of region. They are prepared by the Fish and Game Councils for approval by the minister, in accordance with relevant acts, policies, and conservation management strategies and plans, having regard to the sustainability of sports game in the area, and to the impact that the proposed management is likely to have on other natural resources and other users of the habitat concerned. Plans must include such provisions as may be necessary to maximize recreational opportunities for hunters and anglers. A public consultation process applies as set out in detail in the Conservation Act.

Planning requirements are more often spelt out in **protected areas** legislation (in Jordan, for instance). In China, the responsibility for the formulation of programmes for the development of national nature reserves rests with the environmental protection departments and nature reserves departments under the State Council. Such programmes are then submitted to the competent planning department "for overall balancing" and then to the State Council for final approval and implementation. In Vietnam, a conservation zone establishment project includes the boundaries of the strictly protected, ecological restoration, and service-administrative sections, as well as a scheme of settlement or relocation of households and individuals from the planned place of the conservation zone; and a management plan of the conservation and the buffer zone. In Sabah (Malaysia), a management plan should be prepared within three years after the declaration of a wildlife sanctuary and should include details of management objectives and zones for conservation and management purposes. In other cases, inventories and management plans for wildlife may be subsumed into larger processes on biodiversity, as in the case of Vietnam.

With the exception of Australia and New Zealand mentioned above, **participatory approaches** to wildlife management planning seem scarce in the region, particularly for planning at the central level

of government. Another exception can be found in the Philippines, where detailed rules provide that a management planning strategy must also provide guidelines for the protection of indigenous cultural communities, other tenured migrant communities and sites, and for close coordination between and among local agencies and the private sector. The strategy is also to ensure that management decisions are made with interdisciplinary inputs and participation of all stakeholders. A process is established to allow for methodologies such as stakeholders analysis, participatory resource assessment and community mapping to generate community inputs into the management plan and promote ownership of the plan by the local communities. The management plan is to be presented to the stakeholders through public consultations, and issues and concerns raised shall be addressed.

In some instances, **users or stakeholders** are called upon to develop project-specific or site-specific management plans. This is the case of Vietnam, where forest owners have the obligation to develop management plans for protected animals in their area and issue internal protection rules. In the Philippines, when community-based programmes are in place in protected areas, the people's organization prepares the management plan or an ancestral domain sustainable development and protection plan.

5. Wildlife conservation

Protected area legislation in the selected countries is generally quite developed as it specifically targets wildlife conservation. Legal issues related to the empowerment of the poor specifically concern public participation in the establishment and management of protected areas; consideration of the concerns, uses and knowledge of traditional inhabitants or users in protected areas; and community-based management of protected areas or benefit-sharing when management remains with public authorities. Local and indigenous communities' concerns as well as specific wildlife management concerns may also be adequately addressed by species-based approaches to conservation and by environmental impact assessment, if legislation is appropriately devised to this end, as will be discussed in the final part of this section. This section will address all these issues in turn.

5.1 Public participation in decision-making related to protected areas

There seems to be a variety of approaches in the selected countries with regards to the legal tools used for ensuring public participation in decision-making related to protected areas. In China, although there is no public consultation procedure prior to the establishment of a nature reserve, legislation requires that local economic development, production activities and everyday life of local residents must be properly **considered** when nature reserves are established, delineated in their boundaries and managed. The local government must ensure the proper resettlement of residents living in the core areas.

In Vietnam, the establishment of protected areas instead entails a participatory process that includes collection of opinions from concerned ministries, people's committees at all levels and inhabitants lawfully living in the planned conservation zone and its adjacent area. Similarly, in Japan, **consultation** is needed with the heads of government organizations concerned, the Nature Conservation Council and local governments concerned as well as communication of the designation plan "for the public perusal" for a period of 14 days, during which the area inhabitants and other parties concerned may submit their views. Public hearings must then be organized whenever there are objections to the designation plan or when deemed necessary to hear opinions broadly.

In the Philippines, a general clause states that the administration of protected areas is possible only through cooperation among national government, local government and concerned private organizations. In addition, a detailed process for public participation is set out for the establishment and de-establishment of protected areas, including public hearings, notices on mass media and invitations to potentially affected stakeholders to submit comments. Subsidiary legislation specifies that stakeholders are to be regularly consulted during and after the conduct of the protected area suitability assessment and the gathering of socioeconomic information. In addition, a **protected area management board** should be established for each protected area, composed of various stakeholders including representatives from villages situated in the protected area, tribal communities and NGOs/local community organizations. Moreover,

stakeholders such as tenured migrants, local government units, NGOs, peoples' organizations, local communities, indigenous peoples and other government agencies must be part of the participatory decision-making process in the establishment and planning of the management zones. Such zoning and management prescriptions must not restrict the rights of indigenous peoples to pursue traditional and sustainable means of livelihood within their ancestral domain or land.

In Sarawak (Malaysia), a process is put in place to **investigate rights** that may be affected by the establishment of wildlife sanctuaries. Any holders of rights or privileges relating to the proposed area need to be notified within a period of sixty days from the notification or they will be deemed abandoned or waived. The rights or privileges that may be recognized in the area can be only those of a native community that has enjoyed them for an uninterrupted period beginning from a date prior to 1 January 1958 to the date of the notification. The Chief Wildlife Warden will inquire into the claim and provide a report to a "controller". Where any right or privilege is admitted or found to have subsisted at the time of the notification, the controller shall regulate its exercise, including directing the areas or places within the sanctuary where it can be exercised and the manner of exercising it; proceed to extinguish such rights and pay compensation to the claimants, with the approval of the minister, or permit their exercise in any other area outside the sanctuary. Appeals may be directed to a Sessions Court. Following the controller's decision on the rights and privileges, the minister may, with the approval of the governor, publish the notification constituting the wildlife sanctuary.

In New Zealand, public participation in decision-making related to protected areas is also provided for at the stage of authorizing activities within protected areas through **concessions**. A public notice is required before granting any lease or license, and lies with the relevant minister's discretion before granting any permit or easement. Legislation identifies a series of criteria for deciding upon a concession application, including consideration of any information received after the public announcement, any relevant environmental impact assessment, including any audit or review and any relevant submissions received. Records available for public inspection are kept for all applications for a

concession, including details of any public notification and related decisions.

5.2 Community-based management of protected areas

There are quite a few examples of legal tools that seek to facilitate or recognize community-based management of protected areas in the selected countries. In Japan, the conservation, restoration or creation of various natural areas including *satoyama* (community-based forests) and *satochi* (rural landscapes) is made possible with the **participation of various actors in the community**, including concerned government agencies, municipal authorities, local residents, NGOs and individuals with specialized environmental knowledge. Although the law does not specifically mention wildlife, it is acknowledged that many species, including threatened species, live mainly in *satochi* and *satoyama* areas. Such nature restoration projects must have the objective of restoring lost or depleted ecosystems; adopt a bottom-up approach; and respect the principle of adaptive management. The Minister of the Environment must formulate a basic policy for nature restoration, in consultation with the Minister of Agriculture, Forestry and Fisheries and the Minister of Land, Infrastructure and Transport, and after seeking public opinion. On the basis of this policy, which was adopted in April 2003, responsibility for nature restoration projects rests mainly with the person who undertakes the project and the community. The national and local governments provide the necessary assistance, while the developer should form a **nature restoration committee** including all parties who intend to be involved in the project, in order to draft the overall plan for nature restoration and conclude an agreement with the landowner of the area if needed.

In the Philippines, **buffer zones** provide opportunities for participatory approaches in the management of protected areas. Buffer zones may include public or private lands, and prescriptions for their management must be included in each protected area management plan. It is noted that the establishment of a buffer zone as social fence entails interventions such as social preparation, community organizing and empowerment to ensure its effectiveness, without prejudice to the exercise of police power if necessary. Management authority over the buffer zone is exercised by the protected area

management bureau, which ensures participatory management together with local government units, other government agencies, NGOs, peoples' organizations and other concerned stakeholders. Rights over private lands within the buffer zone are to be recognized and respected in a manner consistent with the management plan. Further opportunities are provided in the Philippines through **community-based programmes**. Such programmes provide organized tenured migrant communities and indigenous peoples with tenure over community-based protected areas and the opportunity to manage, develop, utilize, conserve and protect the resources within the zones of the protected area in addition to buffer zones, consistent with the management plan. A committee is to handle all matters related to the community-based programme, composed of the regional technical director for protected areas as chair, members from the local government unit concerned and selected members from the protected area management bureau. Specific guidelines have been developed to provide for the establishment, management and dissolution of a community-based programme in protected areas (see section 10.5 in Part II).

With specific regard to indigenous peoples living in the vicinity of protected areas, the Philippines' legislation provides once again an interesting approach. The full participation of concerned indigenous peoples in the establishment of protected areas should be ensured by the administration, and the ancestral domain within a protected area must be managed in accordance with a plan harmonized with the protected area management plan. Indigenous peoples concerned have the opportunity to submit a written notice of intent to manage the protected area, otherwise the administration and protected area management bureau will manage the area. The administration can also enter into a **protected area community-based resource management agreement** with tenured migrant communities. Within one year from the agreement, tenure holders are required to prepare a community resource management plan.

In Bangladesh, a new protected areas management programme entitled "**Nishorgo**" was launched in 2004, aiming to improve protected area management and focusing on building partnership between the Forest Department and key local, regional and national stakeholders that can assist in conservation efforts. The programme

formalized collaborative management agreements between the Forest Department, local communities and other key partners by establishing co-management councils and co-management committees, for five protected areas. Their establishment aims to create alternative income-generating opportunities for those depending on forest resources.

In Australia, prior usage rights relating to a reserve continue to have effect but need to be renewed upon approval of the reserve management plan. Thus, indigenous peoples can continue their **traditional use** of the area, including hunting or food gathering (except for purposes of sale), or ceremonial and religious purposes. However, regulations may affect such traditional use, if they have the purpose of conserving biodiversity and expressly affect the traditional use of the area by indigenous peoples. In addition, **jointly managed commonwealth reserves** are reserves including indigenous peoples' land held under lease by the Director of National Parks. The relevant minister must establish a board for such reserves, if the land council for that land (or traditional owners) and the minister agree upon this. The board's role is to make decisions and plans for management of the reserve, in conjunction with the Director. A majority of its members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people's land. Moreover, **indigenous protected areas**, under the "Caring for our Country" initiative, can be established as areas of land managed for conservation and cultural heritage protection by their indigenous traditional owners. Traditional owners enter into a **voluntary agreement** with the Australian Government, and the government provides some funding to help them fulfil their conservation and management objectives, further providing employment opportunities and supporting the development of cultural and eco-tourism ventures. Finally, **conservation agreements** between the Commonwealth and persons related to the protection and conservation of biodiversity and world heritage values **may relate to public or private land**. For example, a conservation agreement may provide for activities that promote biodiversity conservation, control or prohibit actions that may adversely affect species and habitats, restrict the use or require the owner to refrain from certain activities, require the owner to contribute towards costs or specify the manner in which any money paid to the owner is to be applied. The minister must not enter into a

conservation agreement unless satisfied that the agreement will result in a net benefit to biodiversity conservation and is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and must maintain an up-to-date list of conservation agreements in force.

In New Zealand, there appear to be several options for allowing stakeholders, and possibly communities, to manage protected areas directly. One is the possibility that the relevant minister vests a reserve in a **trustee**, following a public consultation procedure and after consultation with the relevant conservation board and fish and game council. Voluntary organizations may also be appointed to manage and control a reserve. In addition, **conservation covenants** may be entered into with owners of private land or holders of state land under lease to manage the land without the need to purchase it. *Nga Whenua Rahui Kawenata*¹⁸ may be entered into by Māori landowners. Furthermore, protected private land agreements and management agreements can be established between the minister and the owner or lessee or licensee of the land.

5.3 Benefit-sharing

Provisions on benefit-sharing in the region are not very common. In Vietnam, however, one of the objectives of the 2003 country's strategy for the management of nature conservation zones is the combination of conservation and development activities, so that the nature conservation zones contribute to comprehensive growth, hunger elimination and poverty alleviation. Thus, legislation allows national conservation zones to be managed by a public management unit, while provincial conservation zones are managed by a public unit or an assigned organization, based on local realities. Households and individuals lawfully living in conservation zones have the right to lawfully exploit resources, participate in and benefit from business and service activities, and are required to observe the regulation on management of conservation zones. **Profits earned from eco-tourism** services must be reinvested in biodiversity conservation and local communities may participate in, and benefit from, eco-tourism activities in order to raise their income and awareness about biodiversity and nature conservation.

¹⁸ Covenants for Māori-owned land.

In the Philippines, the 1993 Guidelines on the Establishment and Management of Buffer Zones for Protected Areas provide **regulated benefits and livelihood opportunities** to local communities. To this end, among the criteria for selection of buffer zones is the need to provide sustainable use of land and resources by local communities; the area's suitability for production of crops preferred by the local communities; the potential capacity of the area to prevent the community from encroaching the protected area through the provision of alternative supply of resources such as wildlife farms; the potential of the area to enhance local community participation for the purpose of increasing the level of support to, and acceptance of, the principles of buffer zone management; and the existence of traditional practices within the area. Permissible complementary activities that are mentioned include regulated hunting of non-protected species for subsistence in forest buffer zones, and traditional hunting and collection of non-protected species in multiple-use buffer zones.

Mandated priority for **local employment** in protected areas can also constitute a form of benefit-sharing. In the Philippines, the legislation calls for recruiting site-level staff from residents living within or in the immediate vicinity of the protected area. Along similar lines, in Japan, the Ministry of the Environment has put in place a specific programme – Green Worker Programme – to promote local residents employment in the parks.

Interestingly, rather than providing for benefits, Japanese legislation instead focuses on **costs**. The Basic Environment Law includes provisions on **cost sharing** with regard to conservation projects, noting that if the state or local government is required to implement a project in order to prevent interference with conservation, the persons who have caused the circumstances necessitating the project must share in the cost, according to their degree of responsibility. Similarly, persons who receive a special benefit from the implementation of nature conservation measures will be required to bear an appropriate and equitable share of the expenses.

5.4 Public participation in species-based conservation

Rarely does legislation (in this as well as in other regions of the world) specifically provide for public participation in the **listing of protected species**.

There are, however, a few interesting exceptions among the selected countries covered by this study. One exception to this trend can, for instance, be found in the Philippines, where any person can seek the addition or deletion of a species from the list upon filing a petition based on substantial scientific information. Such a petition is to be evaluated by the Secretary of the Department of Environment and Natural Resources within a reasonable period of time in accordance with internationally accepted criteria and the status of the species concerned. A recent administrative order specifically provides for consultation with scientific authorities, academia and other stakeholders, in the review and updating of the list.

Along similar lines, in Vietnam, the legislation details a **list of organizations or individuals** who may submit proposals for inclusion in or exclusion of a species (including those conducting surveys or research on species in the country; those assigned to manage forests, conservation zones, wetlands and other natural ecosystems; and societies, associations and other organizations involved in science and technology or the environment).

In Japan, the law provides for the formulation and implementation of **species-based programmes** for rehabilitation of natural habitats and maintenance of viable populations by the Minister of the Environment, following consultation with the Nature Conservation Council. Such programmes are to be formulated on a species-by-species basis and be subject to public perusal before their implementation.

Australia's legal system provides a most sophisticated approach to species protection by ensuring coordination among different levels of government through **Species Information Partnerships**. These are to achieve consistency and increase exchange of information in the listing and recovery of threatened species among different levels of government. In addition, the **steps in a participatory process** of listing are clearly spelt out in a logical sequence: the minister may determine conservation themes, invite people to nominate items for inclusion and forwards the nominations to the Scientific Committee. The Scientific Committee drafts a list of items to be assessed, invites comments on the finalized list, and assesses the finalized list and forwards its assessment to the minister who takes the final decision. The process involves an annual cycle

known as assessment period. Moreover, the **legal implications** for species listing are very detailed: killing, injuring, trading or keeping a listed species, except a conservation-dependent species, is an offence, unless the action was authorized by a permit. The criteria and process for obtaining such exceptional permit are clearly spelt out, providing for public participation. An application of review of a permit-related decision may be made to the Administrative Appeals Tribunal. In addition, recovery plans for listed threatened species and ecological communities and threat abatement plans for key threatening processes are provided for in the Environment Protection and Biodiversity Conservation Act.

5.5 Environmental impact assessment

Efficient management of wildlife also entails protection from indirect threats, such as land uses other than hunting and other harmful processes. Usually legislation makes use of environmental impact assessments (EIA) to this end, but not necessarily specific **wildlife concerns** are taken into account. In addition, the extent of public participation in the EIA processes varies from one country to another, thus influencing the possibility of interested or potentially affected stakeholders to contribute information, share traditional knowledge and generally have their views heard.

In China, if a construction project produces adverse effects on wildlife under special state or local protection, the construction project legal entity must submit an EIA report. The department of environmental protection will examine and approve the report, seeking the opinion of the department of wildlife administration. Public participation is specifically provided for in the EIA legislation: relevant organizations, experts and the public are encouraged to participate in any appropriate way. Regarding plans that may cause adverse impact on the environment and directly involve the environmental rights and interests of the public, the proponent of the special plans should, before submitting the draft plans for approval, hold fact-finding meetings, hearings or other types of consultations to solicit opinions on the draft EIA statements. The proponent should seriously consider these opinions and explain the consideration given to the opinions in the EIA statement submitted for examination. The same procedure is provided for the final EIA reports of construction projects, prior to their approval by the competent departments of environmental protection.

All Australian states and territories include impacts on biodiversity or on species and habitats as a matter for consideration in EIA. These considerations apply through development control regulations associated with land use planning, infrastructure development, and natural resource management laws. The threatened species laws of each state also require that EIA (or species impact assessment) be aligned with planning, development and resource management laws through EIA standards and governance provisions. The Australian Government includes impacts on biodiversity or on species and habitats in EIA for matters of national environmental significance under the Environment Protection and Biodiversity Conservation Act and Regulations, including actions likely to have impacts on listed threatened species and ecological communities, listed migratory species, Ramsar wetlands or World Heritage properties.

In Vietnam, environmental impact assessment is required for projects on land or with adverse impacts on national parks and sanctuaries, protected ecosystems and projects to exploit and use natural resources on a large scale. In Bangladesh, EIAs are required for drainage and irrigation projects that may impact wildlife habitats.

Although wildlife is not specifically addressed by Japanese EIA legislation, it seems useful to draw attention to the **public review and participation process** that is provided for with regard to the initial scoping document to determine the scope of the EIA and the subsequent draft environmental impact statement. Both documents should be made available for public review for one month, with an additional time-period of two weeks allowing submission of comments "from the standpoint of protecting the environment". The process also includes submission of comments by the prefectural and municipal authorities involved. The organization of "explanatory meetings" by the project proponent with the public is provided for with regard to the draft environmental impact statement. The final statement is publicly announced to allow for review; prior to the public announcement a proponent may not proceed with project implementation. The details of the process are to be established by a regulation to be adopted by the Prime Minister's Office. In Vietnam, legal entities and individuals may send petitions and recommendations concerning environmental protection to the appraisal council and the project-approving agency, which should

be taken into consideration before any conclusion can be reached.

6. Requirements for wildlife use

6.1 Hunting

Most of the selected countries regulate hunting through a permitting system. The one exception is India, which has banned commercial and recreational hunting altogether. In the countries covered by this study, different legal tools are used to regulate hunting licenses.

In Japan, applicants can receive a hunting license upon passing a **hunting examination**. The examination is overseen by prefectural governors and tests the applicant's knowledge of hunting safety and ability to identify game animals. Hunters must then register with the prefectural authorities of the area where hunting is to take place, and pay a hunting fee and registration tax. A "**wildlife protection leader**" will ensure hunting control and provide guidance for wildlife protection.

In the Philippines, all wildlife utilization activities require authorization, to be issued upon proper evaluation of best available information or scientific data showing that the activity is not detrimental to the survival of the species or subspecies involved and/or their habitat. Take of wildlife may thus be allowed, provided that appropriate and acceptable wildlife collection techniques are used, with least or no detrimental effects to the existing wildlife populations and their habitats, while threatened species are not covered.

In Peninsula Malaysia, a **register** of persons licensed and granted permits is kept by the Director General of the Department of Wildlife and National Parks. Licensed hunters must **record** their killings or takings in the appropriate space provided in the license. Licenses are not transferable, and may be suspended, revoked or withdrawn without assigning any reasons, if the relevant minister has reason to believe that any of the provisions of the rules or conditions have been contravened. In Sabah (Malaysia), the Director of the Sabah Wildlife Department may refuse to grant a license without assigning any reason for such refusal. No hunting license can be issued unless the Director is satisfied that the applicant is

in possession of suitable firearms, is competent to use them, and is able to identify the animals of the species listed in the Schedules.

In Sabah (Malaysia), **wildlife hunting areas** may be established upon declaration by the *Yang di-Pertua Negeri* (state governor). The proposal should include details for any native or traditional rights in the proposed wildlife hunting area and a summary of undertaken consultations with relevant government agencies and communities likely to be affected. A management plan is to be prepared within three years from the declaration. Any person may hunt any animal in the appropriate zones of the wildlife hunting area, upon a permit issued by the Director. Native and traditional rights as specified in the proposal may continue to be exercised.

6.2 Eco-tourism

Several pieces of legislation in the selected countries specifically address eco-tourism. Once again, different legal tools are used. The Constitution of Lao PDR, for instance, calls upon the state and civil society to promote eco-tourism. In other countries, specific institutional **mandates** may focus on eco-tourism, as is the case of Vietnam where the Ranger Department of the Ministry of Agriculture is responsible for eco-tourism.

In China, tourist activities in the "experimental zone" of protected areas must comply with a **programme** established by the administrative agency of the nature reserve. In the Philippines, tourism activities within protected areas can be undertaken in the framework of **special use agreements**. This mechanism aims to provide access and economic opportunities to indigenous peoples, tenured migrant communities and other stakeholders, thus contributing to poverty reduction. It also aims to optimize the special uses of protected areas consistent with the principles of sustainable development and biodiversity conservation in cooperation with stakeholders; and to earn revenues for the sustainability of protected areas management. The procedure for the processing and issuance of these agreements is described in detail, including tight deadlines for decision-making. Grounds for cancellation of agreements are also specified and include violation or non-compliance with any of its terms and conditions, abandonment of the area or when national interest so requires.

In Vietnam, state policies on the conservation and sustainable use of biodiversity should support the development of eco-tourism "in association with hunger eradication and poverty alleviation, ensuring stable livelihood for households and individuals lawfully living in conservation zones." Eco-tourism activities in national parks and nature reserves, at the same time, must not affect the natural ecosystem and landscape, the life of animals or the cultural identity of local communities. Organizations and individuals carrying out eco-tourism activities must **prioritize local communities' participation** in the activities, creating employment and gradually raising local people's living conditions. Local communities may participate in and enjoy lawful benefits from eco-tourism activities and at the same time protect natural resources and preserve indigenous culture. Communities' investment in eco-tourism development must be facilitated, with a view to restoring and developing forms of folklore and traditional crafts, and producing local goods for eco-tourists, contributing to improving local people's life. Specifically, **biodiversity conservation facilities** are established for conservation, research and eco-tourism purposes, including facilities rearing endangered, precious and rare species and wildlife rescue centres. The applicable legislation establishes conditions to this end (the facilities should have adequate land areas, cages and physical foundations for rearing or breeding species on the list, and have technicians with appropriate professional qualifications) and requires their registration with the provincial-level people's committee. The managers of biodiversity conservation facilities have the right to exchange or donate protected species for the purpose of biodiversity conservation, scientific research or eco-tourism according to the law. They are under the obligation to register and declare the origin of species on the list to the specialized agencies of the provincial-level people's committees; and to take measures to prevent epidemics and treat animal diseases. In addition, the management boards of national parks or natural reserves may **lease** forest areas to organizations and individuals for eco-tourism development. Such schemes must be publicized among and associated with local communities, so that local communities participate in eco-tourism activities and must not exceed 50 years' duration. EIA reports are required for eco-tourism units.

In Sabah (Malaysia), **wildlife tour operators** in any protected area are subject to a permit, and

are required to provide periodic reports on any sign of unlawful human activity, wounded animals or animal remains discovered. It should be finally recalled that in New Zealand, Conservation Boards are to **monitor the impact** of concessions for tourism on conservation land, among other things.

6.3 Breeding

Provisions on breeding are sometimes found in wildlife legislation in the selected countries, with varying degrees of stringency. In India, a **specified administrative entity** – the Central Zoo Authority – is charged with specific breeding-related tasks, such as identifying endangered animal species for purposes of captive breeding and coordinating the exchange of animals for breeding purposes and coordinating research in captive breeding.

In China, breeding wildlife that is under special state protection is subject to a **licence**, which cannot be transferred. Legal entities and individuals may sell such wildlife or its products to purchasing units designated by the government, by presenting their domestication and breeding licenses.

In the Philippines, a "wildlife farm culture permit" is subject to an **environmental impact study**. Reasonable fees and charges are imposed upon consultation with the concerned groups. The quantity of individuals per species to be collected must not exceed the national quota, to be determined on the basis of the best scientific and/or commercial and other significant data available after conducting a review of the status of the species.

In Vietnam, responsibility to manage the breeding and rearing of protected species rests with forest management offices of provinces or centrally-run cities or with the Ministry of Agriculture and Rural Development for localities where no such offices exist. Breeding and rearing farms must satisfy conditions related to registration, suitable construction of cages and farms, ensuring safety for humans and environmental sanitation, meeting the requirements of management and techniques of breeding, rearing and tending the reared species and preventing diseases and epidemics. Specific conditions are set forth **for bear farms and breeding facilities**, including a waste treatment system meeting hygienic and environmental sanitation requirements,

registration and granting of bear farm certifications, and conditions for transportation of bears.

In New Zealand, permits or licenses for keeping specified wild animals in captivity, including farming for the purpose of sale or breeding or operating a safari park, cannot be issued without prior **consultations** with the relevant regional council, and without ensuring that the land is within the feral range of the species, is not unsuitable because of its susceptibility to erosion and will be adequately equipped with effective fences.

6.4 Community-based use of wildlife

General legal clauses may facilitate or promote greater involvement of local communities in wildlife use. For instance, in the Philippines, it is the duty of the wildlife authority to promote equitable access to natural resources by the different sectors of the population; and encourage greater participation and private initiative in natural resource management. More specific legal provisions and appropriate tools may however be more effective in creating a favourable and stable regulatory environment for community-based wildlife use.

Some of these tools have already been highlighted in the section above on eco-tourism. A specific legal tool can be found in Japan, where a **community-based model for sustainable use** of several ecosystems was established by the Law for the Promotion of Nature Restoration, including *satoyama* (community-based forests) and *satochi* (rural landscapes), with the participation of various community actors (see section 5.2 above).

Alternatively or in addition, legal tools may be created for the recognition of traditional wildlife use. In Sabah (Malaysia), an **animal kampung** (village) **license** may be granted to a suitable person to hold it on behalf of and for the benefit of the kampung to which the person belongs. It entitles kampung members to hunt in the area and for species and numbers specified in the license. The animal kampung license is granted for one year without any fee, and may be renewed annually. In another example from Sabah, a **turtle egg traditional collection area** can be reserved exclusively for traditional collection by people living reasonably adjacent to the area, without the need for a permit. These rights do not include the right to sell the eggs. In Sarawak (Malaysia),

natives residing within a native area land or native customary land may have any wild animal for own consumption or use without any license. In Peninsula Malaysia, any member of an aboriginal community may hunt wild animals and birds described in schedules, such as deer, mouse deer, game birds and monkeys, for subsistence purposes.

As a final example, forest-dependent village communities in Vietnam with forests assigned to them have the **collective right** to exploit and use forest products, including forest animals, for public purposes and domestic use, and must formulate forest protection and development rules in accordance with the law.

7. Enforcement of wildlife legislation

Lack of or limited enforcement capabilities by national wildlife management authorities are often cited as one of the main barriers to the effectiveness of sustainable wildlife management regulations. There are, however, few examples of national legal provisions supporting or encouraging public participation in law enforcement, which may, on the one hand, contribute to complement public efforts for law enforcement and, on the other hand, raise the awareness of and empower citizens and groups to contribute to the respect of the rule of law.

In the Philippines, the Wildlife Act provides for the participation of volunteers from NGOs, citizen groups and community organizations in wildlife enforcement. In China, citizens have the duty to protect wildlife resources and the right to inform the authorities of, or file charges against, acts of seizure or destruction of wildlife resources. Organizations and individuals that have made outstanding achievements in wildlife protection, research, domestication and breeding are **rewarded** by the state. Such outstanding conduct includes: contribution to wildlife protection and rescue; scientific research, implementation and enforcement; or working for five years or more on the protection and maintenance of wildlife at the grassroots level, or for the establishment and management of nature reserves and the related scientific research. More generally, in Lao PDR, those demonstrating outstanding contribution to wildlife management, conservation and

sustainable use are to receive relevant incentives, including rewards in accordance with regulations.

Other legal options may create opportunities for the public to access justice when wildlife law is violated. In Lao PDR, any individual or legal entity has the **right to send petitions or complaints** about any undertaking that causes negative environmental impacts, addressing them to the local authority or the environmental management and monitoring unit of the area, where the damage occurs. The responsible agency has the duty to resolve the petition or complaint within 30 days and to notify the petitioner of the result of its action.

8. Other issues: gender, food security and health

Gender equity in access and use of wildlife does not appear as a concern reflected in legislation in the selected countries in Asia and Oceania. The few exceptions include explicit legal provisions that aim at ensuring women representation in certain multi-stakeholder bodies. In the Philippines, for instance, women must be represented in a consultative body advising the National Commission on Indigenous Peoples and in the Commission itself, which is in charge of promoting and protecting the rights of indigenous peoples and the recognition of their ancestral domains and their rights. Similarly, in Bangladesh the membership of the National Biodiversity Authority must include women's organizations. In addition, in Bangladesh special attention is paid to women when recognizing traditional wildlife uses reflecting livelihood practices.

Animal health is seldom addressed in wildlife legislation in the region. One exception to this trend concerns legislation regarding import and export of live wild animals, dead animals, their bodies or parts of their bodies, which in some countries (Lao PDR and Malaysia, for instance) must be accompanied by a certificate of the animal's origin and health. In Vietnam, instead, managers of biodiversity conservation facilities and of wildlife breeding facilities are under the obligation to take measures to prevent epidemics and treat animal diseases. In India, wildlife in sanctuaries needs to be immunized against communicable diseases of the livestock, while grazing livestock in a sanctuary without getting it immunised is prohibited.

Food security issues are rarely addressed in wildlife legislation in the region. The only exception is Malaysia, where legislation provides that meat of any animal killed under a sporting license shall not be sold, but shall be offered to the headman of the nearest *kampung* (village) who shall be entitled to remove it from where it is situated.

9. Recommendations and legal options

This section summarizes the findings emerging from the comparative analysis of wildlife and wildlife-related legislation of selected countries in Asia and Oceania and develops specific recommendations on how to adapt legal frameworks towards more sustainable and pro-poor approach. To this end, it builds upon the set of design principles which FAO developed in 2008 on the basis of international obligations and standards on wildlife management, described in [FAO Legal Paper Online #75](#) "Principles for developing sustainable wildlife management laws" (Morgera and Wingard, 2008). In addition, certain legal tools identified in the previous comparative studies on wildlife legislation in Sub-Saharan African and Latin America have also been cited where relevant.

Specific legal options are presented as additional tools for the assessment of the comprehensiveness and effectiveness of national legal frameworks on wildlife management, as well as more detailed guidance for amending or developing new wildlife management legislation based on existing international guidelines and best practices. These legal tools may assist in drafting national legislation that can support sustainable wildlife management and at the same time empower the poor.

9.1. Public participation in wildlife-related decision-making

Experience 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 law encourages and enables positive behaviour may be more effective in ensuring sustainable wildlife management. 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. Absence of stake in the management of wildlife resources reduces incentives of local people to comply with the law and prevents them from instating on the compliance of outsiders, including government officials themselves. This is reflected in the Addis Ababa Principles and 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."¹⁹

In the selected countries, public participation in decision-making related to wildlife is often enshrined in legislation as the requirement to create multi-stakeholder advisory bodies. Legal provisions have also sometimes provided for transparent ways to select non-governmental stakeholders' representatives for these bodies (as in the case of New Zealand). On the other hand, in countries with communist decision-making structures, such as in China, Lao PDR and Vietnam, public participation is usually facilitated at the local level, sometimes through the Communist Party's organization, although variations are observed. In some countries, indigenous peoples are valued for their traditional knowledge and input in wildlife-related decision-making, and their participation in decision-making structures is specifically mentioned (as for instance in Australia, India and the Philippines).

Recommendations:

- Couple general principles on public participation with specific procedures for their implementation to limit the administration's discretion and provide certainty to stakeholders.
- Examine existing mechanisms for public participation and identify the need to provide/enhance legal tools for stakeholder participation at *all* levels of wildlife-related decision-making (that is, at the level of design or reform of wildlife legislation, policies, programmes and plans, as well as at the level of undertaking environmental impact assessments, listing of protected species, and creating and managing protected areas).

¹⁹ Addis Ababa Principles and Guidelines, practical principle 2.

- Ensure that mechanisms for public participation allow and facilitate the participation of representatives of local and indigenous communities that use wildlife resources or live in their proximity, as well as the representation of other interests that may be affected by wildlife management decisions (farmers, conservation organizations, logging companies, etc.), providing for a balanced array of inputs to management authorities.

Legal options:

- At a minimum, require regular admittance of the public to government meetings: the law may simply allow the public, or relevant stakeholders, to participate in government meetings called for wildlife-related decision-making.
- Require legally mandated consultations: 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 will entail:
 - the publication of proposed rules or decisions;
 - publication of information on the process for receiving and reviewing comments at a reasonably early time; and
 - the obligation for public authorities to take into account the comments received and provide reasons in writing about the decision made, to allow public scrutiny over how comments have been taken into account.
- Create a multi-stakeholder body that advises or exercises management tasks.
 - provide for the representation of various stakeholders and rights holders, particularly representatives of traditional users and indigenous and local communities, rather than solely environmental NGOs and scientific organizations.
 - Ensure transparency in appointments, by requiring the advertisement of open positions and setting out self-selection criteria for stakeholder groups,
 - Allow a bottom-up approach in the selection of stakeholder representatives, particularly by empowering communities to select their own representatives, rather than just allowing the relevant

administration to choose in full discretion the members of the advisory body.

9.2. Institutional set-up and coordination

Wildlife legislation should at a minimum clearly spell out the mandate of relevant institution(s) establishing mechanisms for coordination when several authorities are in charge of wildlife management regulation, in private and public lands including protected areas. Possibly, the law should provide some guidance to the exercise of public discretion in wildlife management (particularly when authorities award licences and permits), in order to increase their legitimacy and accountability, with a view to enhancing the accountability of wildlife authorities and avoiding conflict of interests.²⁰

As wildlife legislation does not exist in a vacuum but must be coordinated with legislation in other relevant areas, wildlife authorities need to coordinate their activities with other line government agencies in related areas of work. There is therefore a need to institutionalize coordination not only with authorities responsible for forestry and the environment in general, but also with those responsible for land planning and land management, tourism, agriculture, customs, indigenous rights and scientific research, to mention some examples. Wildlife legislation in the selected country often addresses this issue by creating a permanent, multi-stakeholder advisory body, as is the case of the National Board for Wildlife and the Tiger Conservation Authority in India, the Central Environment Council in Japan, and the National Wildlife Management Committee in the Philippines.

Recommendations:

- Ensure that the mandates of institutions involved in wildlife management are clearly spelt out in legislation, avoiding unlimited discretion in deciding on wildlife management (particularly, for the allocation of licences for wildlife use, and where relevant, the distribution of benefits) and requiring transparent procedures, including deadlines for decision-making and right to review.
- Ensure inter-institutional coordination involves all ministries with jurisdiction over wildlife

²⁰ This is also encouraged from an ecosystem approach perspective: see CBD Decision VII/11 (2004) on the Ecosystem approach (hereinafter, CBD Decision VII/11), Annex, principle 1.6.

extractive and non-extractive uses including protected areas.

- Facilitate/require communication and exchange of information at and among different government levels.
- Put in place effective means for communications between all stakeholders. Such communications will facilitate availability of the best (and new) information about the resource and enhance the effectiveness of sustainable management policies (Addis Ababa Principle 14, Rationale).

Legal options:

- The law should specify the criteria according to which powers of wildlife management institutions 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 spell out in detail in which cases or on which matters institutional coordination should be sought, and clearly define the scope, objectives and extent of legal requirements for inter-institutional coordination, also in the case of collegiate bodies that include stakeholders and government agencies.
- The law should also define the procedures or mechanisms 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 inter-institutional government bodies;
 - setting up joint decision-making procedures;
 - creating a coordination body composed of government and possibly non-governmental representatives.
- When legislation establishes a permanent coordination body to allow ongoing public participation in wildlife decision-making as well as monitoring decisions implementation, it should provide precise guidance as to the body's composition, powers, and 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 body.

- Advisory bodies could effectively be established at the central and local levels with different functions. At the central level, functions usually entail providing advice concerning national plans, programmes and draft legislation. At the local level, advisory bodies may be more involved in local management planning and authorization processes, as well as implementation and law enforcement issues.

9.3. Wildlife tenure and traditional rights

The issue of wildlife ownership and of people's rights over wildlife is directly linked to the distribution of the benefits wildlife use and conservation generate, whether such benefits consist of financial or material advantages, or limitation of damage caused by wildlife. The role of legislation in clearly assigning property and use rights over wildlife is critical, as is its function in clarifying legal consequences arising from different rights. Clear rules on wildlife tenure are not very common in the region, although China provides an example to the contrary: wildlife is declared **property of the state**, with the clear legal consequence that damage caused by wildlife under special state or local protection will be compensated by the local government. In a different legal context, and in ex-situ conditions, owners of individuals of endangered species in Japan are required to be conscious of the importance of conserving them and treat them properly, while in the Philippines, possession of wildlife by an individual or organization is allowed only if they can prove financial and technical capability and facility to maintain it.

Interestingly, several legal instruments have been identified in the region with regards to **traditional ownership** and its legal recognition. Such instruments extend from the case of the Philippines, which recognize tenure of indigenous and local communities over their ancestral lands in accordance with the indigenous concept of (collective) ownership, and a wide range of rights associated with ancestral lands, including the right for wildlife management and use; to Australia, where indigenous peoples, holders of native title rights do not need authorization to engage in wildlife-related activities, including hunting, for the purpose of satisfying their personal, domestic or non-commercial communal needs. In India, however, although tenure and customary rights of traditional forest dwellers are secured, their traditional hunting rights are excluded, in line with

the general hunting prohibition in the country. This is not the case in Lao PDR, where hunting is still exercised to a large degree for subsistence: customary hunting rights with regard to unprotected wildlife are recognized and should be exercised within the village limits, although customary hunting of partially protected animals is regulated by the authorities. In the case of New Zealand, the Conservation Act must be interpreted and administered as to give effect to indigenous peoples' rights, which however remains open to interpretation with regard to the extent it covers wildlife use. Māori special rights for bird hunting are further recognized in some limited cases, where they are specifically provided by statute or regulation.

Recommendations:

- Clearly define tenure over wildlife, including protected wildlife, and its relation to land ownership, so that access and management responsibilities are clearly allocated for both extractive and non-extractive uses.
- When the tenure system results in the marginalization of traditional wildlife users and/or local or indigenous communities, create a specific legal basis for community-based wildlife management, and/or for sharing among local and indigenous communities living in proximity of wildlife the benefits derived from wildlife use in state or private-owned areas.
- In drafting wildlife legislation with the aim of "empowering the poor", it is important to consider customs governing land and possible discrimination of disadvantaged groups (for example women) resulting from them. All possible efforts to avoid the perpetuation of discrimination in the wildlife sector should be made. The new wildlife legislation would then have to be particularly clear in granting specific rights to targeted groups, thus, "bypassing" any ambiguities or inequities of other legislation or practices.

Legal options:

- When wildlife is considered state property, define clearly any rights and obligations of landowners in respect to wildlife on their land.
- When wildlife is considered private property, require from wildlife owners the development of a sustainable management plan and/or regular reporting to authorities. Assistance from the authorities should be available upon request; funding for such management would be desirable.

- Ensure use rights are adequate to reflect traditional use practices of indigenous and local communities, when sustainable, enabling them to engage in lawful wildlife use.
- Provide a clear and relatively detailed basis for community-based management, requiring an agreement setting out communities' rights and obligations, and/or a management plan setting out activities to be undertaken, prohibitions, benefit-sharing arrangements, applicable conditions etc. Means to enforce the rights of communities vis-à-vis third parties should also be envisaged (see section 9.6 below).

9.4. Wildlife management planning

While legislation can provide guidance – minimum standards and procedures – for decision-making, it cannot and should not try to make detailed wildlife management decisions itself. It should rather provide a basis for wildlife management planning so as to allow flexible and adaptive decisions to be made on the basis of changing circumstances, evolving international standards, and lessons learnt from the field. 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 actions to achieve what ends, and within which limitations. Management plans should not be developed in isolation, but rather in a participatory and inter-disciplinary way that ensures consistency with other natural resources plans, in particular within related ecosystems, such as forest and wetlands management plans.

Several provisions on wildlife management planning were noteworthy in the region under review. A clear and logical sequence of steps for wildlife management planning is specified in the legislation of Lao PDR, passing from the study and preparation of strategic plans, policies and regulations on wildlife management and use, to the adoption of elaborate provisions, and control of implementation in coordination with local authorities. A comprehensive wildlife management planning system can also be found in Japan. Although public consultation requirements in management planning were not very frequent, the Australian legislation provides for a detailed public involvement procedure in the preparation of wildlife conservation plans. Similarly, in the Philippines, a management planning strategy is to be made with interdisciplinary inputs and participation of all stakeholders through a clearly

established process. Interestingly, in New Zealand a differentiation is made between wildlife planning for conservation purposes and for recreational use, and public participation is specifically provided for both processes.

Recommendations:

- Specify when management planning is required in relation to wildlife in both public and private lands, and/or ensure appropriate linkages with related legislation (such as protected areas or forest laws) in which broader management planning exercises may also include wildlife.
- Assign clear responsibilities and clear goals for management planning, specifying information needed (both science- and traditional knowledge-based), public participation requirements, a logical sequence of steps in the process with timelines, and legal consequences.
- Ensure interdisciplinary input and stakeholder participation in the planning process.
- In planning, consider opportunities to delegate rights, responsibility, and accountability to those who own, use and/or manage biological resources. Offer technical or financial assistance where needed.
- With a view to achieving adaptive management, require periodic monitoring, evaluation and updating of management plans. Wildlife users may have a particular role in this regard.
- Enshrine in the legal basis for management planning participation by relevant stakeholders, in particular traditional users and local and indigenous communities, at all levels, and identify opportunities for community-based wildlife management so that impacts on livelihoods are taken into account in order to ensure benefits also accrue to those communities in close contact with the resources.
- Implement constructive programmes that benefit local communities, such as capacity building that can provide income alternatives, or assistance in diversifying their management capacities (Addis Ababa Principle 12, Rationale).
- Apply a precautionary approach in management decisions and respond quickly to unsustainable practices (Addis Ababa, Principle 4, Operational Guidelines).

Legal options:

Wildlife laws should at minimum provide the basis for a system of continuous information-gathering, management planning, monitoring and updating on wildlife. Legal options include:

- Clearly defining which wildlife-related activities require management plans, and creating specific obligations to provide information on the basis of such plans to the government authority (as a general obligation, as a condition of licences and concessions, etc.).
- 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 defining attainable goals.
- 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 cover 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.
- Specifying 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 and Guidelines, 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.
- Specifying how the larger public can access information on wildlife and contribute with additional information on a voluntary basis (Addis Ababa, principle 11.1).
- Identifying in detail the information to be included in management plans. This may include at a minimum:

- a legal description of the area covered (whether national, provincial, local, or some other designation). Such description 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.
- 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 a 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 adequacy requirements.
- Requiring that an instance for public participation, particularly for traditional wildlife users where applicable, be assured before the adoption of the management plan.
- Requiring updating of plans, in particular to take into account local hunting and traditional activities.

9.5. Environmental impact assessment

Wildlife conservation does not only entail the protection of species or of their habitats from activities directly affecting them, but also entails protecting them from activities that may have a negative indirect impact on them. 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) 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.²¹ 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.

In the regions covered by this study, few countries take specific account of impacts on wildlife in the EIA legislation, as is the case of Australian states and territories, Vietnam and Bangladesh. The provision of public participation in the EIA process however was noteworthy, in particular in countries where public participation structures in other wildlife-related instruments were generally lacking, such as China and Japan.

Recommendations:

- Ensure that negative impacts on wildlife and its habitat from other land uses or harmful activities are appropriately covered by the general legislation on EIA, or by specific provisions in wildlife laws. Access to information and public participation in the conduct of EIAs, as well as the possibility for judicial review, should also be clearly backed up by legislation.

Legal options:

- If general environmental legislation already provides EIA 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.
- Request the assessment of any processes that may be harmful on wildlife (usually through an environmental impact assessment), specifying all steps and

²¹ CBD Decision VII/11, Annex, principle 3.

minimum requirements (such as the need of considering all alternatives).

- Specify whether such assessment would be necessary for any economic, administrative or other activities directly or indirectly impacting on wildlife and their habitats.
- Allow public access to the findings of an assessment and its justification, and submission of information or comments.
- Specify the legal implication of these assessments; for example, whether expected negative impacts would impede the carrying out of the proposed activity altogether, or whether the activity would be carried out but only in accordance with specific requirements necessary to minimizing negative effects or remedy to them, or whether it is necessary to impose restrictions on the types of activities that can be undertaken, prohibiting any activities that are likely to cause irreversible damage to wildlife and its habitat.
- To avoid duplicative requirements, activities subject to EIA procedures, that include the submission of management plans to mitigate potential negative impacts on wildlife, should be exempted from other licensing procedures requiring the presentation of similar management plans.

9.6. Participatory approaches in wildlife conservation

Several interesting legal tools have been identified aiming to ensure local and indigenous communities' participation in the identification, establishment and management of **protected areas** in the regions covered by this study. A participatory process prior to the identification and establishment of a protected area usually entails the need to balance conservation needs with other land use objectives and the needs of local inhabitants, as is the case in Vietnam and the Philippines. In Sarawak (Malaysia), a very specific process is put in place to investigate rights that may be affected by the establishment of a protected area. Provision for public participation in protected area management further aims to ensure the local communities' awareness and involvement in conservation goals, as well as to assist in sustainability of resource utilization and provision of alternative livelihoods in case traditional means of livelihood in the protected areas are curtailed. Again, the Philippines' legislation provides useful examples to this regard. The establishment of community conserved areas (see Bangladesh, India and the

Philippines) or indigenous protected areas (see Australia) provide indigenous and local communities with increased management rights and responsibilities in consistency with the management plan.

Most examples from the region provide for direct involvement of indigenous and local communities in protected area management rather than benefit-sharing. This is exemplified in Vietnam, where while conservation zones are managed by a public management unit, inhabitants have the right to lawfully exploit resources, and benefit from business and service activities, including eco-tourism. An interesting form of benefit-sharing noticed is a priority for local employment in protected areas, as is the case in the Philippines and Japan.

Public participation in the **listing of protected species** could be identified among the selected countries. As such, any person can seek the addition or deletion of a species from the protected species lists in the Philippines, while in Vietnam the legislation distils a list of organizations or individuals who may submit proposals for inclusion in or exclusion of a species from the protected species list. This not only provides for participation of different groups of stakeholders in the listing process (i.e. from either a conservation or a sustainable use perspective), but it also requires regular monitoring of population levels and review of scientific legislation by the authorities. A participatory process for listing, including a logical sequence of steps, is provided for in Australian legislation. In addition, in Japan, the law provides for the formulation and implementation of species-based programmes for rehabilitation of natural habitats and maintenance of viable populations.

Recommendations:

- Consider protected area categories as suited to local conditions, taking into account international or regional classifications.
- Provide for a full public participation process prior to the establishment of a protected area, allowing for information to be shared with local inhabitants, for submission of stakeholders' views, and organization of hearings.
- Identify any prior tenure or use rights, including traditional practices, that would be affected by the proposed protected area.
- Identify occupations of inhabitants and livelihood means in the area and the possibility for alternative ones if needed.

- Ensure establishment of protected areas in indigenous peoples' lands is based on their free, prior informed consent.
- Consider management models as adapted to the local conditions.
- Consider the return of any entrance or service fees to local communities, for biodiversity conservation and sustainable development.
- Consider establishing provisions and mechanisms for allocating share of revenues from wildlife use to local communities.
- Consider alternative benefit-sharing methods, including education, training and employment opportunities.
- Consider relocation of communities only as the last resort, following full review of alternatives and extensive consultations with them.
- Clearly identify the consequences of species listing in any established category.
- Identify and assess any existing traditional use with regard to any listed species, also taking into account its population status.
- Clearly identify whether traditional use rights extend to protected species categories and under which conditions.
- Provide for a regular and transparent revision and updating of the species lists, based on both scientific and traditional knowledge.
- Consider public involvement in establishment and revisions of protected species lists.

Legal options:

- provide for a range of protected area categories, possibly taking into consideration international models, and clearly set the consequences with regard to strict conservation or sustainable use of the area's resources. This would provide an array of options to the administration in order to respond to differing needs.
- establish a clear process for information gathering and public participation prior to the establishment of a protected area, including legal consequences of such establishment and the authority responsible for the process. Such process could include announcements in national and local media, invitation of specific stakeholders and right holders, set deadlines for submission of views and organization of public meetings.
- establish a process to identify and assess tenure and use rights in the proposed area, including traditional use practices. Such process could include announcements in national and local media and administration authorities, and specific deadlines for submissions and decision-making, as well as a right to judicial review, in order to prevent or address disputes in this regard.
- provide for tools including impact assessments (to assess social, economic, cultural and environmental impacts of a proposed protected area establishment) to be used according to criteria specified in the legislation. Such criteria could include a dense human population, existence of indigenous peoples, occupations, customary practices, wildlife populations and habitat status.
- With regard to indigenous peoples, provide for a process specifying steps to ensure their information on legal consequences of the proposed establishment; reaching an internal decision according to their customary laws as appropriate; the applicable law, including customary laws, for obtaining their prior informed consent; an open and transparent negotiation process before conclusion of an agreement; and conclusion of an agreement, including its minimum clauses, such as a determination of traditional rights to be exercised or not in the area, indigenous peoples' participation in the area's management, and benefit-sharing mechanisms.
- Provide specifically for stakeholder participation, and in particular indigenous and local communities participation in protected area management bodies, with specific emphasis on vulnerable and disadvantaged groups including women. In case co-management is selected as a model, look for ways to empower and build management capacities of local inhabitants, with particular emphasis to the most vulnerable, including women.
- With regard to benefit-sharing provisions, allocate clear responsibilities and transparent frameworks for the collection and allocation of benefits, as well as mechanisms and/or procedures for the actual benefit-sharing. Provide for a flexible framework, allowing case-by-case decisions on the use of economic benefits, depending on the priorities of each community.
- specify the allocation of planning and management responsibilities at the government and site level, with regard to investment priorities for any generated income or the organization of alternative benefit-sharing methods including training initiatives

or employment opportunities for local inhabitants.

- specify allowed and prohibited uses in protected areas, including customary uses for indigenous and local communities, and avoid confusion by expressly repealing or amending any related legislation. Specific criteria should be set with regard to the potential need for relocation of communities, providing opportunities for concerned communities to analyse options and participate in the final decision.
- set clear categories and lists of protected species, as well as criteria for listing in each category and specific steps for establishment and revision of the lists.
- define the authority responsible for establishing and revising the species lists, the organizations responsible for provision of scientific information or traditional knowledge, a process for the public's information or involvement, and authorities responsible for implementation and enforcement.
- provide at least a provision for communication of the species lists to the public, including user groups and relevant organizations.
- establish a process for the revision of the species lists at regular intervals and allow for input from scientific organizations and interested groups including users and indigenous and local communities. A process for public involvement in the establishment/revision of the lists should include announcement in relevant media, submission of comments, an obligation for the authorities to review the comments, and communication of the final decision.
- clearly identify the legal consequences of listing in any established category with regard to traditional/customary, subsistence or community-based and recreational or commercial use of the listed species, and with regard to any existing trade or business dealing with listed species, as well as penalties in case of infringement. The consequences of listing for any established customary rights to wildlife use should be clearly set out and communicated to relevant indigenous and local communities.

9.7. Requirements and conditions for wildlife use

Most notable uses of wildlife in the region related to hunting, commercial breeding and eco-tourism. Most of the selected countries regulate hunting

through a permitting system, with the exception of India, which has banned commercial and recreational hunting. Although permitting systems should generally be transparent and based on the rule of law, to ensure fair treatment to different users, in many cases criteria for the granting of hunting permits are not provided for in the legislation. Japan is an exception, where applicants can receive a hunting license upon passing a hunting examination, which tests the applicant's knowledge of hunting safety and ability to identify game animals, and must then register with the prefectural authorities of the area where hunting is to take place. Furthermore, permitting systems should take into account best available scientific information with regard to species populations and impacts on their habitat (as is the case in the Philippines).

Commercial breeding is subject to a licensing and registration system in most of the selected countries. Breeding can depend on central management planning (as is the case of India and its Central Zoo Authority); or be regulated at the provincial level, as in Vietnam. Wildlife ranching environmental impacts are taken into account in some cases, as in the Philippines, where the permit is subject to an environmental impact study, and in New Zealand, where there is a requirement to ascertain that the land needs to be suitable and not susceptible to erosion.

Eco-tourism is addressed in several pieces of legislation in the selected countries, notably more in the developing than in the developed ones, although specific requirements to mitigate potential negative impacts on wildlife are missing. In China however, tourist activities in the "experimental zone" of protected areas must comply with a programme established by its administrative agency, while in Vietnam EIA reports are required for eco-tourism units. Interestingly, wildlife tour operators in Sabah (Malaysia) undertake monitoring and enforcement-related responsibilities, as they are required to provide periodic reports on any sign of unlawful human activity, wounded animals or animal remains discovered.

Recommendations:

- Avoid unnecessary or inadequate regulations of uses of wildlife because they can increase costs, foreclose opportunities, and may lead to unsustainable land or wildlife uses (adapted from Addis Ababa Principle 3, Operational Guidelines).

- Require that issuing permits for any type of wildlife use be based on management plans following minimum standards and procedures set out in the law, to reduce discretion and potential for corrupt practices and to increase transparency and predictability.
- Ensure that fees for licenses for extractive and non-extractive uses of wildlife be uniform and made known to the public in advance.
- Ensure that minimum controls are in place for non-extractive uses of wildlife, and that legislation provides for incentives to these kinds of uses.

Legal options:

- Based on sustainable management plans for specific species or areas, the law should clearly define different types of use of wildlife, both extractive and non-extractive, and establish minimum requirements, including conditions for licences and concessions. The law should establish which government agency will control and enforce compliance with said requirements.
- Wildlife laws should specify the rights and duties of hunting rights holders, 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 managers and 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.
- 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 capability to respect hunting restrictions. For instance, legislation should require an exam to demonstrate knowledge of species, safety rules and applicable regulations to obtain permits, and ensure that individuals who have violated rules and regulations in the past no longer are eligible for license/permit to hunt.
- Simplified procedures and requirements may be put in place to give advantage to local communities, with the concurrent goal of requiring the administration to technically support local communities in their gradual assumption of wildlife management responsibilities.
- Over-regulation can be avoided by:

- creating a subsistence category for hunting by rural populations where licenses are not required, but where seasons are limited or other techniques are used to prevent over-harvests, according to the status of each resource;
- setting licensing costs at a level sufficient to cover the adequate distribution of licenses; and
- tying the use of licenses, where instituted, to specific penalties and fines sufficient to encourage use/discourage poaching.
- 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, 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, as well as incentives for sustainable practices that contribute to wildlife conservation; for example, requiring the presentation of management plans, but exempting them from the payment of fees.

9.8. Enforcement of wildlife legislation

Allowing stakeholders participation in the enforcement of wildlife laws may be a useful tool for "empowering the poor", as it is a way of officially recognizing the role of local and indigenous communities as guardians of the sustainable management of the resources, and of allowing them to enjoy firsthand the benefits derived from the rule of law. In Asia and Oceania, legislation in some cases allows members of the public to report violations of wildlife law or to serve as honorary wildlife guards (Lao PDR and Philippines respectively), but rarely provides for incentives to this end. The only exception to the latter trend is China where rewards are foreseen in legislation. Contrary to other regions, there were no instances in which wildlife legislation created specialized tribunals or other adjudicating or mediating entities to deal with wildlife law violations or conflicts (see Cirelli and Morgera, 2009a and 2009b; Aguilar and Morgera, 2009).

Recommendations:

- Provide a clear legal basis for public participation in wildlife law enforcement, recognizing formally honorary guards and

other forms of collaboration with formal law enforcement agents, and possibly provide incentives to this end.

- Clarify the rights of the public to access relevant information, which is a precondition to their effective participation in decision-making, management planning and management activities themselves. Specific procedures should complement general statements of rights in this respect.
- Provide for access to justice related to wildlife law. Specific bodies may be created to ensure that a specialized approach is taken in this respect. Alternatively, providing capacity-building to existing enforcement bodies, especially at the local level, as well as to ordinary courts to address wildlife legislation disputes are key to strengthening the effectiveness of wildlife regulations and to provide incentives for legal/registered wildlife utilization.
- Make alternative dispute resolution mechanisms available to local communities engaging in legal wildlife utilization, including small claims courts, as well as arbitration, mediation, and conciliation, as these mechanisms have proven preferable for the poor because they are more accessible than courts, affordable, comprehensible and (often) effective (Commission on Legal Empowerment of the Poor, 2008b, p.25).

Legal options:

- Local people or organizations, or any member of the public, may be called upon to report violations or carry out enforcement functions, such as requiring hunters to show licences.
- Communities managing resources should also be provided means and support to enforce their management rules.
- Those that significantly assist in the investigations of violation of wildlife law, and/or that prevent or detect violations, should receive by law a portion of fine revenues or other symbolic or non-monetary rewards (training or employment opportunities).
- Establishing a public right to access wildlife-related information as well as mechanisms by which concerned citizens can obtain upon request information in an easy, adequate and timely fashion: the law, therefore, should:²²

- 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 upon wildlife authorities to inform the public. Thus, the law can require as a matter of routine the online 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 forms and in what timeframes information should be made public; and
 - which public authority is responsible for informing the public.
- Ensure that regulations are presented in a single updated or consolidated version, as appropriate, that is available online or otherwise easily accessible and understandable to wildlife users.
- Clearly set out administrative procedures allowing public recourse for the review of decisions by relevant authorities (including at a higher level within the same ministry); and an appeal procedure to independent administrative courts;
- In accordance with national laws, for example on the recognition of arbitral awards, provide a clear menu of alternative dispute settlement procedures for wildlife users. For example, provide recourse to mediation, arbitration or use of traditional dispute resolution systems, including, where applicable, a right of appeal to judicial courts.
- Create a duty for public authorities to inform users, particularly local communities, of their right to appeal and the ways in which they may exercise this right. In this respect, the law should specifically require that information regarding an appeal is clearly indicated in any administrative decision subject to same – for example, in a fine, the rejection of an application or the suspension or cancellation of a licence.

²² Inspired by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), art. 4.

9.9. Gender

References to gender issues are scarce in wildlife legislation. This may be particularly problematic when wildlife use is based upon traditional or customary systems in which women are disadvantaged. Some examples were, however, identified among few of the selected countries (the Philippines and Bangladesh), with regard to supporting participation in advisory bodies.

Recommendation:

- Address gender equality issues in wildlife legislation, when it is necessary to provide opportunities of equal access and use of wildlife resources, and/or require equal representation of women and men on wildlife advisory bodies.

Legal options:

- Include gender equality among the objectives of sustainable wildlife management.
- Require the consideration of gender equity issues in wildlife management planning and decision-making.
- Grant special support to women that contribute to the conservation and/or sustainable use of wildlife.
- Create mechanisms ensuring women's representation in wildlife management bodies.²³

9.10. Human-wildlife conflicts

Legislation can also contribute to the reduction of human-wildlife conflicts, thus alleviating the position of some of the less advantaged people in rural communities whose property (agricultural lands or livestock) may be threatened by wildlife. In the laws which have been examined above, human-wildlife conflicts were often addressed in the context of wildlife tenure or in that of species protection. In Lao PDR, a differentiation between protected and non-protected species was made in allowing killing of dangerous animals. Often approval of authorities or reports are necessary to avoid that the killing be considered unlawful (mention countries). Interestingly, both in Lao PDR and Malaysia the legislation clarified that animals killed in self-defence were to be considered property of state to dissuade from abusing these rules on conflicts. Finally, only in

one instance (China) a preventative approach was used, although such an approach, combined with participatory processes, may be very beneficial both for environmental sustainability and for the empowerment of the poor.

Recommendation:

- Provisions addressing "problem animals" could be improved by requiring some consultation over the adoption of relevant measures, while also obtaining people's support of any necessary restrictions.

Legal options:

- When discussing management plans for species considered to be known problem animals, ensure the participation of all stakeholders in decisions on management of such species, in order to examine:
 - Agreement on land use planning, preferably as part of larger land-use planning exercises, with the goal of preventing conflicting land uses and incidents of wildlife attacks;
 - Where possible, compensation, subject to certain conditions, e.g., fencing in certain ways, cultivation of certain crops, grazing in certain areas. Transparency in allocating compensation should be ensured – for example, by simply requiring the posting of requests and grants;
 - Cooperative surveillance arrangements;
 - Requirements for the administration to monitor the implementation of measures adopted in relation to human-wildlife conflicts;
 - Requirements for people to report conflict occurrences to management authorities in order to include relevant measures within management plans for species or areas;
- Where feasible, the legislation could also require recourse to mutual or private insurance schemes.

²³ Inspired by "Gender", in FAO, "Law and Sustainable Development since Rio", FAO Legislative Study # 73 (2002), p. 257.

PART II – CASE STUDIES

1. AUSTRALIA

1.1 Overview of the legal framework

Australia is a mega-diverse country with a high proportion of terrestrial endemic species. Biodiversity is regarded as an important part of the nation's heritage, and is essential to the identity and culture of Australia's indigenous peoples.

Australia is a federation of six self-governing states and two self-governing mainland territories. Both the federal government and state and territory governments have authority over environmental matters, including wildlife protection; with state and territory governments having primary responsibility for land management legislation. The present report will focus on federal legislation, drawing attention occasionally to state and territory legislation.

The 1999 **Environment Protection and Biodiversity Conservation Act** (EPBC Act), as amended, is the central piece of federal environmental legislation, providing a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places defined in the Act as matters of national environmental significance. The EPBC Act requests the Australian government to focus on the protection of matters of national environmental significance, with the states and territories having responsibility for matters of state and local significance (sec. 3(2)). The 2000 **Environment Protection and Biodiversity Conservation Regulations** provide details for the implementation of provisions of the EPBC Act. The EPBC Act has replaced prior legislation, including the 1992 Endangered Species Protection Act, the 1974 Environment Protection (Impact of Proposals) Act, the 1975 National Parks and Wildlife Conservation Act, the 1983 World Heritage Properties Conservation Act and

the 1982 Wildlife Protection (Regulation of Exports and Imports) Act.

The EPBC Act aims to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources, promote biodiversity conservation, as well as encourage a cooperative approach to environmental protection and management, involving governments, the community, land-holders and indigenous peoples. It promotes a partnership approach to environmental protection and biodiversity conservation through bilateral agreements with states and territories, conservation agreements with land holders, while recognizing and promoting indigenous peoples' role and knowledge, and community involvement in management planning (sec. 3). The Act does not exclude or limit the concurrent operation of any state or territory law, but it prevails in case of conflict (sec. 10).

1.2 Institutional setup and role of stakeholders

The **Department of the Environment, Water, Heritage and the Arts** is the federal agency responsible for conservation and sustainable use of biodiversity, including wildlife protection, management and trade. Environmental departments have also been established under the state and territory governments.²⁴ The 1992 **Intergovernmental Agreement on the Environment** was adopted in order to facilitate a cooperative national approach, better define the roles of the respective governments and reduce the number of disputes between the Commonwealth and the states and territories. In accordance with the agreement, each level of government has responsibilities for the protection of fauna and their habitats, and ensuring the survival of species and ecological communities (Schedule 9, sec. 1). States

²⁴ A list is available at: www.environment.gov.au.

have primary responsibility in the general area of nature conservation (sec. 2), but the Commonwealth has a particular responsibility in relation to management of areas within its own jurisdiction, obligations under international law, including CITES, exports, imports and quarantine, and cross-jurisdictional coordination (sec. 3). A national approach should be taken to rare, vulnerable and endangered species (sec. 4), and resulting national strategies should be considered by all levels of government when making environmental management and resource use decisions (sec. 5). Cooperative activities are promoted for native species and habitats occurring in more than one jurisdiction (sec. 6), as well as for improved intergovernmental arrangements for regulating commercial use of native wildlife including setting of nationally sustainable harvesting levels, establishment of national standards in marketing of wildlife products, and streamlining of permits and regulatory controls and enforcement (sec. 11). Management of parks and protected areas is largely a function of states (sec. 12).

The **Natural Resource Management Ministerial Council**²⁵ was established in 2001 by an agreement between Australian federal, state and territory governments, aiming to: develop policies and strategies for national approaches to the conservation, sustainable use and management of Australia's natural resources; oversee the development and implementation of national natural resource management programme; and promote community understanding of and engagement with the key challenges associated with the sustainable use and management of natural resources. The Council is supported by a Natural Resource Management Standing Committee.

An **inter-government National Reserve System Task Group** is currently updating the national policy framework for the national reserve system. The resulting strategy will set out priority actions and a coordinated approach to achieve a coherent

²⁵ See www.mincos.gov.au/.

and truly national reserve system by 2030. It is intended that the strategy will be endorsed by the Natural Resource Management Ministerial Council.

A **Threatened Species Scientific Committee**, with advisory functions and composed of members appointed by the minister²⁶ and a **Biological Diversity Advisory Committee**, whose members are appointed at the minister's discretion, have been established by the EPBC Act (secs. 502 and 504). The Committees serve to represent the Natural Resource Management Ministerial Council, conservation organizations, the scientific, rural and business communities, indigenous peoples, the fisheries and tourism sectors, local government and the Commonwealth.²⁷ An **Indigenous Advisory Committee** is also established, with members to be appointed by the minister (sec. 505A). All committee members are indigenous Australians and are selected for membership on the basis of their expertise in indigenous land management, conservation and cultural heritage management (Third national report to the CBD: 29). Further advisory committees may be established by the minister on specified matters (sec. 511). A **Director of National Parks**, appointed by the minister, administers, manages and controls Commonwealth reserves and conservation zones (sec. 514A-514B and 514G).

The EPBC Act includes a broad range of **enforcement** mechanisms for managing suspected or identified instances of non-compliance and for reviewing the compliance of referred projects:

- the minister may direct that an **environmental audit** be carried out if he or she has reasonable grounds to believe that a person has contravened or is likely to contravene an

²⁶ See www.environment.gov.au/biodiversity/threatened/committee.html.

²⁷ See www.environment.gov.au/biodiversity/science/bdac/.

- environmental approval or permit issued under the Act (EPBC Act, Division 12);
- **civil or criminal penalties** can apply to individuals and corporations that contravene the requirements for environmental approvals under the Act, including the provision of false or misleading information to obtain approval;
 - **remediation orders** can be issued by the Federal Court upon the minister's application to repair or mitigate environmental damage resulting from a contravention of the EPBC Act (secs. 14A and B);
 - **remediation determinations** can be issued by the minister with regard to contravention of the Act's civil penalty provisions (secs. 14A and B);
 - **enforceable undertakings** can be used to negotiate civil penalties and provide for future compliance (secs 486DA and DB).

Wardens, rangers and inspectors have a range of enforcement-related powers (EPBC Act, sec. 392). Compliance with the EPBC Act is further outlined in the document of the Department of the Environment, Water, Heritage and the Arts "Compliance and Enforcement Policy".²⁸ The public plays a role in law enforcement as any person can report a possible breach of the EPBC Act to the Compliance and Enforcement Branch of the Department.²⁹

With regard to funding for natural resource management, including wildlife management, the "Caring for our Country" initiative³⁰ provides for a "business approach to investment", including clearly articulated outcomes and priorities and improved accountability. Initiated on 1 July 2008, it integrates delivery of previous natural resource management programmes, including the Natural Heritage Trust, the National Landcare Programme, the

²⁸ Available at: www.environment.gov.au.

²⁹ See www.environment.gov.au/epbc/breach.html.

³⁰ Available at: www.nrm.gov.au/

Environmental Stewardship Programme and the Working on Country Indigenous Land and Sea Ranger programme. The initiative is run by Australian Government Land and Coasts, a cross-departmental team comprising staff from the Departments of the Environment, Water, Heritage and the Arts, and Agriculture, Fisheries and Forestry. A business plan is released each year, inviting proposals from relevant organizations and partnerships to undertake activities in six priority areas, including, among others, a national reserve system, biodiversity and natural icons, natural resource management in remote and northern Australia, and community skills, knowledge and engagement.

1.3 Wildlife tenure and use rights

Reviewed legislation does not include a generic statement on wildlife ownership. As noted above, responsibilities with regard to wildlife management are shared between the federal, and state and territory governments. Wildlife-related permits and licences are reviewed below.

In accordance with the 1993 Native Title Act, holders of **native title rights** do not need authorization required by other laws to engage in hunting for the purpose of satisfying their personal, domestic or non-commercial communal needs, and in exercise or enjoyment of their native title rights and interests (sec. 211). Similarly, the EPBC Act does not prevent an indigenous person from continuing, in accordance with the law, the traditional use of an area for hunting and food gathering (except for the purposes of sale) or for ceremonial and religious purposes (sec. 303BAA).

1.4 Wildlife management planning

Responsibility for wildlife management planning is **shared** between the federal, and state and territory governments. The Natural Resource Management Ministerial Council develops national approaches to natural resource management and ensures inter-governmental coordination.

The minister may, on behalf of the Commonwealth, cooperate with and give financial and other assistance to any person for the purpose of identifying and monitoring biodiversity components (EPBC Act, sec.171). The minister may prepare a **bioregional plan** for a bioregion that is within a Commonwealth area, following public consultation on the draft in accordance with the regulations. In the plan's preparation, the minister may cooperate with a state or territory agency for a bioregion that is not wholly within a Commonwealth area. A bioregional plan may include provisions about: the components of biodiversity, their distribution and conservation status; important economic and social values; mechanisms for community involvement in implementing the plan; and measures for monitoring and reviewing the plan (sec. 172). The minister may create and implement a **wildlife conservation plan** for the protection, conservation and management of a listed migratory species or a conservation-dependent species, adopt the plan made by a state or a self-governing territory, or adopt **joint wildlife conservation plans** with states and territories. Legislation requires, to this end, public consultation and consideration to be given to the advice of the Scientific Committee (secs. 289-290). The plan must provide for the research and management actions necessary to support survival of the species concerned, seek to minimize any significant adverse social and economic impacts and give regard to the role and interests of indigenous peoples (sec. 287). Protected area management plans are discussed further in section 1.5 below.

The CBD is being implemented through the National Strategy for the Conservation of Australia's Biological Diversity³¹, first launched in 1996 and endorsed by the Council of Australian Governments. This strategy is currently being reviewed by the Natural Resource Management Ministerial Council, in order to provide an overarching

and high-level strategic national policy framework for biodiversity conservation and sustainable use, covering all of Australia's biodiversity including terrestrial biodiversity and ecosystems. It includes six 'priorities for change' which aim to provide a clear framework for all levels of government, industry and the community for actions needed to reverse biodiversity decline in Australia (Fourth national report to the CBD: 4).

1.5 Wildlife conservation

The majority of **parks and reserves** across the country are managed by state and territory governments' protected area management agencies.³² Commonwealth parks and reserves are managed by the Department of the Environment, Water, Heritage and the Arts and assisted by the Director of National Parks.

The **national system** of protected areas includes:

- the national reserve system, comprised of Commonwealth, state and territory reserves;
- indigenous lands and protected areas run by non-profit conservation organizations, and built under the Australian Government's "Caring for our Country" initiative; and
- national parks, including the Australian Alps National Parks – a system of eleven national parks and reserves crossing state and territory borders.

Jointly developed and agreed by the Australian, state and territory governments, the *Directions for the National Reserve System – A Partnership Approach* were released by the Natural Resource Management Ministerial Council in 2005 and are currently being reviewed.

The EPBC Act provides for a process to nominate sites for the World Heritage List (sec. 314); inclusion and management of areas in the National Heritage List (secs.

³¹ Available at: www.environment.gov.au

³² A list is available at: www.environment.gov.au.

324C-324ZC); and management of Commonwealth Heritage places (secs. 341A-341ZH). These categories have little relevance for wildlife management. A process for designating and managing Ramsar wetlands is also provided for in the Act (secs. 326-336). With regard to **biosphere reserves**, the minister may make and implement a management plan or cooperate with a state or territory for a management plan of a biosphere reserve in the state or territory (sec. 338) in accordance with the Australian biosphere reserve management principles (sec. 340). **Commonwealth reserves** can be declared over areas that the Commonwealth owns or leases (secs. 344-346), following a public consultation process. A proclamation must assign the reserve to a particular IUCN category, which affects how the reserve is managed and used (sec. 347). Some activities can be undertaken in a reserve, only in accordance with the management plan, and include killing, taking, trading, keeping or moving a native species or otherwise using it for commercial purposes (sec. 354). The minister may approve a management plan prepared by the Director and any Board for a reserve. Regulations can be made to control a wide range of activities in reserves (sec. 356). Prior usage rights relating to the reserve continue to have effect but are renewed upon approval (sec. 359). Indigenous peoples can continue their **traditional use** of the area, including hunting or food gathering (except for purposes of sale), or ceremonial and religious purposes. However, regulations may affect such traditional use, if they are made for the purpose of conserving biodiversity and expressly affect the traditional use of the area by indigenous peoples (sec. 359A). The Director may approve specified actions in a reserve, if there is no management plan in operation (sec. 359B). A process for establishing management plans for Commonwealth reserves is provided for, including a public consultation procedure (sec. 368). The plan is approved by the minister (sec. 370).

Jointly managed Commonwealth reserves are reserves including indigenous peoples' land held under lease by the Director. The minister must establish a board for such reserves, if the land council for that land (or traditional owners) and the minister agree to it. The board's role is to make decisions and plans for management of the reserve, in conjunction with the Director. A majority of its members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people's land (secs. 375-378). Special rules apply to Commonwealth reserves in the Kakadu region, Uluru region and Jervis Bay Territory, affecting the activities that can be carried on in those reserves, and additional involvement of indigenous people in the planning and management process is provided for in the rules (secs. 385-390A). The obligations vary among the leases, but generally include specific obligations to mount training programs for indigenous Australians, to contract services and engage as many indigenous Australian people as possible, to engage training officers and to provide cross-cultural training for non-indigenous staff. Considerable effort is also being invested in supporting traditional owners to establish tourism ventures in the parks (Fourth national report to the CBD: 40). **Conservation zones** may be proclaimed in areas outside Commonwealth reserves, to provide for biodiversity conservation in the reserves (secs. 390C-390D). Regulations may provide for the protection of conservation zones, regulate tourism, regulate access or camping, provide for the removal of trespassers and regulate or prohibit the taking of animals, among others (sec. 390E).

Indigenous protected areas have been established under the "Caring for our Country" initiative over land owned by indigenous peoples through various forms of title under Australian law. An indigenous protected area is an area of land managed for conservation and cultural heritage protection by its indigenous traditional owners. Traditional owners enter into a

voluntary agreement with the Australian Government. The government provides some funding to help them fulfil their conservation and management objectives, further providing direct employment and supporting the development of cultural and eco-tourism ventures (Fourth national report to the CBD: 39). Governance and management of an indigenous protected area is carried out by indigenous peoples in accordance with their laws and customs and integrating contemporary (scientific) land management techniques. Before an indigenous protected area can be declared, a management plan needs to be in place, which identifies the management issues and the strategies by which they will be managed, the resources and support required for implementation and arrangements for monitoring and effectiveness evaluation. Once declared, indigenous protected areas are recognized as part of Australia's National Reserve System.

With regard to **protected species**, both the Australian government and state and territory governments maintain lists of threatened species. Coordination for consistency among such lists is achieved through the **Species Information Partnerships**, which are agreements between state and federal jurisdictions aiming to create information (i.e. conservation status, taxonomy, threats, recovery) that supports consistently threatened species listings.³³ The Australian Government has partnerships with South Australia, Western Australia, the Northern Territory, Tasmania and Victoria to prepare information on threatened species listed under state and territory legislation. Both the Australian Government and most of the state and territory governments have mechanisms to identify and protect threatened ecological communities/habitats.

In accordance with part 13 of the EPBC Act dealing with threatened species and ecological communities, the minister must,

by instrument published in the Gazette, establish a **list of threatened species** divided into: extinct; extinct in the wild; critically endangered; endangered; vulnerable; and conservation-dependent.³⁴ Similarly, the minister must establish a **list of threatened ecological communities**, divided into: critically endangered; endangered; and vulnerable (sec. 181), as well as a **list of threatening processes** (sec. 183). The Act establishes criteria for amendment of the lists by the minister (secs. 184-188) and a requirement for considering the advice of the Scientific Committee (secs. 189-190). The minister may determine that a native species is not appropriate for inclusion in any of the categories in case it poses a serious threat to human health (sec. 193). Up-to-date copies of the lists should be available on the internet and to the public on request (sec. 194).

The nomination and listing process involves the following steps: 1) the minister may determine conservation themes (sec. 194D); 2) the minister **invites people to nominate items for inclusion** and forwards the nominations to the Scientific Committee (secs. 194E-194F); 3) the Scientific Committee drafts a list of items to be assessed (secs. 194G-194J); 4) the minister finalizes the list (secs. 194K-194L); 5) the Scientific Committee invites comments on the finalized list (sec. 194M); 6) the Scientific Committee assesses the finalized list and forwards its assessment to the minister (secs 194N-194P); and 7) the minister takes the final decision (sec. 194Q). The process involves an annual cycle known as assessment period. In specific circumstances, the Scientific Committee may coordinate its assessment with the Australian Heritage Council (secs. 194S-194T).

Killing, injuring, trading or keeping a listed species, except a conservation dependent species, is an offence (secs. 196-196E),

³³ See www.environment.gov.au

³⁴ Conservation-dependant species are those focused by specific conservation or management programmes.

unless the action was authorized by a permit, was necessary to prevent the animal's suffering or to prevent a risk to human health or property, was for the purposes of law enforcement or occurred as a result of an unavoidable accident (sec. 197), in which case the person is required to notify the Secretary (sec. 199).

A person may apply to the minister for a **permit** to kill, take, keep, move or trade a protected species (sec. 200). As soon as practicable after receiving the application, the minister must publish on the internet details of the application and an **invitation for comments** within 10 business days on whether the permit should be issued (sec. 200(3)). The minister must not issue the permit unless satisfied that:

- the specified action will contribute significantly to the conservation of the listed threatened species or ecological community concerned; or
- the impact of the specified action on a member of the listed species or ecological community concerned is incidental to, and not the purpose of, the taking of the action and:
 - the taking of the action will not adversely affect the survival or recovery in nature of that species or ecological community;
 - the taking of the action is not inconsistent with a recovery plan that is in force for that species or ecological community; and
 - the holder of the permit will take all reasonable steps to minimize the impact of the action on that species or ecological community; or
- the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the species or ecological community concerned; or
- the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.

The minister must give regard to any approved conservation advice and consider the comments received (sec. 201). A permit is subject to conditions as specified (sec. 202). On application by the holder, the minister may transfer the permit to another person (sec. 205). An application of review of a permit-related decision may be made to the Administrative Appeals Tribunal (sec. 206A).

The minister must keep a **register of habitats** critical to the survival of listed species and ecological communities, which must be made available for public inspection, except for those portions of the register that could compromise the interests of relevant land holders (sec. 207A). Similarly, the minister must establish a **list of migratory species** and amend it as necessary (sec. 209). Similar restrictions to the taking of migratory species and permit regulations apply (secs. 210-222).

The minister must ensure that there is **approved conservation advice** for each listed species and ecological community, except those extinct or conservation-dependent species. Approved conservation advice is a document approved by the minister following consultation with the Scientific Committee and published on the internet (sec. 266B). Conservation advice includes practical activities that can be implemented by local communities, natural resource management groups or interested individuals, such as landholders. Conservation advice may also include broader management actions which can be undertaken by organizations such as local councils, government agencies or NGOs, to protect the species or ecological community at a regional level.

The minister must decide to have a recovery plan for a listed threatened species or ecological community within 90 days after the listing. The minister may, at any other time, decide whether to have such a plan (sec. 269AA). The minister needs to ensure that a threat abatement plan is in force for a

key threatening process only if it is a feasible, effective and efficient way of abating the process (sec. 270A). A recovery plan or threat abatement plan can be made by the minister alone or jointly with relevant states and territories, or the minister can adopt a state or territory plan. Publication, public consultation and advice from the Scientific Committee requirements about the plan are provided for, regardless of how it is made or adopted (secs. 274-278).

Recovery plans for listed threatened species and ecological communities and **threat abatement plans** for key threatening processes bind the Commonwealth and Commonwealth agencies (secs 268-269).

Conservation agreements between the Commonwealth and persons related to the protection and conservation of biodiversity and World Heritage values, among others, **may relate to public or private land** (sec. 303). The minister must not enter into a conservation agreement unless satisfied that the agreement will result in a net benefit to biodiversity conservation and is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan. A conservation agreement must not cover all or part of a Commonwealth reserve (sec. 305). A conservation agreement may provide, for example, for activities that promote biodiversity conservation, control or prohibit actions that may adversely affect species and habitats, restrict the use or require the owner to refrain from certain activities, require the owner to contribute towards costs or specify the manner in which any money paid to the owner is to be applied (sec. 306). The minister must maintain an up-to-date list of conservation agreements in force (sec. 310).

The minister may make **conservation orders** in Commonwealth areas to protect listed threatened species or ecological communities, following a consultation process involving various Commonwealth agencies (sec. 464).

All Australian states and territories include impacts on biodiversity or on species and

habitats as a matter for consideration in their laws regarding **environmental impact assessment** (EIA). These considerations apply through development of control regulations associated with land use planning, infrastructure development, and natural resource management laws. The threatened species laws of each state also apply EIA (or species impact assessment) aligned with planning, development and resource management laws through EIA standards and governance provisions (Fourth national report to the CBD: 62).

The EPBC Act and Regulations provide that an EIA, including assessment of impacts on biodiversity or on species and habitats, should be performed for matters of national environmental significance, including actions likely to have impacts on listed threatened species and ecological communities, listed migratory species, Ramsar wetlands or World Heritage properties.

1.6 Wildlife utilization

The EPBC Act sets up a system for regulating the **international movement** of wildlife specimens, including CITES specimens, export of native wildlife and import of live exotic species (Part 13A). It is an offence to export or import a CITES specimen, a regulated native specimen, or a regulated live specimen unless the exporter or importer holds a **permit** or an **exemption** applies, as reviewed below. The minister must publish in the Gazette a list of CITES species (sec. 303CA). CITES exemptions relate to registered, non-commercial exchange of scientific specimens between scientific organizations (sec. 303CC).

The minister may, upon application made by the interested person (sec. 303CE), issue a permit authorizing the holder to import or export specific CITES specimens in a specified time period. The minister must not issue a permit unless satisfied that:

- the actions specified in the permit will not be detrimental to or contribute to trade which is detrimental to the survival

or recovery of any taxon to which the specimen belongs or any relevant ecosystem;

- the specimen was obtained legally and actions specified in the permit will not violate any law; the conditions applicable to the welfare of live specimens have been complied with; and
- any applicable restrictions have been complied with. Export and import of CITES specimens would have to be for an eligible non-commercial purpose (sec. 303CG) or meet all specific conditions relating to import and export of CITES specimens for commercial purposes related for instance to the specimen's origin from an approved CITES-registered captive breeding programme (sec. 303CH).

The minister must issue a decision within 40 business days from the submission of an application for a permit (sec. 303CI). A register must be maintained to include all applications and decisions (sec. 303CK).

The minister must establish a **list of exempt native specimens** (sec. 303DB), the export of which is also subject to a permit, according to similar conditions as above (sec. 303DG). The minister must also establish a list of specimens suitable for live import (sec. 303EB), which can be amended either on the minister's own initiative (sec. 303ED) or upon application by an interested person (sec. 303EE). The minister must not issue a permit unless satisfied that certain requirements are met, among which are that the proposed import would not be likely to threaten the conservation status of a species or ecological community or threaten biodiversity, and the specimen was obtained legally (sec. 303EN). A register is also kept (sec. 303EQ). Marking requirements of certain specimens for the purposes of identification are provided for in the Act (secs. 303ER-303EW).

The EPBC Act provides for concepts relating to **permit criteria**, including for non-commercial purpose exports and imports,

including breeding (secs. 303FA-303FI); and commercial purpose exports and imports (secs. 303FJ-303FP). Eligible commercial purpose exports and imports include exports from an approved captive breeding programme (sec. 303FK); and exports in accordance with an **approved wildlife trade operation** (sec. 303FN) or in accordance with an **approved wildlife trade management plan** (sec. 303FO). A public consultation procedure is provided for before the approval of a wildlife trade operation or a wildlife trade management plan (sec. 303FR), while consultation with concerned state and territory agencies is required before approval of a wildlife trade management plan (sec. 303FQ). Certain specimens owned by or used by traditional inhabitants in traditional activities are exempted (sec. 303GX).

Hunting in Australia is regulated separately by each state and territorial government, leading to a variety of differing regulations, lists of game species, hunting areas, fees and licence requirements.³⁵ The following can be summarized by way of example:

- State of Victoria: a state hunting licence system is in place for selected species and various licences require that the applicant has passed a Hound Hunting Test and/or Waterfowl Identification Test in the case of deer and duck hunting. All other pest or feral animals can be taken on both state forest and private land with the landholders' permission, without a specific permit under the normal conditions of a firearms licence.
- Queensland: hunting is limited to feral animals on private property with the landowners' permission. Only a current firearms licence is required to hunt on private property, so there is no hunting permit or fee applicable. There are currently no species classified as game that can be taken by recreational hunters during an open season.
- Tasmania: a game licence authorises the taking of game during a declared open season. A licence will not be

³⁵ See www.ssaa.org.au.

issued unless take details from the previous season have been received from the applicant hunter and recorded. Pest or feral animals can be taken at any time on both private land with the permission of the landholder, state forest and crown land.

- Northern Territory: hunting of feral pigs and waterfowl is regulated by a permit system. All other classified feral animals can be taken on private land with the landholders' permission, without a specific permit under the normal conditions of a firearms licence. To hunt on private land or hunting concession, only the landowner permission is required, whereas to hunt on aboriginal lands, a permit from the respective land council and endorsement from the traditional owner is required.

Eco-tourism development rests with state and territory governments under their respective planning and development legislation: most of them have established guidelines to assist them through the approval and development process.³⁶ In addition, in its National Strategy for Ecologically Sustainable Development, the Australian Government includes a challenge "to develop and manage the tourism industry in a way which conserves its natural resource and built heritage base and minimizes its environmental impacts."³⁷

2. BANGLADESH

2.1 Overview of the legal framework

The 1972 **Constitution** of Bangladesh, as last amended in 2004, includes no provision on protection of the environment. Legislation of relevance to wildlife management includes the 1998 Biodiversity and

Community Knowledge Protection Act and the 1973 Wildlife Preservation Order, as amended in 1974.

The **Wildlife Preservation Order** is the main instrument providing for the preservation, conservation and management of wildlife in the country, including hunting regulations, and designation of wildlife sanctuaries, national parks and game reserves. The Order is currently under review, and an amended text has been prepared by the Forest Department. Among the changes, the draft includes provisions for collaborative management of protected areas, establishment of community conserved areas, and updated lists of species in the Schedules.³⁸

Designed to implement the provisions of the CBD, the **Biodiversity and Community Knowledge Protection Act** covers all life forms, including animals (art. 3(2)), and recognizes that "the life supporting and life affirming system ... is a matter of national security" (art. 5(7)). It is declared to be the legal basis to protect the diversity of genera and species of all life forms, including animals and birds (art. 5(12)). The Act aims to ensure the conservation and sustainable use of biological and genetic resources and related knowledge "as a means of sustaining the life support and healthcare system of the people of Bangladesh"; promote appropriate mechanisms for fair and equitable sharing of benefits; and ensure participation and agreement of concerned communities in decision-making regarding distribution of benefits (art. 2(2)).

Establishment of protected areas is also provided for in the **1995 Environment Conservation Act**, which is implemented by the **1997 Rule for the Conservation of the Environment**.

³⁶ See for example www.byron.nsw.gov.au/pdfs/pub_comm_plan/other/ecotourism_development.pdf.

³⁷ See www.environment.gov.au/esd/national/nsesd/strategy/tourism.html.

³⁸ The revised draft is available at: www.nishorgo.org.

2.2 Institutional setup and role of stakeholders

The **Ministry of Environment and Forests** was established in 1989 and oversees all environmental matters in the country. Its Forest Department is responsible for wildlife management, the "Chief Conservator of Forests" being also the "Chief Wildlife Warden". The **Wildlife and Nature Conservation Circle** within the Department includes four regional Wildlife Management and Nature Conservation Divisions. The Department of Environment is the ministry's technical wing and remains responsible for implementation of the Environment Conservation Act, including the designation of ecologically critical areas, as reviewed below (arts. 3 and 5). With regard to wildlife trade, responsibility rests with the Forest Department, the Chief Controller of Import and Export, and the Customs and Excise Department.

A **Wildlife Advisory Board** was established in 1976 under the provisions of the Wildlife Preservation Order, with members appointed, and performing functions assigned, by the government (art. 4). Board membership and assignment of functions are up to the government's discretion and no specifications are provided in the order. The Wildlife Advisory Board operates as the country's CITES scientific authority.³⁹ The revised draft order provides for members to represent several government departments, as well as two NGO representatives and two conservationists, all to be nominated by the government (art. 4).

The **National Biodiversity Authority** is established as a regulatory body to ensure implementation of the Biodiversity and Community Knowledge Protection Act. It is composed of representatives from the public sector, scientific and professional organizations, people's organizations, women's organizations, development and environmental organizations and representatives of local and indigenous

communities. It is considered to function as an independent and autonomous body. It is headed by a chairperson and a management committee of 14 more members, including seven *ex officio* members, one member of the Parliament and six community representatives. The six community representatives are selected by the National Biodiversity Authority among its members or from outside, according to a set of criteria, including competency and experience and lack of connection with interest groups or the industry (Biodiversity and Community Knowledge Protection Act, art. 11). Among the functions of the National Biodiversity Authority is the establishment of lists of endangered ecosystems and threatened biodiversity (art. 11(13)).

A public consultation is currently underway with regard to the amended draft Wildlife Preservation Order, prepared by the Forest Department, including request for comments on the draft and organization of stakeholder meetings.⁴⁰

The Authority's decisions can be challenged by any citizen or community (art. 11(16)). Furthermore, any individual as citizen, or any community or any group as a representative of the collective owners, users and custodians of the biological and genetic resources of the country, have legal standing to bring public interest litigation before the Supreme Court in case they feel that the rights of the community have been violated (art. 19).

The Forest Department is primarily responsible for **wildlife law enforcement** with assistance by the Customs and Excise Department, the Police and the "Bangladesh Rifles" (defined in the ministry's website as a para-military branch). Weak law enforcement capacity remains a major problem for effective wildlife management (Third National Report to the CBD: 77-78). Offences under the Wildlife Preservation Act are tried by the District Magistrate or any

³⁹ See www.cites.org/common.

⁴⁰ See www.nishorgo.org/wildlife_Act/wildlife_act.html.

Magistrate of the First Class specially empowered by the government (Wildlife Preservation Act, art. 35). An **Environment Court** and Environment Appeal Court have been established in 2000: they are competent to exercise any power conferred to them by any environmental law (Environment Court Act, art. 8).

2.3 Wildlife tenure and use rights

The reviewed legislation includes no general reference to public wildlife tenure. However, it is stated that whenever a question arises, any wild animal, trophy or meat must be presumed to be the property of the government until the contrary is proved (Wildlife Preservation Order, art. 22). Individuals in possession of a wild animal must declare it and obtain a certificate of lawful possession (art. 9).

All **biological resources** (including all biotic components of the ecosystems of Bangladesh) belong to the people of Bangladesh, are held in common and constitute **common property** of the country (Biodiversity and Community Knowledge Protection Act, art. 6(1)). The people of Bangladesh, organized into communities, are the general owners, custodians and stewards of these resources (art. 6(2)). The **rights of indigenous and local communities**, farming and fishing communities, and other communities that are directly linked through their livelihood practices to particular ecosystems, in particular women, are recognized by the state (art. 6(4)). Furthermore, all citizens have unencumbered access to biological wealth for their survival needs and traditional uses (art. 6(6)). **Co-ownership of biological resources** of different communities can be established by proper legal procedures, in which case all potential benefits would accrue to all co-owners (art. 8(1)). Co-ownership of the state for the entire territory of Bangladesh is also established, so that the state can negotiate access to biological resources by foreign or commercial interests with the full participation of other co-owners. The state

should ensure payment of royalties or compensation to the communities where applicable (art. 8(2)).

With regard to **human-wildlife conflicts**, legislation clarifies that it is not an offence to kill any wild animal threatening human life, or causing damage to crops or to livestock. In national parks, wildlife sanctuaries, or reserved or protected forest, where cultivation and livestock grazing is illegal, wild animals can be killed only in defence of human life (Wildlife Preservation Order, art. 21). Any protected or game animal killed under these provisions is the property of the government (art. 21(3)).

2.4 Wildlife management planning

Wildlife management planning rests with the Forest Department, although a specific legal basis specifying the department's mandate seems to be lacking (Third National Report to the CBD: 80).

2.5 Wildlife conservation

The Environment Conservation Act provides for the designation of "**ecologically critical areas**" (art. 5) in the case of degraded or threatened ecosystems, but includes no specific reference to wildlife management. The list of factors to be taken into consideration when declaring an ecologically critical area, however, includes the existence of a national park, game reserve or wildlife habitat (rule for the Conservation of the Environment, art. 3). Activities or processes which cannot be continued or initiated in an ecologically critical area are specified by the government, on the basis of Schedules establishing emission and pollutants limits.

The Wildlife Preservation Act provides for three categories of protected areas: national parks, wildlife sanctuaries, and game reserves. **National parks** are "large areas of outstanding scenic and natural beauty" with the primary object of protection and preservation of scenery, flora and fauna in the natural state, to which access for public

recreation and education and research may be allowed (art. 2(h)). Prohibited activities within national parks include hunting, killing or capturing any wild animal within one mile from the boundaries; and firing any gun or doing anything that may disturb any wild animal or interfere with their breeding places. The government may relax the prohibitions for scientific purposes or for aesthetic enjoyment "or for any other exceptional reason" (art. 23(3)).

Wildlife sanctuaries are defined as areas closed to hunting, shooting or trapping of wild animals, declared as such by the government as undisturbed breeding ground primarily for the protection of wildlife (art. 2(p)). Wildlife sanctuaries provide for the strictest protection of wildlife, with prohibited activities including the entry, hunting, killing or capturing any wild animal within one mile from the boundaries; and introduction of domestic or exotic animals (art. 23). The government may relax any of the prohibitions for "scientific purposes or for aesthetic enjoyment" (art. 23(2)). Specific criteria for relaxation of prohibitions by the government are not provided for in the Act.

Game reserves – public or private – are areas declared by the government as such for the protection of wildlife and increase in population of important species (art. 2(c) and (l)). In a game reserve, hunting and shooting of wild animals is allowed under a special permit specifying the maximum number of animals to be killed and the hunting duration (art. 23(5)). The Act does not contain any provision for establishing and managing buffer zones.

In 2004, the Forest Department launched a new protected areas management programme entitled "**Nishorgo**", aiming to improve protected area management and focusing on building partnership between the Forest Department and key local, regional and national stakeholders that can assist in conservation efforts. The programme was designed and is implemented by the Forest Department and USAID. Among its components, the

programme formalizes collaborative management agreements between the Forest Department, local communities and other key partners; offers alternative income-generating opportunities to those presently living from forest resources; and build the capacity of key stakeholders.

The Ministry of Environment and Forests issued a government order by gazette notification on 15 May 2006, regarding the formation of eight co-management councils and co-management committees, including their terms of reference for five protected areas brought under the Nishorgo programme. Co-management councils and co-management committees aim to ensure local participation in protected area management, and include a wide membership from different sectors of society, from government representatives to local inhabitants. They are established in compliance with the project proposal of Nishorgo, but not in pursuance of any existing law. Therefore, the legal basis of these institutions is still under question (Abdullah Abraham Hossain: 35).

A list of **protected species** is provided for in the third Schedule of the Wildlife Preservation Order. These protected animals cannot be hunted, killed or captured unless expressly provided in the same Order (art. 5(2)), for instance in defence of human life (art. 21) or upon government permission for scientific reasons (art. 23(2)). It is also noted that hunting of all game animals, listed in the first Schedule as noted below, is restricted for females that are pregnant, feeding the young or accompanied by their immature offspring.

Environmental impact assessment procedures are guided by the Environment Conservation Act and the 1997 Rules, without any specific reference to impacts of developments on wildlife.

2.6 Wildlife utilization

Hunting and trade of wildlife are regulated by the Wildlife Preservation Act. A list of

game animals is provided in the first Schedule; such animals can be hunted subject to the issuance of an ordinary **hunting permit**. The law provides for no specific process for the issuance of hunting permits. No hunting permits have been issued in Bangladesh since 1998.⁴¹

Private lands can be designated as **private game reserves** where hunting and shooting of wild animals under a special permit is allowed for a specific number of animals and time period, upon application by the owner and designation by the government (Wildlife Preservation Act, art. 24).

Possession of wild animals, trophies or meat **trade** requires a valid permit (art. 15). Such a permit may be granted or denied in the absolute discretion of the officer in charge without assigning any reason (art. 15(1)). The permit is issued upon payment of the prescribed fee and remains valid for a period of one year (art. 15(3)). The holder is required to register its dealings (art. 15(4)).

The second Schedule lists animals, trophies or meat, for the possession, transport or import of which a **certificate of lawful possession** is required. Import of such items, as well as of live wild animals of an endemic or exotic species, is allowed only through a customs port of entry, upon satisfactory proof of lawful export and upon an import permit issued by the government (art. 12). Export of any wild animal, except game animals, is permitted through a custom port of exit and on the basis of an export permit (art. 13). An export permit may be denied without assigning any reason (art. 13(2)). Transit of wild animals, trophy or meat through Bangladesh requires the necessary transit customs documents (art. 14).

The reviewed legislation includes no rules on wildlife **ranching and breeding**. The draft amended wildlife act provides for the government to enact rules and regulations

on wildlife farms. Certain pilot community-based **eco-tourism** initiatives have been undertaken on the basis of the "Nishorgo" protected areas management programme, in several protected areas of the country, however without a specific legal basis.⁴²

3. CHINA, PEOPLE'S REPUBLIC OF

3.1 Overview of the legal framework

The country's 1982 **Constitution** states that natural resources are owned by the state, that is, by the people as whole, with the exception of the forests, mountains, grassland, unclaimed land and beaches that are owned by collectives in accordance with the law. The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation of or damage to natural resources by any organization or individual by whatever means is prohibited (art. 9).

The country's environmental legislation comprises the 1989 **Environmental Protection Law**, aiming at "protecting and improving people's environment and the ecological environment, preventing and controlling pollution and other public hazards, safeguarding human health and facilitating the development of socialist modernization" (art. 1). The definition of environment expressly includes wildlife (art. 2). The law's provisions on environmental impact assessment (EIA) (art. 13) are implemented by the 2002 **Environmental Impact Assessment Law**.

The legal system for the conservation and management of wildlife is built around:

- the 1988 **Wildlife Protection Law**, as amended, which regulates all wildlife-related activities, lays down the general principles for endangered wildlife protection and management, and

⁴¹ According to the Ministry's website at: www.bforest.gov.bd/wild.php.

⁴² See www.nishorgo.org.

hunting regulations, and also addresses institutional issues;

- the 2006 **Regulation on Administration of Import and Export of Endangered Wild Animals and Plants**, aiming specifically at the protection of CITES-listed species, as well as species under special state protection;
- the 1994 **Regulation on Nature Reserves**, regulating the establishment and management of national and local nature reserves; and
- the 1992 **Regulations for the protection of terrestrial wildlife** which implement the Wildlife Protection Law, and address species which are precious, endangered, beneficial or of important economic and scientific research value (terrestrial wildlife regulations, art. 2).

3.2 Institutional set up and role of stakeholders

The State Council, namely the central government, is the highest organ of state administration and is responsible for carrying out the principles and policies of the Communist Party of China, as well as the regulations and laws adopted by the National People's Congress.⁴³ The **State Forestry Administration**, which lies directly under the State Council, is responsible for the nationwide management of terrestrial wildlife (Wildlife Protection Law, art. 7). The Department of Wildlife Conservation within the State Forestry Administration functions as the Administration's wildlife conservation and nature reserves construction programme office, and is responsible for overseeing nationwide management of wildlife and nature reserves. Also under the State Forestry Administration, the National Wildlife Research and Development Center has been established in 2000 to provide scientific and technological support to the management of wild fauna and flora, promote international cooperation and communication, and conduct research on

nature reserves and protection of national wildlife resources.⁴⁴ The Endangered Species Import and Export Management Office, also established under the Administration, is the CITES management authority. On the other hand, supervision and control over wildlife placed on the market, is exercised by the administrative authorities for industry and commerce (Wildlife Protection Law, art. 22).

Regional and local administration of relevance to wildlife management is organized at three levels:

- the **provincial level**, which lies directly under the central government and includes provinces, autonomous regions, municipalities directly under the central government and special administrative regions, the governments of which report to the State Council and its departments;
- the **prefecture level**, which includes autonomous prefectures and prefecture-level municipalities, the governments of which report to the provincial-level governments and their departments; and
- the **county level**, the governments of which also report to the provincial-level governments and their departments.

Governments at various levels take measures to protect regions representing various types of natural ecological systems and regions with a natural distribution of rare and endangered wild animals and plants (Environmental Protection Law, art. 17). Forestry departments under the governments of provinces, autonomous regions and municipalities directly under the central government are responsible for the administration of terrestrial wildlife in their respective areas. The wildlife departments under the governments of autonomous prefectures, counties and prefecture-level municipalities are designated by the provincial governments (Wildlife Protection Law, art. 7; terrestrial wildlife regulations, art. 3). Wildlife departments at various levels are to monitor impacts on wildlife, conduct

⁴³ See <http://english.gov.cn/>.

⁴⁴ See www.wildlife-plant.gov.cn/en/aboutus.htm.

investigations with the departments concerned in case of harm to wildlife, and oversee implementation of the Wildlife Protection Law through inspections (Wildlife Protection Law, art. 11). All entities and individuals have the obligation to be prepared for such inspection (terrestrial wildlife regulations, art. 5). Local governments must take measures to rescue wildlife under special state or local protection in case of natural disasters (art. 13). All competent departments at or above the county level must **coordinate all possible social forces** so as to maintain and improve the environment for wildlife survival (terrestrial wildlife regulations, art.8).

The **nature reserves departments** under the State Council are responsible for the formulation of national technical regulations and standards for the management of nature reserves (regulations on nature reserves, art. 19). The environmental protection departments in the governments at or above the county level, have the right to supervise and conduct inspections on the management of all the nature reserves within their administrative division. The nature reserve departments at the same level have the right to supervise and conduct inspections on the management of nature reserves under their jurisdiction (art. 20).

The provincial nature reserves departments or central nature reserves departments are responsible for the management of the national nature reserves, while nature reserves department at or above the county level are responsible for the management of the local nature reserves within their administrative divisions. The nature reserves departments set up a special administrative agency in each nature reserve, with the responsibility to formulate management regulations and implement relevant laws (arts. 21-22).

Citizens have the duty to protect wildlife resources and the right to inform the authorities of, or file charges against, acts of seizure or destruction of wildlife resources (Wildlife Protection Law art. 5;

Environmental Protection Law, art. 6). Legal entities and individuals that have made outstanding achievements in wildlife protection, research, domestication and breeding are **awarded** by the state (Wildlife Protection Law, art. 4). Such outstanding conduct includes contribution to wildlife protection and rescue, scientific research, implementation and enforcement, or working for five years or more on the protection and maintenance of wildlife at the grassroots level (terrestrial wildlife regulations, art. 32), or to the establishment and management of nature reserves and the related scientific research (regulations on nature reserves, art. 9).

3.3 Wildlife tenure and use rights

According to the Constitution, natural resources are owned by the state, while appropriation by legal entities or individuals is prohibited (art. 9). Wildlife resources are similarly **owned by the state**, which shall protect the lawful rights and interests of units and individuals engaged in their development or utilization (Wildlife Protection Law, art. 3). Hunting and other rights over wildlife can be obtained with the issuance of a licence (see section 3.6 below).

With regard to **human-wildlife conflicts**, when wildlife under special state or local protection (see section 3.5 below) causes losses to crops or other losses, the local governments shall provide compensation, according to criteria to be formulated by governments of provinces, autonomous regions and municipalities directly under the central government (Wildlife Protection Law, art. 14; terrestrial wildlife regulations, art. 10). Local governments must prevent and control the harm caused by wildlife so as to guarantee the safety of human beings and livestock and ensure agricultural and forestry production (Wildlife Protection Law, art. 29). Hunters causing losses to crops or other damage are held responsible for compensation (art. 28).

3.4 Wildlife management planning

General plans for environmental protection and development planning of nature reserves formulated by the state must be incorporated into national economic and social development plans (Environmental Protection Law, art. 4; 1994 regulations on nature reserves, art. 4). With specific regard to wildlife, government authorities, at various levels, must formulate **plans** for the protection, development and rational utilization of wildlife resources (Wildlife Protection Law, art. 6).

Forestry departments under the State Council and at the provincial level must regularly carry out **surveys of wildlife resources** and keep records of them so as to provide the basis for the planning of the protection and development of wildlife resources and the preparation of the list of wildlife species under special protection by the state or local authorities. General surveys of the wildlife resources shall be conducted once every ten years and approved by the competent departments (Wildlife Protection Law, art. 15; terrestrial wildlife regulations, art. 7). There is no provision regarding public participation in the wildlife management planning process.

With regard to protected areas, the responsibility for the formulation of **programmes for the development of national nature reserves** rests with the environmental protection departments and nature reserves departments under the State Council. Such programmes are then submitted to the competent planning department "for overall balancing" and then to the State Council for final approval and implementation (regulations on nature reserves, art. 17).

The country has issued a National Plan for Wildlife Conservation and Nature Reserve Construction in 2000 and a National Plan for Establishment of Forest Nature Reserves in 1997. A national plan for nature reserve development is under preparation and will be submitted to the State Council for

examination and approval, and integration into the five-year plan for national economic and social development (Fourth National Report to the CBD: 11-12).

3.5 Wildlife conservation

The central wildlife department and provincial-level governments designate **nature reserves** in the main districts where wildlife under special state or local protection lives and breeds, in accordance with the relevant provisions of the State Council (Wildlife Protection Law, art. 10).

Local economic development, production activities and everyday life of local residents must be properly considered when the nature reserves are established and managed (regulations on nature reserves, art. 5). The state should ensure integrated management with separate departmental management for nature reserves. The central environmental protection department is responsible for the integrated management of the nature reserves throughout the country. Forestry, agriculture, geology and mineral resources, water conservancy, marine affairs and other concerned departments are responsible for relevant nature reserves under their jurisdiction. The provincial-level governments must decide, according to the specific condition of the locality, on the establishment and the responsibilities of the nature reserves departments at or above the county level (art. 8).

Nature reserves are established in representative natural ecosystems or areas of concentrated distribution of rare and endangered wild animals, or in areas of special protection value such as wetlands and forests (art. 10). Nature reserves are divided into **national** and **local reserves**. National nature reserves are of typical significance in or out of the country, and have major international influence in science, or are of special value for scientific research. Local nature reserves are significant for scientific research, and may be managed by local governments. Specific

measures must be formulated by the central nature reserves department for national reserves or by the provincial-level governments according to their specific conditions for local reserves, and must be submitted to the central environmental protection department for the record (art. 11).

The process for the establishment of a **national nature reserve** requires an application from the provincial government where the proposed reserve is located or by the central nature reserves department. After appraisal by the government's **National Nature Reserves Appraisal Committee**, the central environmental protection department must coordinate with other relevant departments to provide comments on the application and then submit it to the State Council for approval (art. 12).

Establishment of a **local nature reserve** requires an application from the prefecture or county government where the proposed reserve is located, or from the competent provincial department. After appraisal by the provincial government's local nature reserves **appraisal committee**, the provincial environmental protection department coordinates with other relevant departments to provide comments on the application and then submit it to the provincial government for approval, as well as to the central environmental protection and nature reserves competent departments for the record (art. 12).

The reviewed legislation includes no public consultation procedure prior to the establishment of a nature reserve. The boundaries of nature reserves as determined by the responsible government "shall be indicated and announced to the public" (art. 14). It is noted that determination of the boundaries must give consideration to the needs of local economic development, production activities and the everyday lives of local residents (art. 14).

Nature reserves are divided into the **core area**, **buffer zone** and **experimental zone**. The core area includes the intact natural ecosystems and the areas where rare and endangered animals live: there entry and scientific research are generally prohibited, and can only be exceptionally approved by the nature reserve department (art. 18). Scientific observations and other research activities are allowed in the buffer zone upon approval by the administrative agency of the nature reserve, but tourism, production and trade activities are prohibited (art. 28). The area surrounding the buffer zone may be designated as the experimental zone, where various activities such as scientific experiment, educational practice, visit and investigation, tourism, and the domestication and breeding of rare and endangered wild animal or plant species are allowed. Tourist activities in the experimental zone follow the activity programme established by the administrative agency of the nature reserve and approved by the administrative departments of nature reserves at the provincial level, and at the State Council level for national nature reserves (art. 29). It is up to the discretion of the responsible government to designate an "outer protection area" surrounding the nature reserve (art. 18). Technical regulations for the management of various types of nature reserves are formulated by the administrative departments of nature reserves under the State Council and reported to the central environmental protection department for the record (art. 19). The local government must see to the proper resettlement of residents living in the core area (art. 27).

Hunting is prohibited in nature reserves (Wildlife Protection Law, art. 20), unless otherwise provided for by relevant laws and regulations (regulations on nature reserves, art. 26).

Special state protection is accorded to species that are "rare or near extinction", categorized in two classes (first and second) (Wildlife Protection Law, art. 9). The lists of species under special state protection are

prepared by the central wildlife department and announced after the approval of the State Council (art. 9). Another category refers to terrestrial wildlife under **state protection**, which is beneficial or of important economic or scientific value: this is also announced by the Department of wildlife administration. A final category of protected wildlife refers to **wildlife under "special local protection"** referring to wildlife especially protected by provincial-level governments (art. 9). Such lists are announced by the respective governments and submitted to the State Council for the record (art. 9). The administrative measures for wildlife under special local protection and for other wildlife that is not under special state protection are formulated by the standing committees of the people's congresses at the provincial level (art. 30).

Hunting, catching or killing of wildlife under special state protection is prohibited. Where catching wildlife under first class state protection is necessary for scientific research, domestication and breeding, exhibition or other special purposes, the unit concerned must apply to the department of wildlife administration under the State Council for a special hunting and catching licence. Where the catching or hunting of wildlife under second class state protection is intended, the unit concerned must apply to the provincial wildlife department for a special hunting and catching licence (Wildlife Protection Law, art. 16). Anyone who illegally catches or kills wildlife under special state protection must be criminally prosecuted (art. 31).

A special hunting and catching licence for wildlife under state special protection is thus required for the purpose of: scientific research; domestication and breeding; production of medicine by the state; education; controlling the population; "state affairs" or other special reasons (terrestrial wildlife regulations, art. 11). Procedures for the application for a special licence are provided for first class, second class and under-second-class protection wildlife. The department responsible for issuing the

special licence decides on the application within three months from its receipt (art. 12). No special licence can be issued when: there are legal alternatives to the catching or hunting methods available to the applicant to obtain the species; the application is not in conformity with the relevant provisions of the state, or the applicant's hunting gear or hunting method is inappropriate, or the season or location for hunting or catching is not suitable; and the catching or hunting is not justified taking into consideration the situation of wildlife resources (art. 13). The economic benefits derived from the exhibition of wildlife or their products in foreign countries and from other activities can be mainly used for the purpose of wildlife protection (terrestrial wildlife regulations, art. 31).

All trade activities, including import and export, concerning **rhino horn or tiger bone**, are prohibited, as rhinos and tigers are Annex I CITES-listed species (1993 Circular of the State Council on banning the trade of rhinoceros horn and tiger bone). Accordingly, the medicinal standards for rhino horn and tiger bone are abolished and the animal parts should not be used to produce medicine (art. 3). Medicinal research for substitutes is encouraged. Acquiring rhino horn and tiger bone for special utilizations such as medicinal research for substitutes requires the prior approval by the Ministry of Health, and submission to the State Forestry Administration for the record, and is supervised by the local forestry department (art. 4).

Transportation out of any county of wildlife under special state protection or its products requires approval by the wildlife department under the provincial-level government (Wildlife Protection Law, art. 23).

Export of wildlife under special state protection or their products, and import or export of wildlife or their products restricted by international conventions to which China is a party must be approved by the central wildlife department or by the State Council.

In addition, an import or export permit must be obtained, issued by the central endangered species import and export administration. The export of the species of wildlife involving scientific and technological secrets must be dealt with in accordance with relevant provisions of the State Council (Wildlife Protection Law, art. 24).

With regard to **environmental impact assessment**, if a construction project may produce adverse effects on wildlife under special state or local protection, the project proponent must submit an EIA report. The department of environmental protection will examine and approve the report, seeking the opinion of the department of wildlife administration (Wildlife Protection Law, art. 12). The EIA must "be objective, open and fair, give comprehensive consideration to the possible impact on various environmental factors and their constituent ecological systems after the implementation of plans and construction projects, and provide scientific basis for decision-making" (2002 EIA Law, art. 4). Relevant legal entities, experts and the public are encouraged to participate in any appropriate way (art. 5). Regarding the plans that may cause adverse impact on the environment and directly involve the environmental rights and interests of the public, the proponent of the special plans should, before submitting the draft plans for approval, hold fact-finding meetings, hearings or other types of consultations to solicit the opinions on the draft EIA statements from relevant units, experts and the public. The proponent should seriously consider these opinions and explain the consideration given to the opinions in the EIA statement submitted for examination (art. 11). The same procedure is provided for the final EIA reports of construction projects, prior to their approval by the competent departments of environmental protection (art. 21).

The Interim Procedures for Public Involvement in Environmental Impact Assessment (not available in English) provide detailed requirements on the scope, procedure, organization and other aspects

of public involvement in environmental impact assessment (Fourth National Report to the CBD: 97).

3.6 Wildlife utilization

Hunting or catching wildlife that is not under special state protection requires a **hunting licence**. Hunters must observe the hunting quota assigned, and prescriptions on the licence with respect to the species, quantity, area and time limit, as well as tools and methods. A **gun licence** from the public security organ of the county or municipality is further required for those intending to hunt with a gun (Wildlife Protection Law, arts. 18-19; terrestrial wildlife regulations, art. 15). Transfer of any licence or permit is prohibited (Wildlife Protection Law, art. 25). Areas and seasons closed to hunting, as well as the prohibited hunting gear and methods are specified by governments at or above the county level or by the departments of wildlife administration under them (art. 20). Use of military weapons, poison or explosives is prohibited. Measures for the control of the production, sale and use of hunting rifles and bullets are formulated by the department of forestry administration under the State Council jointly with the public security department (art. 21). The establishment of a **hunting area** open to foreigners must be reported to the central wildlife department for the record (art. 26).

The provincial forestry departments, on the basis of the current situation of non-protected species of wildlife resources within their respective administrative areas, identify the wildlife species that can be hunted, and control the annual quota of hunting and catching of wildlife species. These decisions must be drawn up by the county wildlife department in the light of the principles of preserving resources and sustainable utilization, approved by the provincial forestry department, and submitted to the central forestry department for the record (terrestrial wildlife regulations, art. 16). **Establishment of hunting areas** needs to be approved by the provincial forestry department (art. 17). Sale of lawfully

obtained wildlife that is not under state special protection and that was obtained by individuals with hunting licence is permitted to registered entities, in conformity with the licence's conditions (art. 27).

Trade in wildlife under special state protection or products derived from it is prohibited. Where sale or utilization concerning wildlife under **first class state protection** or its products is necessary for scientific research, domestication, breeding, exhibition or other special purposes, the entity concerned must apply for approval by the central wildlife department. For wildlife under **second class state protection** or its products, the unit concerned must apply for approval by the wildlife department of the relevant province, autonomous region or municipality (Wildlife Protection Law, art. 22).

Units or individuals engaged in **business operation or utilization of wildlife not under special protection by the State** or its products apply to the administrative authorities for industry and commerce for record and registration. These entities or individuals must respect the limitation of the annual quota approved by the provincial forestry department (terrestrial wildlife regulations, art. 26). Anyone engaged in wildlife utilization must **pay a fee** for the protection and administration of wildlife resources, whose level is set by the central wildlife department jointly with the financial and pricing authorities, and approved by the State Council (Wildlife Protection Law, art. 27).

A **certificate of import/export permission**, issued by the central endangered species import and export administration, is required for the import or export of CITES-listed or nationally designated species, following approval by the central department of endangered fauna and flora. Import or export of species, of which the trade is prohibited under CITES, is allowed upon approval for special reasons including scientific research, domestication and propagation (Regulation on the Import and

Export of Endangered Wild Fauna and Flora, arts. 4 and 6). Import or export of endangered species or their products restricted under CITES or by the State Council is subject to the approval of the central department of endangered wild fauna and flora (arts. 7 and 10). Consultation with the state scientific institution is provided for before issuance of the certificate (art. 14).

Anyone who intends to domesticate and **breed** wildlife under special state protection must obtain a licence (Wildlife Protection Law, art. 17). Details of the application procedure are provided for in the terrestrial wildlife regulations (arts. 22-24). Entities and individuals may sell such wildlife or its products to purchasing units designated by the government, by presenting their domestication and breeding licences and in accordance with the relevant regulations (Wildlife Protection Law, art. 22). Transfer of any licence or permit is prohibited (Wildlife Protection Law, art. 25).

4. INDIA

4.1 Overview of the legal framework

India's 1949 **Constitution**, as amended, provides for the state to "endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country" (sec. 48A). Protection and improvement of the natural environment, including wildlife, and compassion for living creatures are also among the duties of all citizens (sec. 51A). Protection of wild animals and birds is included in the Constitution's list of concurrent legislative competence, meaning that both the central government (the Parliament) and state governments (the state legislatures) can enact wildlife-related legislation.

The 1986 **Environment Protection Act** is the country's basic environmental law, according to which the definition of "environment" includes "other living creatures" (sec. 2), thus, making it generally

applicable to wildlife. The Act regulates the power of the central government to take environmental measures through means of planning, setting standards and control measures, issuing directions and disseminating information.

Wildlife management is regulated by the 1972 **Wildlife Protection Act** as amended, which addresses wildlife and habitat protection and management; and the 2002 **Biological Diversity Act**, which provides for biodiversity conservation and sustainable use, and fair and equitable benefit-sharing. It should be noted that the Wildlife Protection Act applies to the whole of India except the state of Jammu and Kashmir (sec. 1), while the 2002 Biological Diversity Act extends to the whole of India.

4.2 Institutional set up and role of stakeholders

According to the Environment Protection Act, the central government can take measures for the protection of the environment, including measures to coordinate actions by the state governments (sec. 3). The central government may delegate its powers and functions to any state government, authority or officer as it may deem necessary (sec. 23).

The central government may make rules on the Central Zoo Authority and centrally-declared sanctuaries and national parks (Wildlife Protection Act, sec. 63). The state government further regulates procedures and forms to be used for any application, certificate, licence or permit to use wildlife, the conditions subject to which any licence or permit may be granted, wild animal records, regulation of the possession, transfer and the sale of captive animals, articles and trophies, and taxidermy (sec. 64).

The **Ministry of Environment and Forests** is the central government's agency responsible for planning, promotion, co-ordination and oversight of the implementation of environmental and forestry programmes, including on wildlife

conservation and management. The organizational structure of the ministry covers a number of divisions, including the wildlife division and the environmental impact assessment division.

The Wildlife Protection Act provides for the appointment of a director of wildlife preservation and other officers as necessary by the central government, as well as for a chief wildlife warden, wildlife wardens, honorary wildlife wardens and other officers as necessary by the state government (secs. 3-4). Establishment of a **State Board for Wildlife** by state governments is further provided for. It consists of state government officers, three NGO representatives, ten persons to be nominated by the state government from among eminent conservationists, ecologists and environmentalists, including at least two representatives of the Scheduled Tribes⁴⁵ (sec. 6). The Board advises the state government with regard to the selection of areas to be declared as sanctuaries and national parks and their administration; policy formulation for wildlife conservation; amendments of the Schedules of the Wildlife Protection Act; measures to be taken for harmonizing the needs of tribal and other forest dwellers with wildlife conservation; and any other matter on wildlife protection (sec. 8).

A **National Board for Wildlife** was also established by the 2002 Wildlife Protection Amendment Act at the central government level, consisting of the Prime Minister, the minister in charge of forests and wildlife, three members of parliament, a member from the planning commission in-charge of forests and wildlife, five NGO representatives to be nominated by the central government, ten persons to be nominated by the central government from among eminent conservationists, ecologists

⁴⁵ The term "Scheduled Tribes" refers to specific indigenous peoples, recognized in India's Constitution (art. 342), generally characterized by geographic isolation, distinctive culture, language and religion, and increased poverty.

and environmentalists, other ministries representatives, including the Ministry of Tribal Welfare and the Director-General of Tourism, the Director of the Wildlife Institute of India and other scientific organizations, the member-secretary of the Central Zoo Authority and one representative each from ten states and union territories by rotation, to be nominated by the central government (sec. 5A). The National Board promotes wildlife and forest conservation and development by framing policies and advising the central government and state governments, making recommendations on the setting up and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas, and carrying out impact assessment of various projects and activities on wildlife or its habitat (sec. 5C).

A **Central Zoo Authority** is tasked with specifying the minimum standards and assessing the functioning of zoos, identifying endangered animal species for purposes of captive breeding and assigning responsibility in this regard to a zoo, coordinating the exchange of animals for breeding purposes, ensuring maintenance of studies of endangered species of wild animals bred in captivity, and coordinate research in captive breeding (Wildlife Protection Act, secs. 38A and C). Grants and loans provided to the Authority by the central government, fees, charges and all sums received by the Authority constitute the Central Zoo Authority Fund (sec. 38E).

A **National Tiger Conservation Authority** was established pursuant to the 2006 Amendment of the Wildlife Protection Act. It consists of ministries and parliament representatives, eight experts having prescribed qualifications in conservation of wildlife and welfare of people living in tiger reserves, out of which at least two must be from the field of tribal development, and six chief wildlife Wardens from the tiger reserve states in rotation (sec. 38L). The functions of the Authority include: approval of the tiger conservation plan prepared by the state government; management of tiger reserves;

providing information on protection measures including future conservation plans; laying down normative standards for tourism activities; providing for measures for addressing human-wildlife conflicts emphasizing co-existence in forest areas outside the national parks, sanctuaries or tiger reserves; ensuring that the tiger reserves are not diverted for ecologically unsustainable uses (which may only be authorized in the public interest and with the approval of the National Board for Wildlife and on the advice of the Tiger Conservation Authority); and facilitating eco-development and people's participation. The Authority may issue directions to any person, officer or authority, provided that no such direction interferes with or affects the rights of local people, particularly the Scheduled Tribes (sec. 38O). The state government may constitute a steering committee for ensuring coordination, monitoring, protection and conservation of tiger, co-predators and prey animals within the tiger range states (sec. 38U). State governments are also required to establish tiger conservation foundations for tiger reserves within the state, in order to facilitate and support their management for conservation of tigers and biodiversity in general, and to undertake eco-development initiatives by involving local people. As such, the objectives of tiger conservation foundations are to: facilitate ecological, economic, social and cultural development in the tiger reserves; promote eco-tourism with the involvement of local communities and provide support to safeguard the environment in tiger reserves; facilitate the creation and maintenance of assets for such objectives; mobilize financial resources; foster stakeholder involvement and eco-tourism; and support research, environmental education and training in related fields (sec. 38X).⁴⁶

The **National Biodiversity Authority** is established to advise the central

⁴⁶ Six states had constituted tiger conservation foundations as of July 2009, see Ministry of Environment and Forests press release available at: www.pib.nic.in.

government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources (Biological Diversity Act, secs. 8-18). Its main responsibilities relate to access and benefit-sharing.⁴⁷ Establishment of a state biodiversity board by state governments is also provided for (secs. 22-23). The central government develops national strategies, plans and programmes for the conservation and sustainable use of biological diversity, and directives to the concerned state government to take improving measures for any area threatened by overuse, abuse or neglect. It may also undertake measures for the assessment of environmental impact of a project likely to have adverse effects on biological diversity, with a view to avoiding or minimizing such effects and where appropriate providing for public participation in such assessment (sec. 36).

With regard to law enforcement, a Tiger and other Endangered Species Crime Control Bureau, known as the **Wildlife Crime Control Bureau**,⁴⁸ was established pursuant to the 2006 Amendment of the Wildlife Protection Act (sec. 38Y). Its functions include, among others: collecting intelligence related to organized wildlife crime activities; coordinating the actions of various government authorities involved with law enforcement; implementing obligations established by international conventions; and advising the government on wildlife-crime related issues (sec. 38Z). The reviewed legislation includes no reference to the public's role in wildlife law enforcement.

4.3 Wildlife tenure and use rights

The reviewed legislation contains no generic statement on wildlife ownership. Wild animals hunted or bred in captivity in violation of the law, found dead or killed by mistake, as well as their articles, trophies or meat, and ivory imported into India are the

property of the state government, or of the central government in case the animals were hunted in a centrally-declared sanctuary or national park. The permission of the Chief Wildlife Warden is needed for an individual to acquire, possess, transfer, destroy or damage such government property (Wildlife Protection Act, sec. 39).

A **certificate of ownership** is required for any individual to acquire, keep or sell any protected animal listed in Schedule I or Part II of Schedule II of the Wildlife Protection Act, except in case of inheritance, in which case a declaration to the Chief Wildlife Warden is required (Wildlife Protection Act, sec. 40). Before issuing a certificate of ownership in respect of any captive animal, the Chief Wildlife Warden must ensure that the applicant has adequate facilities for housing and maintenance of the animal (sec. 42).

Extending to the whole of India except the state of Jammu and Kashmir, the 2006 Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act secures individual or community tenure, or both, to **forest-dwelling scheduled tribes and other traditional forest dwellers** with regard to: the right to hold and live in the forest land; the right of ownership, access to collect, use and dispose of minor forest produce; the right to protect, regenerate, conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use; and any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, but **excluding the traditional right of hunting any species of wild animal** (sec. 3).

Recognized forest-related rights may be modified in national parks and sanctuaries, provided that no forest right holders are resettled or have their rights affected for the purposes of creating inviolate areas for wildlife conservation, except in case all the following conditions are satisfied:

- the process of recognition and vesting of rights is complete;

⁴⁷ See www.nbaindia.org/introduction.htm.

⁴⁸ See <http://wccb.gov.in/>.

- it has been established by the concerned agencies of the state government that the activities or impact of the presence of rights holders upon wild animals causes irreversible damage and threatens animals and their habitat;
- the state government has concluded that other reasonable options, such as co-existence are not available;
- a resettlement or alternative package has been prepared and communicated, providing a secure livelihood for the affected individuals and communities;
- the free informed consent of the *Gram Sabhas*⁴⁹ in the areas concerned has been obtained in writing;
- no resettlement can take place until facilities and land allocation at the resettlement location are complete as per the promised package; and
- the critical wildlife habitats from which rights holders are relocated for purposes of wildlife conservation must not be subsequently diverted by the state or the central government or any other entity for other uses (sec. 4).

The forest rights holders, *Gram Sabha* and village institutions are **empowered to protect wildlife**, forest and biodiversity; ensure that forests are preserved from any form of destructive practices affecting their cultural and natural heritage; and ensure compliance with the decisions taken in the *Gram Sabha* to regulate access to community forest resources and stop any activity which adversely affects wild animals, forest and biodiversity (sec. 5). The *Gram Sabha* determines the nature and extent of individual or community forest rights or both that may be given to the forest-dwelling Scheduled Tribes and other traditional forest dwellers, and passes a resolution to that regard. A sub-divisional level committee constituted by the state government will examine such resolution and prepare the record of forest rights and forward it to the district level committee for a final decision (sec. 6). The state government shall

⁴⁹ Public meetings at the village level.

establish a state-level committee to monitor the process of recognition and vesting of forest rights. All such committees consist of state government officers, and three members of the *Panchayati Raj* Institutions⁵⁰ of whom two must be the Scheduled Tribe members and at least one must be a woman.

The Wildlife Protection Act states that hunting rights conferred on the Scheduled Tribes of the Nicobar Islands are not affected by its provisions (sec. 65). These tribes enjoy special privileges with regard to subsistence hunting.

With regard to **human-wildlife conflicts**, hunting of wild animals specified in Schedules I, II, III and IV is prohibited, except in cases where the Chief Wildlife Warden decides that any Schedule I animal has become dangerous to human life or is diseased beyond recovery. The Chief Wildlife Warden may then permit hunting in these cases by order stating the reasons, provided that such animal cannot be captured, tranquilized or relocated. Furthermore, the Chief Wildlife Warden or authorized officer may decide that any Schedule II, III or IV animal has become dangerous to human life or property, including crops, or is diseased beyond recovery, and permits its hunt by order and stating the reasons. The killing or wounding in good faith of any wild animal in defence of oneself is not an offence; such killed or wounded animal is considered government property (Wildlife Protection Act, secs. 9 and 11).

4.4 Wildlife management planning

The Ministry of Environment and Forests is responsible for wildlife management planning.⁵¹ Reviewed legislation, however, contains no specific rules for such planning process, nor any requirement for public participation. Certain management planning

⁵⁰ Village-level administration.

⁵¹ See <http://envfor.nic.in/>.

requirements are also required for protected areas (see section 4.5 below).

Among its policy imperatives, the **National Wildlife Action Plan 2002-2016** recognizes the need to build peoples' support for wildlife through conservation programmes reconciling livelihood security with wildlife protection, and to address human-wildlife conflicts as a crucial management issue through innovative approaches (Action Plan: Policy Imperatives).

4.5 Wildlife conservation

With regard to protected areas, the Wildlife Protection Act provides for the establishment of sanctuaries and national parks. The state government may issue a notification to declare its intention to constitute a **sanctuary** in an area of ecological significance for the purpose of protecting, propagating or developing wildlife or its environment (sec. 18). The collector, appointed by the state government, inquires into, and determines, the existence, nature and extent of pre-existing rights in or over the land within the limits of the sanctuary (sec. 19-23). If a claim is admitted, the collector may exclude such land from the proposed sanctuary, proceed to acquire such land or rights, or allow the continuation of any right within the limits of the sanctuary, in consultation with the Chief Wildlife Warden (sec. 24). Following this process, the state government issues a notification declaring the area as a sanctuary and specifying its limits (sec. 26A). **Entry** to sanctuaries is restricted and **requires a permit** granted by the Chief Wildlife Warden (sec. 27). A person who has received the permission to reside within the limits of a sanctuary is bound to prevent law violations in the sanctuary, report the death of any wild animal and safeguard its remains, and assist with law enforcement (sec. 27(2)).

The Chief Wildlife Warden is the authority to control, manage and maintain all sanctuaries, including ensuring the security of wild animals and the preservation of wildlife, regulating the grazing or movement

of livestock for the interest of wildlife, and taking measures for immunisation against communicable diseases of the livestock (sec. 33). Taking or grazing livestock in a sanctuary without getting it immunized is prohibited (sec. 33(2)).

The state government must constitute an **advisory committee** consisting of the Chief Wildlife Warden or his nominee, a member of the state legislature within whose constituency the sanctuary is situated, three representatives of *Panchayati Raj* Institutions, two NGO representatives, three individuals active in the field of wildlife conservation, one representative each from departments dealing with Home and Veterinary matters, honorary wildlife wardens, if any, and the officer-in-charge of the sanctuary. The committee provides advice on measures to be taken for better conservation and management of the sanctuary including participation of the people living within and around the sanctuary (Wildlife Protection Act, sec. 33B).

A state government may constitute a **national park** in areas of ecological association or importance, within a sanctuary or not (sec. 35). The same process for determination of claims and rights applies, following which the state government publishes a notification declaring the area as a national park and specifying its limits. Similar requirements for taking of wildlife also apply (sec. 35(6)). Forest produce removed from a national park may be used for meeting the personal needs of people living in and around the park and cannot be used for commercial purposes (sec. 35).

The **central government** may also declare as sanctuaries or national parks areas leased or transferred to it by the state government. In such cases, the powers and duties of the Chief Wildlife Warden are exercised by the Director of Wildlife Preservation (sec. 38).

The state government may, after having consultations with the local communities,

declare any government-owned area, particularly the areas adjacent to sanctuaries and national parks, and areas linking one protected area to another, as a **conservation reserve** for protecting landscapes, seascapes, flora and fauna and their habitat (sec. 36A). A management committee must then be established by the state government to advise the Chief Wildlife Warden on the conservation, management and maintenance of the reserve. The committee consists of a representative of the forest or wildlife department, one representative of each village *Panchayat* in whose jurisdiction the reserve is located, three NGO representatives working in the field of wildlife conservation and one representative each from the Department of Agriculture and Animal Husbandry (sec. 36B).

The state government may, where the community or an individual has volunteered to conserve wildlife and its habitat, declare any private or community land not within a National Park, sanctuary or a conservation reserve, as a **community reserve**, for protecting fauna, flora and traditional or cultural conservation values and practices (Wildlife Protection Act, sec. 36C). A management committee will then be the authority responsible for conserving, maintaining and managing the reserve, and preparing and implementing the management plan for the reserve, consisted of five representatives nominated by the Village *Panchayat* or where such *Panchayat* does not exist by the members of the *Gram Sabha* and one representative of the state forest or wildlife department (sec. 36D).

A **tiger reserve** can be created by notification by the state government, on the recommendation of the Tiger Conservation Authority. A tiger conservation plan is prepared by the state government, to ensure protection of the tiger reserve and ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve. A tiger reserve may include a core or critical tiger habitat area, required to be kept intact

but without affecting the rights of scheduled tribes or other forest dwellers; and a buffer or peripheral area, which aims at promoting co-existence between wildlife and human activity with due recognition to livelihood, developmental, social and cultural rights of the local people. Scheduled Tribes or other forest dwellers cannot be resettled nor have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation, except in case a voluntary relocation on mutually agreed terms and conditions has been agreed upon (Wildlife Protection Act, sec. 38V).

State governments may also notify, in consultation with local bodies, areas of biodiversity importance as **biodiversity heritage sites**, and frame rules for their management, in consultation with the central government (Biological Diversity Act, sec. 37).

With regard to **protected species**, the Wildlife Protection Act includes six schedules which give varying degrees of protection, with absolute protection being provided under Schedule I and part II of Schedule II. The central government may declare any wild animal other than those listed in Schedule I and Part II of Schedule II to be vermin (pest) for any area and for a specified time period (Wildlife Protection Act, sec. 62). Zoos require the previous permission of the Central Zoo Authority to acquire or transfer any wild animal specified in Schedules I and II (sec. 38I). There is no provision allowing for public involvement in the listings.

The central government, in consultation with the concerned state government, may notify any species on the verge of extinction as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species (Biological Diversity Act, sec. 38). No connection among this process and the listing of protected species in the Schedules of the Wildlife Protection Act is provided for in the reviewed legislation.

With regard to **environmental impact assessment**, the 1997 notifications regarding public hearings specify the rules of procedure for public hearings in relation to environmental clearance of projects, including publication of the notice in at least two newspapers widely circulated in the region, one of which should be in the vernacular language of the locality concerned, and invitation of public opinion within 30 days from the date of publication of the notification. All persons, including residents, environmental groups and others located at the project's site, sites or displacement of sites likely to be affected can participate in the public hearing and make suggestions. Wildlife, however, is not specifically mentioned. The Biological Diversity Act states that the central government should, wherever necessary, undertake measures for assessment of the environmental impact of any project likely to have adverse effect on biological diversity with a view to avoiding or minimizing such effects, and where appropriate providing for public participation in such assessment (sec. 36(4)).

4.6 Wildlife utilization

India **bans hunting** of any animal for **commercial or recreational purposes**. The Chief Wildlife Warden may only grant a permit for hunting any wild animal specified in the permit for special purposes - education, scientific research, scientific management (meaning relocation to an alternative habitat or population management without killing), and collection of specimens, by an order stating the reasons, and upon the payment of the prescribed fee. For animals listed in Schedule I, prior **permission** of the central government is required, while permission of the state government is required for any other wild animal (sec. 12).

With regard to **eco-tourism**, some states have enacted policies or guidelines, but the reviewed legislation does not contain any comprehensive regulation. The Wildlife Protection Act allows construction of

commercial tourist lodges, hotels, zoos and safari parks inside sanctuaries, with the prior approval of the National Board (sec. 33).

A certificate of ownership or the permission of the Chief Wildlife Warden is required for the **sale** of any wild or captive animal listed in Schedule I or Part II of Schedule II, making of animal articles, taxidermy or transfer of wild animal or articles from one state to another (Wildlife Protection act, sec. 43). Such permission may be granted if the Chief Wildlife Warden is satisfied that the animal or article has been lawfully acquired.

Dealings in trophy and animal articles, including commerce, manufacturing and taxidermy, require a licence, otherwise they are prohibited. The Chief Wildlife Warden may grant the licence having regard to the previous experience of the applicant and the implications of granting such licence for the status of wildlife. Licences are not transferable (secs. 44-45). The law further provides for the right to appeal in case application for a licence or renewal of same is refused (sec. 46). Licencees are required to keep records of their dealings and make them available for inspection (sec. 47). Dealings in captive animals, trophies and articles derived from animals listed in Schedule I or Part II of Schedule II are prohibited (secs. 48 and 49B). Licensed taxidermists may put under a process of taxidermy any scheduled animal or their part for the government or with the authorization of the Chief Wildlife Warden for educational or scientific purposes (sec. 49B). According to a recent clause introduced by the Central Zoo Authority, zoos across the country can preserve the trophies of animals that die in their custody⁵² for scientific and educational purposes.

⁵² See www.indianexpress.com/news/preserve-animal-trophies-for-educational-sc/382028/.

5. JAPAN

5.1 Overview of the legal framework

The 1946 Constitution of Japan has no provision on the environment. The 1993 **Basic Environmental Law** sets forth general provisions, with the purpose to "comprehensively and systematically promote policies for environmental conservation to ensure healthy and cultured living for both the present and future generations of the nation as well as to contribute to the welfare of mankind, through articulating the basic principles, clarifying the responsibilities of the state, local governments, corporations and citizens, and prescribing the basic policy considerations for environmental conservation" (art. 1). Wildlife is not specifically mentioned.

Legislation of specific relevance to wildlife management includes: the Wildlife Protection and Hunting Law; the Law for the Conservation of Endangered Species of Wild Fauna and Flora; the Nature Conservation Law; and the Natural Parks Law.⁵³

Originally enacted in 1918 and revised several times since, the **Wildlife Protection and Hunting Law** provides for wildlife and habitat protection, and for the regulation of hunting, including through hunting licences and the designation of game species and non-hunting zones. The law was revised in 1999 to provide for a Specified Wildlife Management Planning System (Knight: 70), however this revision is not available in English. The law was last revised in 2006 to establish a hunter approval system and conservation projects (National Biodiversity Strategy 2008: 34); again this revision is not available in English.

The 1992 **Law for the Conservation of Endangered Species of Wild Fauna and Flora** provides for regulations against the capture and transfer of endangered species, implementation of protection and breeding programmes, and designation of "natural habitat conservation areas" in areas recognized as important for the conservation of endangered species. The 1972 **Nature Conservation Law** (Law no. 85 of 22 June 1972) stipulates basic policies for nature conservation and establishes a system for designating natural conservation areas and wilderness areas. Its full text is not available in English.

The 1957 **Natural Parks Law**, as last amended in 2002, provides for the designation, regulation and management of national parks, quasi-national parks and prefectural natural parks. The 2002 amendment provided for new conservation measures, including "strengthened ecosystem conservation measures", and for the designation of "regulated utilization areas." It opened the possibility for the establishment of "park management organizations" and the conclusion of "scenic landscape protection agreements" between the landowners and local governments or NGOs.

An **Ecotourism Promotion Law** was adopted in 2007 and entered into force in April 2008; however, its full text is not available in English. The law aims to promote tourism, support the local tourism industry, protect nature, and give tourists environmental education. Municipal governments may develop eco-tourism plans and implement measures to promote eco-tourism. Local communities are supported to take actions pursuant to the law (Fourth national report to the CBD: 80).

5.2 Institutional setup and role of stakeholders

The **Ministry of Environment** was established in 2001, from the sub-cabinet level Environment Agency, established in 1971. A Nature Conservation Bureau within

⁵³ When a law instrument was not available in English, the review was based on summarized information provided by the Ministry of Environment.

the ministry contains divisions on natural parks and on wildlife, including an office of wildlife management. The National Park Division is responsible for management of natural parks; the designation of national and quasi-national parks and formulation of park management plans; and the planning and implementation of natural park programmes. The Wildlife Division is responsible for species protection, the designation of national wildlife protection areas, drafting of regulations and standards for wildlife conservation, and international cooperation on wildlife conservation. Its office of wildlife management has competence over wildlife hunting and management, control of nuisance and dangerous wildlife, and the management of national wildlife protection areas. A **network of regional environment offices**, including **nature conservation offices**, assists with policy implementation at the regional and local level.⁵⁴

In accordance with the Basic Environmental Law, a **Central Environment Council** has been established within the Ministry of Environment, tasked with discussing important environmental matters with the Prime Minister and concerned ministers. It is comprised of no more than 80 members, appointed by the Prime Minister from among academics or others having expertise on environmental conservation (arts. 41-42). The establishment of **Prefectural and Municipal Environment Councils** is also provided for, to be stipulated by prefectural or municipal ordinances (arts. 43-44). A **Joint Committee on Natural Environment and Wildlife** was established under the Central Environment Council in 2007, to work on the National Biodiversity Strategy (Fourth National Report to the CBD: 33). The strategy was finally decided upon by the **Council of Ministers for Global Environment Conservation**, comprised of almost all Japanese ministries and agencies, and established to ensure their close coordination in policy measures to address environmental problems with

serious global-scale repercussions, and to ensure their comprehensive implementation (Fourth National Report to the CBD: 33; 2002 National Biodiversity Strategy).

A **Nature Conservation Council** has been established by the Nature Conservation Law to investigate and discuss nature conservation issues, in response to inquiries by the Ministry of the Environment or other concerned ministries (art. 13).

The 2002 Law for the Promotion of Nature Restoration has established the governmental **Nature Restoration Promotion Conference**, including officials from several ministries and government agencies, and the **Nature Restoration Expert Panel**, including individuals with specialized knowledge of the natural environment with advisory functions (art. 17).

References to stakeholder participation in wildlife regulation and management or general environmental decision-making are limited. The Basic Environmental Law rather allocated **responsibilities** for:

- the **state** for formulating and implementing fundamental comprehensive policies with regard to environmental conservation (art. 6) and take legislative, financial and other measures (art. 11);
- **local governments**, i.e. prefectures and municipalities, in accordance with the natural and social conditions in their jurisdiction (arts. 7 and 36);
- **corporations** to make voluntary efforts to conserve the environment and reduce environmental impacts; and
- **citizens** to cooperate on the basis of state policies (art. 9).

A similar division of responsibilities among the national government, local governments and the people is provided for in the Law for the conservation of endangered species (art. 2). **Prefectural authorities** are responsible for the formulation and implementation of wildlife management

⁵⁴ See www.env.go.jp/en/.

plans and for the implementation of hunting regulations and can establish several types of prefectural protected areas as described in section 5.5.

5.3 Wildlife tenure and use rights

The Law for the Conservation of Endangered Species of Wild Fauna and Flora establishes duties for the owners of individual animals belonging to endangered species, noting they must be conscious of the importance of conserving them and endeavour to treat them properly (art. 7). Under the guidance of the Minister of the Environment (art. 8), owners of individual animals such as those bred for commercial purposes, may register them with the Ministry of the Environment or with a designated registration organization, and be provided with registration cards (art. 20), to be used in all transfers (art. 21). The reviewed legislation and bibliography contains no reference to community-based or private systems of wildlife tenure and use *in situ*.

5.4 Wildlife management planning

A "**Specified Wildlife Management Planning System**" was established by the 1999 revision of the Wildlife Protection and Hunting Law. The law provided for "**specified wildlife management plans**", which are long-term plans each prefecture may establish, at their own discretion, to properly manage wildlife populations that are rapidly increasing or decreasing. The plans state specific goals for the target species, and prescribe concrete measures for properly controlled hunting, preventing negative influences, and conserving habitat. They should be drawn on the basis of population studies, taking into consideration local circumstances.

According to the system, the national government sets up the overall **policy** on wildlife protection, including designation of protected areas, captive breeding and control of dangerous wildlife (art. 3). Each prefecture can establish comprehensive

wildlife protection project plans to actively promote wildlife protection projects, including on wildlife management, control of populations and conservation and management of habitats (art. 4). Each prefecture can then establish specified wildlife management plans at the local level, to control local populations of specific wildlife species (art. 7).

Organized at the prefecture level, such plans should aim at maintaining stable local wildlife populations, targeting thus populations that are either rapidly increasing or drastically decreasing. They should describe the goals and methods for population management and habitat maintenance, including by hunting regulations tailored to local circumstances, conservation measures or counter-measures to prevent and control damage caused by wildlife. According to the Ministry of Environment, a total of 62 Specified Wildlife Management Plans have been established in 38 prefectures by December 2004, to target specific wildlife species populations.

5.5 Wildlife conservation

Several kind of **protected areas**, providing for different degrees of protection and prioritizing different values each, are established by the Natural Parks Law, the Nature Conservation Law and the Law for the Conservation of Endangered Species of Wild Fauna and Flora.

The Natural Parks Law aims at the protection of places of **natural scenic beauty** (art. 1). It is considered that the protection of fauna is significant for conserving the scenic beauty, and for this reason the state and local public bodies should take measures to conserve ecosystem and creature diversity in natural parks (art. 3.2). The law distinguishes between:

- national parks, which are places of greatest natural scenic beauty representing the model scenic beauties of the country;

- quasi-national parks, which are places of great natural scenic beauty; and
- prefectural natural parks.

The national parks are designated by the Minister of the Environment, after seeking the opinions of the prefectures concerned and the Central Environmental Council (art. 5(1)). The same procedure is followed for preparation of the national park plan regarding its regulation (art. 7). Designation of a quasi-national park and preparation of its park plan are to be requested by the prefecture concerned, and executed by the minister following consultation with the Council (arts. 5(2) and 7(3)). Designations are announced in the official gazette (art. 5(3)). No process for stakeholder participation or consultation with the public is provided for either in the designation or the preparation of the park plan.

The minister for national parks and the prefecture's governor for quasi-national parks may designate a **special zone** within the park's boundaries, for the purpose of preserving scenic beauty (art. 13). Activities not to be carried out without the permission of the minister or the prefecture's governor respectively include capturing, killing or wounding animals, or animals designated by the Minister of the Environment, or collecting or damaging their eggs (art. 13(3)(11)). Such permission cannot be granted if the activity "fails to comply with the standards prescribed by the environmental ministerial ordinance" (art. 13(4)). Before granting permission, the prefecture's governor needs to obtain the consent of the minister (art. 13(5)). When particularly necessary for landscape preservation, the Minister of the Environment or the prefecture's governor respectively, may designate a **special protection zone within the special zone** (art. 14).

The special zone may also include a **regulated utilization area**, access to which can be limited for a period of time decided upon by the minister (art. 15) and conditioned upon the minister's or the prefecture's governor approval and the

issuance of an entry approval certificate (art. 16).

The Minister of the Environment or the prefecture's governor may designate a legal entity established for protection and proper use of the park as the **park management organization** (art. 37). Such designation is announced in the official gazette or prefectural official report (art. 37.2). The park management organization can be a foundation or a non-profit organization acknowledged by the minister as capable of performing the required operations, including management of the park, maintenance and management of its facilities and offer of appropriate advice and guidance concerning the protection of the park (art. 38). These operations are to be performed in close cooperation with the minister and the local public body concerned (art. 39).

The law provides for the conclusion of "**scenic landscape preservation agreements**" between the Minister of the Environment or local public bodies or the park management organization and the owner of land or trees within the boundaries of the park (art. 31). Based upon this agreement, the park management organizations manage and protect the land on behalf of the landowners. The agreement would provide for the area to be covered, management methods and development of facilities. It requires the consent of all land owners within its area. The agreement should comply with the standards prescribed by the environmental ministerial ordinance and should not unreasonably restrict the use of the land, trees and bamboos concerned. The agreement is to be presented for public inspection and those concerned may submit written comments (art. 32). Approval is granted by the Minister of the Environment or the prefecture's governor (art. 33).

The Ministry of the Environment has also put in place the "Green Worker Programme" under which local residents are employed in the parks (Ministry of the Environment 2003: 17). Its legal basis is not available.

The Nature Conservation Law (full text not available; JICA 1999: 43-44) provides for the designation, by the Minister of the Environment, of **wilderness areas** from among the state-, prefecture- or municipal-owned land, where wilderness is maintained without any influence of human activities (arts. 14, 17 and 19). In wilderness areas, activities that may impact the natural environment are prohibited in principle. The minister can further designate zones where access is restricted. Wilderness areas are excluded from the area of national or quasi-national parks (Natural Parks Law, art. 58).

In addition to wilderness areas, the minister can designate **nature conservation areas** where the conservation of the natural environment is required in view of natural and social conditions (Nature Conservation Law, arts. 22 and 25-27). The areas aim to preserve various natural ecosystems, including rivers, lakes, marsh and sea coasts with valuable wildlife, and habitats of plants and animals maintaining good natural environment. They can include special zones, where only selected activities are permitted, including **wildlife protection zones** where the capture and collection of designated wildlife species is regulated and subject to permission by the minister. In **ordinary zones**, designated activities which may have adverse impacts on the ecosystem should be notified to the superintendent of the competent regional environment office (Environment Agency 1995). A conservation plan for each area is established by the minister, upon the advice from the prefectural governor and the Nature Conservation Council (Nature Conservation Law, arts. 15 and 23). Prefectural nature conservation areas are designated by prefectural governors in accordance with the prefectural regulations (art. 45).

The Wildlife Protection and Hunting Law (Ministry of the Environment 2003: 31) provides for the designation of **wildlife protection areas** by the Minister of the Environment, and of prefectural wildlife protection areas by the prefectural governor. There capture or hunting of wildlife is

prohibited, unless wildlife is considered to be a pest. Other activities are permitted in the area. Where stricter regulation is required for species conservation, **special protection zones** may be declared within wildlife protection areas. There construction, land development, reclamation projects, tree cutting, mining and other activities require the permission of the Minister of the Environment or the prefectural governor. Permission cannot be given when the activity in question will cause serious harm to wildlife or to wildlife habitat (Knight: 66). There appears to be no criteria to be used in this regard.

The Law for the Conservation of Endangered Species of Wild Fauna and Flora provides for the establishment of **natural habitat conservation areas** by the Minister of the Environment when deemed necessary for the conservation of endangered species, taking into consideration its distribution, ecology and habitat conditions (art. 36). The designation provides indication of the area and the species concerned, and a conservation guideline. Following consultation with the heads of other government organizations concerned, the Nature Conservation Council and local governments concerned, **the designation plan is made available "for the public perusal"** for a period of 14 days, during which the area inhabitants and other parties concerned may submit their views (art. 36(4)-(5)). **Public hearings** must be organized whenever there are objections to the designation plan or when deemed necessary to hear opinions broadly (art. 36(6)).

In addition, and in accordance with the same procedure described above, the minister may designate as **managed areas**, within the habitat conservation areas, those recognized as particularly important for the conservation of the endangered species (art. 37). Such designation can be terminated when no longer considered necessary (art. 37(2)). Conservation measures are stricter in the managed areas, and several activities, including capture of

species individuals and observation of the endangered species by methods designated as detrimental to habitat or growth of its individuals, are prohibited without the minister's permission (art. 37(4)). Such permission cannot be granted when the activity does not conform to the conservation guideline of the area, and is subject to specific conditions (art. 37(6)-(7)).

The law further provides for the designation for a specific time period, by the Minister of the Environment, of **restricted areas**, where entry is to be restricted for the sake of endangered species conservation. The consent of the owners or the occupants of the concerned land is required. The minister may terminate the designation when the owners or the occupants of the land seek such termination "with due reasons" (art. 38). Activities to be held in the parts of the habitat conservation areas not belonging to the managed areas, referred to as **surveillance areas**, are to be reported to the Minister of the Environment, who may prohibit or restrict the activity when it does not conform to the area's conservation guideline (art. 39).

Finally, the 2002 Law for the Promotion of Nature Restoration provides for a community-based model for the conservation, restoration or creation of various natural areas including *satoyama* (community-based forests) and *satochi* (rural landscapes) with the **participation** of concerned government agencies, municipal authorities, local residents, NGOs and individuals with specialized environmental knowledge (art. 2). The law is based on the objective of restoring lost or depleted ecosystems, the adoption of a bottom-up approach and the principle of adaptive management for nature restoration projects (Third National Biodiversity Strategy: 98). The Minister of the Environment formulates a basic policy for nature restoration, in consultation with the Minister of Agriculture, Forestry and Fisheries and the Minister of Land, Infrastructure and Transport, and after seeking public views (art. 7). On the basis of this policy, which was adopted in April 2003,

responsibility for nature restoration projects rests mainly with the person who undertakes the project and the community actors. The national and local governments must "strive to provide the necessary assistance to facilitate the implementation of nature restoration projects undertaken by local residents, specified non-profit corporations and other private organizations" (art. 4), while the developer must "strive to take the lead" in carrying out the project (art. 5). To this end, the developer should form a **nature restoration committee** including all parties who intend to be involved in the project, that will draft the overall plan for nature restoration, discuss the draft implementation plan and conduct communication and coordination for implementing the project (art. 8); submit the drafts to the competent minister and prefectural governor for receipt of advice (art. 9); and conclude an agreement with the landowner of the area if needed (art. 10). Although the law does not specifically mention wildlife, it is acknowledged that many species, including threatened species, live mainly in *satochi* and *satoyama* areas (Third National Biodiversity Strategy: 29), the conservation and management of which this law provides for through a community-based approach.

With regard to species protection, the Ministry of the Environment has published the **Red List of threatened wildlife**, the review of which was finalized in August 2007 (Third National Biodiversity Strategy: 193). Species protection regulations are included in the Law for the Conservation of Endangered Species of Wild Fauna and Flora and the Wildlife Protection and Hunting Law, which, however, do not cover all the species included in the Red List (Knight: 69).

The Law for the Conservation of Endangered Species of Wild Fauna and Flora categorizes endangered species into **nationally endangered, internationally endangered, and temporarily designated endangered species**, all of them to be designated by a Cabinet Order (art. 3). The Prime Minister should draft a national

guideline for endangered species conservation, following consultation with the Nature Conservation Council (art. 6). Taking, killing or injuring endangered species individuals is prohibited, unless permission has been granted or in cases stipulated in a Prime Minister's Office Ordinance (art. 9). Permission may be granted by the Minister of the Environment or of Agriculture, Forestry and Fisheries for the purposes of scientific research, breeding or other purposes provided for in a Prime Minister's Office Ordinance, in which case a permission certificate is issued (art. 10). The persons who have conducted the permitted taking must accommodate the species individuals in proper breeding facilities and treat them by methods prescribed in a Prime Minister's Office Ordinance (art. 10(10)). The adoption of required measures or the annulment of the permission may be ordered by the Minister of the Environment when necessary for the species (art. 11). Transfer of endangered species, exports and imports are also prohibited, unless permission is granted (art. 12-16).

The law provides for the formulation and implementation of **programmes for rehabilitation of natural habitats and maintenance of viable populations** by the Minister of the Environment, following consultation with the Nature Conservation Council. Such programmes are to be formulated on a species-by-species basis and are subject to public perusal before their implementation (arts. 45-46). Landowners or occupants must cooperate in the installation of necessary facilities under the approved programmes (art. 47).

The Basic Environment Law includes provisions on **cost sharing** with regard to conservation projects, noting that if the state or local government is required to implement a project in order to prevent interference with conservation, the persons who have caused the circumstances necessitating the project must share in the cost, according to their degree of responsibility. Similarly, persons who receive a special benefit from the implementation of nature conservation

measures will be required to bear an appropriate and equitable share of the expenses (arts. 37-38).

The 1997 **Environmental Impact Assessment Law** does not contain any specific reference to wildlife protection. The purpose of the Act is to ensure that any large-scale project with potential serious impact on the environment (assumably including wildlife) complies with the required conditions (art. 1). A public review and participation process is provided for with regard to the initial scoping document to determine the scope of the EIA (arts. 7-8) and the subsequent draft environmental impact statement (arts. 16-18). Both documents should be made available for public review for one month, with an additional time-period of two weeks allowing submission of comments "from the standpoint of protecting the environment". The process also includes submission of comments by the prefectural and municipal authorities involved (arts. 9-10, 18 and 20). The organization of "explanatory meetings" by the project proponent with the public is provided for with regard to the draft environmental impact statement (art. 17). The final statement is publicly announced to allow for review (art. 27); prior to the public announcement, a proponent may not proceed with project implementation (art. 31). The details of the process are to be established by a regulation to be adopted by the Prime Minister's Office.

5.6 Wildlife utilization

Hunting regulations, including restrictions to the species, season and method of capture, are provided for by the Wildlife Protection and Hunting Law. The law gives the Minister of the Environment the authority to **designate game species**, and 49 species have been designated as such as of November 2007 (Third National Biodiversity Strategy and Action Plan: 199). Capture of wildlife requires either a **hunting licence** issued under the provisions of this law, or a special permit for the purpose of scientific study, or for control of nuisance and

dangerous wildlife. There are different types of hunting licences for traps; for nets; for shotguns and rifles (except air-guns and gas-guns); and for air-guns and gas-guns. Applicants can receive a hunting licence upon passing a **hunting examination** overseen by prefectural governors, which tests the applicant's knowledge of hunting safety and ability to identify game animals. Hunters must then register with the prefectural authorities of the area where hunting is to take place, and pay a hunting fee and registration tax (Ministry of the Environment 2003: 31; Third National Biodiversity Strategy and Action Plan: 199).

Hunting activities are also regulated by identification of hunting seasons; areas where hunting is prohibited, including wildlife protection areas and temporary non-hunting zones or game preserve areas for the purpose of wildlife recovering; regulations on hunting methods and mass capture; and limitations on hunting quotas per day or per hunting season (Ministry of the Environment 2003: 31).

Hunting management rests largely with the prefectural authorities. The "**wildlife protection leader**" is a position dedicated to hunting control and guidance for wildlife protection, having the status of part-time prefectural employee (Third National Biodiversity Strategy and Action Plan: 199).

The Law for the Conservation of Endangered Species of Wild Fauna and Flora provides for the **regulation of businesses dealing with endangered species**. Those engaged in such business with nationally designated endangered species, including transfer or deliveries of individuals, are obliged to notify to the Minister of the Environment and the Minister of Agriculture, Forestry and Fisheries information regarding the corporation, location of facilities and object of business, as prescribed by Ordinances by the Prime Minister's Office and the Ministry of Agriculture, Forestry and Fisheries (art. 30(1)). A similar notification is required for those engaged in businesses regarding

processed products coming from national endangered species (art. 30(2)). Furthermore, those engaged in such business, must keep track of the origin of the individuals or the parts and products thereof and whether they are bred or taken (art. 31). The Minister of the Environment and the Minister of Agriculture, Forestry and Fisheries may issue instructions in case of violations, in order to contribute towards species conservation, or order suspension of business for a period not exceeding three months, in case of violation of the instructions (art. 32). On-the-spot inspections are addressed in the law (art. 33).

Those engaged in businesses dealing with **designated parts of internationally endangered species** are to notify the Minister of the Environment and the ministers provided for by a Cabinet Order according to the type of the designated parts (art. 33-2). They should also obtain and register information on the persons having transferred the designated parts and the parts' sources (art. 33-3). In case of violation, the concerned minister may issue instructions or, in case of violation of the instructions, suspend the business for period not exceeding three months (art. 33-4).

The law further provides for **certification of products** produced from legally-obtained materials by a Cabinet Order by the Minister of the Environment or other concerned minister (art. 33-7) or by a certification organization as assigned and regulated by the minister (art. 33-8 and 9).

The Law for the Conservation of Endangered Species of Wild Fauna and Flora addresses **breeding** of endangered species in suitable facilities for conservation purposes and upon the necessary permits (arts. 11-14). A Basic Policy concerning *ex situ* conservation of endangered species of wild fauna and flora was published in January 2009, including a basic approach to select species subject to *ex situ* conservation and implementation issues. Commercial breeding, of animals

other than endangered wildlife, is not addressed in the legislation.

6. JORDAN

6.1 Overview of the legal framework

The Constitution of the Hashemite Kingdom of Jordan of 1952 does not mention environmental protection or wildlife. Specific provisions on wildlife management are included in the **Agriculture Law No. 44 of 2002**. These should be read in conjunction with more general environmental provisions contained in the successive **Environmental Protection Law No. 52 of 2006**. It should also be noted that the forestry sections of the Agriculture Law are currently in the process of being reformed.⁵⁵ The relevant legal framework is further comprised of Regulation No. 29 of 2005 on natural protected areas and national parks, Regulation No. 37 of 2005 on environmental impact assessment (EIA) and Directive No. Z/34 of 2003 protecting wild animals and birds and regulating hunting and trading.

6.1 Institutional set up and role of stakeholders

The institutional set-up for wildlife management in Jordan is quite distinctive, in that specific authority is allocated to the Ministry of Agriculture, which delegated significant powers to an NGO, while general responsibilities were subsequently assigned to the recently-created Ministry of Environment.

The **Ministry of Agriculture** is entrusted with regulating the protection of wildlife species, hunting and trading with a view to implementing the country's commitments

⁵⁵ As most legal instruments are only available in Arabic, this chapter draws heavily on the FAO report "Interim Report on Forestry Legislation in Jordan", prepared by Gorashi Kanoan in 2007 in the framework of the FAO project TCP/JOR/3101 (the report is on file with the authors of this study).

under CITES and other international conventions. The minister can issue regulations specifying: the licence conditions for hunting; limitations on time and areas for hunting; prohibition of hunting, trapping, trading in, transferring or selling of certain species of wild birds and wildlife; trading with certain species of wild birds; technical and health conditions of zoos; conditions for experimental animals and their protection, nutrition and transfer (art. 57(a), Agriculture Law No. 44 of 2002). The Minister of Agriculture is authorized to form a Wildlife Protection Committee and to specify its functions (art. 57).

The **Royal Society for the Conservation of Nature (RSCN)**, a voluntary organization that was established in 1966 under the patronage of H. M. the King, has been delegated by the Minister of Agriculture in 1975 to implement wildlife legislation, regulate hunting and manage protected areas (Agriculture Law, art. 64).

The **Ministry of Environment** was established in January 2003, primarily to promote the protection of the environment and the sustainable use of its components. Its specific duties include developing a general policy for environmental protection; preparing the plans, programs and projects necessary to achieve sustainable development; setting standards for the sustainable use of the components of the environment; monitoring the status of the environment and its components; issuing the conditions to establish agricultural, development, commercial, industrial, housing, mining and other projects; and approving the establishment of national reserves and parks and their management, monitoring and supervision (Environmental Protection Law, art. 4). The Minister of Environment is to nominate the specialists and officers for the inspection and control on all activities which may damage or prejudice the environment (art. 7). For the implementation of the Environment Protection Law, the Council of Ministers is entrusted to issue regulations relating to

nature protection natural reserves and national parks, and EIA (art. 25).

The Act further establishes the **Environmental Protection Fund** (art. 16) with the aim of supporting the protection of the environment and its components. The consultative committee that will be established by the Council of Ministers, will represent various stakeholders and entities concerned with the environment. Wildlife management could arguably fall under eligible activities.

Wildlife law enforcement is carried out by RSCN in cooperation with public security forces, the army and customs authorities.

6.2 Wildlife tenure and use rights

The Jordanian legislation does not include a general provision on wildlife tenure; however, the Agriculture Law indicates that possession of wild birds and animals by private individuals is prohibited (art. 57(c) (3)). In addition, specific conditions are set out for the issuance of licences that would then confer use rights over wildlife (see section 6.5 below).

6.3 Wildlife management planning

With the exception of protected areas management planning (see section 6.4 below), planning provisions are absent in Jordanian wildlife-related legislation, as law is traditionally seen as an instrument exclusively to prohibit and severely sanction certain undesirable conducts, rather than create the conditions for participatory management and flexible mechanisms ensuring sustainable use.

6.4 Wildlife conservation

The Agriculture Law sets forth a regulatory system for **classification of wildlife** into three schedules, and set out penalties for hunting any animal included in any of these schedules. Five national criteria were identified in order to list wildlife species into the three schedules: international status (IUCN, CITES), national conservation status, ecological importance, local distribution importance, and threats influencing the species.

Regulation No. 29 provides a regulatory regime for the establishment and management of a **natural reserve or national park**. An application should be submitted to the Ministry of Environment requesting the establishment and management of a natural reserve or national park. A technical committee appointed by the minister will review the application and make recommendations, upon which the minister will take the appropriate decision. Then the natural reserve or national park is designated by the Council of Ministers, which will define the borders of protected areas or national parks in accordance with the recommendations of the aforementioned Committee. A detailed management plan will then be drawn by the entity in charge of the reserve or park. Moreover, the minister is authorized to designate any location as a sanctuary for rare fauna or designate an area whose nature is beautiful as an area of special protection.

By virtue of a Memorandum of Understanding between the Ministry of Environment and RSCN, the latter is entrusted to establish and manage nature reserves and to act for their development in a sustainable way. A bilateral committee is envisaged to lay down plans and programmes for the establishment of nature reserves, approval of new ones and extending the existing ones.⁵⁶

⁵⁶ Ibid.

Environmental impact assessment is mandatory for all new projects that may have negative impacts on the environment (Environmental Protection Law, art. 13). A technical committee is composed of 11 specialized and experienced persons drawn from various relevant ministries, including the Ministry of Agriculture (art. 5, Regulation No. 37 of 2005). Lack of representation of the public (including potentially affected individuals/communities and interested NGOs) in the technical committee, is one of the drawbacks of the EIA Regulation. A category-based approach is introduced in screening projects that are subject to a comprehensive EIA (Category 1 referred to in Annex 2), projects that are subject to a preliminary EIA (Category 2 referred to in Annex 3), and projects which are not subject to any EIA (Category 3). The Ministry of Environment is to involve any concerned individual or a representative of the public to participate in investigating the preliminary draft prepared by the project proponent in order to identify significant impacts of the project (art. 9). The project proponent can appeal against the decision of the Minister of the Environment to the same minister, who may appoint an independent panel of experts to review the appeal and submit its recommendations to the minister. The minister's ultimate decision can then be subject to judicial review before the High Court of Justice.

6.6 Wildlife utilization

The Agriculture Law of 2002 sets out the following **prohibitions**: hunting in certain areas and times; entry into the country or export of wildlife species (dead or alive) without a permission from the minister; wildlife culling, possession, transfer or selling or marketing; hunting of carnivores or predatory birds except with a special permit by the minister; altering nests or collecting wild bird eggs; use of vehicles, spotlights and machine guns; use of unauthorized guns for hunting; use of glue and sticky material for trapping wildlife; use of poisons and drugs; use of camouflage places or

calling devices or cages to trap wildlife species; and cruelty to wildlife and wild birds (art. 57(c)).

The 2003 Regulation protecting wild animals and birds and regulating hunting and trading prescribes the conditions for issuing a **hunting licence**. It also bans hunting in the Eastern Desert except for the species, regions and seasons specified by the minister and in accordance with a gazetted declaration. It further prohibits absolutely hunting, trapping, transporting and selling any wildlife species not mentioned in the hunting schedule; and prohibits export, import, re-export of any wildlife species and derivative parts unless a special permit is granted. Temporary hunting licences may be issued to foreigners (art. 4). Conditions for renewal of licences are also set forth (art. 5). RSCN is entrusted to manage all aspects of hunting licensing (art. 7).

There appears to be no specific rules related to wildlife-watching and eco-tourism or to wildlife breeding and ranching, although breeding programmes for endangered species are in operation in natural reserves (Third National Report to the CBD: 22). Regulations on breeding and ranching are currently under preparation by RSCN.

7. LAO PEOPLE'S DEMOCRATIC REPUBLIC

7.1 Overview of the legal framework

After the promulgation of the 1991 Constitution, Lao PDR enacted various laws and decrees for the protection of its environment and natural resources, with the 1999 Environmental Protection Law and the 1996 Forestry Law being the main pieces of legislation in this area. The **Constitution**, as amended in 2003, provides for the obligation of all organizations and citizens to "protect the environment and natural resources: land surfaces, underground resources, forests, animals, water sources and the atmosphere" (art. 19). The **Environmental Protection**

Law contains measures for the protection, mitigation and restoration of the environment, as well as guidelines for environmental management and monitoring. It specifically aims at protecting natural resources and biodiversity and promoting sustainable socio-economic development (art. 1). The **Forestry Law**, revised in 2007, determines basic principles, rules, and measures for the administration, use and maintenance of forest land and resources, including wildlife, in order to make forests a sustainable source of livelihoods for the people (art. 1).

Of particular relevance to wildlife management, the 1989 **Decree 118 on Wild Animals, Fisheries, Hunting and Fishing** makes provision for the protection and development of the wildlife population, including endangered and protected species, and lists the permitted hunting techniques. The 1993 **Decree No. 164 on national biodiversity conservation areas** (not available) established the country's protected area system. The 1996 Forestry Law used to regulate a series of wildlife-related issues; however, following its 2007 revision and enactment of the 2007 **Wildlife and Aquatic Law** the latter regulates the conservation, breeding and utilization of wildlife and aquatic animals, so that sustainable wildlife management contributes to livelihoods of all ethnicities and assists in the realization of national socio-economic goals (art. 1).

Lao PDR belongs to the group of least developed countries and the majority of its population depends on natural resources for subsistence. This is recognized in the country's 2004 National Biodiversity Strategy and Action Plan, the stated goal of which is to maintain the diverse biodiversity as one key to poverty alleviation and protect the current asset base of the poor (National Biodiversity Strategy and Action Plan: vi).

7.2 Institutional set up and role of stakeholders

Established in 1993, the **Science, Technology and Environment Agency (STEA)** is the principal environmental management and monitoring authority. Among others, STEA issues general regulations and measures on biodiversity management and monitoring (Environmental Protection Law, arts. 15 and 36). Its mandate covers the overall coordination and oversight of environmental affairs and management throughout the country. The Environmental Protection Law has also established **environmental management and monitoring units** at a ministerial, provincial, municipal or special zone level, as well as at district levels. They have the duty to designate biodiversity protection areas and protected species. **Village administrations** also engage in environmental management and monitoring (Environmental Protection Law, arts. 15 and 35).

Organizations and persons are recognized as primary contributors to the mitigation of adverse effects on the environment. They have the **right to send petitions or complaints** about any undertaking that causes negative environmental impacts, addressing them to the local authority or the environmental management and monitoring unit of the area, where the damage occurs. The responsible agency has the duty to consider the issue within 30 days from the date of receipt, but urgent issues are to be addressed immediately. When local authorities or responsible sectoral agencies cannot resolve the issues, they have to report to the next higher level in their chain of command or to the higher environmental management and monitoring agency, within 7 days. The responsible agency has the duty to address the petition or complaint within 30 days and to notify the petitioner of the result (Environmental Protection Law, art. 25).

The government encourages and promotes wildlife conservation and sustainable management (Wildlife Law, art. 5), while individuals and organizations are obliged to take part in related activities and take any necessary measures to prevent adverse impacts on wildlife from pandemic diseases, hunting, illegal trade and habitat destruction (art. 7).

The **Ministry of Agriculture and Forestry**⁵⁷ is the central government agency dealing with wildlife management, including drafting of policies, strategies and regulations, in collaboration with other concerned government agencies and local authorities (Wildlife Law, arts. 54-55). The Ministry's Department of Forestry is responsible for wildlife and protected areas issues.⁵⁸ Wildlife management responsibilities also rest with the provincial and capital city divisions of agriculture and forestry; the offices of agriculture and forestry of districts and municipalities; and village forest units, with regard to implementation at their respective levels (Wildlife Law, arts. 54-57). The district and municipal offices are responsible for registering wildlife used for breeding and hunting equipment; authorizing village-level wildlife management and conservation; and monitoring implementation activities of the village forestry units.

A **Wildlife and Aquatic Life Inspection Organ** is established by the Wildlife Law, with enforcement-related responsibilities. It should cooperate with government agencies at the central and local level with regard to implementation of wildlife-related legislation (art. 60). Individuals and organizations should communicate any possible violation of wildlife laws and regulations to the concerned agency (art. 63). Those demonstrating outstanding contribution to wildlife management, conservation and sustainable use should receive relevant incentives, including rewards in accordance with regulations (art. 66).

⁵⁷ See www.maf.gov.la/.

⁵⁸ See www.dof.maf.gov.la/.

With regard to **funding** for wildlife management activities, the Forest and Forest Resource Development Fund is also operating as a fund for wildlife conservation and protection (Forestry law, art. 37; Wildlife Law, art. 27). It is envisaged that funding would result from budget allocation, natural resource utilization projects, and contributions from individuals, organizations, collectives or international organizations (Forestry law, art. 37(2)). Wildlife-related funds should be used for purposes such as surveying and classification, habitat preservation, breeding activities and information dissemination (Wildlife Law, art. 28).

7.3 Wildlife tenure and use rights

Wildlife living in the natural environment on the territory of Lao PDR is **the property of the nation**, represented by the state, which is responsible for wildlife management throughout the country. Wildlife held in captivity for breeding belongs to the individual or organization possessing it, in accordance with respective laws and regulations (Wildlife Law, art. 4).

Rights with regard to wildlife use are established by the Wildlife Law, and are distinguished into government-granted, transferred and inherited (arts. 45-48). A transferred right refers to the sale or granting of a right to use wildlife bred by the individual (art. 47). Wildlife users and business operators must take measures to prevent illegal hunting and trade, and monitor animal health (arts. 50-51).

Customary rights to use unprotected wildlife (in the "common or general category") for "cultural reasons" are recognized and should be exercised within the village limits in accordance with rules and regulations (Wildlife Law, art. 32). Customary hunting rights are also recognized for unprotected wildlife, as well as for wildlife in the "management category" (partially protected) but only for animals, areas and seasons specified by the

authorities (art. 24). The Forestry Law provides for customary utilization of forest and forest products for household utilization, in accordance with village regulations, but the provision does not specifically mention wildlife (art. 42).

With regard to **human-wildlife conflicts**, citizens have the right to capture or kill protected animals, in case they are threatening human lives. Before or at least after killing, approval must be requested or a report must be sent to the relevant authorities. The animal killed remains the property of the state (Wild Animals Decree No. 118, art. 5; Wildlife Law, art. 24). In case protected animal species cause damages to livestock, cultivation and other property, this must be reported to the district or municipality authorities to resolve the issue (Wild Animals Decree No. 118, art. 5; Wildlife Law, art. 24).

7.4 Wildlife management planning

Wildlife management planning is the responsibility of the Ministry of Agriculture and Forestry, which must formulate a strategy plan for wildlife conservation and management for adoption by the government (the National Assembly or the Council of Ministers), in cooperation with other central government and local authorities, aiming to guarantee the sustainable economic and social development of the country, contribute to poverty eradication and improve livelihoods (Wildlife Law, arts. 16 and 55; Wild Animals Decree No. 118, art. 2). Public participation at the local level is required for the identification of potential conservation zones, but no specific procedure is provided for (art. 17).

Village-level authorities have increased responsibility with regard to forest management planning, including wildlife management planning, for **village forests**, in accordance with PM Decree no. 59 on Sustainable Management of Production Forest of 2002 and the Regulation no. 535 on the Management of Village Forests of

2001 (not available).⁵⁹ Village forests, which can include conservation forests (see below) are allocated to village administration authorities by the district governor or municipality chief (Forestry Law, art. 82).

7.5 Wildlife conservation

In 1993, a **Protected Area System** was created by Decree 164, establishing 20 national biodiversity conservation areas. Besides this, there are a number of provincial protected areas (UNEP: 56). Use restrictions in national biodiversity conservation areas include cutting trees, collecting forest products, and expansion of shifting cultivation or settling of people (art. 4; Hyakumura: 122).

Guidelines on national biodiversity conservation areas (NBCA) establishment and zoning, and also on restricted activities and development fund establishment, and the rights and duties of state agencies in NBCA and wildlife management are provided for in MAF Regulation no. 0524/2001 on Management of National Biodiversity Conservation Areas, Aquatic Animals and Wildlife and the subsequent MAF Regulation no. 360/2003 on Management of National Biodiversity Conservation Areas and Wildlife (not available). Regulation no. 360 prohibits wildlife harvest in the national biodiversity conservation areas for other than customary use (Forestry Strategy: 19). The PM Decree no. 59 on Sustainable Management of Production Forest of May 2002 provides for delineation of production forest and management planning and calls for the **participation of villages in all aspects of**

⁵⁹ Village forestry is defined as a partnership between the state and organized villagers for the management of designated forests to sustain benefits, which are equally shared by the villagers and the rest of the national community. Village forestry is understood as a process rather than a predetermined output, and as a continuum of approaches to people-oriented forest management with different intensities in the degree of participation. A National Village Forestry Strategy was elaborated in 2001 (NAFRI: 135).

production forest management, including wildlife management (ADB, Annex 3-2: 14-15; Khamphay Manivong & Phouthone Sophatilath: 9-11).

Following the 2007 revision of the Forestry Law, forests are classified into protection, conservation and production forests (Forestry Law, art. 9). **Conservation forests** are of particular relevance to wildlife management, as they serve to protect animal species and biodiversity, as well as beautiful landscapes suitable for tourism, among other purposes (arts. 11 and 24). They can be established at the national, provincial, district or village levels (art. 11). They are divided into total protection, controlled use, corridor and buffer zones. The main habitat, feeding and breeding place of wild animals can be identified as a total protection zone, where unauthorized entry is strictly prohibited. The controlled use zone is adjacent or close to the total protection zone. Hunting restrictions apply, but people are allowed to enter and use forest products according to the management plan. Corridor zones are areas between two forests and are managed to provide passage for animals, in order to increase wildlife population. Any activity that may obstruct animals' passage is prohibited. Buffer zones are areas managed to prevent any encroachment in the conservation forest (art. 24). Preservation of **production forests** aims specifically at achieving socio-economic development and poverty eradication (art. 25).

The Wildlife Law provides for three **categories of wildlife**: protected ("prohibition" category); partially protected ("management" category); and unprotected ("common or general" category) (art. 10). The prohibition category includes wildlife species listed as rare, near extinct, high value or of special importance for socio-economic, environmental, educational or scientific purposes. Such wildlife should be managed and preserved, and utilization requires the government's permission (art. 11). The management category includes wildlife considered beneficial for

national economic, social and environmental interests, and is important for livelihoods and scientific research (art. 12). Use of such wildlife is controlled. The general category includes wildlife able to reproduce widely in nature and can be used in accordance with the law and as long as such use does not threaten species numbers nor does it impact adversely on the ecosystem (art. 13). The lists of species in the prohibition and management category are established or amended by the government, upon recommendation of the Ministry of Agriculture and Forestry (art. 22). The law does not provide for public participation in the establishment or amendment of such lists.

With regard to **Environmental Impact Assessment** (EIA), STEA has the duty to issue general regulations on EIA procedures and methods. Each agency is responsible for the development projects and activities of its sector and issues its own regulations, based on the general EIA regulation issued by STEA. The EIA process should ensure the participation of local administrative authorities, mass organizations and population likely to be affected by the respective development project or activity (Environmental Protection Law, art. 8). Wildlife is not specifically mentioned in the Law. An EIA Regulation was issued in 2000, providing further guidelines on EIA during the planning and execution of development projects (not available).

7.6 Wildlife utilization

Wildlife can be used for the public benefit; for household or family purposes; for customary purposes; or for business (Wildlife Law, art. 29). Wildlife use for the public benefit, including tourism, should follow the laws and regulations, to guarantee sustainable use and avoid adverse impacts to the environment or the society, and requires the permission of the authorities (art. 30). Wildlife use for household purposes, for instance medicinal purposes, is restricted to the common or general category wildlife and should follow

regulations regarding seasons and allowed areas, while use of wildlife in the management category should follow the regulations of the Ministry of Agriculture and Forestry (art. 31). Customary use is described in section 7.5 above. Wildlife use for business, including farming, trade and tourism, is allowed in the conservation areas and in accordance with regulations (art. 33). Any wildlife-related business operation should function in accordance with the laws and the international conventions that Lao PDR has signed (art. 34). Approval and registration with the agriculture and forestry authorities is required: at the government level for use of wildlife in the prohibition category; the ministry level for use of wildlife in the management category; and the provincial or Capital city level for the common or general category (art. 35). Similarly, authorization and permission from such authorities is required for keeping wildlife for breeding or business purposes (art. 36).

Subsistence **hunting** still contributes to rural livelihoods, while commercial hunting is also on the rise, particularly for foreign markets. The law provides for the establishment of categories of animals which may be caught or hunted; hunting closed seasons; and areas where hunting is prohibited (Decree No. 118, art. 3; Agreement of Long Kone Quarter, art. 4). Hunting of protected wildlife is prohibited, with the exception of educational, research and breeding purposes and upon government permission. Hunting of wildlife listed in the management category can be allowed only for specific animals, areas and seasons as a customary activity. Hunting of wildlife in the management category for business purposes requires the permission of the Ministry of Agriculture and Forestry. Wildlife in the common or general category can be hunted in specific seasons and according to regulations, while hunting for such animals for business purposes requires the permission of provincial or Capital city authorities (Wildlife Law, art. 24). Capture or hunting of wildlife in the conservation zones, during breeding seasons, and when pregnant or with small calves is prohibited (art. 52).

Wildlife breeding is encouraged in order to increase population numbers, support socio-economic development and improve livelihoods (Wildlife Law, art. 20). Wildlife can be captured and held in captivity for family use in accordance with laws and regulations and in adequate conditions (art. 21). Wildlife listed in the prohibition and management category held in captivity for business purposes should be registered with the district or municipality authorities, or declared to the village forestry unit in case it is not destined for business purposes (art. 23). Breeding operations should not contaminate the environment (art. 52(8)).

With regard to **wildlife trade**, "any import and export of biodiversity resources such as plants, seeds, animal breeds and microorganisms shall strictly comply with the regulations and measures on biodiversity management" (Environmental Protection Law, art. 15). Wildlife from breeding activities can be traded: from the second generation onwards for wildlife in the prohibition category; and from the first generation for the management category. The animals used as parents should be preserved for further breeding or released into the natural environment. Wildlife in the common or general category can be traded as prescribed in the laws and regulations (art. 40). Transportation of wildlife within the country requires permits issued by the agriculture and forestry authorities (art. 41). Import and export require additional permits, documents regarding legality of origin, and breeding and veterinary certificates (art. 42).

With regard to **eco-tourism**, the Constitution provides that the state and society promote, develop and open up the country to cultural and historical tourism and eco-tourism (art. 30). The Forestry Law states that utilization of forest for tourism or recreation is encouraged, according to the laws and regulations (arts. 5 and 54). The Law then lists eco-tourism among business operations in forests (art. 45), which require the approval of, and registration with, forest authorities (art. 45). Tourism and recreation activities should be undertaken in the

management zones of all kinds of forests, in specifically designated areas (art. 43). Eco-tourism operations should not cause negative impacts on the environment (art. 54), but the reviewed legislation does not include any specific guidelines regarding potential negative impacts on wildlife. The 2006 **Law on Tourism** lists wild animals as a resource for nature tourism (art. 8). The National Ecotourism Strategy and Action Plan was developed in 2003 to further develop and promote ecotourism. The strategy sets out a framework to deliver socio-economic and environmental benefits to rural communities and conservation benefits to the National Biodiversity Conservation Areas. Its implementation is largely project-based (Khamphay Manivong & Phouthone Sophathilath: 25-26). Nine of the Lao PDR's 17 rural provinces are currently engaged in planning activities to develop and promote eco-tourism (NBSAP: 12).

8. MALAYSIA

8.1 Overview of the legal framework

Both the federal and state governments can enact laws regarding wildlife management in Malaysia, according to the country's **Federal Constitution** of 1957, as amended. Wildlife management in Peninsular Malaysia is regulated by the 1972 **Protection of Wildlife Act** as amended, while the 1997 Sabah Wildlife Conservation Enactment and the 1998 Sarawak Wildlife Protection Ordinance apply in Sabah and Sarawak respectively. The Protection of Wildlife Act is currently under review to emphasize biodiversity conservation and strengthen related penalties (Fourth National Report to the CBD: 38). The 2008 **International Trade in Endangered Species Act** regulates the import, export and re-export of CITES-listed species throughout the country.

Protected areas and species are further regulated by the 1980 National Parks Act in

Peninsula Malaysia; the 1984 Parks Enactment and the Fauna Conservation Ordinance in Sabah; and the 2002 Parks By-Laws in the Federal Territory of Putrajaya.

8.2 Institutional set up and role of stakeholders

The distribution of law-making authority between the federal and state governments is provided for in the Federal Constitution (Ninth Schedule, comprising a list of matters falling under federal competence, a list of matters falling under state competence and a list of matters falling under concurrent competence). Wildlife protection and national parks are included in the list of matters under **concurrent** authority of both the federal and state governments. In case of inconsistency, federal law takes precedence over state law. However, this still raises the issue of how uniformity of state laws may be promoted, particularly with respect to matters which fall under state jurisdiction alone. Regulation of wildlife management, protected areas, forestry and native peoples' rights is specific to Peninsula Malaysia, Sabah or Sarawak (National Biodiversity Policy: 18).

Government authorities responsible for wildlife management are: the Department of Wildlife and National Parks of the Ministry of Natural Resources and Environment, including a Law Enforcement Division, for Peninsula Malaysia; the Sabah Wildlife Department; and the Forests Department Sarawak. The **Department of Wildlife and National Parks** for Peninsula Malaysia is directed by a Director-General for Wildlife and National Parks, a Deputy Director General, and such number of directors, deputy directors, assistant directors and rangers as may be considered necessary (Protection of Wildlife Act, art. 4). The **Sabah Wildlife Department**, under the Ministry for Tourism, Development, Environment, Science and Technology, is administered by a Director (Sabah Wildlife Conservation Enactment, art. 3). The Director may appoint suitable persons to be

honorary wildlife wardens, to assist with implementation (art. 6); and may licence suitable persons to be wildlife guides (art. 8). The **Forest Department of Sarawak** is responsible for forest, wildlife and national park management in Sarawak. The Sarawak Wildlife Protection Ordinance provides for the appointment of a Wildlife Controller, Wildlife Wardens and Rangers by the minister (art. 3). The Controller may, with the minister's approval, constitute a special wildlife committee, headed by a warden, and consisted of rangers, honorary wildlife rangers and residents selected by the Controller, to assist him with the management of a wildlife sanctuary (art. 9). licence

The 1980 National Parks Act makes provisions for the establishment of a **National Parks Advisory Council**, which shall assist the Minister of Natural Resources and Environment on matters relating to the conservation, utilization, management and development of national parks, consisted of representatives of different government department and no more than six other persons to be appointed at the minister's discretion (art. 5).

The 1998 **National Biodiversity Policy** statement is "to conserve Malaysia's biological diversity and to ensure that its components are utilized in a sustainable manner for the continued progress and socio-economic development of the nation". Its principles include that the sustainable management of biological diversity is the responsibility of all sectors of society; it is the duty of government to formulate and implement the policy framework for sustainable management and utilization of biological diversity in close cooperation with scientists, the business community and the public; and the role of local communities must be recognized and their rightful share of benefits ensured. Its objectives include optimizing economic benefits from sustainable utilization and ensuring long-term food security.

8.3 Wildlife tenure and use rights

Peninsula Malaysia's or Sarawak's legislation do not include a general statement on wildlife tenure. The Sabah Wildlife Conservation Enactment, instead, states that all protected animals and their products shall be the property of the government, unless they have been lawfully imported or obtained upon a valid licence or permit (art. 40). Possession of totally protected animals by individuals needs authorization by the Minister for Tourism, Development, Environment, Science and Technology (art. 41). Possession of other protected animals or products requires a valid licence or permit (art. 41(2)). Keeping protected animals in captivity also requires a permit, upon the condition that the applicant is a fit person to keep the animal and has made adequate arrangements (art. 43). A **certificate of legal ownership** is issued by the Director, under the authority of a valid licence or permit (art. 47).

Traditional and native rights to wildlife use are recognized upon conditions and in differing degrees in Peninsula Malaysia, Sabah and Sarawak, as reviewed below.

With regard to **human-wildlife conflicts**, in peninsular Malaysia officers may shoot any wild animal or bird, if it is a danger to human life or property (Protection of Wildlife Act, art. 53). Any land owner or occupier may use birdlime for the destruction of grain-eating birds damaging cereals (art. 54); and may shoot a wild animal or bird causing serious damage to crops and domestic animals, provided reasonable efforts to drive the animal away are used first (art. 55). Such damage of wildlife, if any, shall be reported to the authorities (art. 55(2)); killed wildlife shall be the property of the state (art. 55(4)). In Sabah, a land owner, or any person, is allowed to take "reasonable" measures to defend human life, livestock, crops or other property from attack or damage by protected animals (Sabah Fauna Conservation Ordinance, art. 39). The use of a firearm shall only be resorted where no other alternative is possible (art. 39(3)). For

totally protected animals listed in Part I of Schedule 1, only defence of human life applies (art. 39(5)). The facts and circumstances shall be reported immediately to the nearest authorized officer and any dead animal shall be the property of the government (art. 39(7)). In Sarawak, dangerous animals can be hunted or killed by a warden or in defence of human life and property (Sarawak Wildlife Protection Ordinance, art. 42).

8.4 Wildlife management planning

Wildlife management planning rests largely with the state authorities and may differ between Peninsula Malaysia, Sabah and Sarawak.

The Sabah Wildlife Conservation Enactment includes provisions regarding preparation of a management plan within three years after the declaration of a wildlife sanctuary, including details of management objectives and zones for conservation and management purposes (Sabah Wildlife Conservation Enactment, art. 13). A management plan is also required within three years from the establishment of a wildlife hunting area (art. 64). There are no specific provisions regarding public involvement in the planning process. The reviewed legislation for Peninsula Malaysia and Sarawak does not contain specific planning requirements.

8.5 Wildlife conservation

8.5.1 Peninsula Malaysia

A state governor may, after consultation with the Minister of Natural Resources and Environment, declare any state land to be a **wildlife reserve or sanctuary**, define its boundaries and designate the responsible officer (Protection of Wildlife Act, art. 47). For wildlife reserves, the governor may also specify protected or totally protected wild animals and birds, in addition to those specified in the Schedules to the Wildlife Act (art. 47). There are no public participation requirements in the designation of wildlife

reserves or protected wildlife. Entering a wildlife reserve or sanctuary requires a written permit from the Department of Wildlife and National Parks (art. 48). Licensed hunters and individuals wishing to enter the reserve or sanctuary for the purposes of art, science or restoration, shall be granted a written permit (art. 48(2)). Hunting is not permitted in wildlife sanctuaries (art. 49). In wildlife reserves, licensed hunters may hunt but a permit is required (art. 50). The Protection of Wildlife Act includes schedules on "totally protected" wild animals and birds, "protected" wild animals and birds (game wildlife) and protected insects; hunting-related schedules on the standard of maturity and points; and law enforcement-related schedules.

According to the National Parks Act, the state authority may, on the request of the Minister of Natural Resource and Environment, reserve any state land for the purpose of a national park, placed under the control of a national park committee. There are no requirements for public involvement in the process. Any such reservation of land shall be notified in the gazette (art. 3). Wildlife protection is listed as one of the objectives of national park establishment (art. 4). A committee shall be constituted by the minister for each national park, consisting of government representatives and not more than three other persons appointed at the minister's discretion. The committee shall be responsible for the management of the park, under the guidance of the National Parks Advisory Council (art. 7).

The Director General of the Department on Wildlife and National Parks shall have the general supervision of all matters relating to national parks (art. 8). No person other than an officer may reside on, enter, use or occupy land within a national park without the permission of the Director General (art. 9). The minister "may make regulations not inconsistent with the Act as to any or all of the following matters": the exclusion of members of the public from certain areas within a national park; the prohibition of the

killing and capturing wildlife; the construction and maintenance of hotels and works of public utility (art. 11).

Applicable to the Federal Territory of Putrajaya, the **2002 Parks By-Laws** prohibit catching or killing any animal or bird in a park or possessing any instrument for catching animals (art. 5).

8.5.2 Sabah

The Minister for Tourism, Development, Environment, Science and Technology, after consultation with the Sabah Wildlife Department Director, may recommend that an area be declared a wildlife sanctuary, if necessary to maintain wildlife habitats, ensure the maintenance of biodiversity values or ensure the conditions necessary to protect significant species of animals or plants (Wildlife Conservation Enactment, art. 9). The proposal shall include details on **traditional rights** in the proposed area and a **summary of the consultations** held with relevant government agencies and of presentations made by persons and communities likely to be affected (art. 9(2)). Declaration of an area as a wildlife sanctuary is made by the *Yang di-Pertua Negeri* (state governor) and published in the gazette (art. 9(6)). From the date an area is declared a sanctuary, no land may be alienated and no rights shall have effect except in accordance with the Enactment (art. 9(8)). Any person or group who objects to the proposed sanctuary or claims loss of rights may provide the grounds of the objection or the rights claimed (art. 10(2)). A claim with respect to loss of rights may be settled by agreement between the Director and the claimant, and any person may appeal to the High Court within thirty days of the notification (art. 10(3) and (4)). From the date of the publication, any land title, right or concession granted, including for hunting, shall be void (art. 11).

A **management plan** should be prepared within three years after the declaration of a wildlife sanctuary, including details of management objectives and zones for

conservation and management purposes (Wildlife Conservation Enactment, art. 13).

Residence in and entry into a wildlife sanctuary is restricted; entry in designated parts may be allowed upon a valid permit (art. 15). However, **native or traditional rights** specified in the proposal may continue to be exercised in the sanctuary, except where under agreement with the Director, the persons entitled opted for compensation (art. 20).

Conservation areas may also be declared by the *Yang di-Pertua Negeri* for wildlife and habitat protection in **areas neighbouring wildlife sanctuaries** (art. 21). The legislation does not provide for public involvement in the process. The *Yang di-Pertua Negeri* may enact regulations to provide for the control of development projects, hunting and movement of animals in conservation areas (art. 21(2)). Provisional wildlife sanctuaries may be declared by the Director when there is an urgent need to save wildlife or its habitat from imminent destruction (art. 22). Such declaration shall not prevent the residence of persons already in the area or restrict their movement except in those parts closed for the protection of vulnerable wildlife populations (art. 22(6)).

Activities in Sabah parks are regulated by the 1984 Parks Enactment, as amended in 1996. A consultation procedure before establishment is provided for (art. 6-7). The *Yang di-Pertua Negeri* shall then make an order conceding, modifying or disallowing the exercise of declared rights and privileges (art. 8). The *Yang di-Pertua Negeri* may convert any forest reserve declared under the Forest Enactment or any game sanctuary or bird sanctuary under the Fauna Conservation Ordinance to be a park (art. 12). A **Board of Trustees of the Sabah Parks** is created, consisting of members appointed by the *Yang di-Pertua Negeri*, with wide management responsibilities (art. 24-25). The Board shall appoint a Director of Parks and any member of parks officers as necessary (art. 41).

Without prejudice to any right or privilege lawfully acquired, the written permission of the Board, the Director or any authorized park officer is required for hunting any animal or taking or destroying any egg or nest, introducing any animal in, or removing any animal from the park (art. 48). No criteria for such authorizations are provided for in the Enactment.

Forest reserves in Sabah are established in accordance with the 1968 Forest Enactment, as amended, and can include wildlife reserves for the protection of wildlife (arts. 5-22). Animals within forest reserves are subject to the provisions of the Fauna Conservation Ordinance, which also provides for declaration of game or bird sanctuaries (art. 7).

8.5.3 Sarawak

A **wildlife sanctuary** may be created from any state land which is not part of a national park or a nature reserve (Sarawak Wildlife Protection Ordinance, art. 10). Any rights or privileges associated with the proposed area need to be reported within a period of sixty days from the notification or they shall be deemed abandoned or waived (art. 11). The **rights or privileges** that may be recognized in the area shall be only those of a native community and enjoyed for an uninterrupted period beginning prior to 1 January 1958 and ending no later than the date of the notification (art. 12). The Chief Wildlife Warden shall inquire into the claim and provide a report to the Controller (art. 12-13). Where any right or privilege is admitted or found to have subsisted at the time of the notification, the Controller shall regulate its exercise, including directing the areas or places within the sanctuary where it can be exercised and the manner of exercising it; proceed to extinguish such rights and pay compensation to the claimants, with the approval of the minister, or permit their exercise in any other area outside the sanctuary (arts. 16-17). Appeals may be directed to a Sessions Court (art. 19). Following the Controller's decision on the rights and privileges, the Minister of

Environment and Public Health may, with the approval of the *Majlis Mesyuarat Kerajaan Negeri* (the governor), publish the notification constituting the wildlife sanctuary (art. 20).

The minister, may, with the approval of the *Majlis Mesyuarat Kerajaan Negeri*, delineate a **wildlife sanctuary within a forest reserve**. Such a declaration will result that the area shall cease to be a forest reserve, and limit or prohibit the exercise of any subsisting rights and privileges (art. 21). Entry into a wildlife sanctuary requires the written permission from the warden in charge. Hunting is prohibited in the sanctuaries (art. 24).

The **environmental impact assessment** legislation requires an environmental impact assessment for drainage and irrigation activities with regard to their impacts on wildlife habitat (Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987, Schedule, sec. 3).

8.6 Wildlife utilization

8.6.1 Peninsula Malaysia

Shooting, killing or taking any protected wild animal or bird, nest or egg, carrying on the business of a dealer or a taxidermist, keeping or breeding protected animals and birds and trophies, import and export, requires a **licence, permit or special permit** granted by the Director of the Department of Wildlife and National Parks, according to the quota prescribed by the minister (Protection of Wildlife Act, arts. 29-30). No other criteria related to the permitting system are specified. The conditions with respect to the granting of licences, including open and closed seasons with regard to specified wild animals or birds, quotas, methods and means to be used, restricted localities and licence categories may from time to time be prescribed by the minister by order in the *Gazette* (art. 31). The minister may also issue permits additional to the quota of

licences and permits (art. 32). A register of persons licensed and granted permits is kept by the Director General of the Department of Wildlife and National Parks (art. 35). Licensed hunters shall record their killings or takings in the appropriate space provided in the licence (art. 36). Licences are not transferable (art. 45), and may be suspended, revoked or withdrawn without assigning any reasons, if the minister has reason to believe that any of the provisions of the Act, regulations, rules or conditions have been contravened (art. 44A). No licence or permit shall be granted in respect of any totally protected wild animal or bird, their nest and egg (art. 34).

Wildlife dealers and taxidermists are required to record their dealings (art. 37) and shall purchase wildlife only from licensed hunters and the Department of Wildlife and National Parks (art. 39). Protected wildlife may be offered for sale only during the open season or during the first 30 days of the closed season (art. 39(3)). Only the Department of Wildlife and National Parks has the right to sell protected wildlife to individuals other than licensed dealers and taxidermists (art. 40).

The minister may grant not more than one special permit to each applicant for each year, to shoot, take or breed any totally protected wild animal or bird; grant special permits to keep, confine or breed totally protected wild animals to any zoo; grant not more than one special permit to each applicant for each closed season to hunt any protected wild animal or bird during the closed season. Conditions may be imposed on such special permits (art. 51(1)).

Any member of an aboriginal community may hunt wild animals and birds described in Schedules 2 and 4, such as deer, mouse deer, game birds and monkeys, for subsistence purposes (art. 52).

The minister may enact specific regulations on registration of trophies, licence and permit granting conditions as well as conditions for confinement and breeding (art. 104).

8.6.2 Sabah

The Sabah Fauna Conservation Ordinance regulates the functions and powers of the Chief Game Warden, honorary game wardens, deputy and assistant game wardens and game rangers in Sabah (arts. 4-6); and types of hunting licences to be issued by the Game Warden in absolute discretion. It is noted that no game licence shall authorize the hunting of female elephant. Special licences may also be issued with absolute discretion, for scientific research, but not for the hunting of rhinos or orangutan (art. 8). Hunting regulations and sanctions are provided for (arts. 11-17), as well as lists of protected and game animals.

The Sabah Wildlife Conservation Enactment **lists species** protected from hunting in Part I of Schedule 1 (art. 25). Species listed in Part I of Schedule 2 and in Schedule 3 may be hunted with a licence and according to the quota set (art. 25(2)). Possession of a valid firearm licence is required for the issuing of hunting licence (art. 28). The Director may refuse to grant a licence without assigning any reason for such refusal (art. 28(2)). No hunting licence shall be issued unless the Director is satisfied that the applicant is in possession of suitable firearms, competent to use them, and able to identify the animals of the species listed in the Schedules (art. 28(4)), thus the Director may require the applicant to undergo tests to ensure competence to use firearms and to identify species of animals (art. 28(5)). Hunting licences are not transferable (art. 28(8)). The enactment categorizes licences into: sporting; commercial hunting; animal kampung (village); and other licences as may be prescribed (art. 29). An **animal kampung licence** may be granted to a suitable person to hold it on behalf of and for the benefit of the kampung to which the person belongs. It entitles kampung members to hunt in the area and for species and numbers specified in the licence. The animal kampung licence is granted for one year without any fee, and may be renewed annually (art. 32).

Except in the case of the animal kampung licence, a hunter shall register all animals killed or captured (art. 35). The enactment further provides for hunting restrictions, which may be raised upon the Director's authorization (art. 33).

Sale of protected animals or their products is also allowed upon a certificate of legal ownership, an animal dealer's permit, an animal farming permit, a commercial hunting licence or in the kampung market by a kampung member (art. 48). The **meat** of any animal killed under a sporting licence shall not be sold, but shall be offered to the headman of a kampung, who shall be entitled to remove it from where it is situated (art. 52).

The enactment provides for the establishment of **wildlife hunting areas**, upon declaration by the *Yang di-Pertua Negeri* (art. 64). The proposal should include details for any native or traditional rights in the proposed wildlife hunting area and a summary of undertaken consultations with relevant government agencies and communities likely to be affected (art. 64(2)). The same consultation procedure is provided for in the enactment (art. 64). A management plan is to be prepared within three years from the declaration (art. 68). Any person may hunt any animal in the appropriate zones of the wildlife hunting area, upon a permit issued upon the Director's discretion (art. 71). Native and traditional rights as specified in the proposal may continue to be exercised (art. 75).

The business of a **wildlife tour operator** in any protected area requires a permit issued by the Director (Sabah Enactment, art. 76). A wildlife tour operator shall be required to provide periodic reports on any sign of unlawful human activity, wounded animals or discovered animal remains (art. 76(6)). Animal **farming** requires a permit issued by the Director, subject to conditions specified on the permit regarding constructions, sanitary conditions, and measures for the prevention of escape and of animal diseases (Sabah Enactment, art. 78). Where an area

is declared as a turtle egg traditional collection area, it shall be reserved exclusively for collection of turtle eggs for subsistence, without a permit, in accordance with the traditional rights of the people living reasonably adjacent to the area. These rights do not include the right to sell the eggs (art. 87). Commercial turtle farms are regulated in accordance with the 1964 Fauna Conservation (Turtle Farms) Regulations, which provide for the tender procedure for the granting of an exclusive right to collect turtle eggs in turtle farms (art. 3). The award of a tender shall be in the absolute discretion of the Chief Game Warden (art. 4). No turtle eggs shall be collected from any farm or area reserved for collection during the month of March (art. 6).

8.6.2 Sarawak

It is an offence to hunt, kill, capture, sell or be in possession of any completely **protected animal** or their recognizable part, derivative, or nest, except in accordance with a written permission issued at the Controller's discretion for scientific or educational purposes or for the protection and conservation of such animal (Sarawak Wildlife Protection Ordinance, art. 29). A licence is required for the hunting or possession of any other protected animal or any part derived thereof (art. 29(2)). A Controller's licence is needed for breeding, rearing or keeping any wild animal (art. 35).

Unless licenced, no person shall have in his or her possession any species of wild mammal, bird, reptile or amphibian, except for no more than five kilos for own consumption and with the exception of natives residing within a native area land or native customary land who may have any wild animal for own consumption or use (art. 37). Lists of totally protected and protected animals are attached to the Ordinance.

8.6.3 Federal legislation

Any person who produces **captive-bred animals** of CITES-listed species for

commercial trade purposes needs to be registered with the Management Authority (International Trade in Endangered Species Act, art. 14) and shall keep and maintain records of their stocks and transactions (art. 18).

The **import of wild carnivores** into the country including the requirement of a veterinary health certificate and transport requirements are regulated by the 2000 Regulation for the Importation of Wild Carnivores into Malaysia.

9. NEW ZEALAND

9.1 Overview of the legal framework

Legislation of relevance to wildlife conservation and management in New Zealand includes: the 1987 **Conservation Act**; the 1953 **Wildlife Act**; the 1977 **Wild Animal Control Act**; and the 1989 **Trade in Endangered Species Act**. The legislative framework for protected areas further includes the 1977 **Reserves Act** and the 1980 **National Parks Act**. The 1991 **Resource Management Act** is the main general piece of legislation on environmental management.

The Conservation Act, as amended, regulates a number of institutional, management and conservation issues. The Wildlife Act provides for the protection and control of wild animals and birds, the management of game and permits regulations. The Wild Animals Control Act aims mainly to the control of harmful species and to regulate recreational and commercial hunting. The Trade in Endangered Species Act regulates the trade, import and export of endangered species. The National Parks Act provides a framework for the creation, management and maintenance of national parks, while the Reserves Act provides for the control, management, maintenance, preservation, including the protection of the natural environment and wildlife habitat, development, and use of nature reserves.

9.2 Institutional setup and role of stakeholders

The **Department of Conservation** is a central government agency reporting to the Minister of Conservation. It has a decentralized organization with a head office in Wellington and two regional and 13 conservancy (regional) offices located throughout New Zealand. Its functions cover land and natural resource management, international cooperation on matters relating to conservation, and the use of natural or historic resources for tourism, to the extent that this use is not inconsistent with its conservation (Conservation Act, sec. 6).

The 1991 Resource Management Act sets out the functions of the Ministers for the Environment and for Conservation, as well as the functions of local authorities in natural resource management, including requirements for the Māori interests and values to be included in the management process. It is administered by the **Ministry for the Environment**, which is responsible for making recommendations on national environmental standards; the monitoring and investigation of any matter of environmental significance; and the consideration and investigation of the use of economic instruments to achieve the purpose of the Act (sec. 24). The Minister of Conservation has functions related to coastal policy under the Act, as well as assessment and controls of recognized customary activities (sec. 28).

The **New Zealand Conservation Authority** is an independent authority responsible for advising the minister on statements of general policy prepared under acts including the Conservation Act, the Wildlife Act, the Reserves Act and the Wild Animal Control Act; approving conservation management strategies and plans, and reviewing them as required under these acts; reviewing the effectiveness of general policies; investigating nature conservation matters of national importance; making proposals for the change of status or classification of areas of national and international importance; and liaising with the New

Zealand Fish and Game Council (Conservation Act, secs. 6A-6B). The Authority consists of 13 members: five appointed after consultation with the Ministers of Māori Affairs, Tourism, and Local Government; one appointed on the nomination of *Te Runanga O Ngai Tahu*⁶⁰; three appointed on the recommendations of the Royal Society of New Zealand, Royal Forest and Bird Protection Society, and Federated Mountain Clubs; and four appointed from public nominations, in accordance with a process provided for (sec. 6D).

Establishment of no more than 19 **Conservation Boards** under the New Zealand Conservation Authority is also provided for in the Conservation Act (sec. 6L). In practice, there are 13 conservation boards, each focusing on a defined geographical area⁶¹ that deal with planning and providing strategic direction, including recommending the approval by the Authority of conservation management strategies, and then advising on their implementation (sec. 6M). The **conservation management strategies** are 10-year plans for managing and protecting the natural and historic features and wildlife of the region. Other board work can include: developing and reviewing national park and other management plans for lands administered by the Department; considering the impact of concessions for tourism and other activities on conservation land; and advising on proposals to change the protective status or classification of areas of national or international importance. Every board consists of no more than 12 members appointed by the minister following a public nomination process, having regard to the particular features of land administered by the Department in the area of the board's jurisdiction and interest in nature conservation, natural earth and

⁶⁰ The tribal council representing the Māori people of the southern islands of New Zealand.

⁶¹ www.doc.govt.nz/getting-involved/nz-conservation-authority-and-boards/conservation-board-information/.

marine sciences, recreation, tourism, the local community and Māori perspectives. Before making any appointment representing the interests of the Māori, the minister shall consult with the Minister of Māori Affairs (sec. 6P).

The Conservation Act has also created the **New Zealand Fish and Game Council** (at the national level) to represent the interests of anglers and hunters and provide coordination in the management, enhancement and maintenance of sports fish and game (secs. 26A-M), as well as **regional Fish and Game Councils** with more specific functions such as monitoring sports fish and game populations (secs. 26P-26ZF). Each Fish and Game Council consists of not more than 12 members elected among individuals holding a current adult whole season licence to hunt game or fish for sports fish, provided they are not bankrupt or convicted of an offence involving sports fish, game or protected wildlife (sec. 26U). The New Zealand Fish and Game Council consists of persons appointed by the Fish and Game Councils (sec. 26D).

The **Wildlife Enforcement Group** is a partnership under a Memorandum of Agreement between three New Zealand government departments: the Customs Service, the Ministry of Agriculture and Forestry, and the Department of Conservation. Its aim is to stop organized illegal trade in wildlife involving import, export, and related domestic activity.

A number of **funds** established by the government are of relevance to wildlife management activities, including:

- the Biodiversity Advice Fund and the Biodiversity Condition Fund, aiming to enhance management of biodiversity, including animal and bird species, on private lands;
- the Nature Heritage Fund, aiming to protect indigenous ecosystems by providing incentives for voluntary conservation on private lands;

- the Community Conservation Fund aiming to assist community groups undertaking restoration projects on public land;
- the Nga Whenua Rahui Fund, supporting protection of indigenous ecosystems on Māori land, and
- the Mataranga Kura Taiao Fund supporting initiatives to retain and promote traditional Māori knowledge and its use in biodiversity management.

9.3 Wildlife tenure and use rights

The **Crown** (state) retains ownership of indigenous fauna. Wildlife lawfully taken or killed is considered to be the property of the person who took or killed it (Wildlife Act, sec. 57; Wild Animal Control Act, sec. 9).

With regard to **Māori ownership** over their natural resources, the Conservation Act states that it shall be "interpreted and administered as to give effect to the principles of the Treaty of Waitangi" (sec. 4).⁶² This includes the principle of self-management, referring to the Māori ownership and control of their lands, estates, forests, fisheries and other properties.

With regard to **human-wildlife conflicts**, if partially protected wildlife causes injury or damage to land or to property, the occupier may hunt or kill it, subject to the relevant regulations (Wildlife Act, sec. 5(2)). Such written authority may be given by the Director-General with regard to any animal, whether absolutely protected or not (sec. 54).

9.4 Wildlife management planning

Wildlife areas, including wildlife sanctuaries, refuges and reserves, as well as conservation areas are managed by the

Department of Conservation, in accordance with approved statements of general policy and conservation management strategies and plans (Wildlife Act, sec. 14B; Conservation Act, sec. 17A). **Statements of general policy** are drafted by the Director-General, after consultation with the New Zealand Fish and Game Council in the case of sports fish and game policy, or the Conservation Authority in any other case. The statements are made available for public inspection and submission of comments by interested persons and organizations and regional councils, before their approval by the minister (Conservation Act, sec. 17B). **Conservation management strategies** aim to implement general policies and establish objectives for the integrated management of natural and historic resources, including any species, under several acts, and for recreation, tourism or conservation purposes (sec. 17D). **Conservation management plans** serve to implement the strategies and establish detailed objectives for integrated management within an area (sec. 17E).

Strategies are drafted by the Director-General in consultation with the conservation boards of the area concerned, and other persons and organizations the Director-General considers appropriate. They are provided to appropriate regional councils and territorial and Māori authorities and made available for public inspection and submission of comments. Public hearings must also be organized (sec. 17F). A similar public consultation process applies for the conservation management plans, before their approval by the conservation boards (sec. 17G). The Director-General may initiate a review or amendment of any strategy or plan, after consultation with the conservation boards concerned (secs. 17H-17I).

The **sports fish and game management plans** establish objectives for such management within any region or part of region. They are prepared by the Fish and Game Councils for approval by the minister, in accordance with relevant acts, policies,

⁶² The 1840 Treaty of Waitangi, signed by representatives of the British Crown, and various Māori chiefs, established a British governor in New Zealand, recognised Māori ownership of their lands and other properties, and gave Māori the rights of British subjects.

and conservation management strategies and plans. When preparing such a plan, the Fish and Game Council must have regard to the sustainability of sports fish and game in the area, and to the impact that the proposed management is likely to have on other natural resources and other users of the habitat concerned. Plans must include such provisions as may be necessary to maximize recreational opportunities for hunters and anglers (sec. 17L). A public consultation process applies (sec. 17M), as set out in detail (sec. 49).

The Wild Animal Control Act provides for **wild animal control plans** for recreational hunting areas, to be managed by the ministry, individual or board that retains control over the land (secs. 27-29). Such a plan is issued by the Director-General and revised at intervals no greater than five years. Not less than one month before any such plan is prepared or revised, the Director-General should advertise in newspapers circulated in the area the intention to prepare or revise a wild animal control plan, and invite submissions or proposals for the hunting of the area (sec. 28).

9.5 Wildlife conservation

The Conservation Act provides for establishment of **conservation areas** upon declaration by the minister and publication in the Gazette (sec. 7). A conservation area may become a reserve, sanctuary, refuge or national park (sec. 8). Entry to and use of conservation areas by the public is free of charge, and reasonable charges may apply for use of facilities (sec. 17). However, conservation areas may be closed to public entry for conservation purposes, in accordance with the conservation management strategy or plan: the Director-General shall take steps to ensure that the public is aware of the closure and the reasons for it (sec. 13).

Activities in conservation areas are carried out upon authorization by a **concession** (sec. 17O) in the form of a lease, licence,

permit or easement granted by the minister (sec. 17Q) upon application by the interested person (sec. 17S). A **public notice** is required before granting any lease or licence, and lies at the minister's discretion before granting any permit or easement (sec. 17T). In considering an application for a concession, the minister must further consider: the nature of the activity and type of structure or facility proposed and their effects; any measures to be undertaken to avoid, remedy or mitigate any adverse effects of the activity; any information received after the public announcement; any relevant environmental impact assessment, including any audit or review; and any relevant submissions received. The Minister may decline any application if the information available is insufficient for assessing the effects, if there are no adequate methods for remedying, avoiding or mitigating the adverse effects, and if the minister believes that the application does not comply with the provisions of the Conservation Act or any relevant conservation management strategy or plan. Concessions shall not be granted also if the proposed activity could reasonably be undertaken in another location (sec. 17U). In addition, the Minister must inform the applicant of the reasons for declining within 20 working days after receipt of the application. Records are available for public inspection and are maintained for all applications for a concession, details of any public notification and related decisions (sec. 17ZI).

Additional specific protection can be provided for by the minister, who may declare land held for conservation purposes to be a conservation park, an ecological area, a sanctuary area or a wilderness area, following a public notice of such an intention (Conservation Act, sec. 18). **Conservation parks** are to provide for the protection of natural and historic resources and to facilitate public recreation and enjoyment (sec. 18). **Wilderness areas** are created to preserve indigenous natural resources, thus no constructions, livestock, road or vehicles shall be allowed, unless the minister

authorizes activities as necessary or desirable for the preservation of the area's indigenous natural resources (sec. 20).

Ecological areas are managed to protect the value for which they are held (sec. 21) and **sanctuary areas** are managed to preserve in their natural state the indigenous plants and animals in it, and for scientific and other similar purposes (sec. 22).

Wildlife management areas are managed for protection of wildlife and wildlife habitat values, and of indigenous natural and historic resources (sec. 23B). **Stewardship areas** are managed for protection of their natural and historic resources (sec. 25).

Māori reserves are also provided for in the Act (sec. 27A).

The Wildlife Act provides for the following categories of protected areas:

- **Wildlife sanctuaries**, which are areas set aside for wildlife protection and subject to any prohibition or restriction imposed by proclamation, including prohibition of hunting or capturing wildlife. All wildlife in the sanctuaries is deemed to be absolutely protected with some exceptions. Public access is restricted (secs. 9-13);
- **Wildlife refuges**, which are areas set aside for wildlife and game bird protection and are subject to any prohibition or restriction imposed by proclamation or notice (sec. 14);
- **Wildlife management reserves**, which are areas managed to benefit wildlife and are subject to any prohibition or restriction imposed by proclamation. These may be private lands managed upon the consent of the occupier (sec. 14A); and
- **Wildlife districts**, which are areas mainly set aside for purposes of the Wildlife Act, and controlled by either the Department of Conservation or a fish and game council (sec. 37).

Concessions may be granted by the minister in respect of any wildlife sanctuary, refuge or management reserve, in accordance with the provisions of the

Conservation Act (Wildlife Act, sec. 14AA). Wildlife areas are managed by the Department of Conservation in accordance with statements of general policy and conservation management strategies and plans (secs. 14B-14E).

Different categories of **reserves** are established pursuant to the Reserves Act, aiming more at nature preservation and management for the benefit and enjoyment of the public. As such, a reserve may have value for recreation, education, as wildlife habitat or as an interesting landscape. Ensuring the survival of all indigenous species of flora and fauna in their natural communities and habitats is mentioned as one of the purposes of the Reserves Act (sec. 3). Eight categories of reserves are established: national reserves, with values of national or international importance (sec. 13); recreation reserves, providing for the physical welfare and enjoyment of the public (sec. 17); historic reserves, aiming to protect objects and natural features of historic and cultural value (sec. 18); scenic reserves (sec. 19); nature reserves, established primarily to protect indigenous flora or fauna (sec. 20); scientific reserves (sec. 21); government purpose reserves, including wildlife management areas (sec. 22); local purpose reserves (sec. 23); and wilderness areas, which are to be maintained in a natural state (sec. 47). The minister may vest the reserve in any local authority or in any **trustees**, following a public consultation procedure (secs. 119-120) and after consultation with the relevant conservation board and fish and game council (sec. 26). Voluntary organizations may also be appointed to manage and control a reserve (sec. 29). The minister may appoint a reserves board, trust, trust board or other special board to control and manage a reserve (sec. 30). Management of the reserves follows the statements of general policy, and conservation management strategies and plans (secs. 40-41).

Conservation covenants maybe entered into with owners of private land or holders of state land under lease to manage the land

without the need to purchase it (sec. 77). *Nga Covenants* for Māori-owned land (*Whenua Rahui Kawenata*) may be entered into by Māori landowners (section 77A). "Protected private land" is a category of land similar to conservation covenant land, established upon agreement between the minister and the owner or lessee or licensee of the land (section 76).

National parks are established pursuant to the maintenance in natural state and public's right of entry (National Parks Act, sec. 4) and preservation of indigenous plants and animals (sec. 5). They may include **specially protected areas** (sec. 12). National parks are administered and managed by the Department of Conservation, in accordance with statements of general policy, and conservation management strategies and plans (sec. 43).

Being the result of successive generations of environmental law, this overlapping protected area classification system would need to be streamlined. At present, as an administrative practice national parks are prioritized, followed by scientific reserves, sanctuary areas, ecological areas and wilderness areas. The various land classifications are managed in terms of their own statutory requirements, with general policies acting as an umbrella to link the various pieces of legislation.

The **protection levels for different wildlife species** are set out in a series of schedules under the Wildlife Act classifying animals and birds falling into the following categories:

- Absolutely protected wildlife throughout New Zealand, which comprises the wildlife species that are not included in any schedules and all wildlife in sanctuaries (secs. 8 and 10);
- Wildlife declared to be game, which can be hunted within specified seasons and according to the regulations, eg Canada goose, black swan, pukeko and mallard duck (Schedule 1);
- Partially protected wildlife, including the black shag, harrier hawk and little owl (sec. 5 and Schedule 2);
- Wildlife which can be hunted from time to time at the discretion of the minister, e.g. black swan and mutton bird and South Island weka (sec. 6 and Schedule 3);
- Wildlife not protected; however the minister has the discretion to prohibit hunting wildlife in this category (sec. 7). Currently there is no such wildlife list and Schedule 4 is repealed;
- Noxious animals, which are subject to the provisions of the Wild Animal Control Act, e.g. deer, goat and possum (sec. 7A and Schedule 6);
- Terrestrial and freshwater invertebrates declared to be animals and therefore subject to the provisions of the Wildlife Act, e.g. weta, salmon and scarab beetles (sec. 7B and Schedule 7); and
- certain unprotected animals that "no person can farm, breed, sell, capture, convey or keep in captivity for the purposes of farming, breeding, or selling" without the permission of the minister, such as ferret, polecat, stoat or weasel (sec. 7C and Schedule 8).

Amendments to the Schedules are declared by the Governor-General by order of the Council (sec. 8).

9.6 Wildlife utilization

Part II of the Wildlife Act outlines provisions relating to the **management of game bird hunting**, such as setting open seasons, restrictions on take and licences for bird game listed in Schedule 1 of the Act. Conditions and specifications to be included in the notification of an open season for game at each region are recommended by each regional fish and game council, through the New Zealand Fish and Game Council, for approval by the minister (secs. 15-16). A licence is required to hunt or kill bird game (sec. 19). Buying or selling any bird game is prohibited unless with the prior consent of the Director-General (sec. 23).

The Director-General may issue permits for **hunting in a conservation area**, if it is in accordance with the management plan and with regard to the safety of the public likely to be in the area (Conservation Act, sec. 38). Permit conditions vary between different DOC conservancies (regional offices). Hunting permits apply to feral deer, goats, pigs, chamois and thar, while separate permits are required for game bird and possum hunting on all public conservation land. Permits are subject to access permission where required to cross private land.⁶³ The Director-General may from time to time declare a land other than national park land as **recreational hunting area** (Wild Animal Control Act, secs. 27-29). Māori have special rights for bird hunting and fishing in some limited cases, where they are specifically provided by statute or regulation (eg the Titi (Muttonbird) Islands Regulations 1978 (SR 1978/59)).

The country's obligations under CITES are being fulfilled through the Trade in Endangered Species Act, which establishes the regulations for **trade** in CITES-listed species. Upon application by the interested person, the Director-General is responsible for issuing the appropriate permit or certificate that would authorize trade in specimens of endangered, threatened or exploited species, if granted (sec. 10). Granting a permit or certificate generally requires consultation with the appropriate scientific and management authorities (secs. 13-24).

Enacted in implementation of the Wildlife Act, the 1985 Wildlife (Farming of Unprotected Wildlife) Regulations set out procedures and requirements for the issue of licences and authorities to farm, **breed**, and sell unprotected wildlife. The Regulations further provide for a total prohibition on the keeping in captivity, liberation, or conveyance of unprotected wildlife in the Chatham Islands, the Stewart Island, the Great Barrier Island and any

⁶³ Information obtained from the Department of Conservation website, at: <http://www.doc.govt.nz>.

other island within the territorial sea of New Zealand, except the North and South Islands (reg. 3).

Keeping specified wild animals in captivity, including farming for the purpose of sale or breeding or operating a safari park requires a permit or licence. The Director-General must not issue any such permit or licence unless satisfied, after consulting the relevant regional council, that the land is within the feral range of the species, is not unsuitable because of its susceptibility to erosion and will be adequately equipped with effective fences (Wild Animal Control Act, sec. 12). Deer farming does not require a licence, except in areas specified by the minister. The minister may, from time to time, by notice in the Gazette, specify areas where deer farming is prohibited or permitted, in which case a process for public information and involvement applies in accordance with sec. 49 of the Act (sec. 12A).

With regard to **eco-tourism**, the Tourism on Conservation Lands Forum has promoted a partnership approach to the management of tourism activities on conservation lands. Its members include government agencies, industry representatives and non-government agencies. However, there is no specific legal instrument with regard to eco-tourism.

10. PHILIPPINES

10.1 Overview of the legal framework

The Philippines' 1987 **Constitution** provides for the right to a healthy environment, noting that "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature" (sec. 16). This rights-based approach to the environment is coupled, at least to some extent, by an obligation to protect: the 1998 **Animal Welfare Act** provides for the duty of every person to protect the natural habitat of the wildlife. Habitat destruction is considered as

a form of cruelty to animals and its preservation a way of protection (sec. 7).

The country's environmental legislation of relevance to wildlife management includes mainly: the 1988 Philippine Environment Code; the 1992 National Integrated Protected Areas System Act and its Implementing Rules and Regulations; the 2001 Wildlife Resources Conservation and Protection Act and its 2004 Joint Implementing Rules and Regulations; and the 2006 Executive Order No. 578 establishing the National Policy on Biological Diversity. The 1988 **Philippine Environment Code** addresses protection of the environment in a broad sense and contains specific provisions on wildlife resources.

The 1992 **National Integrated Protected Areas System Act** (NIPAS Act) creates a system of protected areas encompassing "outstandingly remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biographic zones and related ecosystems, whether terrestrial, wetland, or marine" (sec. 2). It provides for classification of protected areas; administration and management; allowed activities and environmental impact assessment; recognition of ancestral land rights and other customary rights; and establishment of an Integrated Protected Areas Fund. Its **Implementing Rules and Regulations**, as revised in 2008, detail the processes by which the Department of Environment and Natural Resources (DENR) and other concerned institutions and agencies establish, administer, manage and disestablish protected areas.

The 2001 **Wildlife Resources Conservation and Protection Act** is the main piece of legislation concerning wildlife. The Act provides for the conservation, preservation and protection of wildlife species and their habitats, in order to preserve and encourage ecological balance and biological diversity. It provides,

furthermore, for the control and supervision of wildlife capture, hunting and trade.

The 2006 **National Biodiversity Strategy** establishes the National Policy of Biological Diversity, providing for the role of the private sector and civil society, and for guidelines on critical habitats and key biodiversity areas.

10.2 Institutional setup and role of stakeholders

According to the Environment Code, the principal management and conservation authority is the then **Department of Natural Resources**. Public participation is explicitly mentioned in the Code, which states that "The National Government, through the Department of Natural Resources, shall establish a system of rational exploitation and conservation of wildlife resources and shall encourage **citizen participation** in the maintenance and/or enhancement of their continuous productivity" (sec. 28). Indicative measures for rational exploitation of wildlife resources to be taken by the Department include: regulating the marketing of threatened wildlife resources; reviewing all existing rules and regulations on the exploitation of wildlife resources with a view to formulating guidelines for their systematic and effective enforcement; and conserving threatened species of fauna, increasing their rate of production, maintaining their original habitat, habitat manipulation, determining limits, population control in relation to the carrying capacity of any given area, banning of indiscriminate and/or destructive means of catching or hunting them (sec. 29).

Renamed the Department of Environment and Natural Resources (DENR) by the Reorganization Act of the Department of Environment and Natural Resources (Executive Order no. 192, 1987), DENR is still the government agency responsible for the conservation, management, development and proper use of the environment and natural resources, as well as the licensing and regulation of all natural resources "in order to ensure equitable

sharing of the benefits derived from there for the welfare of the present and future generations of Filipinos" (sec. 4).⁶⁴ Following the Reorganization Act, a **Protected Areas and Wildlife Bureau (PAWB)** has been created (sec. 6). The PAWB⁶⁵ has a wide range of functions regarding policy development on protected areas, biodiversity conservation, and endangered species of flora and fauna, as well as monitoring and assessment of the management of the integrated protected areas system (sec. 18). Environment and Natural Resources Regional Offices have been established in the 13 administrative regions of the country (sec. 21). The 1992 National Integrated Protected Areas System Act has further established, in the regional offices, protected areas and wildlife divisions in the regions where protected areas have been established (sec. 10).

The DENR is to, *inter alia*, promote equitable access to natural resources by the different sectors of the population; and conserve specific terrestrial and marine areas representative of the Philippine natural and cultural heritage. It is also responsible for development of policies and implementation of programmes for the equitable distribution of natural resources; preservation of cultural and natural heritage through wildlife conservation and segregation of protected areas; encouragement of greater people participation and private initiative in natural resource management; licensing and regulation of all natural resources; and formulation of a national conservation strategy (Reorganization Act, sec. 5). The DENR retains responsibility over all terrestrial plants and animals, turtles and tortoises and wetland species, including also crocodiles, waterbirds and all amphibians and dugong; while the **Department of Agriculture** is responsible for all aquatic habitats deemed critical, and aquatic resources except dugong (2001 Wildlife Act, sec. 1). In the Province of Palawan, all

competence with regard to natural and wildlife resources is with the Palawan Council for Sustainable Development in accordance with Republic Act 7611. These three agencies are also the CITES management authorities (2001 Wildlife Act, sec. 19). To provide advice to the management authorities, the scientific authorities for terrestrial species are the Ecosystems Research and Development Bureau of the DENR, the U.P. Institute of Biological Sciences and the National Museum, as well as other agencies as designated by the DENR Secretary. **National Wildlife Research Centers** for terrestrial and aquatic species are established (sec. 31), to lead in the conduct of scientific research on the proper strategies for the conservation and protection of wildlife, including captive breeding or propagation. The DENR Secretary is to encourage the participation of experts from academic/research institutions and wildlife industry in this regard.

The 2004 Joint Implementing Rules and Regulations of the Wildlife Act provide for the establishment of the **National Wildlife Management Committee** to provide technical and scientific advice. This Committee is composed of representatives from the DENR, Department of Agriculture or Palawan Council for Sustainable Development, Environmental Management Bureau, other concerned government agencies, and local scientists with expertise in various fields of wildlife. Stakeholders may be invited as resource persons, when considered necessary. The Committee's mission is to submit recommendations regarding the collection or use of wildlife for trade, bioprospecting, conservation breeding or propagation of threatened species, scientific research and special uses (rule 6.1 and 2). **Regional Wildlife Management Committees** are likewise created by the regional offices of the DENR or Department of Agriculture (rule 6.3).

With regard to indigenous peoples, the **National Commission on Indigenous**

⁶⁴ See also www.denr.gov.ph/.

⁶⁵ See www.pawb.gov.ph/.

Peoples has been established, pursuant to the 1997 Indigenous Peoples Rights Act, in order to promote and protect the rights of indigenous peoples and in recognition of their ancestral domains and their rights thereto (sec. 38). It is composed of seven commissioners belonging to indigenous peoples from seven different ethnographic areas, at least two of whom should be women (sec. 40). A **consultative body** consisting of traditional leaders, elders and women and youth representatives is to be constituted by the Commission with an advisory role (sec. 50). The Commission is responsible for the identification, delineation and recognition of ancestral lands and domains, where traditional rights to wildlife use are exercised (see section 10.3 below). In addition, Chapter IV of the Indigenous Peoples Rights Act provides for the right to self-governance, including the use of own commonly accepted justice systems (sec. 15), the right to participate in decision making (sec. 16) and the right to determine and decide priorities for development (sec. 17). These principles are extended to wildlife management in the ancestral lands.

With respect to the involvement of stakeholders in decision-making processes, the Environment Code only includes a general provision that it shall be the responsibility of local government units as well as private individuals to actively participate in the environmental management and government protection programs (sec. 58). In addition, the **National Environment Protection Council** (established by Presidential Decree No. 1121) may, whenever it deems necessary, conduct public hearings on issues of environmental significance, which could arguably include wildlife issues (sec. 61). The National Biodiversity Policy recognizes that the protection, conservation and sustainable use of biodiversity is a shared responsibility among all sectors. It therefore calls for collaboration among the DENR and all concerned government agencies and offices with the private sector, civil society, and local communities "so that biological diversity goals are incorporated in

their respective programs and activities, including institutionalizing biodiversity conservation as a principal corporate environmental responsibility. Public participation in protection, conservation and sustainable use activities, especially at the local level, shall be encouraged to maximize conservation and community benefits" (sec. 2).

With regard to **wildlife law enforcement**, the National Anti-Environment Crime Task Force, created by Executive Order no. 515 of 15 March 2006, is responsible for all **environmental crime**, including violations of the Wildlife Act and the NIPAS Act, and all laws and regulations establishing protected areas. The Wildlife Act provides for the participation of volunteers from NGOs, citizen groups and community organizations in wildlife enforcement. In general, wildlife enforcement officers should be designated by the Philippine National Police, the Armed Forces and the National Bureau of Investigation (sec. 30).

A **Wildlife Management Fund** has been established as a special account in the National Treasury, administered by the DENR, to finance habitat rehabilitation or restoration and support scientific research, enforcement and monitoring activities, as well as enhancement of capacity of relevant agencies. Funds should be derived from fines, fees, charges, donations, endowments, and administrative fees or grants in the form of contributions. Contributions to the fund are exempted from all taxes (Wildlife Act, sec. 29).

10.3 Wildlife tenure and use rights

The Constitution, under the title on national economy and patrimony, provides that wildlife as well as other natural resources are **owned by the State**, with the exception that the "Congress may, by law, allow **small-scale utilization of natural resources by Filipino citizens** (Sec. 2). Furthermore, "the State, subject to the provisions of the Constitution and national development policies and programs, shall protect the

rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being. The Congress may provide for the **applicability of customary laws governing property rights** or relations in determining the ownership and extent of ancestral domain" (sec. 5). As reviewed below, the rights to ancestral domains include the rights of ownership over traditional hunting grounds and the right to manage and conserve natural resources, including wildlife.

No person or entity is allowed **possession of wildlife** unless they can prove financial and technical capability and facility to maintain it (Wildlife Act, sec. 26). This rule applies to any facility, such as zoos, parks, aquaria or government institutions (Wildlife Act Implementing Rules and Regulations, Rule 26.6). Those possessing threatened and exotic species are obliged to register them; threatened wildlife possessed without certificate of registration is to be confiscated. The obligation for registration and possession of a wildlife registration certificate was subsequently extended to non-threatened faunal species (Administrative Order 2004-60, secs. 1 and 3). The holder of the certificate does not have the additional right to collect animals from the wild unless granted a specific permit (Wildlife Act Implementing Rules and Regulations, Rule 26.8).

The 1997 Indigenous Peoples Rights Act recognizes the **indigenous concept of ownership**, i.e. that ancestral domains and all resources found therein serve as the material bases of cultural integrity. According to this concept, ancestral domains are the indigenous peoples' **private but community property**, which belongs to all generations and therefore cannot be sold, disposed or destroyed. The concept also covers sustainable traditional resource rights (sec. 5).

The **rights to ancestral domains** include (sec. 7):

- rights of ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places and **traditional hunting grounds**;
- the right to develop lands and natural resources within the ancestral domain, manage and conserve natural resources, and benefit and share the profits from allocation and utilization of natural resources;
- the right to stay in the territories and not to be relocated without their free and prior informed consent; and
- the right to resolve land conflicts in accordance with customary laws.

Within the ancestral domain, indigenous peoples retain responsibility for wildlife management. **Utilization of wildlife resources within ancestral domains/ancestral lands** is subject to the issuance of a free and prior informed consent pursuant to the Indigenous Peoples Rights Act (Wildlife Act Implementing Rules and Regulations, Rule 4.7).

Indigenous peoples' responsibilities include the maintenance of ecological balance by protecting flora and fauna, watershed areas and other reserves (Indigenous Peoples Rights Act, sec. 9). The Indigenous Peoples Rights Act sets the processes for **delineation and recognition of ancestral domains**, giving a decisive role to the communities concerned (ch. VIII). For instance, the sworn statement of the elders as to the scope of the territories and agreements made with neighbouring communities is considered essential for the determination of the traditional territories. Areas within the ancestral domains, whether delineated or not, are presumed to be communally held, with the exception of property regimes existing prior to the 1997 Act (secs. 55-56). Ancestral domains found necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by the appropriate agencies with the full participation of the indigenous peoples concerned are to be maintained, managed

and developed for such purposes. **Primary responsibility to maintain, develop, protect and conserve such areas rests with the indigenous peoples concerned**, with the full and effective assistance of the government agencies. Any community decision to transfer the responsibility over the areas must be made in writing on the basis of customary laws regarding consent, without prejudice to the basic requirement on free and prior informed consent. In any case, such transfer of responsibility shall be temporary and will ultimately revert to the community in accordance with a program for technology transfer; and no community shall be displaced or relocated for wildlife and natural resources management and conservation purposes without the written consent of the specific persons authorized to give consent (sec. 58).

The 2008 Revised Rules and Regulations of the NIPAS Act (sec. 6.8) note that the indigenous peoples shall not be deprived of their recognized claims and rights to the ancestral domain, including on wildlife management, as defined under the Indigenous Peoples Rights Act. **Qualified tenured migrants** of a protected area are given a certificate of recognition, but those located within the strict protection zone are resettled to the multiple use zone or buffer zone, while protected area occupants who do not qualify as tenured migrants are to be resettled outside the protected area (rule 15).

Such rules ensuring the rights of indigenous peoples to their ancestral lands and domains and recognizing traditional property regimes in accordance with customary laws are also included in acts establishing specific protected areas, such as the **Mt. Kanla-on Natural Park Act** of 2001 (sec. 13). With regard to tenured migrants, a **tenorial instrument** over an area not exceeding three hectares is foreseen (sec. 14). Such an instrument must be community-based, limited solely to multiple-use zones, promote clustering, and comply with the zoning and management plans.

10.4 Wildlife management planning

As a general rule, the DENR retains competence over wildlife resources and management planning. According to the 2004 Implementing Rules and Regulations of the Wildlife Act, special laws can give management jurisdiction or control over certain wildlife species or habitats, or the mandate to conduct scientific research, to government agencies, bodies or academic institutions, in which case a **memorandum of agreement** is signed with the DENR Secretary (rule 4.9).

Introduction, reintroduction or restocking of endemic and indigenous wildlife is subject to prior clearance from the DENR Secretary, issued upon completion of a **feasibility study** and public consultation with concerned individuals or entities (Wildlife Rules and Regulations, sec. 12). In the case of exotic wildlife introduction, the prior informed consent of local stakeholders is further required. Such introduction is prohibited in protected areas or critical habitats (sec. 13).

With regard to protected area management, a **general management planning strategy** is to serve as guide in formulating **individual plans** for each protected area (sec. 9, NIPAS Act). The management planning strategy shall also provide guidelines for the protection of indigenous cultural communities, other tenured migrant communities and sites, and for close coordination between and among local agencies and the private sector. The strategy is also to ensure that management decisions are made with interdisciplinary inputs and participation of all stakeholders (rule 10.1 of the Implementing Rules and Regulations). A process is established to allow for methodologies such as stakeholders analysis, participatory resource assessment and community mapping to generate community inputs into the management plan and promote ownership of the plan by the local communities. The management plan is to be presented to the stakeholders through public consultations,

and issues and concerns raised shall be addressed (rule 10.2.1). The protected area management board retains responsibilities with regard to management planning (see sec. 10.5 below).

According to the 2004 **Revised Guidelines on the Establishment and Management of Community-based Programmes in Protected Areas**, the DENR provided tenured migrant communities and interested indigenous peoples within protected areas and buffer zones, tenure, over established community-based protected areas, provided that the activities to be undertaken are consistent with the protected area management plan (sec. 1). In such cases, a management plan or an ancestral domain sustainable development and protection plan should be prepared by the people's organization to manage the area (see section 10.5 below).

10.5 Wildlife conservation

The **process and criteria for the determination of threatened species** are provided in the 2001 Wildlife Act. Such competence rests with the DENR Secretary, who shall determine whether any wildlife species is threatened, and classify it as critically endangered, endangered, vulnerable or other accepted categories based on the best scientific data. Due regard is to be paid to internationally accepted criteria, including: present or threatened destruction, modification or curtailment of the species' habitat or range; over-utilization for commercial, recreational, scientific or educational purposes; inadequacy of existing regulatory mechanisms; and other natural or man-made factors affecting the existence of wildlife. The list of categorized threatened wildlife is to be updated regularly, provided that a species listed as threatened will remain on the list for at least three years following its initial listing. Any person can seek the **addition or deletion of a species** from the list upon filing a petition based on substantial scientific information. Such a petition is to be evaluated by the Secretary

in accordance with the criteria above and the status of the species concerned, who is required to act within a "reasonable period of time" (sec. 22). The 2004 DENR Administrative Order 15 established a revised list of terrestrial threatened species and their categories, and specifically provided for **consultation with scientific authorities, academia and other stakeholders**, in the review and updating of the list (sec. 6).

The 1992 NIPAS Act recognizes that administration of protected areas is possible only through cooperation among national government, local government and concerned private organizations (sec. 2). The **established protected areas system** consists of (sec. 3):

- strict nature reserves;
- natural parks;
- natural monuments;
- wildlife sanctuaries, protected landscapes and seascapes;
- resource reserves;
- natural biotic areas; and
- other categories as established by law, conventions or international agreements.

Hunting, destroying, disturbing or mere possession of any plants or animals or their products in protected areas is prohibited, unless a permit from the management board is obtained (sec. 20). No criteria for such a permitting system are provided for in the legislation.

A **public participation process** is required for the establishment of the protected area system (sec. 5). According to this process, the DENR shall conduct public hearings at the locations near the area, and notify the public of the proposed action through publication in a newspaper of general circulation, and other necessary means in the area or areas in the vicinity of the affected land 30 days prior to the public hearing. At least 30 days prior to the date of hearing, DENR is to advise all local government units in the affected areas,

national agencies concerned, people's organizations and NGOs, and invite them to submit their views on the proposed action at the hearing not later than 30 days following the date of the hearing. Then, DENR must give due consideration to the recommendations at the public hearing, and provide sufficient explanation for his recommendations contrary to the general sentiments expressed in the public hearing. Upon receipt of the recommendations of the DENR, the President issues a presidential proclamation designating the recommended areas as protected areas and providing for measures for their protection until the Congress enacts a law finally declaring the areas as part of the integrated protected area system.

Further details about the public notification and consultation process are provided for in the NIPAS Act Implementing Rules and Regulations. Stakeholders are to be regularly consulted during and after the conduct of the protected area suitability assessment and the gathering of socioeconomic information (rule 6.6.4). Public hearings shall be conducted to inform the public and serve as a venue to address issues, concerns and suggestions for each proposed protected area, and include: notification of the public, at least 30 days prior to the public hearing, to ensure that all affected local government units, concerned national agencies, indigenous people, people's organizations, NGOs and local communities are notified; allocation of sufficient time for presentation of the rationale for the establishment of the protected area and the impacts of the establishment on tenure, livelihood and activities of stakeholders, among other issues; and preparation of reports on the proceedings and results of the hearing, to be made available to the public for review and submission of views (sec. 6.6.6). NIPAS Review Committees both at the national and regional offices are to lead the review of the proposed protected areas, however no stakeholder participation is envisaged in such committees (Rules 6.6.7 and 6.6.8).

A protected area management board should be established for each protected area, composed of: the regional executive director under whose jurisdiction the protected area is located; one representative from the autonomous regional government, if applicable; the provincial development officer; one representative from the municipal government; one representative from each *barangay* (village) covering the protected area; one representative from each tribal community, if applicable; at least three representatives from NGOs/local community organizations; and if necessary, one representative from other departments or national government agencies involved in protected area management (sec. 11). The board has a central role in planning, administrative and budgetary matters, and takes decisions by a majority vote. Its members are appointed by the DENR Secretary. It is responsible for approving policies and guidelines for the management of the area, ensure that the management plan and the ancestral domain sustainable development and protection plan are harmonized, and resolving conflicts among tenured migrant communities.

Each protected area is divided into two **management zones**: strict protection and multiple-use (rule 10.3). Stakeholders such as tenured migrants, local government units, NGOs, peoples' organizations, local communities, indigenous peoples and other government agencies are part of the participatory decision-making process in the establishment and planning of the management zones. Such zoning and management prescriptions may not restrict the rights of indigenous peoples to pursue traditional and sustainable means of livelihood within their ancestral domain or land (rule 10.5).

The protected area superintendent is responsible for the **implementation of the management plan and operations** in the protected area, including for: issuing certifications that the proposed activity/project is permitted within the management zones; issuing cutting permit

for planted trees for a specific volume per applicant for traditional and subsistence uses by indigenous peoples and tenured migrants; and issuing certificates of origin and transport permits for natural resources from the protected area (rule 11.7). Whenever applicable, the site-level staff must be recruited from residents living within or in the immediate vicinity of the protected area (rule 11.8).

Development projects and activities with potential environmental damage, whether or not included in the management plan, need to secure an **environmental compliance certificate** in accordance with the Philippine Environment Impact Statement System (rule 13, Implementing Rules and Regulations). The **disestablishment of a protected area**, should be supported by the results of a suitability assessment, public notification and hearings (rule 8).

For each protected area, peripheral **buffer zones** are established when necessary. Such buffer zones may include public or private lands, and prescriptions for their management must be included in each protected area management plan (rule 9). It is noted that the establishment of buffer zones as social fence entails interventions such as social preparation, community organizing and empowerment to ensure its effectiveness, without prejudice to the exercise of police power if necessary. Management authority over the buffer zone is exercised by the protected area management bureau, which must ensure participatory management together with local government units, other government agencies, NGOs, peoples' organizations and other concerned stakeholders (rule 9.3). The management strategy for the buffer zone is an integral part of the protected area management and is developed by the protected area management bureau together with the concerned community and other stakeholders (rule 9.4). Rights to private lands within the buffer zone are to be recognized and respected in a manner consistent with the management plan (rule 9.5).

The 1993 **Guidelines on the Establishment and Management of Buffer Zones for Protected Areas** state that buffer zones provide **regulated benefits and livelihood opportunities** to the local communities (secs. 2-3). **Criteria** for selection of buffer zones (sec. 5) include the need to provide sustainable use of land and resources by local communities; the area's suitability for production of crops preferred by the local communities; the potential capacity of the area to prevent the community from encroaching the protected area through the provision of alternative supply of resources such as wildlife farms; the potential of the area to enhance local community participation for increasing the level of support to, and acceptance of, the principles of buffer zone management; and the existence of traditional practices within the area. Allowable complementary activities include regulated hunting of non-protected species for subsistence in forest buffer zones, and traditional hunting and collection of non-protected species in multiple-use buffer zones. Commercial collection and hunting of wildlife species is prohibited within the buffer zones (sec. 13).

The NIPAS Act recognizes that **indigenous peoples** cannot be deprived of their recognized claims and rights to the ancestral domains or lands as defined under the Indigenous Peoples Rights Act. When a protected area is claimed as ancestral domain or land, the DENR must coordinate with the National Commission on Indigenous Peoples, so that indigenous peoples concerned take an active part in the conduct of the resource profile and preparation of the initial protected area plan (rules 6.8-6.9, Implementing Rules and Regulations). The DENR must ensure the full participation of the concerned indigenous peoples in the establishment of protected areas, in accordance with the NIPAS Act and the Indigenous Peoples Rights Act. The ancestral domain within a protected area is managed in accordance with a plan harmonized with the protected area management plan (rule 14.1). However, the Implementing Rules and Regulations further

note that unless the indigenous peoples concerned submit a written notice of intent to manage the protected area, the DENR and protected area management bureau will manage it (rule 14.1). The DENR may also enter into **protected area community-based resource management agreement** with the tenured migrant communities of protected areas (rule 15.4). Within one year from the agreement, tenure holders are required to prepare a community resource management plan.

According to the 2004 Revised Guidelines on the Establishment and Management of **Community-based Programmes in Protected Areas**, the DENR provides tenured migrant communities and interested indigenous peoples within protected areas and buffer zones, tenure over established community-based protected areas, provided that the activities to be undertaken are consistent with the protected area management plan (sec. 1). This gives opportunities to organized tenured migrant communities and indigenous peoples to manage, develop, utilize, conserve and protect the resources within the zones of the protected area and buffer zones (sec. 2). A committee is to handle all matters related to the community-based programme, composed of the regional technical director for protected areas of the DENR as chair, members from the local government unit concerned and selected members from the protected area management bureau (sec. 4).

The guidelines provide for four stages in the establishment and management of a community-based programme in protected areas: the preparatory stage; formation of a people's organization and provision of security of tenure; the planning stage; and the implementation stage (sec. 5).

The preparatory stage involves generating awareness for the programme, forming a strategic collaboration of all sectors concerned, identifying the area, and processing conflicting claims through creation of an arbitration group (sec. 5.1).

During the second stage, tenured migrant communities and interested indigenous peoples are assessed and organized as to their potential in resource management and may be provided with the tenurial instrument. This stage includes formation of a people's organization, with assistance from protected area staff; drafting of the protected area community-based resource management agreement as the tenurial instrument to be issued, to provide tenurial security and incentives to develop, utilize, manage, conserve and protect the area pursuant to the approved community resource management plan; and the application, processing and approval of the agreement by the protected area authorities. The area is not to exceed 15,000 hectares and the community-based resource management agreement has an initial duration of 25 years, renewable for another 25 years (sec. 5.2). During the planning stage, the people's organization prepares the management plan or an ancestral domain sustainable development and protection plan (sec. 5.3). Finally, the implementation stage aims to enhance organizational and institutional capacities, ensure economic viability of resource management activities, ensure the flow and equitable benefits to people's organization members, and ensure the build-up of capital by the people's organization for sustainability (sec. 5.4).

Compliance with the terms and conditions of the community-based management agreement is monitored by the protected area management bureau, while the protected area superintendent is required to submit biannual reports on the agreement's implementation (sec. 7). Grounds for termination or cancellation of the agreement include neglect or violation of its terms and conditions, violation of environmental and natural resource legislation, conduct of non-authorized uses or when the national interest so requires (sec. 8).

10.6 Wildlife utilization

Indigenous peoples have **priority rights** in the harvesting, extraction, development or exploitation of any natural resources **within the ancestral domains** (sec. 57, Indigenous Peoples Rights Act). A non-member of the community concerned may be allowed to take part in the development and utilization of the natural resources for a period not exceeding 25 years, which is renewable for no more than another 25 years, on the basis of a formal and written agreement or a decision by the community concerned pursuant to its own decision-making process. Collection of wildlife by indigenous peoples, except threatened species, may be allowed for traditional use and not for trade (sec. 7, Wildlife Act).

All wildlife utilization activities require authorization by the DENR Secretary, upon proper evaluation of best available information or scientific data showing that the activity is not detrimental to the survival of the species or subspecies involved and/or their habitat (sec. 6, Wildlife Act). Collection of wildlife may thus be allowed, provided that appropriate and acceptable wildlife collection techniques are used, with least or no detrimental effects to the existing wildlife populations and their habitats, while threatened species are not covered (sec. 7).

A **wildlife farm culture permit** is required for breeding or propagation of wildlife for commercial purposes, subject to an environmental impact study (sec. 17). Issuance of a permit by the DENR Secretary or authorized representative is required for other activities including collection of wildlife, transport, export or import (sec. 20), as well as scientific research, bioprospecting or commercial purposes (rule 7.1, Wildlife Act Implementing Rules and Regulations). Reasonable fees and charges, upon consultation with the concerned groups, are imposed (sec. 21). The quantity of individuals per species to be collected must not exceed the **national quota approved by the Secretary**, determined on the basis of the best scientific and/or commercial and

other significant data available after conducting a review of the status of the species. The Secretary must likewise indicate the areas of collection, whenever possible (rule 7.2).

Unless specifically allowed in accordance with the Wildlife Act, exploitation of wildlife resources and their habitats is illegal, including: killing and destroying wildlife species; disturbing critical habitats including by logging, dumping waste or squatting; trading of wildlife; collecting, hunting or possessing wildlife, their by-products or derivatives; and transporting wildlife (sec. 27). Specific exceptions include allowed killing of wildlife as part of religious rituals of established tribal groups or indigenous cultural communities or when the wildlife is afflicted with an incurable communicable disease. After the conduct of scientific studies, the DENR Secretary issues **guidelines governing hunting of wildlife** (rule 7.7). The Secretary is also to prepare a **national list of economically important species**, in consultation with concerned scientific institutions, conservation groups, stakeholders and the industry (rule 18.1).

The 2004 Wildlife Act Implementing Rules and Regulations specify the requirement for prior informed consent from the concerned indigenous peoples or prior clearance from the local government unit, and in the case of protected areas clearance from the protected area management board (rule 7.4). **Collection of threatened species** is allowed only for scientific, or breeding and propagation purposes (rule 7.5). Only Filipino citizens, or corporations, partnerships, cooperatives or associations 60 percent of the capital of which is owned by Filipinos, are allowed to collect non-threatened economically important species for direct trade purposes, upon the issuance of a wildlife special use permit (rule 18.2).

The 2007 Rules and Regulations governing special uses within protected areas sets in detail the guidelines for processing and

issuance of **special use agreements within protected areas**, acknowledging that their effective management should encourage cooperation between and among stakeholders to manage and develop the appropriate zones of protected areas (secs. 1-2). The objectives include: to provide access and economic opportunities to indigenous peoples, tenured migrant communities and other stakeholders, contributing thus to poverty reduction; to optimize the special uses of protected areas consistent with the principles of sustainable development and biodiversity conservation in cooperation with stakeholders; to guide the development of the appropriate zones of protected areas in accordance with their management objectives; and to earn revenues for the sustainability of protected areas management (sec. 2). As such, special use agreements may be issued within protected areas whose management zones have been identified and delineated, except in strict nature reserves (sec. 4). Subject to the issuance of an environmental compliance certificate and approval by the DENR Secretary, special uses include: ecotourism facilities, camp sites, communication facilities, irrigation canals, aquaculture, scientific monitoring stations, agroforestry and forest plantation. The agreement has an initial duration of 25 years and may be renewed. Possible applicants include indigenous peoples, tenured migrants, local government units or other government agencies, and other stakeholders including business entities and NGOs, with preference given to indigenous peoples and tenured migrants.

The procedure for the processing and issuance of the special use agreement is described in detail, including tight deadlines for decision making (sec. 10). Grounds for its cancellation include violation or non-compliance with any of its terms and conditions, abandonment of the area or when national interest so requires (sec. 12).

Two reviewed presidential proclamations have identified pieces of public land as **eco-tourism parks**: the Presidential

Proclamations No. 557 and 602, both of 2004. It is noted that development of ecotourism is subject to environmental impact assessment.

11. TONGA

11.1 Overview of the legal framework

The 1875 Act of the Constitution of Tonga is the supreme law of the land. The King is the head of the executive and governs the country through ministers appointed (and dismissed) at his pleasure. The Constitution vests with the King and the Legislative Assembly the power to enact laws to ensure the effective operation of the executive, the legislature and the administration of justice and other matters.

As there is very little wildlife in Tonga (mainly birds), there are few legal rules related to wildlife management. These basically include the **Birds and Fish Preservation Act** (CAP. 125; originally enacted in 1903 and last amended in 1989) and the **Parks and Reserves Act** (Cap. 89; originally enacted in 1977 and last amended in 1988). Reference will be also made to the Environment Impact Assessment (EIA) Act of 2003, as its general provisions related to natural resources can be considered applicable to wildlife, given that "natural resources" have been defined as including "animals and their habitats, whether native or introduced."⁶⁶

11.2 Institutional set up and role of stakeholders

The **Ministry of Land** (MLSNRE) is responsible for the administration of all land in the Kingdom. Although not expressly mentioned in the Land Act (Cap. 132), the

⁶⁶ This chapter draws heavily on the FAO report "Review of Forestry Legislation in Tonga", prepared by Gloria Guttenbeil-Pole'o in 2008 in the framework of the FAO project TCP/TON/3102 (the report is on file with the authors of this study).

minister is also responsible for survey (the Surveyor General) and natural resources. In 2009, a new Ministry of Environment and Climate Change was created, to replace the former Department of Environment operating under the Ministry of Lands, Survey, Natural Resources and Environment. This ministry is responsible for the administration of the Parks and Reserves Act, although the latter anticipated that an authority would be established (art. 3) to this end, which would have declared with the consent of Privy Council by notice in the Official Gazette any area of land or sea to be a park or reserve for the purposes of this Act (sect. 4). The authority would have had the power to make regulations for the protection, preservation and maintenance of natural, historical, scientific and other features of any park or reserve.

The **Minister of Environment** administers the EIA Act. As the Birds and Fish Preservation Act was supposed to be administered by the Prime Minister (art. 4), it has been unclear which part of government is responsible for the day-to-day administration of the Act with regards to birds (while fisheries are now under the mandate of the Ministry of Agriculture, Forests and Fisheries). As successfully amended, however, the Act now provides that the **Minister of Agriculture, Forests and Fisheries** may permit with the consent of the Cabinet to collect specimens subject to conditions on any or all protected birds (art. 3).

11.3 Wildlife tenure and use rights

There is no legal statement on wildlife tenure in Tongan legislation.

11.4 Wildlife management planning

There are no legal provisions on wildlife management planning in the Tongan legal system.

11.5 Wildlife conservation

The Birds and Fish Preservation Act provides for the preservation of wild birds (including pekepeka, fuleheu and kulukulu). "**Protected birds**" are those birds whether imported into or indigenous to the Kingdom and the eggs and progeny of any such birds as are mentioned in Schedule I to the Act (art. 2). The Act also prohibits any construction activity, discharge of effluent or permanent cutting, damage or removal of mangroves from any protected area (including Fanga'uta and Fanga Kakau lagoon) without prior consent from the Prime Minister. It further empowers the Prime Minister to declare part of any land or water (or both) as **protected areas**. "Protected area" means any area comprising land, or water, or land and water, as is specified in the Third Schedule to the Act (art. 2). The relationship between the latter provisions and those of the Parks and Reserves Act remains unclear.⁶⁷ Regardless, prohibitions applicable to protected areas do not include use or disturbance of wildlife (art. 7).

According to the Parks and Reserves Act, **parks** are administered for the benefit and enjoyment of the people of Tonga with freedom of entry and recreation by all persons (art. 7), whereas **reserves** must be administered for the protection, preservation and maintenance of any valuable feature of such reserve, and activities and entry must be strictly regulated (art. 8). The designation allows for prescribing conditions and restrictions for the protection, preservation and maintenance of natural, historical, scientific or other valuable features (art. 5). A general provision may arguably allow for participatory management of parks and reserves: the Authority is indeed allowed to enter into agreements or arrangements with any person or persons or government departments for the purposes of carrying into effect any object or any purpose of the Act (art. 6).

⁶⁷ Ibid.

An **environment impact assessment** to study and evaluate the potential effects that a development project may have on the environment must be conducted before a major project commence. The Schedule of the Act contains a list of activities that are considered "major project" and for which an environment impact assessment is required. Besides the fact that wild animals are included in the definition of natural resources, there is no further mention of the issue in the act. The minister has the power to determine an activity a "major project" thus subjecting to the EIA Act. Factors to consider include the effect it is likely to have on areas, landscapes, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic or scientific value, whether it will result in the occurrence (or increase the chances of occurrence) of natural hazards such as soil erosion, flooding, tidal inundation, or hazardous substances or whether it will result in the allocation or depletion of any natural and physical resources in a way or at a rate that will prevent the renewal by natural processes of the resources or will not enable an orderly transition to other materials.

11.6 Wildlife utilization

There is no legislation regulating the use of terrestrial and avian wildlife, as the existing legal framework focuses exclusively on protection. However, the forestry legislation is currently under review, and the draft forest bill provides for the licensing of taking of protected species; the control of exports of protected species and protected species products; and the making of regulations for the management of any protected species.

12. VIETNAM

12.1 Overview of the legal framework

Vietnam's 1992 **Constitution**, as amended in 2001, states that "State organs, units of the armed forces, economic and social entities, and all individuals must abide by State regulations on the rational use of

natural wealth and on environmental protection. All acts likely to bring about exhaustion of natural wealth and to cause damage to the environment are strictly forbidden" (art. 29).

An extensive and interconnected framework of laws, regulations and implementation guidelines provide for wildlife management, conservation and sustainable utilization. The 2008 **Law on Biological Diversity** is the most comprehensive instrument in this regard. It provides for the conservation and sustainable use of biodiversity, including classification of conservation zones at the national and provincial level, and lists of endangered, precious and rare species. The law provides for state management responsibilities for biodiversity, and for the rights and obligations of organizations, households and individuals. Principles for the conservation and sustainable development of biodiversity include the harmonious combination of conservation with rational exploitation and use of biodiversity, and with hunger eradication and poverty alleviation; and sharing of benefits from biodiversity exploitation and use with concerned parties (art. 4).

The 2005 **Law on Environmental Protection** is the general law providing for policies, measures and resources for environmental protection; and rights and obligations of organizations, households and individuals (art. 1). Biodiversity protection must be carried out on the basis of ensuring rights and legitimate interests of local population communities and concerned entities (art. 30).

The 2004 Law on Forest Protection and Development (Forest Law) provides for the management, protection, classification, development and use of forests and rights and obligations of forest owners, and regulates wildlife as part of forest resources. An implementing regulation of the Forest Law, the Decree No. 32/2006/ND-CP on Management of Endangered, Precious and Rare Forest Plants and Animals is the central instrument for wildlife management,

providing for the management of listed species, and provisions for their exploitation, transport and trade. The 2006 regulation on forest management further provides for the implementation of the Forest Law, prohibiting hunting, trapping or catching **wild animals in special-use forests**, being national parks or nature conservation zones are prohibited (see section 12.5 below).

12.2 Institutional setup and role of stakeholders

Environmental protection is the concern of the whole society, the right as well as responsibility of state agencies, organizations, households and individuals (Law on Environmental Protection, art. 4(2)). The state should "encourage and facilitate all organizations, population communities, households and individuals to participate in environmental protection activities" (art. 5(1)).

According to the Biodiversity Law, the government, through the **Ministry of Natural Resources and Environment**, performs the overall state management of biodiversity (art. 6). The functions of the Ministry include the management of land ownership and use rights; nature and biodiversity conservation; strategic environmental assessment (EIA) and environmental impact assessment; and guiding and facilitating associations and NGOs in participating in the natural resources and environment sector's activities (Decree No. 25/2008/ND-CP defining the functions, tasks, powers and organizational structure of the Ministry of Natural Resources and Environment, arts. 2(5), (8) and (17)). With regard to a list of tasks, including ecosystem preservation, the minister is assisted by its Environment Department (Decision No. 13/2004/QD-BTNMT defining the functions, tasks, powers and organizational structure of the Environmental Department). The Environmental Impact Appraisal and Assessment Department assists with EIA-related tasks (Decision No. 14/2004/QD-BTNMT defining the functions, tasks,

powers of the Environmental Impact Appraisal and Assessment Department). Other ministries and provincial-level people's committees retain responsibility for projects under their competence (Environmental Protection Law, art. 17(7)).

The **Ministry of Agriculture and Rural Development** has the primary responsibility for forest and wildlife management, including specifying wild species banned from exploitation in nature or permitted for conditional exploitation, in coordination with the Ministry of Natural Resources and Environment (Biodiversity Law, art. 44(2); Forest Law, arts. 8 and 41(3); Decree 32/2006, art. 13). Both lists should be publicized periodically. The Ministry of Agriculture and Rural Development is also responsible for eco-tourism activities in all kinds of forests, in coordination with the Vietnam National Administration of Tourism (2006 Regulation on forest management, art. 22). A Ranger Department within the Ministry is responsible for national parks, as well as for nature preservation, the management and rational use of wild animals, eco-tourism, and law enforcement (Regulations on working relationship between the Ranger Department and the National Parks under the Ministry of Agriculture and Rural Development, year, arts. 4-7). **Forest rangers** constitute a specialized force of the state (Forest Law, arts. 79 and 83). Their duties include guiding forest owners, inspecting and controlling forest protection, exploitation and use, enforcing forest legislation, protecting forest owners' legitimate rights, organizing the protection of special-use and protection forests, and following international cooperation activities with regard to forest animal trade (art. 80).

The **Prime Minister** may establish national-level conservation areas (Biodiversity Law, art. 23), after consulting concerned ministries and ministerial-level agencies, people's committees of all levels and inhabitants lawfully living in the planned place of the conservation area and its adjacent area (art. 22(2)). Each area is

managed by a management unit operating as a public not-for-profit unit with or without financial autonomy (art. 28(1)).

People's committees at all levels perform biodiversity management as decentralized by the government (Biodiversity Law, art. 6(4); Forest Law, art. 8), being the "organ of local state administration" (Constitution, arts. 123-124). The **Vietnam Fatherland Front**, "the political base of people's power", has the duty to "educate and mobilize their members and the people to participate in environmental protection activities" (Law on Environmental Protection, art. 123). It is an umbrella organization of local-level groups with links to the Communist Party of Vietnam.

The **Department of Environmental Police**, part of the General Police Department, is responsible for law enforcement with regard to environmental and wildlife laws violations. Disputes over forest ownership and use rights are settled by **people's courts**, which form the country's judicial system (Forest Law, art. 84).

Funds for biodiversity conservation and sustainable development come from the state budget, investments and contributions of domestic and international organizations and individuals, and proceeds from environmental services (Biodiversity Law, arts. 73-74). "Development investment funds" allocated from the state budget should be used for surveying biodiversity, ecosystem restoration, endangered, precious and rare species conservation, and investing in state-owned biodiversity conservation facilities, among other purposes (art. 73(2)). Regular funds from the state budget should be used for biodiversity information management, reports and conservation planning, species lists and management of conservation zones, among other purposes (art. 73(3)).

12.3 Wildlife tenure and use rights

There is no general statement on wildlife tenure in Vietnamese legislation. The state

manages and disposes of natural and planted forests and forest wild animals, allocating rights and obligations to forest owners (Forest Law, art. 6). The state can assign forestry land of all types, such as special-use areas including wild fauna, to organizations, households and individuals for "stable and long-term" use in the form of land assignment without land use levy or in the form of lease of forestry land (Decree No. 163/1999/ND-CP on assigning and leasing of forestry land to organizations, households and individuals for stable and long-term use for forestry purposes, arts. 1 and 3). The ownership right over planted production forests includes the **forest owners' right** to possess, use and dispose of animals within the planted forest (Forest Law, arts. 3(5) and 76).

Forests can be assigned to **village communities** who traditionally depend on forests, are capable of managing forests and have filed an application for such assignment (art. 29). Communities with assigned forests have the collective right to exploit and use forest products, including forest animals, for public purposes and domestic use, and must formulate forest protection and development rules in accordance with the law (art. 30). They should not divide forests among their members (art. 30(2.e)).

With regard to **human-wildlife conflicts**, when forest animals threaten to harm people's property or life, measures to drive them away should be applied first, without harming them (Decree No. 32/2006/ND-CP, art. 11(1)). Outside special-use forests, when such measures prove unsuccessful, these cases should be reported in writing to presidents of people's committees who will decide whether to permit trapping or hunting such animals (art. 11(2)). For particularly precious and rare animals such as the elephant, rhino, tiger and leopard, the consent of the Agriculture and Rural Development Ministry and the Natural Resources and Environment Ministry is further needed (art. 11(2)).

12.4 Wildlife management planning

According to the Law on Environmental Protection, "natural resources must be **inventoried** and assessed in terms of reserve, renewability and economic value, so as to have grounds for planning their use and determining allowable limits for their exploitation, rates of environment tax and environmental protection fees ..." (art. 28(1)), while "natural resource use planning must be in harmony with nature conservation planning" (art. 28(2)). State policies on the conservation and sustainable use of biodiversity should give priority to the conservation of important, specific or representative natural ecosystems and the conservation of endangered, precious and rare species (Biodiversity Law, art. 5(1)); and ensure local people's participation in the process of formulating and implementing biodiversity conservation plans (art. 5(2)).

The **national master plan on biodiversity conservation** should include provision for the establishment of conservation zones and their management, and solutions for stabilizing the livelihoods of households and individuals lawfully living in conservation zones (Biodiversity Law, art. 9(5)). The plan's formulation, approval and updating is under the responsibility of the Ministry of Natural Resources and Environment, in coordination with relevant ministries and ministerial-level agencies (art. 10). There is no provision for public participation or consultation in the plan's formulation. Awareness-raising with regard to, and implementation of, the plan rests with the Ministry of Natural Resources and Environment, as well as with people's committees at the provincial and city level (art. 11). Biodiversity conservation plans of provinces and centrally run cities should be based, among others, on the national master plan and local biodiversity conservation and exploitation needs (art. 12); and should also provide for the establishment of conservation zones and their management, and solutions for stabilizing the livelihoods of households and individuals lawfully living in conservation

zones (art. 13(3)). These are formulated by provincial-level people's committees and submitted to the people's councils⁶⁸ for approval (art. 14(1)) under procedures to be stipulated by the government (art. 14(2)). Awareness-raising, and implementation of the provincial plan rests with the people's committee (art. 15).

Forest owners have the right to exploit protected animals for scientific purposes and breeding, and the obligation to develop management plans for protected animals in their area and issue internal protection rules (Decree No. 32/2006/ND-CP, art. 12). Management plans for protected areas are also provided for in the Biodiversity Law (see section 12.5 below).

12.5 Wildlife conservation

One of the objectives of the 2003 country's strategy for the management of nature conservation zones is the **combination of conservation and development activities**, so that nature conservation zones contribute to comprehensive growth, hunger elimination and poverty alleviation (Strategy on management of the system of Vietnam's nature conservation zones till 2010, Section I: Objectives). The strategy's principles include: coordination among central and local government authorities; fulfilling the economic aspirations and encouraging the participation of communities living around nature conservation zones; management by the people's committees especially at the commune and district level; taking into consideration traditional use of natural resources by ethnic minority groups; and linking closely conservation with sustainable development (Strategy on management of the system of Vietnam's nature conservation zones till 2010, Section II.1: Principles).

⁶⁸ The people's council is the provincial government, elected by the inhabitants. The people's council appoints a people's committee, which act as the executive branch of the provincial government.

The Law on Environmental Protection provided for the establishment of nature conservation zones (art. 29); however, it is presumed that its classification of conservation zones and ecosystems is superseded by the more recent Biodiversity Law. The Biodiversity Law provides for establishment of **national and provincial-level conservation zones**, including: national parks; nature reserves; species/habitat conservation zones; and landscape conservation zones (art. 16).

Criteria for **national park** establishment include existence of nationally or internationally important natural ecosystem; a permanent or seasonal habitat of at least one species on the list of endangered, precious and rare species; or a landscape and unique natural beauty of eco-tourism value (art. 17). **Nature reserves** can be established at the national or provincial level: they should include an important natural ecosystem or have eco-tourism and recreational values (art. 18(2)). **Wildlife reserves**, at the national or provincial level, should be a permanent or seasonal natural habitat of at least one species on the list of endangered, precious and rare species (art. 19). Provincial nature reserves, wildlife reserves and landscape conservation zones are set up under provincial-level biodiversity conservation plans (arts. 18(3), 19(3) and 20(3)). **Landscape conservation zones** should have a particular ecosystem, unique natural beauty and eco-tourism value (art. 20).

A **conservation zone establishment project** should include the boundaries of the strictly protected, ecological restoration, and service-administrative sections, as well as a scheme of settlement or relocation of households and individuals from the planned place of the conservation zone; and a management plan of the conservation and the buffer zone (art. 21). National-level conservation zone establishment projects must be formulated as assigned and decentralized by the government (art. 22(1)). The formulation process includes consulting concerned ministries, people's committees at all levels and lawful residents of the

planned conservation zone and its adjacent area (art. 22(2)). Decisions regarding the establishment of national-level conservation zones rest with the Prime Minister, and should include the function, tasks and organization structure of its management unit (art. 23). Decisions must be sent to people's committees of the locality where the conservation zone is located for communication and implementation purposes (art. 23(3)).

Provincial-level conservation zones are established by provincial-level people's committees, after consulting concerned people's committees of all levels, lawful residents in the planned conservation zone and its adjacent areas, and obtaining the approval of state agencies competent to manage conservation zones (art. 24).

Each conservation zone includes: a strictly protected section; an ecological restoration section; and a service-administrative section (art. 26(1)). Hunting and exploiting wild species is prohibited in strictly protected sections of conservation zones, except for scientific research (art. 7(1)).

Ministries and provincial-level people's committees organize the management of conservation zones, in accordance with a regulation on management of conservation zones to be promulgated by the Prime Minister (art. 27). National conservation zones are managed by a public management unit, while provincial conservation zones are managed by a public unit or an assigned organization, based on local realities (art. 28). Households and individuals lawfully living in conservation zones have the right to lawfully exploit resources, participate in and benefit from business and service activities, and are required to observe the regulation on management of conservation zones (art. 30). Organizations and individuals carrying out lawful activities in conservation zones have the right to lawfully exploit resources and are required to observe the regulation on management of conservation zones (art. 31).

Activities in **buffer zones** must comply with the regulation on management of buffer zones as promulgated by the Prime Minister (art. 32(2)). Investment projects in buffer zones must undergo an environmental impact assessment (art. 32(3)).

Protected areas legislation is complemented by the Forest Law, which classifies forests into: production forests; protection forests, which aim at protecting water sources and regulate climate; and special-use forests, used for conservation of nature and specimens of the forest ecosystems, and for tourism. Special-use forests include national parks; nature conservation zones such as nature reserves and species-habitat conservation zones; and landscape protection areas (art. 4). Forests where endangered, precious and rare forest animals live must be considered for the establishment of special-use forests (Decree No. 32/2006/ND-CP, art. 5(1)).

The 2006 regulation on forest management, issued in implementation of the Forest Law, provides that all acts of hunting, trapping or catching **wild animals in special-use forests**, being national parks or nature conservation zones are prohibited. Where those acts are necessary, they must comply with the Decree on management of endangered, precious and rare forest plants and animals (art. 12). The release of forest animals into special-use forests is allowed only for conservation purposes under the guidance of the Ministry of Agriculture and Rural Development; released animals must be indigenous and healthy; their number must be suitable with the living environment and feed sources and ensure the forests' ecological balance (art. 18). Further details on the release of forest animals, including from rescue centres, are provided for in the Circular No. 99/2006/TT-BNN guiding the implementation of a number of provisions of the Regulation on forest management.

Community-based natural resource protection, and co-management and conservation of wildlife is promoted as an objective in a reviewed regional biodiversity

conservation programme (Program on Conservation of Biodiversity in Central Truong Son Ecological region in the 2004-2020 Period, art. 1(5.c))

With regard to **protected species**, the Biodiversity Law provides for a list of endangered, precious and rare species that are prioritised for protection, including wild fauna (art. 37). The government must specify criteria for the definition and regulations on management and protection of these species (art. 37(2)). Organizations or individuals who may submit proposals for inclusion in or exclusion of a species from the list are: those conducting surveys or research on species in the country; those assigned to manage forests, conservation zones, wetlands and other natural ecosystems; and societies, association and other organizations involved in science and technology or the environment (art. 38). The Ministry of Natural Resources and Environment should draw the updated list and submit it to the government for decision (art. 39). The list is publicized through the media (art. 40(2)). Habitats of species on the list must be assessed for conservation zone establishment (art. 41).

Listed species on the list may be reared in biodiversity conservation facilities for conservation or eco-tourism (art. 45(1)). The rearing for commercial purposes must comply with any legal requirements to be adopted (art. 45(2)). The exchange, export, import, purchase, sale, donation and transportation of listed species on the list and their products for commercial purposes must comply with the government's specific regulations (art. 46).

Listed species are divided into:

- Group I, consisting of those *strictly* banned from exploitation and use for commercial purposes, including forest animals of scientific or environmental value or high economic value, with very small populations in nature or in *high* danger of extinction; and
- Group II, consisting of those restricted from exploitation or use for commercial

purposes, including forest animals of scientific or environmental value or high economic value, with small populations in nature or in danger of extinction (Decree No. 32/2006/ND-CP, art. 2).

The lists of Group I and II animals are annexed to the Decree. Management of protected species rests with the state (art. 3(1)), which however "encourages, assists and assures legitimate rights and interests of organizations, households and individuals that invest in management, protection and development of endangered, precious and rare forest plants and animals" (art. 3(3)). Damage caused by such protected animals is compensated by the state (art. 3(2)).

Hunting, exploiting parts of, illegally killing, transporting, purchasing and consuming listed species or their products, as well as illegally rearing such species, is prohibited (Biodiversity Law, art. 7(4) and (5)). Similarly, hunting, trapping or catching protected animals, as well as their transport, export, import or trade are prohibited (Decree No. 32/2006/ND-CP, art. 5(3); Environmental Protection Law, art. 7). Group I animals can be exploited only for scientific purposes, including for breeding, according to plans approved by the Agriculture and Rural Development Ministry (art. 6(1)). Group II animals in special-use forests can be exploited only for scientific purposes, including for breeding, according to plans approved by the Agriculture and Rural Development Ministry (art. 6(2)). Group II animals outside special-use forests may be exploited for scientific purposes, including breeding, according to plans by the Ministry for centrally-run forests or by provincial-level people's committees for forests managed by local organizations or individuals (art. 6(2)).

The Ministry of Agriculture and Rural Development has the primary responsibility for specifying the conditions for the protection of wild species banned from exploitation in nature or permitted for conditional exploitation, in coordination with the Ministry of Natural Resources and

Environment (Biodiversity Law, art. 44(2); Decree No. 32/2006/ND-CP, arts. 6(3) and 13). Both lists should be publicized periodically.

Transportation regulations include requirements for **documentation of origin** and special transportation permits granted by provincial-level forest ranger offices (Decree No. 32/2006/ND-CP, art. 7(2)). It is strictly prohibited to process or trade in endangered, precious and rare forest animals of either Group I or Group II exploited from nature and products thereof for commercial purposes (art. 9(1)).

Provisions on strategic environmental assessment, **environmental impact assessment** and environmental protection commitment are included in the Environmental Protection Law. Organizations and individuals may **send petitions and recommendations** concerning environmental protection to the appraisal council and the project-approving agency, which should be taken into consideration before any conclusion can be made (art. 17(5)). An environmental impact assessment is due for projects on land or with adverse impacts on national parks and sanctuaries, protected ecosystems and projects to exploit and use natural resources on a large scale (art. 18(1)). EIA reports for projects occupying the area of a national park or nature reserve may be appraised by appraisal service organizations (Regulation on the conditions for and provision of the service of appraising environmental impact assessment reports, year, art. 5(1)). An environmental impact assessment must include the opinions of the commune-level people's committees and representatives of population communities in the place where the project is located; opinions against the project location or against environmental protection solutions must be presented in the environmental impact assessment (art. 20(8)).

Responsibility for organizing the appraisal of EIA reports rests with the Ministry of Natural Resources and Environment, other agencies

or provincial-level people's committees for projects under the competence (Environmental Protection Law, art. 21(7)). The same agencies approve the EIA reports following their appraisal. Before approval is granted, they need to consider complaints and recommendations made by project owners, concerned population communities, organizations and/or individuals (art. 22(2)). Details for the **community consultation process** are provided for in Circular No. 05/2008/TT-BTNMT guiding strategic environmental assessment, environmental impact assessment and environmental protection commitment. In providing their opinion, communities are represented by the commune, ward or township Fatherland Front Committees (Decree No. 21/2008/ND-CP amending and supplementing a number of articles of the Government's Decree No. 80/2006/ND-CP of 9 August 2006 detailing and guiding the implementation of a number of articles of the Law on Environmental Protection, art. 6A). Approved EIA reports need to be notified to the concerned localities (art. 23(2)).

12.6 Wildlife utilization

Biodiversity conservation facilities are established for conservation, research and eco-tourism organization purposes, and include facilities rearing endangered, precious and rare species and wildlife rescue centres (Biodiversity Law, art. 42). Among the conditions to be satisfied, the facilities should have adequate land areas, cages and physical foundations for rearing or breeding species on the list, and have technicians with appropriate professional qualifications (art. 42(2)). Registration with the provincial-level people's committee is required (art. 42(2) and (3)). The managers of biodiversity conservation facilities have the right to exchange or donate protected species for the purpose of biodiversity conservation, scientific research or eco-tourism according to the law (art. 43(1.f)). They are under the obligation to register and declare the origin of species on the list to the specialized agencies of the provincial-level people's committees; and to take measures

to prevent epidemics and treat animal diseases (art. 43(2)). Conditional exploitation of wild species in nature must comply with the Forest Law (art. 44(1)).

Process and trade for commercial purposes is permitted for endangered, precious and rare forest animal species originating from artificial breeding and their products; and Group II animals confiscated by the state that can no longer be rescued and released into the environment (Decree No. 32/2006/ND-CP, art. 9(2)). Organizations and individuals that process or trade in protected species must be registered, possess animals and products of lawful origin, and monitor their receipt and delivery (art. 9(2)).

The Ministry of Agriculture and Rural Development should prescribe rules for **hunting** of forest animals, tools and means banned or restricted from use, species, minimum sizes and seasons allowed for exploitation and hunting, and areas where forest exploitation is banned (Forest Law, art. 41). Lawful hunting of non-protected species is subject to a permit.

State policies on the conservation and sustainable use of biodiversity should support the development of **eco-tourism** "in association with hunger eradication and poverty alleviation, ensuring stable livelihood for households and individuals lawfully living in conservation zones" (Biodiversity Law, art. 5(4)).

Eco-tourism activities in national parks and nature reserves must not affect the natural ecosystem and landscape, the life of animals or the cultural identity of local communities (2007 Regulation on management of ecotourism activities in national parks and nature reserves, art. 4(1)). Profits earned from eco-tourism services must be reinvested in biodiversity conservation (art. 4(2)). **Local communities** may participate in, and benefit from, eco-tourism activities in order to raise their income and awareness about biodiversity and nature conservation (art. 4(3)). The

management boards of national parks or natural reserves may lease forest environment to organizations and individuals for eco-tourism development. Such forest lease scheme must be publicized among local communities, so that local communities participate in eco-tourism activities, and cannot exceed 50 years' duration (art. 6(2)). EIA reports are required for eco-tourism units, in accordance with the Environmental Protection Law.

Organizations and individuals carrying out eco-tourism activities must **prioritize local communities' participation** in the activities, creating employment and gradual raising local people's living conditions. Local communities may participate in and enjoy lawful benefits from eco-tourism activities and at the same time protect natural resources and preserve indigenous culture. Communities are supported in investing in eco-tourism development, restoring and developing forms of folklore and traditional crafts, and producing local goods for eco-tourists, contributing to improving local people's life (2007 Regulation on management of ecotourism activities in national parks and nature reserves, art. 7.3). Among the duties of organizations engaged in eco-tourism is to prioritize recruitment of local people (art. 8(2)).

Approval or eco-tourism development schemes in national parks and nature reserves rests with the Ministry of Agriculture and Rural Development (Regulation on management of ecotourism activities in national parks and nature reserves, art. 9). Provincial and municipal people's committees may approve eco-tourism development schemes of parks and reserves under their management after consulting with the Ministry (art. 9(2)).

Eco-tourism activities in special-use forests must be formulated into investment projects and approved by competent state agencies (Forest Law, art. 53, forest regulation art. 22). Under the guidance of the Ministry of Agriculture and Rural Development, in coordination with the

Vietnam National Administration of Tourism, eco-tourism development projects must not adversely affect biodiversity preservation and landscape, constructions must comply with forest plans approved by competent authorities, and create conditions for households and individuals living in special-use forests to participate in the provision of tourist services (Forest regulation, art. 22). Eco-tourism activities in production forests must not alter the forest-use purposes and comply with relevant law provisions (Forest regulation, art. 42(2)). With regard to protection forests, eco-tourism activities may be organized by the forest owners, under the guidance of the Ministry of Agriculture and Rural Development (Forest regulation, art. 33). Details on the construction of infrastructure for eco-tourism activities in all kinds of forests are provided for in the Circular No. 99/2006/TT-BNN guiding the implementation of a number of provisions of the Regulation on forest management.

Management of export, import, re-export, introduction from the sea, transit, breeding, rearing and artificial propagation of endangered species of precious and rare wild fauna, including CITES- and national law-regulated species and their products, as well as provision for CITES implementation at the national level is regulated by Decree No. 82/2006/ND-CP. The government must stipulate forest animals permitted for import, banned from export or subject to conditional export (Forest Law, art. 44). The Decree provides for CITES permits and certificates and marking of specimens originated from breeding and rearing (art. 4); prohibits the export of protected specimens as provided for by Vietnamese law, unless a permit is awarded for export for non-commercial purposes (art. 5); and regulates the export of protected specimens under national law originated from breeding and rearing (art. 6).

Responsibility to manage the **breeding** and **rearing** of protected species rests with forest management offices of provinces or centrally-run cities or with the Ministry of Agriculture and Rural Development for localities where no such offices exist (art. 9).

Animal breeding and rearing farms must satisfy conditions, including registration, suitable construction of cages and farms, ensuring safety for humans and environmental sanitation, meeting the requirements of management and techniques of breeding, rearing and tending the reared species and preventing diseases and epidemics (art. 10).

Specific conditions are set for **bear farms and breeding facilities**, including a waste treatment system meeting hygienic and environmental sanitation requirements, registration and granting of bear farm certifications, and conditions for transportation of bears (2008 Regulation on management of raised bears).

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