



# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

Task 3  
Forestry: Country studies



May – 2022



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EUROPEAN COMMISSION

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# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## TASK 3 – Case Study *Austria*

ENV/2020/OP/0022



May 2022

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## ABBREVIATIONS

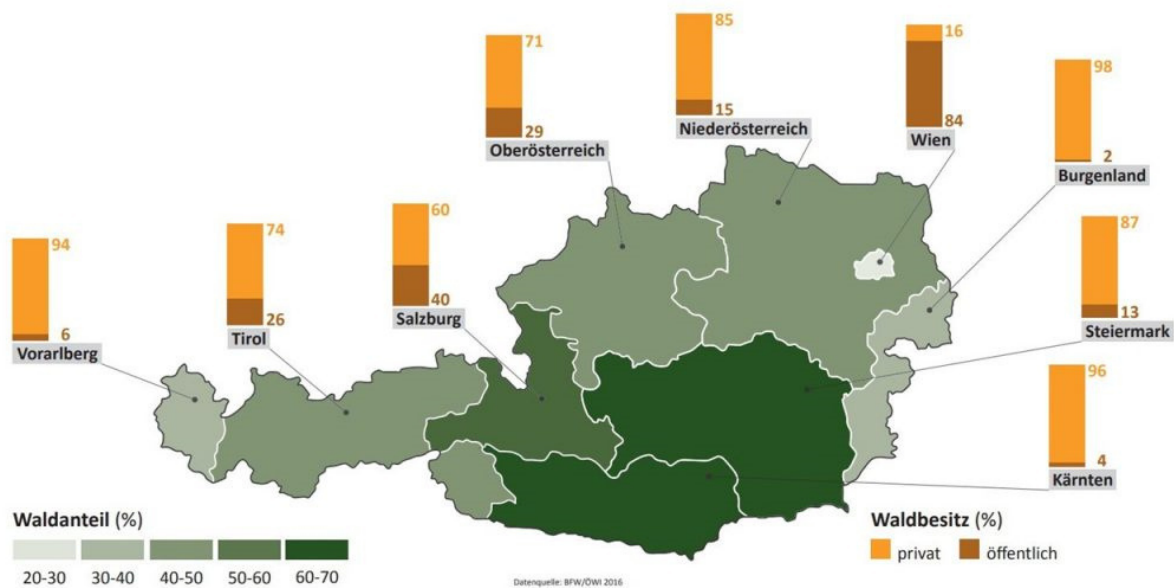
BD	Birds Directive
BFW	Federal Forest Research Centre
BMLRT	Federal Ministry of Agriculture, Regions and Tourism
CDDA	Nationally designated protected areas
CNC	Contractual nature conservation
EU	European Union
EIA	Environmental Impact Assessment
HD	Habitats Directive
IUCN	International Union for Conservation of Nature
MCPFE	Ministerial Conference on the Protection of Forests in Europe
NGO	Non-governmental organisation
NSchG	Naturschutzgesetz
OÖ	Oberösterreich
ÖBF	Österreichische Bundesforste (Austrian Federal Forests)
UN	United Nations
UVP-G	Umweltverträglichkeitsprüfungsgesetz
WAF	Waldfachplan
WBI	Austrian Forest Bird Index
ERG	Afforestation Rights Act / Einforstungsrechtegesetz

# 1 INTRODUCTION

The Birds and Habitats Directives (Nature Directives) are the foundations of EU nature and biodiversity policy, providing a common legal framework to conserve Europe's most threatened and valuable species and habitats. Embedded in this legislation, the protection rules for listed species apply to their entire natural range in Member States, both within and outside Natura 2000 sites. The following report presents the findings of an analysis on the implementation of the Articles 12 and 13 Habitats Directive (HD), and Article 5 Birds Directive (BD) in Austria. It aims to show how thoroughly the regulations are transposed into national law, to reveal what efforts are being made to provide information about them to foresters and enforce them and to evaluate assessment and authorisation procedures. To this end, we contacted more than 30 national and regional experts. Due to the federal structure of Austria, we used the state of Upper Austria (Oberösterreich) for explanatory purposes, but our intention was to provide insights from all other regions, where available. Upper Austria was chosen due to the fact that most feedback was given for this 'Land'.

## 1.1 FORESTS AND FORESTRY IN AUSTRIA

Austria is one of the smallest but most densely forested countries in Central Europe (Eurostat 2020). Forests in Austria cover almost half of the Austrian landscape (47.6 %), equating a total area of close to 4 million hectares. The Austrian Forest Inventory estimates that since 1961, the forest area increased by more than 300,000 hectares (ha), although this increase has declined somewhat since 2000/02 (Federal Forest Research Centre 2021). The reasons for this are stated as being the reforestation of forests and the trend towards natural regeneration.



**Figure 1** - Overview of the share of forest in the total area of Austria per state (Waldanteil %), as well as differentiation according to private (privat) or public (öffentlich) forest ownership (graphic extracted from Federal Forest Research Centre, 2016)

Most of the Austrian forest is privately owned (82 %) and divided among about 145,000 private owners, to varying degrees between the states (**Figure 1**). These ownerships are mainly attributed to farms or family forests, most of which have a very small structure. The majority of public forests are managed by the Austrian Federal Forests, municipalities and federal provinces (Federal Forest Research Centre, 2016). Fifteen percent of all forest land (which is 88 % of all public forests) is managed by the state-

owned “Österreichische Bundesforste AG”. Forest ownership in Austria is predominantly small-scale. Half of Austria's total forest area is private forest of under 200 hectares, consisting mainly of agrarian communities or family forests (BFW, 2016). Private forest of over 200 hectares, including some very large private estates, make up 22% of the total forest land (BFW, 2016). Agrarian communities are associations of former “land subjects” who are jointly entitled to ownership rights to certain plots of land (“agrarian community plots”). With 530,000 ha and 42 % of the total Natura 2000 area, forests are also an essential part of the protected area network in Austria. However, in total, only about 13.1 % of Austria's forests are located within Natura 2000. Many commercial forests are managed with forest management plans. Such plans, however, are not mandatory but do exist for around 50% of Austrian forests (BMLRT, 2020).

Austrian forests today contain over 60 different tree species, though most forests (70 %) consist of conifers, predominantly spruce, which reflects human intervention in forestry. Most of the forested area is situated on steep terrain. The forest cover and composition as well as the current growth of forested areas in Austria is mostly based on human interference and management (i.e. trends in forest land use, afforestation with deciduous wood species, timber harvest in relation to increment, forest regeneration by natural seedfall, etc).

The Austrian forestry and timber industry employs 300,000 people and the annual production value of the entire wood value chain is about 12 billion euros, making it an important economic sector in Austria (Forest Association Austria, 2017). While the number of people employed in the forestry and timber industry in Austria has declined in recent years, the country ranks high in economic indicators for the forestry and timber industry across the EU, despite its relatively small area (Eurostat 2020).

Austrian forests and forest management have undergone great change during the past 500 years (Findeis, 2016). From the 16th century on, increasing production of wood led to deforestation in great parts of the country. Urban settlements and intensive mining required more and more wood, the unregulated extraction of which led to a massive shortage. In the 18th and 19th centuries, the forests were overexploited for construction and firewood for energy production in the iron industry and salt works, as well as the increasing demand in growing cities. As a result, disasters caused by avalanches and floods became more frequent. Following these experiences, in the 18th century the government began to regulate forest management to ensure sustainability in Austria's forests, and in 1852 the first Austrian Forest law was passed (Rechberger, 2015). Since 1961, an Austrian Forest Inventory continually assesses the state and development of forests in Austria. The Austrian Forest Inventory is allocated to the Federal Forest Research Institute.

## 1.2 GOVERNANCE

Austria is a federal republic with nine federal states (Bundesländer), where each federal state has an elected parliament (Landtag), a state government (Landesregierung) and a governor (Landeshauptmann). Legislative competence and responsibility for the execution of laws are distributed by the Austrian Federal Constitution between the federal government and the nine federal states. On state level, Austria is divided into 79 districts (Bezirke), and 15 independent cities (Statutarstädte) which form their own districts. The administrative office of a district, the district commission (Bezirkshauptmannschaft), is headed by the district commissioner (Bezirkshauptmann).

Regarding **legislation and policy development in the forest sector, competences are split between the national government and the state governments. At national level, forest protection is enshrined in the Austrian Forest Act 1975 and partly in the Water Act 1959. Both legislations have had multiple amendments (for example, since 2002, the term "sustainability" has been anchored in § 1 of the Forest Act). However neither legislation has been adapted to EU species protection rules (Articles 12 and 13 HD, and Article 5 BD). While the national Forest Law contains provisions to protect the forest, such as logging requirements or protection from forest fires, forest pests, or forest-damaging air pollution, it does not contain specific provisions that address the protection of the associated forest**



**biodiversity.** Enforcement of national law is carried out within the state administration, i.e. by the state governors and district administrative authorities.

At state level, forestry regulation is aligned with the federal forestry law and gives complementary concretisation, specifically regarding forest fire prevention, rights to obtain timber and other forestry products for certain communities, grazing rights on forest land, etc.. In addition to national legislation, additional forestry legislation is in force at the level of the nine states, e.g. the Upper Austrian Forestry Rights Law and the Provincial Law on Afforestation Rights in Upper Austria (Öö. Einförstungsrechtgesetz - Öö. ERG).

**Nature conservation in Austria** does not have a national legislation, as each state has its own nature/landscape protection, and hunting and fishing laws to implement the EU Nature Directives. In the nature/landscape protection acts of the *Länder*, species protection is divided into special species protection and general species protection. General species protection applies to all wild species, not only endangered species. Here, for example, the deliberate damage or destruction of wild plants and fungi or the deliberate disturbance, pursuit, capture, killing or injury of wild animals is prohibited. A further **species protection ordinance** deals with specific and selected species. These include species not covered by hunting and fishing legislation, although there is some overlap. Species listed in the Annexes of the Nature Directives are also listed in this species protection ordinance and are marked as such.

Following the forest-relevant decisions of the UN Conference on the Environment in Rio de Janeiro (1992), the Ministerial Conference on the Protection of Forests in Europe (MCPFE) developed a pan-European set of criteria for modern, sustainable forest management. Based on these criteria, the Austrian Forest Dialogue developed a comprehensive **set of indicators consisting of 65 indicators for sustainable forest management** (Federal Ministry of Agriculture, Regions and Tourism, 2021). It is used to define appropriate implementation measures and to assess the achievement of objectives by defining actual and target variables. The set of indicators includes, among others, indicators of biodiversity in Austria's forests, and its data is used in a number of national and international reports. However, the set does not contain any indicators specifically in relation to Articles 12 and 13 of the HD or Article 5 of the BD. With regard to species, it includes one indicator (Indicator 4.8) on threatened forest species (based on Austrian Red List species) with the target on non-deterioration and improvement where possible.

The set of indicators was adopted by the Austrian Forest Forum in 2017 and forms an integral part of the **Austrian Forest Strategy 2020+**. Elaborated by a consortium of 85 organisations, the strategy was developed in order to “meet the diverse challenges and demands of Austria’s forest and their use in the present and future” (Federal Ministry of Agriculture, Regions and Tourism, 2021). It takes into account the political requirements of current national and international forest-related strategies, programs and processes, such as the **Austrian Biodiversity Strategy 2020+**, the Austrian forest ecology programme, Austrian Adaptation Strategy, among others. The diverse tasks of forest management are covered in seven specific fields of action. These include climate change and climate protection, forest and species protection, income security, provision of the renewable raw material wood, bioeconomy, protection against natural hazards, forest use for recreational activities, and science and research.

The concept of "**contractual nature conservation**" (CNC), an instrument of voluntary nature conservation, plays a central role in the strategy for implementing nature conservation goals. The nature conservation laws of the federal states increasingly provide for this in addition to the official instruments of nature conservation: instead of legal prohibitions and obligations, certain care and maintenance measures (e.g. the promotion of a certain tree species) or payments for refraining from timber use are agreed with the property owner, based on contracts under private law. These CNC measures are primarily intended to improve the conservation status of species and habitats or support the achievement of Natura 2000 targets. Another example of CNC in practice are natural forest reserves, which, in addition to Natura 2000 and nationally designated protected areas (CDDA), are a type of small-scale primeval forest remnant or near-natural forest that resemble their original state in their tree species composition and structure. Before issuing ordinances, the authority must check whether the purpose of the intended measure cannot also be achieved through CNC agreements.

### 1.3 PROTECTED SPECIES

According to the forest classifications<sup>1</sup>, 47 % of Austrian species protected under Annex IV of the Habitats Directive are either directly or indirectly dependent on forests (77 species in total). For wild birds in Austria, 13.8 % of the wild bird species protected under the Bird Directive are classified as forest birds – according to the Common Birds indicator for forest birds (30 bird species in total). Almost half of the Austrian forest bird species that are listed in the Austrian Red List are either classified as endangered or near threatened (OBf, 2020).

Regarding the state of nature for species protected under the HD, these are not available specifically distinguished for forestry species. However, overall, 14.5% of HD species are considered to be in good conservation status, 48.4% of species are considered to be poor, 33.9% bad and 2.4% of unknown status. Moreover, trends of biodiversity associated to Austrian forests can be evaluated using cross-species indicators. Due to their representativeness as indicator species and the data-rich long-term monitoring programs in place, population trends of selected common bird species are suitable for determining the biodiversity status in Austrian forests. The Austrian Forest Bird Index (WBI) aggregates a selection of bird species that are linked to forest habitats. Between 1998 and 2010, the WBI fluctuated but declined steadily. Since 2010, however, there has been an upward trend. By comparison, the development of birds on Austrian farmland (Austrian Farmland Bird Index) has declined more sharply than the WBI and has only levelled off or slowly increased since 2012 (Teufelbauer et al., 2017).

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<sup>1</sup> Article 12 and Article 17 species classification is based on the current State of Nature Report 2020 (EEA 2020). While the classification for Annex species relies on the definition from Halada et al. 2013 (only available for Article 17), the birds classification refers to the classification from the Common Bird Indicator classification for birds with ecological preferences for forest (CFoBI).

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTRY

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

#### National perspective

As outlined before, the legal and administrative system in Austria is strongly decentralised. It is thus characterised by a strong federal division of competences, in which each of the nine *Länder* has its own nature protection, hunting and fishing laws to implement the EU Nature Directives. In contrast to the forestry legislation, there is no national nature protection law serving as an umbrella for the *Länder* legislation. Therefore, each nature protection law at *Länder* level contains the species protection rules adapted to the specific requirements of the Habitats and Birds Directives. The species protection rules have also been included in the hunting and fishing laws of the *Länder*. However, so far neither the national Austrian Forest Act 1975, nor the Water Act 1959 has been amended to include the prohibitions arising from Articles 12 and 13 HD, and Article 5 BD.

Through nature protection laws of the *Länder*, plant and animal species listed in Annex IV of the Habitats Directive and wild bird species occurring in the respective state are formally protected.

To present a more detailed analysis on the transposition of Articles 12 and 13 HD, and Article 5 BD, the case of Upper Austria is further detailed below, with relevant transposing legislation presented also in the corresponding country template (ANNEX I). As agreed with DG Environment, the nature laws of the eight other *Länder* have not been reviewed in greater detail but seem to vary in structure and degree of detail.

#### Federal state perspective (exemplified for Upper Austria)

In Upper Austria, species protection is taken up in its Nature and Landscape Protection Law ([Oö. Natur- und Landschaftsschutzgesetz 2001](#), Oö. NSchG 2001). The regulations on special species protection are elaborated in the Article § 27 ff. Oö. NSchG, which according to § 27 Paragraph 3 includes all wild, non-huntable birds and species listed under Annex IV HD. The § 27 Paragraph 4 of its Nature- and Landscape Protection Law formulates the following exemptions:

The following shall in any case be subject to the special protection of section 28 Paragraphs (3) and (4)

1. all free-living non-huntable bird species and
2. all non-huntable animal species listed in Annex IV of the Habitats Directive,

which are native to the European territory of the Member States of the European Union.

Providing protection to non-huntable species seems to be in compliance with the Nature Directives and, in particular with the differentiation under Annex IV list of species needing strict protection measures and Annex V species whose exploitation is subject to management measures. This differentiation in legal protection is also reflected in the nature protection laws of other *Länder*, as is the case for Burgenland, Carinthia and others.

Articles 12 and 13 HD and Article 5 BD are jointly transposed in § 28 Paragraph 3 Oö. NSchG:

*‘(1) The fully protected plants and mushrooms may not be dug up or removed from their location, nor damaged or destroyed, nor acquired, transferred, transported, sold or offered for sale in a fresh or dried state. This protection applies to all parts of the plant or fungus, such as underground parts (roots or fungal mycelia), branches, leaves, flowers, fruits, etc.*

(2) *Partial protection of plants and fungi shall include, for underground parts, a prohibition on removing them from their location and, for aboveground parts, a prohibition on removing them from their location in quantities exceeding a hand bunch or individual branches, pads, or bearings.*

(3) *The protected animals in all their developmental forms shall not be pursued, disturbed, captured, transported, kept or killed. The sale, keeping for sale and offering for sale of these animals is prohibited regardless of their age, condition or developmental form. This applies mutatis mutandis to recognisable parts or products obtained from these animals.*

(4) *Any damage to or destruction of the reproduction or resting places of protected animals is prohibited. (Note: LGBl. No. 54/2019)*

These transpositions deviate from Articles 12 and 13 HD and Article 5 BD as there is:

- no reference to Article 5(c) addition “even if empty”; and
- no reference to Article 5(d) and Article 12(1)(b) on disturbance occurring during the period of breeding, rearing, hibernation and migration.

Even though it might not constitute major issues due to the prohibition cause any ‘damage or destruction of reproduction or resting places of protected animals’, it can be identified as a transposition shortcoming.

### **Forestry exemptions within the transposing legislation**

With regard to the species protection rules, the Oö. NSchG further includes exceptions for agricultural and forest use of land and soil, articulated in the exemption clause of § 32 Oö. NSchG, which states:

*‘The contemporary agricultural and forestry use of land shall not be affected by §§ 26 to 30, provided that such plant or animal species listed in Annex IV of the Habitats Directive or covered by § 1 of the Birds Directive are not intentionally impaired or killed.’*

According to the definition of § 3 No. 17 Oö. NSchG, the “contemporary agricultural and forestry use” is defined as

*‘ [...] any regular and permanent activity for the production and extraction of agricultural and forestry products with the help of natural forces, provided that this activity corresponds to the respective contemporary views of business management and biology as well as to the principle of sustainability.’*

The commentary on the NSchG of Upper Austria from Schiffner and Matzinger (2015) further details which activities do not fall under the definition of ‘contemporary agricultural and forestry use’:

*‘Contemporary agricultural and forestry use’ does not include measures which are only a prerequisite for agricultural and forestry use of land, but which in themselves are not to be regarded as such use (e.g.: the construction of a farmstead, the construction of access roads, bridges). The practice of hunting and fishing is classified as agriculture but does not constitute agricultural and forestry use within the meaning of this provision.’*

Hence, direct forestry activities, such as a limited extent of clear cutting, are not subject to the species protection rules under Articles 26 to 30, whereas supporting activities, such as road construction (as referred to under § 14 Oö. NSchG), are subject to these rules. **In addition to the other issues mentioned before, this is a transposition problem with the Nature Directives, which do not contain such exemption regarding contemporary agriculture and forest use.**

Additional regulation or any further guidelines for interpreting the term “contemporary”, which is in itself rather vague, could not be found. For the term “intentional”, Schiffner and Matzinger (2015) give the following interpretation:

*‘[...] For §§ 28 to 31, on the other hand, § 32 represents a real exception in favour of agriculture and forestry, whereby the second half of the sentence is only to be regarded as a catch-all fact required under Community law, which in practice is unlikely to be significant. For example, mowing a meadow, knowing that there are some specially protected plants in this meadow, does not constitute an act of “deliberate” impairment or killing. As soon as there is in fact an intentional impairment or killing of specially protected species, it will hardly be possible to speak of a contemporary agricultural and forestry use of land.’*

This specification underlines the lax interpretation of ‘*intentional*’, as it states that contemporary agricultural and forestry activities in themselves do not lead to intentional impairment or killing. Similar approaches are also found in the other states. **Exemptions for forestry and agricultural activities are found in the nature legislation of all *Länder*.** However, Lower Austria tightened the species protection rules by linking them to the IUCN Red List. As such, § 21 NSchG Lower Austria excludes the exemptions for agricultural and forestry activities when compromising the wellbeing of animals that are threatened by extinction. This regulation applies to a few species, such as the European souslik (*Spermophilus citellus*). These species include threatened Annex IV species and birds, but also species that are not covered under Annex IV of the Habitats Directive.

Furthermore, the clause § 32 Oö. NSchG does not correctly transpose Article 12(1)(d) of the Habitats Directive which does not require deterioration or destruction of breeding sites or resting places to be intentional or ‘deliberate’.

In conclusion, several transposition issues could be identified, as exemplified in the Upper Austrian case:

- Clause § 32 Oö. NSchG does not correctly transpose Article 12(1)(d) of the Habitats Directive which does not require deterioration or destruction of breeding sites or resting places to be intentional or ‘deliberate’;
- ‘contemporary agricultural and forestry use of land’ is exempted from the species protection rules;
- the transposition is missing reference to the Article 5(c) BD addition ‘even if empty’ as well as to Article 5(d) BD and Article 12(1)(b) HD on disturbance occurring during the period of breeding, rearing, hibernation and migration.

## 2.2 SUBSIDIARY LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

In the case of Upper Austria, its nature protection law is accompanied by a complementary Species Protection Regulation ([Oö. Artenschutzverordnung](#)). This is based on §§ 27 and 29 Paragraph 2 and fulfils two main objectives: a) providing a list of species protected under the Nature Directives that locally occur in Upper Austria, and b) presenting accompanying measures to § 28 Oö. NSchG 2001.

Such concretisations include:

- *Special requirements for the great cormorant (*Phalacrocorax carbo*);*
- *Special requirements for the carrion crow (*Corvus corone*) and the common magpie (*Pica pica*);*
- *Measures to protect the offspring and the closer living area of protected animals, including the following prohibitions in free nature:*
  1. *The removal of reeds*
  2. *In the period from 1 April to 30 September, beating, clipping or burning down groups of bushes and trees as well as hedge trains, mowing reeds, burning brushwood*
  3. *In the period from 1 March to 31 July, the emptying of stagnant water (such as ponds or pools) outside of fish farms;*
- *Exceptions for catching and keeping songbirds;*
- *Prohibited ways and means of catching or killing protected animals.*

While these measures are taken into account for activities outside forest areas, respective experts do not know any application of these rules inside forest areas.

Compared to other Austrian state law, this degree of detail is rather uncommon. Most of the state nature

protection laws and accompanying regulations do not indicate concrete measures.

Apart from this regulation, no additional official subsidiary legislation could be identified, neither for Upper Austria nor for other states. According to knowledgeable experts from administrations and non-governmental experts, as well as to additional research, the **intermediate layer of additional legislation regarding species protection rules is thin to non-existent.**

### 2.3 SPECIFIC RULES APPLICABLE AT FOREST HOLDING LEVEL UNDER THIS LEGISLATION

Applicable species rules are mostly present inside of Natura 2000 areas. Depending on the state, specific guidance documents for Natura 2000 are available. In addition, management plans are mandatory for the sites and in other states, for example the Burgenland, additional monitoring plans are required. In most cases, the development of management plans is decentralised and is mandated to the ‘region manager’ (Regionsmanager) or the respective ‘area supervisor’ (Gebietsbetreuer).

Otherwise, **no specific rules that contribute to the transposition of Articles 12 and 13 HD, and Article 5 BD and that are applicable to specific parcels of (forested) land outside of Natura 2000 sites could be identified.**

### 3 GOVERNMENT ADVICE TO FORESTERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

The results of the expert interviews, supplemented by literature review, revealed indications of governmental advice regarding the legal requirements for species protection in Austrian forests. However, a broad spectrum of experts stated that they had very few perceptions of forestry agencies or contractors bringing concrete prohibitions to the attention of forest owners in a sufficiently concrete manner.

- According to state officials, experts of the **state forestry services** take the species protection regulations into account in their consultations. These also entail written informational material and documents, which are made available to the forest owners both in analogue and digitally and are mostly project-based. Such information, however, could not be openly retrieved.
- **Forestry advice** to forest owners is organised at state level. For instance, according to interviewed state officials from Styria, such advice is carried out with regard to veteran trees and deadwood, woodpecker and nest trees, forest edge design and maintenance, on the creation of mixed forests and on the promotion of valuable biotopes and habitats for species-rich flora and fauna. In the course of forestry advice, the importance of the right period of use is also emphasised. No specific reference to the species protection rules was given.
- There are **additional information and education formats** (often in broader terms related to species protection and conservation). In Upper Austria, for instance, district forest inspectors give presentations and discussion sessions; in Styria, a ‘white book’ collects all measures relevant for examination under the nature conservation law in European protected areas (Europaschutzgebieten); and training programs for foresters as well as open forest pedagogical activities dedicated to nature protection are available in (at least) several Austrian states. It was not stated how many of these formats entailed specific reference to the species protection regulations.
- One interviewed expert pointed out that the Upper Austrian Federal Forests ([Österreichische Bundesforste](#)) have guidelines for internal use and they comply with them. This is supported by a handout about **cooperation between Birdlife Austria and the Austrian Federal Forests**, which was assessed as very useful and coherent (Gimpl and Wetzel, 2018).
- A cooperation between different actors, the Kuratorium Wald, the Federal Forest Research Centre, as well as the Federal Ministry of Agriculture, Regions and Tourism, with the support of the EU, has published a **handbook on NATURA 2000: Nature-oriented forest management for selected forest species protected by the Habitats Directive - focus on species**. The handbook contains fact sheets on 42 forest species protected by the HD, including their habitat and distribution in Austria, the status of the species and existing threats. In addition, it contains two lists, one identifying forestry measures that promote protected species, and one that identifies forestry measures that potentially harm them. The [handbook](#) is publicly available for download online, but can also be obtained in paper form from the Kuratorium Wald. It was not possible to establish the extent to which relevant landowners are aware of it or use it. It also does not include specific species occurrence data.
- In Lower Austria, to the knowledge of one interviewed expert, an in-depth analysis of the application of the EU species protection provisions is most comprehensively available from an independent source, tASFINAG Construction Management Ltd. Due to an apparent lack of official documents, this **technical document** prepared by a team of experts is becoming increasingly important as a basis for assessment of official procedures (Suske *et al.*, 2016). The document goes into depth on the significance of impairments through certain activities, cumulative effects and beneficial measures with specific reference to NATURA 2000, but also to species protection and the prohibitions at issue. It contains procedures for assessing the effects



of projects on species and their habitats protected under Articles 12 & 13 Habitats Directive or Article 5 Birds Directive, as well as in the case of a possible impact on Natura 2000 sites, and under which circumstances such projects must be approved or rejected. It is, however, focused solely on recommendations for planning practice in the construction of transport infrastructure (concerning forest habitats amongst others).

- With regard to the **knowledge of the forest owners**, diverging feedback was received in the conducted interviews. While several (mainly NGO) experts doubt that forest owners would know 1) species protection regulations and 2) where respective protected species occur on their property, other actors feel/answer differently. Officials of different states suggest that due to past and ongoing initiatives and 20 years of execution, landowners are sensitive to and aware of species protection (without however being able to directly refer to concrete species protection rules). According to one source, large property owners at least often have good knowledge of the species protection regulations and partly also which species occur on their properties. Many landowners are also organised in agricultural chambers or similar associations.

## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION IN FORESTRY

In Austria, controls are often carried out by local bodies. While it differs between states, these often involve ‘nature guards’ (Naturwacht), or forest/hunting/fishing protection organisations, as is the case in Styria and Upper Austria. These entities are responsible for the control of compliance with the legal provisions and also have the obligation to report violations in their respective areas of responsibility. Additionally, they are in charge of advising and informing citizens on nature-related issues. In Upper Austria, for instance, around 287 ‘nature guard’ bodies and 289 forestry protection bodies actively control compliance with the nature protection law. Thus, enforcement and prioritisation of species protection may vary significantly between the Länder.

According to the transposition of the species protection rules in Austrian *Länder*, forestry land use in line with ‘contemporary forest management’ intrinsically respect the species prohibitions. Thus, as a rule, there are no violations of the access prohibitions. However, the exemption does not extend to activities going beyond this (e.g. construction activities, or forestry measures beyond ‘contemporary forest management’). To this end, the requirements must be comprehensively addressed, and the competent state authorities are required to enforce the protection regime, including monitoring compliance and imposing sanctions.

Penalty provisions that sanction violations of species protection prohibitions also form part of the state nature protection laws. Article § 56(1) Oö. NSchG, for instance, punishes the violation of §§ 27 ff. Oö. NSchG with a fine/penalty of up to EUR 2,000. However, these penalties vary among the states: in § 21 NSchG Lower Austria, the penalty can reach EUR 14,500. However, most experts consider penalty provisions to be ineffective because, in their personal experience, the penalty is often paid instead of abandoning a project e.g. construction activities within forests.

The expert survey and literature review revealed thin evidence on the monitoring and enforcement of the legal requirements for species protection in Austria's forest areas, especially outside of Natura 2000 sites. The experts unanimously indicated that formal or official controls or monitoring bodies that record compliance with the Habitats and Birds Directives are either non-existent or rather ineffective. The following findings were made:

- Since a basis for enforcement requires good data on the occurrence of species, it was noted by the interviewed experts that **comprehensive biodiversity monitoring** meeting scientific criteria is largely lacking in Austria, even though efforts are currently being made to remedy this situation. While the Austrian Forest Inventory provides a statistically meaningful data basis for forest habitat types, the status assessment and the occurrence of species is often still based on expert estimates (Gimpl and Wetzel, 2018).
- Another interviewed expert from the legal field stated that there are no coherent **monitoring/control mechanisms within the Natura 2000 sites** of Lower Austria. The management plans in which these should be embedded were often assessed as rather incoherent. This is an opinion shared by an expert from the NGO sector, who stressed that within Natura 2000 sites ‘necessary measures to achieve the protection goals are contractually regulated’, but do not serve to ensure compliance with species protection regulations throughout the entire area. While it is mainly the task of the district foresters to be on the ground and clarify malpractices, there is a lack of effective monitoring of the plans. It was pointed out that while the situation in Styria seems to be somewhat better, this would strongly indicate that if the situation is like this in Natura 2000 sites, there is even less consultation and control outside Natura 2000.
- According to interviewed experts, despite frequent activities that potentially threaten protected species, effective controls carried out by the authorities are often lacking. This is because no

exemption permits under species protection law need to be issued for many activities<sup>2</sup>, with the manager or landowner himself being obliged to ensure the law is upheld. According to an interviewed regional NGO of Lower Austria (Naturschutzbund Niederösterreich), a control of species protection prohibitions by state authorities only takes place when a charge is filed. In other words, in Lower Austria, official controls of species protection rules are undertaken on a specific event-related basis or based on complaints from third parties. All experts interviewed, belonging to both NGOs and government agencies, stated that they were unaware of any statistics on inspections regarding species protection on forestry land, and some added that if there were any, they are not publicly available (due to official secrecy in Austria). Therefore, none of the respondents were aware of, or able to report, on the consequences of a violation of the species prohibitions, such as in the form of fines. According to NGO responses, any controls carried out regularly are allegedly aimed only at compliance with the Forest Act, not at compliance with species protection regulations.

- Another instrument for the management of forests in Austria is the **Forest Sector Plan** (Waldfachplan, abbreviated to ‘WAF’); a voluntary instrument of regional planning that targets specific forestry and/or general issues (e.g. nature conservation, water and soil protection). The legal basis for the Forest Sector Plan has been contained in the [Federal Forest Act](#) since 1975; however, the legislator has not laid down any concrete binding requirements but only an orientation framework. The WAF is an instrument launched by the Federal Ministry of Agriculture, Forestry, Environment and Water Management to strengthen the individual responsibility and motivation of forest owners (also in relation to upholding the law, which includes the prohibitions related to the protection of species) and is thus intended to anticipate the need for control mechanisms. Forest management plans are used in areas of the Österreichische Bundesforste, but also in many other areas.
- Regarding the **Forest Strategy 2020+**, interview responses suggested that it will very likely remain a toothless instrument if there are no corresponding efforts to make it binding. If this is not done within the legal framework, it is difficult to assess its impact. It has no effect on the implementation of the species protection rules.

Several interviewees expressed the opinion that the Forestry Act of 1975 should be amended to adapt it to the species protection rules.

In Austria, forestry is a national competence (Forestry Act), and nature conservation is a federal state competence (there is no national nature conservation law, but each federal state has its own, as described above). According to an interviewed environmental lawyer, each federal state interprets or enshrines EU law somewhat differently, and each district authority ‘(Bezirkshauptmannschaft)’ also has its own approach, especially with regard to enforcement. Therefore, according to several interviewees, the current federal system prevents uniform implementation of the law, which leads to ambiguity and often to a shifting of responsibilities, where neither the national nor the federal state or a lower authority feels responsible for enforcing species protection regulations. Because most forest controls relate to the Forest Act, amending the Forest Act would be critical to coordinating national and federal state approaches and ensuring proper enforcement.

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<sup>2</sup> Example: According to § 6 Oö. NatSchG, certain types of interventions in areas outside of settlements must only be notified to the authority before they are carried out.

## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FORESTRY ACTIVITIES WHICH MIGHT AFFECT THE PROTECTED SPECIES

The authorisation procedures for forestry activities are mainly subject to the Austrian Forest Law under §§ 17a. According to this regulation, no authorisation is necessary for registered clearings below 1,000 m<sup>2</sup>. The following activities do require authorisation under Forest law (§ 62):

- Clearings above 1,000 m<sup>2</sup>;
- Forest roads, if they lead through a working area of torrent or avalanche control, through ‘protection forest’<sup>3</sup> or ‘ban forest’<sup>4</sup>;
- Stationary forestry material ropeways;
- Other forestry systems (such as rope cranes) that affect the interests of public authorities and transportation infrastructure.

In Austria, the **Environmental Impact Assessment Directive (Directive 85/337/EEC)** is implemented by the national Environmental Compatibility Act (Umweltverträglichkeitsprüfungsgesetz, UVP-G). The UVP-G determines which activities require an environmental impact assessment, including:

- Plans requiring environmental impact assessments which are included in Annex I column 1;
- Plans with simplified procedures which are included in Annex I column 2 and 3.

Rows 43-46 include agricultural and forestry plans. For forests, these include (row 46):

- a) Clearing<sup>5</sup> an area of at least 20 ha;
- b) Extensions of clearings, if the total extent of the approved areas in the last ten years including any pending extensions is at least 20 ha in size and the additional land take is at least 5 ha;
- c) Clearing<sup>6</sup> for routes over an area of at least 50 ha;
- d) Extensions of route elevations, if the total extent of the approved areas in the last ten years including any pending extensions is at least 50 ha in size and the additional land take is at least 12.5 ha;
- e) The first afforestation with non-natural wood species in category A areas worthy of protection in an area of at least 15 ha;
- f) Extensions of first afforestation with non-natural wood species in category A areas worthy of protection, if the total extent of the approved areas in the last ten years including any pending extensions is at least 15 ha in size and the additional land take is at least 3.5 ha;
- g) Clearings in category A areas worthy of protection over an area of at least 10 ha;
- h) Extensions of clearings in category A areas worthy of protection, if the total extent of the approved areas in the last ten years including any pending extensions is at least 15 ha in size and the additional land take is at least 2.5 ha;
- i) Extensions clearing for routes in category A areas worthy of protection, if the total extent of the approved areas in the last ten years including any pending extensions is at least 24 ha in size and the additional land take is at least 6.25 ha.

Hence, an Environmental Impact Assessment will only be required for a limited number of significant developments or significant plans within forests. No specific link to species protection rules is made by the Austrian legislation implementing the Environmental Impact Assessment Directive.

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<sup>3</sup> Protection forests are protected forests by law (§ 21ff Austrian Forest Act 1975). which mainly serve to protect the function of habitats. In Austria, about 20% of the forest area are protection forests. They protect against various natural hazards such as erosion, floods, avalanches, mudflows, floods, rockfall and rock avalanches. Further details on this type of forest can be found here (German text): <http://www.wald-in-oesterreich.at/bannwald/>

<sup>4</sup> A ban forest is a special form of protection forest or forests with a welfare function. Further details on this type of forest can be found here (German text): <http://www.wald-in-oesterreich.at/bannwald/>

<sup>5</sup> Clearings are defined as “the use of forest land for purposes other than those of forest cultivation pursuant to section 17(1) Forest Act 1975”

<sup>6</sup> Clearing for routes are defined as the clearing of unripe high forest that is necessary for the purpose of erecting and for the duration of the legal existence of an energy line installation (§ 81 para. 1 lit. b of the Forest Act 1975).

For Natura 2000 areas, **Article 6(3) of the Habitats Directive** is implemented into the federal state nature laws requiring nature impact assessments in the case of ‘significant impairment’ of the protected area. In Upper Austria, for instance, it is implemented under § 24 Oö. NatSchG, which states:

*‘Measures which, individually or in combination with other measures, may lead to a significant impairment of the conservation purpose of a European protected area or a site of Community importance within the meaning of Art. 4 para. 2 subpara. 3 of the Habitats Directive require the approval of the Provincial Government (nature impact assessment) before they are carried out.’*

While commercial forest activities might form part of a protected area management plan for ‘conservation or restoration purposes’ they also might be subject to a nature impact assessment (Oö. Umweltschutzamt, 2020). Forest management plans (Waldbewirtschaftungspläne, mentioned in section 1) as part of regional planning can also be assessed if the plan is likely to impact on a respective Natura 2000 site.

Due to the federal structure in Austria, no comprehensive overview on figures and dates exists at national level for Natura 2000 either (BMLRT, 2020). However, figures from the 2013-2018 reporting indicate that management plans are present for around 72% of Natura 2000 sites.

No comprehensive information on the actual application of relevant impact assessments on forest activities and forest management plans could be identified. An example, according to one expert, is that large clear-cuts that would be subject to an environmental impact assessment have been carried out several times in recent years in primeval-like forests, priority-protected mixed slope and gorge forests in the Kamp and Kremstal protected areas of Lower Austria. Furthermore, despite several notifications by environmental associations such as [LANIUS](#) (Research Association for Regional Faunistics and Applied Nature Conservation) and the Lower Austrian Society for Nature Conservation, they have not been officially prohibited, nor were subsequent review procedures initiated. According to the expert, it appears to be the goal of the provincial administration’s forestry and nature conservation policy to handle as many projects as possible via screenings (preliminary assessments without sufficient data) in the interest of users, in order to avoid significantly more costly nature impact assessment procedures and consequently the participation of environmental associations as parties in the proceedings.

With regard to forestry activities that require authorisation according to § 62 Forestry Act, perceptions and experiences from contacted experts indicate that nature protection legislation (such as § 6 Oö. NatSchG) is not sufficiently reflected in forestry authorisation procedures which lead to ‘legislative gaps’. Interview partners from the NGO sector indicated that due to this split of competences, relevant nature authorities are often not informed about forestry activities that would require approval under nature protection legislation, and this is therefore not applied. Clearings only need to be reported where they would exceed 0.5 ha; anything below this threshold is considered a ‘free clearance’ under § 86 Forestry Act.

A more powerful and effective means of countering destructive plans can be found in contractual nature conservation (CNC).

## 6 OVERALL ASSESSMENT: SPECIES PROTECTION ON FOREST LAND

### 1. KEY FINDINGS

#### 6.1 TRANSPOSITION ISSUES

Contrary to some other policy areas (e.g. for forestry) no national law exists for nature protection in Austria, but each state has its own. As a result, ambitions differ across states and the knowledge is often not combined or shared. The underlying legal basis, however, is largely comparable: all nine Austrian states transposed Articles 12 and 13 HD and Article 5 BD into state law, even if – at least in the case for Upper Austria – some transposition issues were identified:

- Far reaching exemptions for ‘contemporary’ agricultural and forest use of land and soil (§ 32 Oö. NatSchG) provided that protected species are ‘not intentionally impaired or killed’. In praxis, and across many federal state nature protection laws, the term “contemporary” is based on a rather imprecise implicit sustainability concept<sup>7</sup>, and the interpretation of ‘intentional’ is highly vague. This exemption does not correctly transpose Article 12(1)(d) of the Habitats Directive which does not require deterioration or destruction of breeding sites or resting places to be intentional or ‘deliberate’;
- Missing parts of Article 12 and Article 5 specifications ((§ 27 Oö. NatSchG, for more detail, see section 2).

**The exemptions for forestry and agricultural land use are also found in the nature legislation of all other eight *Länder*.** Lower Austria, however, strengthens the species protection rules by linking them to the IUCN Red List. As such, § 21 NSchG Lower Austria excludes the exemptions for agricultural and forestry activities when it compromises the wellbeing of animals that are threatened by extinction.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

There is no specific legislation implementing species protection rules applicable at forest property level other than the generic species protection rules transposing the relevant BD and HD provisions. In Upper Austria, there is a complementary species protection ordinance providing accompanying measures that entail special requirements for some species, such as seasonal bans on certain activities that go beyond the generic regulations. However, experts are not aware of any application of these regulations within forest areas, and similar laws in other states do not indicate such specific measures. The intermediate layer of additional legislation for species protection is therefore sparse to non-existent throughout Austria.

##### *Other implementing or stimulating measures*

- Other concepts, such as Contractual Nature Conservation or the concept of protective forest (‘Schutzwald’) that shall be applied for vulnerable parts of the forest are in practice seen as effective measures for the protection of selected species occurrences.
- Forest sector plans, as a voluntary instrument of regional planning, target specific forest protection issues but lack concrete binding requirements, rendering it an orientation framework whose

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<sup>7</sup> ‘...organised according to procedures that are customary in a certain region and at a certain time or based on traditional experience and the use, which is adapted to natural conditions, ensures permanent performance in a functioning system without exhausting the production bases and without unduly burdening nature and the landscape.’ (§ 21 Nö. NatSchG)

effectiveness could not be evaluated.

### 6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT

#### Government advisory services

- No respondent to the survey was aware of any further official guidance or other document dedicated to specifically outlining the species protection rules in further detail.
- Evidence of targeted advisory services or (written) guidance on species protection rules for forest sector actors was rather thin, though actors from state government do say that there is in fact respective information at the local level – though it is not openly or digitally available. However, training programs for foresters as well as open forest pedagogical activities dedicated to nature protection are available in (at least) several Austrian states. Further, there are some initiatives from private owners, e.g. from the state-owned ÖBF to set up more specific rules on its territory via its Handbook on *Natura 2000 and Forest*.
- The perception of most experts is that landowners managing their forest are often unaware of the prohibitions, especially small landowners.

#### Enforcement of species protection legislation

- Forests and their management in Austria are traditionally subject to the forestry law and are not directly targeted by the nature protection legislation. Due to the broad exemptions for forest activities, the regulatory framework provides loopholes to circumvent species protection found in the Nature Directives.
- Species protection rules are thus not effectively enforced in Austria: monitoring and enforcement levels are low (even within Natura 2000 sites, according to some experts). Forestry controls are often carried out by local bodies. While it differs between states, these often involve “nature guards” (Naturwacht), or forest/hunting/fishing protection organisations, as is the case in Styria and Upper Austria. However, for the most part these controls do not consider compliance with the species protection rules.
- Limited information was found on the sanctioning of violations of species protection rules, as there are no statistics (openly) available. Penalty provisions are considered by most experts as rather ineffective, as payment of the fine is often preferred instead of abandoning the project.

### 6.4 ASSESSMENT AND AUTHORISATION PROCEDURES

#### Environmental Impact Assessment (EIA)

- EIA is only required for a limited number of significant developments or plans within forests. No specific link to species protection rules is made in the Austrian legislation implementing the EIA Directive nor at the level of the federal states.
- For Natura 2000 areas, Article 6(3) of the Habitats Directive is incorporated into the state nature laws by requiring nature impact assessments in cases of ‘significant impairment’ to the protected area. However, there are reported instances of approved clear-cuts carried out in Natura 2000 sites without conducting a necessary EIA.

#### Other authorisation procedures

- The authorisation procedures for forestry activities are mainly subject to the Austrian Forest Law

under §§ 17a. According to this regulation, no authorisation is necessary for registered clearings below 1,000 m<sup>2</sup>. The following activities require authorisation: forest roads, stationary forestry material ropeways and other forestry systems and installations (such as rope cranes).

- Forest management plans (Waldbewirtschaftungspläne) as part of regional planning can also be assessed if the plan is likely to impact on a respective Natura 2000 site. However, no comprehensive information on the actual application of relevant impact assessments on forest activities and forest management plans could be identified.
- Due to a split of competences between nature and forestry authorities, relevant nature authorities are often not informed about forestry activities (on Natura 2000 sites) that would require approval under nature protection legislation. An official approval is therefore not always obtained.

## 2. RECOMMENDATIONS

### Legislative transposition measures of species protection rules:

- Correct the problems related to the transposition of Article 5 of the Birds Directive and Article 12 of the Habitats Directive..
- Consider revising the far-reaching exemptions for ‘contemporary’ agricultural and forest use of land and soil management. In this context, further revisions may include clarifications on the terminology used, including specifying ‘sustainable forest management’ to ensure consistent understanding and implementation.

### Preventive and implementing measures:

- Increase coordination and consistency between the *Länder* so that forest species protection is put on the agenda at every level of government and strengthen their capacity in terms of staff and knowledge.
- Enact not only voluntary and supporting instruments (such as contractual nature conservation), but also strengthen the use of obligatory management requirements that are so far largely lacking.

### Public advisory and enforcement:

- Increase monitoring of local species occurrences and site-specific assessments of the conservation status of species; e.g. through additional funding and human/technical capacities.
- Make information on protected species and their presence more readily accessible to forestry stakeholders and gradually improve the quality of this information so that it is relevant at property level.
- Expand the availability of openly accessible guidance on species protection in forests whilst further expanding existing advisory services.
- Increase controls and monitoring in relation to compliance with the species protection legislation and make respective statistics/records concerning controls and sanctions publicly available, via additional funding and human/technical capacities.
- Further increase the capacity of existing control entities for forestry, e.g. ‘nature guards’, or forest/hunting organisations to inform on, monitor and control the species protection rules.

### Authorisation and permits:

- Improve the implementation of impact assessments for forest activities., e.g. by supporting the information flow between different authorities (especially nature protection and forestry authorities).



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# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## **TASK 3 – Case Study** *Germany*

ENV/2020/OP/0022



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## ABBREVIATIONS

BArtSchV	Ordinance on the Protection of wild Animal and Plant Species
BBodSchG	Federal Soil Protection Act
BD	Birds Directive
BbgNatSchAG	Nature Conservation Implementation Act of Brandenburg
BfN	Federal Agency for Nature Conservation
BMEL	Federal Ministry of Food and Agriculture
BMUV	Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection
BayNatSchG	Bavarian Nature Conservation Act
BNatSchG	Federal Nature Conservation Act
BWaldG	Federal Forest Act
ECJ	European Court of Justice
EIA	Environmental Impact Assessment
HD	Habitats Directive
LANUV	NRW State Agency for Nature, Environment and Consumer Protection
LNatSchG	State Nature Conservation Act
NGO	Non-governmental organisation
NRW	North Rhine-Westphalia
ROG	Federal Spatial Planning Act
RP	Rhineland-Palatinate
SEA	Strategic Environmental Assessment
UVPG	Federal Environmental Impact Assessment Act

# 1 INTRODUCTION

The following analysis presents the findings on the implementation of Article 12 and 13 Habitats Directive (HD), and Article 5 Birds Directive (BD). To this end, 20 national and regional experts were contacted (contact list can be found in Appendix II). Their perspectives were handled anonymously in the report.

Due to the federal structure of Germany, we limited the scope of our analysis to only a few *Länder* for explanatory purposes, but provide insights from other regions, where available. The states of North Rhine-Westphalia, Lower Saxony, Baden-Wuerttemberg and Brandenburg provided most of the responses to this study, so most explanations and insights relate to them.

The Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection (BMUV) was offered to give its feedback on the present study. The overarching perspective was stated as such:

*The EU COM already recognizes in its "Guidance document on the strict protection of animal species of Community interest under the Habitats Directive" (C(2021) 7301 final) that the application of species protection legislation in the area of ongoing activities, e.g. in agriculture, forestry or fisheries, may be problematic. However, it also quite rightly points out that the HD also applies to these activities. In the area of agriculture, for example, preventive measures are possible to ensure compliance with Article 12 HD. These may include, for example, the development of sufficiently detailed and clear guidelines and codes of conduct (even if they are not legally binding). As in the case of agricultural practices, such preventive approaches to forestry can ensure protection of affected species, provided that they are communicated effectively and implemented with good will and with sufficient resources.*

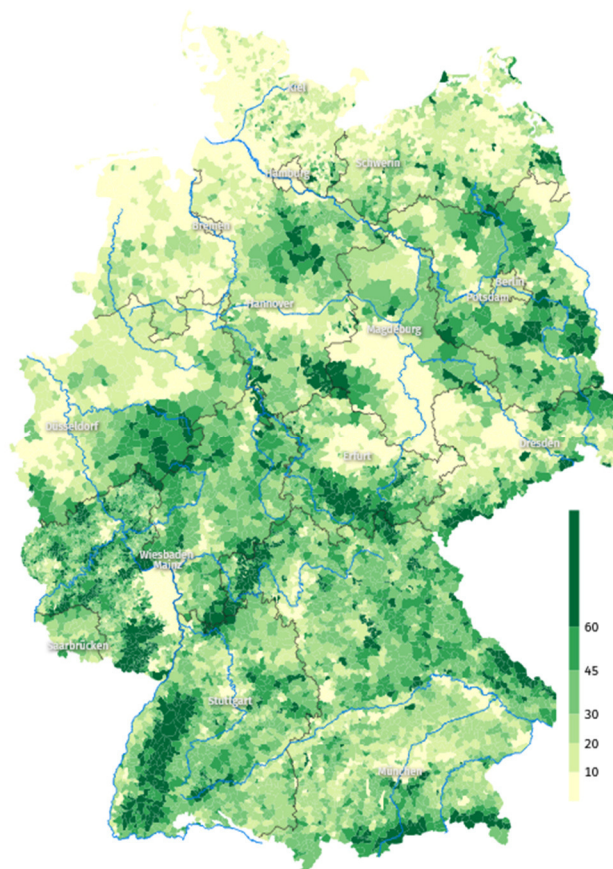
*Nonetheless, this report focuses on examining and outlining the legal frameworks of member states, but, in our view, does not adequately address the real core problem of species decline, namely harmful land use practices. Over-intensive land use can only be addressed with a comprehensive approach, especially with attractive funding incentives, and only to a small extent through an (improved) legal framework. The presented reports do not address other causes of species decline, so from our point of view the reports are incomplete.*



## 1.1 FORESTS AND FORESTRY IN GERMANY

Forests in Germany cover one third (32%) of the country's land area, with a total area of 11.4 million ha (IFL, 2016; Figure 1). There are significant regional differences in the area and ownership structure of the German forests. For example, Bavaria has the highest share of forest area with 2.6 million ha corresponding to 36.9% of the total state area, while Brandenburg has the highest forest area per inhabitant (4,601 m<sup>2</sup>; which is three times higher than the national average) and North Rhine-Westphalia has the largest share of private landowners (63%) (BMEL, 2014; MULNV, 2021).

With a share of 48% (5.5 million ha), private forests are the predominant type of forest ownership in Germany. This includes medium-sized and larger forests, but also small-scale private forests, as well as church forests. The average forest area per owner is about 2.5 ha, and only 12% of the private forests are in the hands of holdings, with more than 1,000 ha forest area. The state and federal/national forests account for 33% of Germany's forested area (3.7 million ha) (BMEL, 2014).



**Figure 1:** Share of forest area in total land area (%) in 2019  
Data: Statistical Offices of the Federation and the *Länder*, 2021

### History and development of the forest

The fact that today's forests in Germany are dominated by conifers, especially spruce and pine, is a result of historical developments. Under natural circumstances, deciduous trees would determine the appearance of the forests in Germany. From the Middle Ages until the 19th century, many forests were overused as a source of energy or cleared for farmland and pastures. Since the start of the industrial revolution, large areas of degraded forests and abandoned grazing land were reforested with conifers that were easy to sow or plant and had high commercial value. The current age structure of the German forest was shaped by the extensive reforestation after the Second World War in the 1950s and 1960s. Spruce and pine were preferred for reforestation, especially as they grow quickly and cope particularly well with the conditions after clear-cutting. The forest damage caused by air pollution in the 1980s led

to a rethinking of the choice of tree species. As a result, more deciduous trees have been planted in the recent decades resulting in more mixed forests.

### **Ecological importance and structural diversity**

Every ten years, the Federal Ministry of Food and Agriculture (BMEL) conducts a national forest inventory. Carbon inventories are carried out in the middle of the period, which survey a limited feature spectrum in the ecological field, e.g. the deadwood stock. According to the latest results from 2012, the share of deciduous trees, mixed forests and uneven canopy structures have recently increased throughout Germany (BMEL, 2014). Currently, deciduous trees cover 43% of the woodland area. This means that the share has increased by about 7% compared to the last inventory in 2002, while the share of conifers has decreased by about 4%. The difference between the two corresponds to the increase in forest area (BMEL, 2014).

Mixed forests dominate the German forest with 76% of the area, whereby deciduous tree species are more often mixed than conifers. While over 30% of the coniferous forests are still managed as monocultures, the area of mixed stands has increased by 5% in the last 10 years (2002-2012).

The Federal Forest Inventory also indicates an average of 9 trees with ecologically significant characteristics (so-called biotope trees) per hectare. They include a disproportionately high share of deciduous trees with a higher share of 60%. Among these, the Federal Forest Inventory has extrapolated around 22 million woodpecker trees or cavity trees, 741,000 nest trees with big nests and 1 million other identified biotope trees<sup>1</sup>. 80% of woodpecker and cavity trees are deciduous (BMEL, 2014).

### **Forest age structure**

The area and age of forests keep increasing. The average forest is now 77 years old, four and a half years older than in 2002. About 24% of the forest is older than 100 years and 14% older than 120 years. The area of forests over 100 years old has increased by 393,000 ha compared to 2002 (BMEL, 2014).

### **Economic importance**

Wood produced in Germany is an important component of the rural economy. Every year, 122 million m<sup>3</sup> of wood grows back, while 76 million m<sup>3</sup> of wood is harvested. With a nationwide annual turnover of 177.3 billion euro, around 1.1 million people are employed in the forestry and timber sector in Germany. Nevertheless, forestry, combined with agriculture, only account for 0.7% of the German BIP (Statista, 2020).

### **Biodiversity, threats and species protection**

The forest in Germany is one of the few elements of the landscape where species diversity is not declining, but increasing. This has been evaluated with the indicator "Species diversity and landscape quality" that has been developed in the context of the National Sustainability Strategy (BfN, 2021). However, it should be stated that individual species are still in decline, including many beetle and butterfly species, as well as the White-backed woodpecker (*Dendrocopos leucotos*). Although the average age of forests in Germany has steadily increased in recent decades and thus higher age classes occupy larger areas, ecologically old forest stands (e.g., beech trees more than 200 years old or oaks more than 300 years old) remain extremely rare (BMEL, 2016; Müller et al., 2020).

Analyses of breeding bird species in Germany have shown that the populations of forest-dwelling species have decreased significantly overall over the last 24 years (BMU, 2020). For almost 10 years, however, there has been a change in population trends that has led to a slight increase in the numbers of forest birds. For many forest birds that remain in Germany in winter, the higher seed supply, which is a suitable source of food, has had a positive effect. In addition, improvements in the "specific structures and functions" of the forests with an increased proportion of deadwood, older stands and biotope trees may have played a role.

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<sup>1</sup> In the forest inventory biotope trees are identified on plots in a 4x4km grid and the number of these trees is extrapolated of the total forest area.

In Germany, the most important drivers of biodiversity loss are habitat loss and homogenization of the landscape (sealing of soil, settlements and traffic routes<sup>2</sup>) as well as overuse/overexploitation including on land the intensification of agriculture associated with eutrophication and inputs of pesticides (Böhning-Gaese et al. 2018). In contrast, forests in their various forms, as comparatively more natural ecosystems, represent important refuges for native biodiversity. However, the local and regional disappearance of species has not stopped in forests.

Around 17% of Germany's forests are protected areas under the Habitats Directive and thus part of the European network of protected areas "Natura 2000" (FAO, 2020). In turn, around 761,000 ha (equivalent to 58%) of Natura 2000 areas within Germany are located in forests (BMEL, 2021). The forest area within all types of protected areas in Germany has increased from 2.1 million ha in 2000 to 3.3 million ha in 2020 (FAO, 2020). The majority of Natura 2000 sites are located in managed forests, which are usually separated from each other by traffic routes, settlement areas and agricultural land. The long development periods in forests, in combination with differing dead wood proportions across sites/regions, may explain why forests inside and outside Sites of Community Importance under the Habitats Directive have not yet shown major improvements with regard to biodiversity (Müller *et al.*, 2020). However, the Forest Report 2021 (BMEL, 2021) of the German Government states that "as a result of these diverse measures and approaches, the objective of maintaining and developing biodiversity and landscape quality in Germany is better achieved in forests than in any other type of landscape and habitat". The report further analyses that strong storms, extreme drought, heat waves and mass reproduction of bark beetles have led to massive forest damage in many places in Germany. According to the recent assessment, almost all main tree species show symptoms of damage, with more than 277,000 hectares in need of reforestation.

## 1.2 GOVERNANCE

Germany is a federal republic with **16 federal states** (Bundesländer or Länder/Land (sg.)), where each state has an elected parliament (Landtag) and a state government (Landesregierung). Legislative competence and responsibility for the execution of laws are distributed by the German Constitution between the national government and the 16 *Länder*. On the state level, Germany is divided into 294 districts (Kreise) and 107 independent cities (kreisfreie Stadt) which form their own districts. The administrative office of a district, the district administration, is headed by the district commissioner (Landrat/Landrätin) or, in the case of cities, by the mayor ((Ober)bürgermeister/bürgermeisterin).

The **framework conditions** for forest management in Germany have developed over time. Sustainable forest management (on a scientific basis) emerged around 250 years ago, as did sector administrations and forestry as a profession. Regarding legislation and policy development in the forestry sector in Germany, **competences are split between the national government and the state governments**. The sharing of powers and legislative competencies, as prescribed in the Constitution, enables the provision of a unified framework of standards and conditions, while leaving sufficient room for the *Länder* to reflect their own specific circumstances in state laws.

The **Federal Forest Act** provides a national normative basis for the German forest sector. Until its adoption in 1975, the development of the forest sector and forest administration had been run by the *Länder* in a traditionally decentralised manner. However, this law is limited to a general framework legislation for sustainable forest management. Hence, the Federal Forest Act **prescribes generic principles only**, which are meant to guide state legislatures in the design of their respective State Forest Laws. Only minimum requirements (e.g. reforestation of cleared or degraded forest areas) are prescribed and the type of forest management is outlined by vague legal terms (e.g., "orderly" forest management).

Forest administration at the state level in Germany lies in different government institutions, reflecting the competence of the *Länder* to organise and structure their administration as they see fit. In most

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<sup>2</sup> On average 170 km<sup>2</sup> of land are being sealed every year in Germany (UBA, 2020),

cases, a special department of a state ministry serves as the **supreme forestry authority** with **subordinate forestry administrations at the lower levels** of state governance. Forest supervision and most administrative tasks (e.g., forest management planning, control, monitoring/statistics) are in the hands of the district. Forest management is therefore a permanent task of individual forest owners, supervised by forestry offices and their district forester rangers in the forestry districts (precincts).

The **Federal Nature Conservation Act**, last amended in 2021, aims to protect, care for and develop nature and landscapes in recognition of their intrinsic value as well as for their significance for human life, health, and wellbeing. The law explicitly recognizes **sustainable forest management as a means of nature conservation**, provided that (i) forests are established close-to-nature, (ii) they are managed sustainably without clear-felling, and (iii) a sufficient proportion of locally adjusted site-specific tree species are retained (Article 5).

The **Federal Soil Protection Act** aims to protect or restore the functions of the soil on a permanent sustainable basis. However, its purview regarding forestry is **purely supplementary**, meaning that it applies only insofar as forest laws do not govern relevant impacts on soils. Forest owners or managers automatically meet the requirement for precaution in soil management when exercising forest management in accordance with effective forest laws. Regarding the **Federal Water Act**, it is only relevant to mention that forests located in designated water protection areas may be subjected to management restrictions beyond the minimum required by law, in accordance with the applicable forestry laws, which provide financial compensation to the owners.

The **State Forest Laws** generally reflect the basic structure and main provisions of the Federal Forest Act, but differ, for example, in (i) the legal definition of forest management and minimum requirements for forest management, (ii) the safeguarding of the protective and social functions of the forest and the requirements for Environmental Impact Assessment (EIA), (iii) provisions on protected forest areas, (iv) structure, mandates and responsibilities of forest administrations and state forestry enterprises, (v) public support for the forest sector, and (vi) penal provisions. What all State Forest Laws have in common is their aim to define the qualitative essence of sustainable forest management by way of enforceable minimum requirements which are immediately and equally binding to all forest owners. Together, such minimum requirements approximate otherwise indeterminate legal expressions such as “sustainable”, “orderly”, and “state-of-the-art” forest management.

The most fundamental difference between *Länder*, however, is the extent to which state forest administrations combine different administrative functions: (i) administration and management of state forests, (ii) optional co-administration and management of community forests, (iii) application and enforcement of forest laws and related regulations to non-state forest owners as well as the public, and (iv) public support (advice, technical assistance, and funding) to non-state forest owners. In general, a **regional distinction** has emerged between the northern and southern *Länder* for historical reasons: In northern Germany, the Chambers of Agriculture (corporations under public law) publicly support the private forest owners. In southern Germany, the concept of the "unified forest administration" emerged, in which the district forest offices of the state forest administrations perform **administrative, enforcement and service functions** in parallel.

The Federal Ministry of Food and Agriculture (**BMEL**) **oversees forest policy development**, both in terms of Germany's national forest policy and Germany's participation in the international forest policy dialogue and related processes. However, the BMEL is bound by the constitutional division of competences between the national level and the *Länder*. National forest policy initiatives are therefore primarily aimed at shaping overarching legal-regulatory as well as socio-economic framework conditions for sustainable forest management and the development of the forest sector. This includes, e.g., the development of the [German Forest Strategy 2050](#), which aims at the strategic orientation of national forest policy in times of climate change. Relevant for species protection are (relatively vague) objectives that include, e.g., further development of the integration of biodiversity and nature conservation in forestry management (in coherence with the objectives of the future EU Forest Strategy), as well as “increased respect” for habitat and habitat structures and the renunciation of nutrient-consuming and nutrient-depleting or soil-damaging uses.

The BMEL also coordinates **data collection and information management** at the national level. The [Federal Forest Inventory](#) (BWI) is a central instrument for monitoring forest resources. BMEL annually publishes the national [Forest Condition Survey](#), a periodical assessment of forest health and vitality, including the effects of airborne pollutants on forests and forest soils (e.g., acidification, nutrient balances).

The **Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection (BMUV)** performs a coordinating role – national as well as internationally – regarding Germany’s commitments emanating from both the UNCBD (e.g., national reporting, implementation of the program of work on forest biodiversity) and UNFCCC. The BMUV and the associated Federal Agency for Nature Conservation (BfN) are spearheading the development of a [National Biodiversity Monitoring Centre](#) (which is currently in the development phase) interdepartmentally with BMEL as well as the Ministries of Research (BMBF), Digital Infrastructure and Transport (BMDV) and Finance (BMF) as well as representatives of the *Länder*. The aim is to advance nationwide biodiversity monitoring by ensuring that the numerous actors from science, national and state authorities, professional societies and associations are better networked and that scientific findings on biodiversity are incorporated into monitoring practice.

### 1.3 PROTECTED SPECIES

According to the forest classifications<sup>3</sup>, **58%** of German species protected under Annex IV of the Habitats Directive are either directly or indirectly dependent on forests (49 species in total). For wild birds in Germany, 13.8% of the wild bird species protected under the Birds Directive are classified as forest birds (31 bird species)– according to the Common Birds indicator for forest birds.

With more than **300** recorded **breeding bird species**, Germany is one of the most species-rich countries in Central Europe (Gerlach *et al.*, 2019). Looking at trends, in contrast to the agricultural landscape, bird populations in forests have recovered in recent years. In the period from 2005 to 2016, the forest bird population has increased by about 1.5 million, with a pronounced increase since 2010 (Kamp *et al.*, 2020). According to analyses based on the Nature Directives reporting 2013-2018, reasons for such positive developments most likely relate to an increased proportion of deadwood and more numerous old-growth stands and biotope trees (BMU, 2020). Some “winner” **species of the Habitats Directive’s Annexes** are experiencing pronounced recent increases (e.g., wildcats, wolves) due to concerted conservation action, despite having been regarded as species in conflict with forestry land-use for a long time (BMU, 2020).

However, it is also clear that not all forest species benefited from such developments. In particular, those species that prefer special conditions, e.g., historical forms of use or certain rare forest types, are negatively affected. For example, the populations of the Hazel grouse (*Tetrastes bonasia*) in Germany outside the Alps have declined sharply (Weiss & Jöbges, 2018) and rare bat species are still threatened due to the felling of old trees with knotholes and cavities (Meinig & Boye, 2009). Assessments of the most recent Nature Directives reporting indicate that the most prominent pressures on forest species in Germany are generally considered to be forest management reducing old-growth forests and urbanisation.

With respect to **available data and information**, a digital [handbook](#) on all HD Annex IV species and indications on their distribution is provided by the Federal Agency for Nature Conservation (BfN) to be used for agricultural, forestry or fishery purposes. It is currently further developed to include information on local populations and threats, appropriate conservation measures, and programs and projects for each

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<sup>3</sup> Article 12 and Article 17 species classification is based on the current State of Nature Report 2020 (EEA, 2020). While the classification for HD Annex IV species relies on the definition from Halada *et al.* 2013 (only available for Article 17), the birds classification refers to the classification from the Common Bird Indicator classification for birds with ecological preferences for forest (CFoBI).

species. The inclusion of recommendations for agricultural, forestry and fishery use are still ongoing. The available distribution data is mostly based on TK25 (10x10 km raster).

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTS

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

The Federal Nature Conservation Act (BNatSchG) distinguishes between general species protection and special species protection. § 39 BNatSchG provides for general species protection. If specially or strictly protected animal or plant species are affected, the provisions for special species protection in § 44 BNatSchG apply in addition to the provisions for general species protection in § 39 BNatSchG. § 44 BNatSchG on special species protection implements Art. 12 and 13 of the Habitats Directive and Art. 5 of the Birds Directive.

Under § 44 in connection with § 7 para. 2 no. 13 and 14 BNatSchG, the following wild animals/species are protected:

- HD Annex IV species of the Habitats Directive
- European bird species
- Animal and plant species listed in Annex A or Annex B to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.
- Animal and plant species listed under § 54 BNatSchG<sup>4</sup>

The following Table 1 shows the translated transposition of Art. 12 and 13 of the Habitats Directive and Art. 5 of the Birds Directive into the German § 44 BNatSchG.

Table 1: Transposition of the species protection rules into German law

Art. 12 and 13 of the Habitats Directive				
Art 12(1) prohibits: (a) all forms of <b>deliberate capture or killing</b> of specimens of these species in the wild Art 13(1) prohibits: (a) the <b>deliberate picking, collecting, cutting, uprooting or destruction</b> of such plants in their natural range in the wild	Art 12(1)c) prohibits: (c) <b>deliberate destruction</b> or taking of eggs from the wild	Art 12(1)d) prohibits <b>deterioration or destruction</b> of breeding sites or resting places.	Art 12(1)b) prohibits: b) <b>deliberate disturbance</b> of these species, particularly during the period of breeding, rearing, hibernation and migration	Art 12(2) and Art 13(1)b) prohibit the keeping, transport and sale or exchange and offering for sale or exchange of specimens taken in the wild, except for those taken legally before the Directive is implemented
(1) It is prohibited to: 1. To pursue, <b>capture, injure or kill</b> wild animals of specially protected species or to take their developmental forms from nature, to damage or destroy them	(1) It is prohibited to: 1. To pursue, capture, injure or kill wild animals of specially protected species <b>or to take their developmental forms from nature</b> , to damage or destroy them	(1) It is prohibited to, [...]  3. <b>Remove, damage or destroy breeding or resting places</b> of wild animals of the specially protected species	(1) It is prohibited to: [...]  2. significantly <b>disturb wild animals of strictly protected species and European bird species during the breeding, rearing,</b>	(2) It shall also be prohibited to: 1. To take animals and plants of the specially protected species <b>into possession or custody</b> , to have them in possession or custody or to process

<sup>4</sup> §54 Authorisation to Issue Statutory Orders, BNatSchG:

(1) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is hereby empowered to place under special protection by ordinance, with the consent of the Bundesrat, certain animal and plant species or populations of such species not covered by section 7 para. 2 no. 13 letter a or letter b, insofar as they are naturally occurring species which

1. are endangered in their domestic population as a result of human intervention, or insofar as they are species which may be confused with such endangered species or with species within the meaning of section 7 para. 2 no. 13 letter b, or

2. are endangered in their population and for which the Federal Republic of Germany is highly responsible.

<p>[...]</p> <p>4. <b>Take wild plants</b> of specially protected species or their developmental forms from the wild, <b>damage or destroy them or their habitats.</b></p>			<p><b>moulting, hibernation and migration periods;</b> significant disturbance is deemed to occur if the disturbance worsens the conservation status of the local population of a species</p>	<p>them (<b>prohibition of possession</b>), 2. Animals and plants of the specially protected species within the meaning of section 7(2) no. 13 letters b and c a) <b>to sell, buy, offer for sale or purchase, keep in stock</b> for sale or transport, exchange or give for use or enjoyment in return for payment, b) <b>acquire, display</b> or otherwise use for commercial purposes. (<b>marketing prohibitions</b>).</p>
<b>Art. 5 of the Birds Directive</b>				
<p>Art 5 a) <b>deliberate killing or capture</b> by any method;</p>	<p>Art 5 (b) <b>deliberate destruction</b> of, or damage to, their nests and eggs or removal of their nests;</p>	<p>Art 5 (c) taking their <b>eggs</b> in the wild and keeping these eggs even if empty</p>	<p>Art 5 (d) <b>deliberate disturbance</b> of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;</p>	<p>Art 5 (e) <b>keeping birds</b> of species the hunting and capture of which is prohibited;</p>
<p>(1) It is prohibited to: 1. To pursue, <b>capture, injure or kill</b> wild animals of specially protected species or to take their developmental forms from nature, to damage or destroy them</p>	<p>(1) It is prohibited to: 1. To pursue, <b>capture, injure or kill</b> wild animals of specially protected species or to <b>take their developmental forms from nature</b>, to damage or destroy them  3. to <b>remove, damage or destroy breeding or resting places</b> of wild animals of the specially protected species</p>	<p>(1) It is prohibited to: 1. To pursue, capture, injure or kill wild animals of specially protected species <b>or to take their developmental forms from nature</b>, to damage or destroy them</p>	<p>(1) It is prohibited to: 2. significantly <b>disturb wild animals of strictly protected species and European bird species during the breeding, rearing, moulting, hibernation and migration periods;</b> significant disturbance is deemed to occur if the disturbance worsens the conservation status of the local population of a species  3. <b>Remove, damage or destroy breeding or resting places</b> of wild animals of the specially protected species</p>	<p>(2) It shall also be prohibited to: 1. To take animals and plants of the specially protected species <b>into possession or custody</b>, to have them in possession or custody or to process them (<b>prohibition of possession</b>), 2. Animals and plants of the specially protected species within the meaning of section 7(2) no. 13 letters b and c a) <b>to sell, buy, offer for sale or purchase, keep in stock</b> for sale or transport, exchange or give for use or enjoyment in return for payment, b) <b>acquire, display</b> or otherwise use for commercial purposes. (<b>marketing prohibitions</b>).</p>



## Forestry exemptions within the transposing legislation

§ 44 BNatschG further provides for exceptions for agriculture, forestry and fisheries, articulated in the exemption clause of § 44 para. 4 BNatSchG (**Privilegierung**) that states:

*If the agricultural, forestry and fisheries land use and the utilisation of the products obtained thereby comply with the requirements specified in § 5 para. 2 to 4 of this Act as well as with the requirements of good professional practice resulting from § 17 para. 2 of the Federal Soil Protection Act and the law on agriculture, forestry and fisheries, they shall not violate the prohibitions on access, possession and marketing. If species listed in Annex IV of the Directive 92/43/EEC, European bird species or such species listed in a statutory instrument pursuant to § 54 para. 1 no. 2 are affected, this shall apply only as long as the conservation status of the local population of a species does not deteriorate as a result of the management.*

§ 5 BNatSchG on agriculture, forestry and fisheries, in correspondence to the Federal Soil Protection Act (BBodSchG) § 17 para. 2, states:

*(1) Nature conservation and landscape management measures shall take into account the special importance of agriculture, forestry and fisheries compatible with nature and the landscape for the conservation of the cultural and recreational landscape. [...]*

*(2) In the case of agricultural use, in addition to the requirements arising from the regulations applicable to agriculture and from section 17 para 2 of the Federal Soil Protection Act, the following principles of good agricultural practice shall be observed:*

- 1. Soil cultivation must always be adapted to the site, taking into account the weather conditions,*
- 2. The soil structure is maintained or improved,*
- 3. Soil compaction is avoided as far as possible, in particular by taking into account the soil type, soil moisture and the soil pressure caused by the equipment used for agricultural land use,*
- 4. Soil erosion is avoided as far as possible by site-adapted use, in particular by taking into account slope, water and wind conditions and soil cover,*
- 5. The natural structural elements of the fields, in particular hedges, copses, field margins and field terraces, which are necessary for the protection of the soil, are preserved,*
- 6. the biological activity of the soil is maintained or promoted by appropriate crop rotation; and*
- 7. The humus content of the soil typical of the site is maintained, in particular by a sufficient supply of organic matter or by reducing the intensity of cultivation.*

*(3) In the silvicultural use of the forest, the objective shall be to establish near-natural forests and to manage them sustainably without clear-cutting. A sufficient proportion of native forest plants shall be maintained. [...]*

Hence, according to § 44 (4) BNatSchG, forestry land use that respects the principles of “good professional practice” is excluded from the species protection rules. In other words, forestry activities in line with “good professional practice” intrinsically respect the species prohibitions according to German law, at least *as long as the conservation status of the local population of a species does not deteriorate as a result of the management*. While § 5 para. 3 BNatSchG sets the goal of establishing near-natural forests, it is not further concretised from a species protection perspective and thus not sufficiently enforceable. According to case law regarding individual principles of “good professional practice”, they are merely seen as a guideline for action<sup>5</sup>. A comprehensive specification of the “good professional practice” has been demanded for a long time and has already been raised in the German Bundesrat (council of federal states), however mostly for the agricultural practices specified under § 5 para. 2 BNatSchG (see recommendations in [Bundesrat 168/1/17](#)). Besides this political debate, there is extensive literature available that criticises the vague and abstract principles, such as Köck (2019) and Möckel et al. (2014).

However, for certain species, including those listed in Annex IV of the Habitats Directive, the exemptions only apply as long as “the **conservation status** of the local population of a species **does not**

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<sup>5</sup> The Federal Administrative Court (BVerwG) has ruled (BVerwG, judgement of 1.9.2016, Ref. 4 C 4.15, para. 16 et seq.), for example, that the provision of § 5 para. 2 no. 5 BNatSchG, according to which grassland conversion must be avoided on peatland sites, does not contain a prohibition within the meaning of § 67 para. 1 BNatSchG. Thus, the principles of good professional practice are merely a guideline for action.

**deteriorate** as a result of the management” (§ 44 para. 4 S. 2 BNatSchG). If this is not ensured by other protective measures, e.g., by site protection measures, species protection programs, contractual agreements or targeted education, the **competent authority** shall order the necessary **management conditions** (Bewirtschaftungsauflagen) towards the causative forest owners – as required under §44 BNatSchG.

While some legal experts argue that § 44 para. 4 BNatSchG is compatible with European law (e.g. Fellenberg in Kerkmann (2010), Lütkes in Ewer/Heugel (2018), Messerschmidt in Bundesnaturschutzrecht (2019)), other authors have questioned its compatibility with European law:

- Gellermann, in: Landmann/Rohmer § 44 BNatSchG, Rn. 40: According to § 44 para. 4 sentence 3 BNatSchG, agricultural, forestry or fishery land use that kills or disturbs species protected by European legislation or results in the destruction of protected habitats only violates the prohibitions of Article 44 para. 1 BNatSchG if it is not compatible with official management requirements (as detailed below).
- Gellermann, in: Landmann/Rohmer § 44 BNatSchG, Rn. 40 further states, that “while the relativisation of the prohibition on disturbance is still compatible with Article 5 (d) of the Birds Directive, it is nevertheless subject to concerns under EU law because it is not supported by Article 12 para. 1 b of the Habitats Directive”.
- Gläß, in: Giesberts/Reinhardt, BeckOK, § 44 BNatSchG, Rn. 55: The ECJ has ruled that a blanket exemption of agricultural and forestry land use is not compatible with European law

**Thus, these exemptions of agricultural and forestry land use may pose a transposition issue, because they cannot be found in the corresponding EU directives and affect the species protection rules implementation in Germany.**

## Other exemptions

§ 44 para. 5 BNatSchG further includes exemptions for

- 1) construction projects that are subject to the “intervention regulation” (§ 15 para. 1 BNatSchG, for more detail on this see section 5), for which impairments are identified as “unavoidable” and require a permit according to § 17 para. 3; and
- 2) BNatSchG construction projects on areas with development plans (mostly in interior areas of cities and communes) according to § 18 para 2 BNatSchG.

According to one legal expert on species protection, “there are reasons to believe that § 44 BNatSchG para. 5 No. 3<sup>6</sup> does not meet the requirements of EU law”. This view, however, is not shared by the BMUV.

Apart from defining the provisions needed for a derogation under Art. 16 HD, § 45 BNatSchG gives further derogation clauses that transpose those in Article 16 HD/Article 9 BD.

Additionally, § 37 para. 2 BNatSchG states that “*the provisions of plant protection law, animal protection law, the law on epidemics and the law on forestry, hunting and fishing shall not be affected by the provisions of this chapter*”. This, inter alia, implies that the species identified as huntable species in the Federal Hunting Act (Bundesjagdgesetz – BJagdG) or state Hunting Laws are not covered by the species protection rules under § 44 BNatSchG. HD Annex IV species, however, are de facto not huntable, as they do not have any hunting season, such as the Wildcat (*Felis silvestris*), the Lynx (*Lynx lynx*) or the Eurasian otter (*Lutra lutra*), or the European bison (*Bison bonasus*). The same is true for the four fish species in Germany protected under HD Annex IV. Analogously, many birds such as birds of prey are excluded from hunting throughout the year. This is regulated in the Federal Hunting Hours Ordinance (Bundesjagdzeitenverordnung – BJagdZ-VO). However, for example for the the Common wood pigeon (*Columba palumbus*), the closed season has repeatedly been lifted by the higher hunting authority in North Rhine-Westphalia in order to avoid “excessive game damage” (§ 24 para. 2 LJG-NW), under which circumstances hunting is also permitted during the breeding season (§ 22 para. 4 sentence 2 of the Federal Hunting Act). This conflicts with the fact that, according to the Birds Directive, hunting of birds is not permitted during the breeding season (Art. 7 para. 4: “during the nesting season or during the separate phases of the breeding and rearing season”).

### Additional regulation related to species protection

§ 39 para. 5 BNatSchG – as the general species protection regulation that existed prior to the EU Nature Directives and thus does not specifically target the EU species protection rules – details further prohibitions on the destruction of breeding sites (incl. nests) and resting places:

It is prohibited to,

1. *burn off the ground cover on meadows, field margins, high meadows and unused ground areas as well as on hedges and slopes or treat areas not used for agriculture, forestry or fishing in such a way that the fauna or flora is considerably impaired,*
2. *cut, plant or remove trees, hedges, living fences, shrubs and other woody plants outside of forests, short-rotation plantations or horticulturally used areas in the period from 1 March to 30 September; gentle shaping and maintenance cuts are permissible to remove the growth of plants or to maintain the health of trees,*
3. *cut back reed beds in the period from 1 March to 30 September; outside these periods, reed beds may only be cut back in sections,*
4. *permanently clear water-bearing ditches using trenchers if this has a significant impact on the natural balance, in particular on wildlife.*

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<sup>6</sup> §44 BNatSchG 5 No. 3: The prohibition pursuant to sub-section 1 number 3 does not apply if the ecological function of the reproduction sites and resting places affected by the intervention or project continues to be fulfilled in the spatial context.

According to § 39 para. 6 BNatSchG, it is also prohibited to visit caves, galleries, earth cellars or similar spaces that serve as winter roosts for bats during the period from 1 October to 31 March; this does not apply to the performance of activities that cannot be postponed and cause only minor disturbance or to areas that are developed for tourism or are heavily used. While this is not directly linked to agricultural management, this is part of the German legislation on species protection.

EU Species protection regulation is not included in the Federal German Forest Act (BWaldG). The German building law accounts for nature conservation concerns, e.g. in outskirt areas (§ 35 BauGB), which according to the legal commentary (Gellermann, in: Landmann/Rohmer § 44 BNatSchG, Rn. 40) also includes § 44 BNatSchG.

## 2.2 SUBSIDIARY LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

The BNatSchG is accompanied by a complementary Federal Ordinance on the Protection of Wild Animal and Plant Species (BArtSchV). In addition to providing the list of strictly protected species (Article 1), § 4 (1) BArtSchV lists further – rather general – prohibitions on the deliberate disturbance of species, namely:

1. *With snares, nets, traps, hooks, glue and other adhesives,*
2. *Using live animals as bait,*
3. *With crossbows,*
4. *With artificial light sources, mirrors or other illuminating or dazzling devices,*
5. *With acoustic, electric or electronic devices,*
6. *By fumigation or using poisons, poisoned or stupefying baits or other stupefying agents,*
7. *With semi-automatic or automatic weapons whose magazine can hold more than two cartridges, or using sighting devices for shooting at night with electronic image amplifiers or image converters,*
8. *Using explosives,*
9. *From motor vehicles or aircraft; or*
10. *From boats with a propulsion speed of more than five kilometres per hour.*

These do not include any specifications for forestry management. Apart from this ordinance, no additional official subsidiary legislation derived from the EU transposing legislation could be identified. Based on the knowledge of interviewed experts from administrations and non-governmental experts as well as on additional desk research, this study concludes that the **intermediate layer of additional legislation regarding species protection rules is rather thin.**

**Specific legal requirements on respecting species protection rules in forestry are currently largely lacking in both the BNatSchG and the Federal Forest Act (BWaldG). However, more detailed legal requirements are often covered by existing *Länder* legislation.** § 54 para. 10 BNatSchG authorises state governments to issue ordinances with general requirements for agricultural and forestry land use within the meaning of § 44 para. 4 BNatSchG. They may also authorise other state authorities to issue general requirements. However, no example of such requirements could be identified for this study. § 11 para. 1 BWaldG requires forests to be managed properly and sustainably within the framework of their intended purpose.

The BWaldG does not make any reference to national or EU species protection legislation. Destructive management practices such as clear-cutting<sup>7</sup> are not prohibited, except for “conservation forests” (Schutzwald). Such conservation forests are mainly designated to reduce environmental impacts such as erosion processes, avalanches or drought (species protection is not mentioned). In some instances, however, state forest laws (LWaldG) address species protection in additional paragraphs, such as § 22 para. 2 LWaldG Baden-Wuerttemberg. It states:

*Special attention shall be paid to nature conservation requirements in protected areas, for example Natura 2000 areas, to **the requirements of special species protection** as well as to the creation and maintenance of naturally structured forest edges. Sufficient habitats for indigenous flora and fauna shall be preserved, for example by leaving deadwood; the requirements for maintaining a healthy and adequate game population shall be taken into account.*

It further states in § 22 para. 2 LWaldG Baden-Wuerttemberg that “*the forestry authorities shall work towards ensuring that the requirements set out in paragraphs 1 to 3 are taken into account in the management of the forest and in particular in the preparation of operational plans*”. Furthermore, this

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<sup>7</sup> State Law in many cases does specify the regulation on clear cutting. While Brandenburg in its LWaldG Brandenburg prohibits clear cuts (§ 10 LWaldG Brandenburg), other *Länder* impose area limitations, e.g. Niedersachsen (§ 12 NWaldLG) und Baden-Württemberg (§ 15LWaldG) limit clear cutting to 1 ha, in Rhineland-Palatinate 0.5 ha except for even-aged pure stands up to 2 ha (§ 5 LWaldG RP)

state law contains the concept of the “biotope conservation forest” (Biotopschutzwald). In addition to the nationally defined “conservation forest”, this protection category is defined as a forest that “*serves to protect and preserve rare forest communities as well as habitats of rare wild plants and wild animals*” (§ 30 para. 1 LWaldG Baden-Wuerttemberg). Further details on this are given in Appendix I. A similar regulation can also be found in Rhineland-Palatinate (§ 18 LWaldG RP).

Some of the forest laws of the *Länder* also contain more detailed provisions on individual principles of close-to-nature forest management. Close-to-nature forestry is a management approach that has been developing as a good professional practice over the last decades. It treats the forest as an ecological system performing multiple functions, achieving the management objectives with minimum human intervention aimed at accelerating the ongoing natural processes. It works with natural populations of trees, ongoing processes and existing structures. Examples can be found, inter alia, in the forest laws of Thuringia, Berlin, Rhineland-Palatinate or Bavaria.

## 2.3 SPECIFIC RULES APPLICABLE AT FOREST HOLDING LEVEL UNDER THIS LEGISLATION

In Germany, forest management is mostly in the hands of foresters that often **do respect the prohibitions**, especially regarding important forest species such as the Great spotted woodpecker (*Dendrocopos major*). However, forestry education is still largely committed to high production forestry and is only slowly opening up to more nature-based perspectives (highly dependent on the individual education facility or university). However, according to the survey responses, many managers and landowners envisage and carry out supportive management measures for endangered and protected species beyond the legal requirements and specifications, often implemented through corresponding contractual nature conservation models.

For example, one state official analysed the conservation status and special protection attention of a selection of important forest species for Baden-Wuerttemberg as such:

- **Bat populations** are mostly stable in the forest due to increased attention and enforcement as well as the preservation of cavity trees.
- While many populations of **woodpeckers** are stable, the White-backed woodpecker (*Dendrocopos leucotos*) is still declining due to the need for a high level of dead wood (which is still insufficiently left in the forests).
- Populations of **owls**, such as the Eurasian pygmy owl (*Glaucidium passerinum*), profited from increased nature-near management efforts to leave more old trees in the forest.
- Forest butterflies are targeted by projects that, inter alia, preserve and improve the edges of the forests.

Moreover, some states conduct targeted work for biotope protection, biotope maintenance or the promotion of species-specific habitats. For instance, the Brandenburg State Forestry Office has implemented protection programs for forest species for many years. The focus is on protected or endangered animal and plant species and their habitats. The Brandenburg State Forestry Office gives particular importance to the protection of the following 15 species (groups): Lesser spotted eagle (*Clanga pomarine*), White-tailed eagle (*Haliaeetus albicilla*), Black stork (*Ciconia nigra*), Black woodpecker (*Dryocopus martius*), Wolf (*Canis lupus*), Stock dove (*Columba oenas*), the Osprey (*Pandion haliaetus*), Common European viper (*Vipera berus*), Peregrine falcon (*Falco peregrinus*) and other falcon species, lizards, Stag beetle (*Lucanus cervus*), silver fir (*Abies alba*), Marsh Labrador Tea (*Rhododendron tomentosum*) and bat species. See exemplary information on the species protection program for the [Lesser spotted eagle](#) led by the German Wildlife Foundation. Such programs include the identification of local populations (via mapping, on-site monitoring and/or citizen science) that are then addressed via targeted conservation measures.

In principle, all public and private forests forming part of the Natura 2000 network that are larger than 100 ha are managed according to a management plan. These include mapping activities of all Annex IV species and wild birds and respective measures to protect the local population. This also applies to forests owned by the church with more than 50 ha. Smaller private forests may also be managed according to a management plan if they are part of a private forest association. In reality, the total

forested area with a long-term forested management plan is 7,6 million ha, which equates to 66.7% of Germany's total forested area (FAO, 2020).

### 3 GOVERNMENT ADVICE TO FOREST OWNERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

The results of the expert interviews, supplemented by a literature review, reveal some key aspects of governmental advice regarding the legal requirements for species protection in the German forestry sector.

The Federal Ministry of Food and Agriculture (BMEL) and some state ministries with their associated Chambers of Agriculture have presented the legal regulations in guidelines and information brochures for forest management. These interpretative aids are **not legally binding**, but may be used by forest managers and landowners, authorities, and courts. Insofar as many of them have the character of official administrative regulations, they are to be taken into account when interpreting standards but are not to be observed like legal ordinances (BfN, 2014).

Interview partners point to the concept of biotope trees (Biotopbäume) as one key instrument to ensure species protection in forests. Biotope trees are trees of high ecological importance and should be left in the forests permanently. This concept targets nesting (incl. aeries) species and species living in tree cavities such as beetles, bats, birds and insects. It includes different types of trees such as “cavity trees”, “trees with aeries”, “dead wood”, “old trees”, “head trees”, or others. The implementation, however, is **not mandatory by law** and thus **dependent on the individual forest manager**. Still, many state forestry authorities have mappings and guidelines on how to identify biotope trees, such as the one given by Bavaria ([guidance on biotope trees and dead wood](#)).

Some *Länder* seem to be more active than others in providing guidance, having relatively extensive **advisory services**. These mostly take the form of online information systems or distributed written information (guides, official instructions, etc.). A wide range of experts pointed to a **disparity between the states**, with some state ministries openly stating that they do not (yet) have “soft measures” such as guidelines for subordinate authorities, other experts, and ultimately foresters. Extensive online research has come to similar conclusions. It is possible, however, that they simply cannot be found online or are not freely accessible. Another observation in this context, voiced by several experts, is that in wealthier states (mostly in the south of Germany such as Baden-Württemberg) a higher level of government advice is available. According to interviewed experts, this is mostly due to the availability of more financial and human resources in the respective ministries.

Examples of specification and advice to foresters include:

- At the national level, there is an [online information service](#) for forestry, fisheries and agriculture with profiles of protected species according to Annex IV of the Habitats Directive. Here, in addition to information on biology, ecology, endangerment and management, grid information on occurrences can be found. In addition, there is the Scientific Information System on International Species Protection ([WISIA-online](#)), which provides a database of animal and plant species that are specially and strictly protected under the Federal Nature Conservation Act (BNatSchG). More technical information from the national government and the *Länder* is accessible via the [BfN website](#). Projects and programs for species affected by forestry activities at national and state level are also listed here (e.g., for the [European wildcat \(\*Felis silvestris\*\)](#)).
- All *Länder* have made efforts to **collect relevant data** and information on protected species as well as on the various topics and instruments of biodiversity conservation **online**. However, they differ in the depth of information provided. Some *Länder* have established **central species databases** (e.g., [Bavaria](#), [Hessen](#), [Thuringia](#), [Schleswig-Holstein](#)) that serve as a state-wide recording, documentation and information system for fauna and flora. The information therein is needed for a variety of administrative and specialised tasks of the *Länder* and local administrations. Such tasks focus in particular on the **documentation of species occurrences**, but can also relate to impact regulation, special species protection assessment, environmental impact assessment, monitoring, Natura 2000 and for nature conservation assessments and planning. Similarly and often embedded



in an extensive species web-portal, **species profiles** (Artensteckbriefe; e.g., [Mecklenburg-Western Pomerania](#); [Saxony](#); [Baden-Württemberg](#)) also contain important information relevant to species protection and on planning and approval issues. These are aimed at planning offices and authorities primarily, but also other relevant stakeholders (e.g., foresters) and the general public. Only a few *Länder*, especially the independent cities, have less information in a national comparison, e.g., there is a lack of systematically collected forestry parameters in combination with faunistic or floristic mapping. Baden-Württemberg has a dedicated [Forest Conservation Information System](#) presenting all relevant data and information on the various topics and instruments of forest nature conservation. In addition, some *Länder* have published working aids for special species protection assessment in the context of planning approval/permit procedures. This is discussed further in chapter 5.

- North Rhine-Westphalia (NRW) provides a range of advisory and information services and publications with regards to species protection in forestry. The *Land* has published a detailed [brochure on regulations on species and biotope protection](#), which contains information on the legal provision for the sectors of agriculture, forestry, and fisheries. It focuses particularly on species protection assessments and is aimed primarily at nature conservation authorities and planning offices, to ensure correct implementation with land users. Notably, a [specific guide on species protection in forestry](#) has been developed by the NRW ministry. The guide is intended to serve as a **working aid** for regional authorities, but also to provide support and **direct assistance to foresters in complying with species protection regulations** - for example, when it comes to the question of whether their activities are acceptable and lawful for the protection of a species in an individual case. Therein, so-called **positive lists of measures** provide a comparatively high degree of guidance for foresters to comply with the species rules in a nationwide comparison. An example of a measure in this list is provided in **Table 1** below. The guide is supplemented in the [online portal](#) by a brochure on the protected species, annexes to nationwide **occurrence maps** of local populations, as well as species-specific **fact sheets** and another method manual for **EIAs** with regards to protected species.

Table 2: Extract from the positive lists of forestry measures under species protection law issued by the German state of NRW

<b>1) Measure</b>	Thinning of forest stands (mid-diameter of the breast from 14 cm) if necessary, with simultaneous initiation, promotion and (without ground treatment) and favouring of rejuvenation
<b>2) Relevant species</b>	European wildcat ( <i>Felis silvestris</i> ) Bats Nest and colony breeding birds Eurasian eagle-owl ( <i>Bubo bubo</i> ) Woodpeckers Owls Golden Oriole ( <i>Oriolus oriolus</i> )
<b>3) Measures</b> for relevant species are generally <b>unobjectionable</b> in terms of species protection law if the following conditions are met in all forests and according to § 52 LNatSchG NRW especially in protected sites under the BD	<b>General conditions:</b> Nest and cavity trees as well as known with bat roosts or hermit roosts are left in place. Occurrences are left in place. No felling of nest and cavity trees in Special Protected areas (SPA). The use of vehicles takes place only from the created network of paths/fine accesses
<b>4) As a rule:</b> No significant impairment in the sense of § 33 para. 1, sentence 1 BNatSchG, according to § 34 para. 1 if the following conditions are met in <b>protected areas under the HD</b> or no violation of the provisions § 30 BNatSchG/ § 42 LNatSchG NRW (in <b>all forests</b> )	Both wood and vehicle use as in column 3. In natural habitat types of community interest, according to Annex I of the Habitats Directive, at least 6 selected old trees per ha (esp. nest and cavity trees) are not used.  In stands that are habitat types, the proportion of living typical tree species is not reduced

- **Chambers of agriculture can** also play a role in providing direct advice to foresters and in preparing the information provided by higher-level authorities. Through information and statements collected by the BMUV for the purpose of this study, it is stated that the focus of the biodiversity advisory service of the NRW Chamber of Agriculture is to communicate which measures can be used to support/promote which species and how (i.e., contractual nature conservation). Information on **species protection regulations/prohibitions** is included, but this is allegedly **not the main focus of their advisory work**.<sup>8</sup>
- In Lower Saxony, the approach called "Lower Saxony Way"<sup>9</sup> provides an extended advisory service on biotope and species protection that has been established, with the primary addressee being agriculture. However, the exemplary implementation of ecological silviculture by the Lower Saxony State Forests has recently been emphasised in a broad set of goals and measures for the specification and further development of a government program for "[Long-term Ecological Forest Development](#)". It includes **goals and measures on timber extraction and maintenance measures** providing **special consideration to the protection of mammals and birds** in the breeding season. Reference is also made to corresponding funding opportunities. When examining the advice offered in the form of publications and guidelines concerning species protection and legislation, a practical guide "[NATURA 2000 in Lower Saxony's forests](#)" stands out which includes, among other things, the identification of forest areas with reproduction and resting sites of protected species with associated restrictions on use or necessary measures (e.g. the leaving of volumes of deadwood or biotope trees) in addition to some lesser detailed flyers (e.g., "[Habitats Directive and species protection in Lower Saxony](#)").

To make the species rules and corresponding data available and applicable for foresters, additional communication and guidance work on protected species is required. The *Länder* should increase their efforts to build a comprehensive system of information for forest biodiversity protection.

In many cases, there are specialised units in the state environment ministries that deal with species conservation. Responsibilities are sometimes split between separate forestry units/ministries at the state level. It appears that agricultural practices and their impacts on biodiversity, as well as compliance with species protection regulations for agricultural activities, are given more attention in many government assessments and publications. The Chambers of Agriculture, which are tasked with providing advice to foresters, similarly seem to have a substantial focus on agriculture and **provide comparatively little information on forestry**. Sections on their website that link forestry and conservation, for example, focus more on pest controls rather than aspects of biodiversity conservation. Regional forestry offices are very numerous, but except for a few dedicated exceptions, they seem to give precedence to economic interests of timber production over species protection.

It is recommended that more concerted efforts be made to put forest species conservation on the agenda of all government levels, but especially reaching regional forestry departments. These can then instruct foresters and landowners on implementation of the protection regime. The incentive for that can only come from the state environmental ministries.

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<sup>8</sup> Chambers of Agriculture from several *Länder* were contacted as part of this study, but none of them agreed to be interviewed or to give a statement on the extent to which their advisory work includes aspects relevant to biodiversity and species protection.

<sup>9</sup> The "Lower Saxony Way" is an agreement reached by the federal state government of Lower Saxony, the Chamber of Agriculture and NGOs that is unique in Germany. In the joint agreement, all participants commit to great efforts in nature and species conservation, biodiversity and the management of landscape resources (<https://www.niedersachsen.de/niedersaechsischer-weg>).

## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION IN FORESTS

Compliance with the provisions of species protection law is **monitored by the competent authorities within the states**. The competent authorities **differ from state to state** including centralised and more decentralised approaches. For example, in Schleswig-Holstein, the state ministry is responsible (centralised), whereas in NRW it is the Lower Nature Conservation Authorities (decentralised), along with the chambers of agriculture and the forty Biologic Stations unique to this state. Thus, enforcement and prioritisation of species protection may vary significantly between the *Länder*.

According to German law, forestry land use in line with “orderly forest management” **intrinsically respects the species prohibitions, as stated under § 44 para. 4 BNatSchG**. Thus, as a rule, there are **no violations** of the access prohibitions of § 44 para. 4 BNatSchG for such activities. However, according to the same paragraph, a forestry measure is classified as unobjectionable or in need of coordination with the competent authority, depending on whether the activity is expected to negatively affect a local species population. Furthermore, the exemption does not extend to activities going beyond this (e.g., construction activities, forestry measures beyond “orderly” or the “good professional practice”). To this end, the requirements must be comprehensively addressed, and the competent state authorities should be required to enforce the protection regime, including monitoring compliance and imposing sanctions.

**Penalty provisions** that sanction violations of the prohibitions of § 44 para. 1 and 2 BNatSchG are punished with a fine of up to 50,000 EUR (§ 69 para. 7 BNatSchG). Notably, the extent to which a forest landowner or the forestry worker carrying out a specific activity has **knowledge of the species prohibitions and the associated sanctions**, was deemed as rather low by most of the interviewed stakeholders. In this context, this is important because, although penalties exist, they are hardly ever imposed according to all the survey responses, and a lack of knowledge of the regulations by foresters raises the legitimate question of whether the penalties may not be sufficient to ensure a functioning system of species protection.

The literature review and the expert assessment provided some indications on the monitoring and enforcement of the legal requirements for species protection on Germany’s forested land.

- In NRW, for example, the Lower Nature Conservation Authorities are responsible for implementation of the species protection according to state law (§ 2 (4) LNatSchG NRW). Within this framework it is also their task to determine whether the local population of a given species is deteriorating as a result of management. Should this be the case, the forester concerned would be informed, as well as the state forestry administrations (forestry offices, precinct rangers). In a next step, coordination/optimisation of the protection concept (especially through contractual conservation) is the measure of choice of the *Land* to stop/reverse deterioration. In what the NRW Ministry calls an “escalation cascade of measures”, the ordering of **management requirements** according to § 44 para. 4 BNatSchG and the imposition of sanctions are only used as a **last resort**. They only come into force after targeted education/awareness campaigns, development of suitable measures with the forester (species protection programs & contractual nature conservation), as well as spatial protection have been exhausted. This point was **also confirmed by officials from other state ministries**. In fact, several state environment ministries stated that they **do not have figures on the number of management requirements being imposed** according to § 44 BNatSchG.
- It is noteworthy that the authorities in NRW have only exhausted the entire legal process and made an example in “*very few extreme cases*”, including the imposition of management requirements (legal consequence of a deterioration according to § 44 para. 4 BNatSchG) and sanctions. The so-called positive lists of measures as part of a piece of guidance issued by the NRW ministry of environment mentioned in the previous chapter are intended to provide foresters with legal certainty that the activity in question does not lead to any deterioration of the local population of a certain species. Therefore, such activities, taking into account “species-related conditions”, do not require

coordination with the Lower Nature Conservation authorities. Thus, there are typically no enforcement actions or consequences (contractual regulations, management requirements, sanctions) necessary for measures complying to this schema. The picture is the same in Lower Saxony, where the ministry of environment is only aware of “a few individual cases”, stating also that the responsibility for the order lies with the municipal authorities. In fact, **statistics on violations of § 44 BNatSchG** or § 69 BNatSchG and their penalties were generally **not available** and according to several state environmental ministries and could therefore not be provided upon request.

- Several experts (mostly from NGOs and from academia, some from lower levels of the administration) asserted that **violations of the species protection rules in German forests are relatively common**. For example, an expert from a scientific forestry institution under a state authority stated that he had witnessed several incidents in which cavity trees clearly associated with and important to protected bird species were cut down without any official complaint or legal action following.
- A representative of a large German NGO attributes a major problem to the **lack of enforcement capacity and political will/direction**. In order to levy fines, an authority would have to regularly monitor what is happening. In his view, nature conservation authorities are often not equipped for this, and public prosecutors are not familiar with environmental criminal law (or the few specialised ones have been politically discontinued in the few *Länder* in which they were present, such as NRW). The expert states that fines are extremely rare, even for intentional violations of species protection law (illegal killings, poisonings of e.g., birds of prey, wolves, etc.), because there are no enforcement capacities (political prioritisation) to find the offenders. In this regard, he concludes that sanctioning species protection violations through regular practice is likely to be even less of a priority and that the focus of the controls is more on the quantitative delimitation of the area eligible for contractual nature conservation. However, officials also stated that there are in fact **efforts in the Länder to close enforcement gaps and improve species protection in forests**. In Baden-Wuerttemberg, for instance, matters of forest species protection are increasingly being enforced by the state nature conservation units instead of the forestry units, with considerable additional personnel. In Bavaria, the „Handlungskonzept zur Polizeilichen Aufgabenwahrnehmung im Zusammenhang mit dem Luchs“ was established in 2015 as a guideline for police officials on how to deal with illegal killings of Lynx.
- Several interview partners suggest **that regulatory law, by means of a strong enforcement regime with controls and sanctions, is not a suitable instrument to ensure effective protection of species in forestry and agriculture**. One representative of a state environmental ministry argued that sanctions and controls would work for the "rare and last of their kind (e.g., Western capercaillie, *Tetrao urogallus*)", where mediation with sanctions is a viable option. However, when it comes to more common species (e.g., European green woodpecker, *Picus viridis*), he does not consider § 44 BNatSchG to be **a suitable instrument** to stop the loss of biodiversity in forestry (and agriculture). This statement was also printed and presented during an official workshop of the ministry to explain the guideline for species protection in agriculture and forestry to a range of relevant stakeholders.<sup>10</sup> The extensive exemptions for good practice agricultural activities, and the limited willingness of state governments to enforce and sanction violations of the regulations, imply that violations of the species rules are likely to occur on a relatively large scale, given the known impacts of industrial agriculture on rare but also common species. That is, unless the following approach, which is widely considered by federal state governments to be the more effective and successful alternative, is entirely sufficient to uphold the species rules at large scale (an assumption which was questioned by some survey respondents outside of the government): the so-called "commitment to the **principle of cooperation**", which does not ignore the legal regulations but places the focus more on cooperation with the land users and thus also, arguably, presupposes a greater degree of trust.<sup>11</sup> In fact, the § 3 para. 3 BNatSchG stipulates that “*in the case of nature conservation and landscape*

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<sup>10</sup> The workshop slides were provided as part of the answer to this study but are not available online

<sup>11</sup> The workshop slides were provided as part of the answer to this study but are not available online

*management measures, priority shall be given to examining whether the purpose can also be achieved at reasonable expense through contractual agreements. If this is the case, contractual agreements take precedence.”*

- Despite increasing efforts by the *Länder* to have accurate knowledge on species occurrences and their conservation status, several experts stated that in most cases, the **data is not extensive enough** to assess populations at the site level. Several experts pointed to the fact that to legitimately sanction violations, authorities need to demonstrate that the population of a species in a specific location is declining due to the activities of an individual forester. However, such a **causal connection between concrete action and deterioration of the conservation status** is supposedly not possible in practice. Even if sanctioning individual violations would be feasible at certainty, **human and technical capacities** of the authorities for control were deemed as not nearly sufficient.
- An expert from one state forestry department asserted that to give valuable advice on site-specific conditions under which forestry measures are in line with the species protection rules, a knowledge base including rigorous monitoring needed to be in place.

It is important to note that such **informal conservation activities** (including many other projects, cooperation, initiatives and associations of this kind) are arguably **also very important** in addressing the gap between preventing negative impacts on protected species through common day-to-day forestry practices.

## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FORESTRY ACTIVITIES WHICH MIGHT AFFECT THE PROTECTED SPECIES

In Germany, authorisation procedures for land management are mostly based on the BNatSchG and the Federal Environmental Impact Assessment Act (Gesetz über die Umweltverträglichkeitsprüfung – UVPG).

### 5.1 IMPACT REGULATION

An important instrument of the German nature protection legislation is the impact regulation (Eingriffsregelung), which is specified under §§ 13 - 19 BNatSchG. There are a number of deviations from §§ 14-17 BNatSchG under state law. Its goal is to maintain the performance and functionality of natural processes and the landscape, including those that are outside the special conservation areas. It states in §13 BNatSchG:

*Significant impairments of nature and landscape are to be avoided by the polluter as a matter of priority. Significant impairments that cannot be avoided shall be compensated for by compensatory or substitute measures or, where this is not possible, by monetary compensation.*

§ 14 para. 2 BNatSchG, states that agricultural, forestry and fishery land use is exempted from this regulation, as long as it respects the requirements of § 5 para. 2-4 BNatSchG, and § 17 para. 2 BBodSchG respectively (please see section 2.1)<sup>12</sup>. This also includes the resumption of such activities if they were temporarily paused or restricted, provided that the requirements regulated in § 14 para. 3 BNatSchG are met. Thus, this regulation most frequently targets construction projects for settlements, industries or transportation. In such cases, the “polluter” is obliged to refrain from avoidable impairments of nature and landscape if “reasonable alternatives” are possible (§ 15 para. 1 BNatSchG). If impairments cannot be avoided, the “polluter” has to bring forward a justification and is obliged to conduct compensatory measures (“polluter-pays principle”, Verursacherprinzip, § 15 para. 1 and 2 BNatSchG). According to § 15 para. 2 BNatSchG, compensation is assured as soon as the impaired functions in the affected natural area have been restored in a similar or equivalent way. § 17 para.10 BNatSchG states that, if an intervention is a project subject to an environmental impact assessment under the Federal **Environmental Impact Assessment Act** (Gesetz über die Umweltverträglichkeitsprüfung – UVPG), the procedure needs to match the requirement of this law.

Special species protection has become increasingly important in the context of intervention planning and project approvals in recent years, as the species protection prohibitions of § 44 para. 1 BNatSchG now also apply to intervention projects. For the process of the project, this thus requires appropriate technical assessment approaches. If such projects may concern species protected under Annex IV HD or European birds, §44 para. 5 BNatSchG states that in following cases, no violation occurs:

- if the impairment caused by the intervention or the project does not significantly increase the risk of killing or injuring specimens of the species concerned and this impairment cannot be avoided by applying the necessary, professionally recognised protective measures
- if the animals or their developmental forms are impaired in the context of a necessary measure aimed at protecting the animals from killing or injury or their developmental forms in the spatial context, and these impairments are unavoidable if the ecological function of the reproduction and resting places affected by the intervention or project continues to be fulfilled in the spatial context.

It further states that early compensatory measures may also be applied.

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<sup>12</sup> § 14 para. 2 BNatSchG is further specified and amended in some states, such is the case for Bavaria (Art. 6 BayNatschG) with a longer time period for resumption of agricultural, forestry and fishery land use; or for Saxony-Anhalt (Art 6 NatSchG LSA) which states that care and maintenance measures on dykes, dams and other flood protection facilities, as well as the restoration of a proper condition after an incident of damage on the existing route, are generally not to be regarded as encroachment.

## 5.2 ENVIRONMENTAL IMPACT ASSESSMENT

The environmental impact assessment is addressed in a separate legislation and applies to larger and more complex projects. With regard to forestry interventions, Annex 1 UVPG includes the following activities, see Table 2.

Table 3: Forestry related UVPG projects

<b>17.1</b>	<b>First afforestation within the meaning of the Federal Forest Act with</b>		
17.1.1	50 ha or more of forest,	X	
17.1.2	20 ha to less than 50 ha of forest,		A
17.1.3	2 ha to less than 20 ha of forest;		S
<b>17.2</b>	<b>Clearing of forest within the meaning of the Federal Forest Act for the purpose of conversion to another type of use with</b>		
17.2.1	10 ha or more of forest,	X	
17.2.2	5 ha to less than 10 ha of forest,		A
17.2.3	1 ha to less than 5 ha of forest;		S

**Legend:** X in column 1 = project is subject to EIA; A in column 2 = general preliminary assessment of the individual case; S in column 2 = site-specific preliminary assessment of the individual case

This further targets construction activities that also might impact forest species. In Germany, the UVP-G also entails the requirements of a **Strategic Environmental Assessment (SEA)** in §§ 33 et seq. UVPG that is further mirrored in the Federal Spatial Planning Act (Raumordnungsgesetz – ROG). It mainly involves the development of an environmental report detailing possible impacts by a spatial plan on, inter alia, “*humans, including human health, animals, plants and biodiversity*” at an early stage (§ 8 para 1 ROG). **Neither the EIA nor the SEA make specific reference to HD Annex IV species or wild birds.** No occasion could be found where SEA would be used for forestry management plans. In fact, the Saxonian Upper Administrative Court came to the following conclusion (2020):

*Due to the lack of plan status, a strategic environmental assessment does not have to be carried out for a forest management plan. According to Section 35 (1) of the Environmental Impact Assessment Act, such an assessment must be carried out for the plans and programmes mentioned therein. Forest management plans are neither provided for in Annex 5 Nos. 1 and 2 to the EIA Act [UVPG], nor do they set a framework for decisions on the permissibility of projects listed in Annex 1 [UVPG] or of projects which require an environmental impact assessment or a preliminary assessment of the individual case under Land law. Forest management plans do not contain specifications with significance for subsequent approval decisions, in particular on the need, size, location, nature, operating conditions of projects or the use of resources (Article 35(3) UVPG).*

At the state level, an instance could be found for compensatory instruments that are (rather broadly) linked to forest transformation activities, such as regulated in § 8 LWaldG Berlin.

## 5.3 SPECIES PROTECTION ASSESSMENT

Furthermore, in case of disturbances of strictly protected species under HD Annex IV or European wild birds, a (specific) species protection assessment in accordance with § 44 para. 1 BNatSchG needs to be conducted. However, this instrument targets “species relevant to planning” which do not include common bird species. This can include technical contributions, a species protection report, or, depending on the requirements of the competent authority, a mapping of existing habitat populations.

The *Land of North Rhine-Westphalia* (NRW) serves as an example to show how this is implemented in practice, with a focus on forestry, see Box 1.

Box 1: Projects in the context of (specific) species protection assessment with a focus on forestry in North Rhine-Westphalia

Projects in this context are:

- Interventions in nature and landscape permissible under § 15 BNatSchG in conjunction with state law (LNatSchG NRW)
- Projects permitted under the provisions of the Federal Building Code (§§ 30, 33, 34, 35 BauGB).

The following projects, which require a forestry permit or notification, require an SSA

- Conversion
- Initial afforestation
- Road construction
- Exceptions to the ban on clear-cutting
- Burning of logging residues
- Permanent fireplaces
- Waste recycling and
- Organised events.

Within a three-step approach, the competent forestry authority examines whether a permit can be issued with regard to the species protection prohibitions according to § 44 para. 1 BNatSchG.

Overall, the species protection regime within the framework of planning and approval procedures is **limited to the species protected under Annex IV of the Habitats Directive and European bird species**. However, these two protection regimes pose “fundamental problems for planning practice”, according to the competent authority in NRW. While the protection under the Birds Directive applies to all wild birds naturally occurring in the EU, strictly speaking, planning would also have to consider stray visitors or sporadic migrants. Furthermore, the species protection prohibitions for birds also apply to numerous birds that are considered as "common species" in Germany (e.g., Common blackbird (*Turdus merula*), Chaffinch (*Fringilla coelebs*), Great tit (*Parus major*)). For this reason, the NRW State Agency for Nature, Environment and Consumer Protection (LANUV) has made a selection of protected species for NRW, based on certain considerations, which are to be dealt with individually through a three-stage species-by-species assessment. In NRW, these species are called "species relevant to planning", referring to application in all planning and approval procedures (Ministry for Climate Protection, Environment, Agriculture, Nature Conservation and Consumer Protection of the *Land* of North Rhine-Westphalia, 2015). The list includes 184 species that are considered relevant to planning under the Birds and Habitats Directives in NRW, which are distributed unevenly across the different species groups (Figure 2).



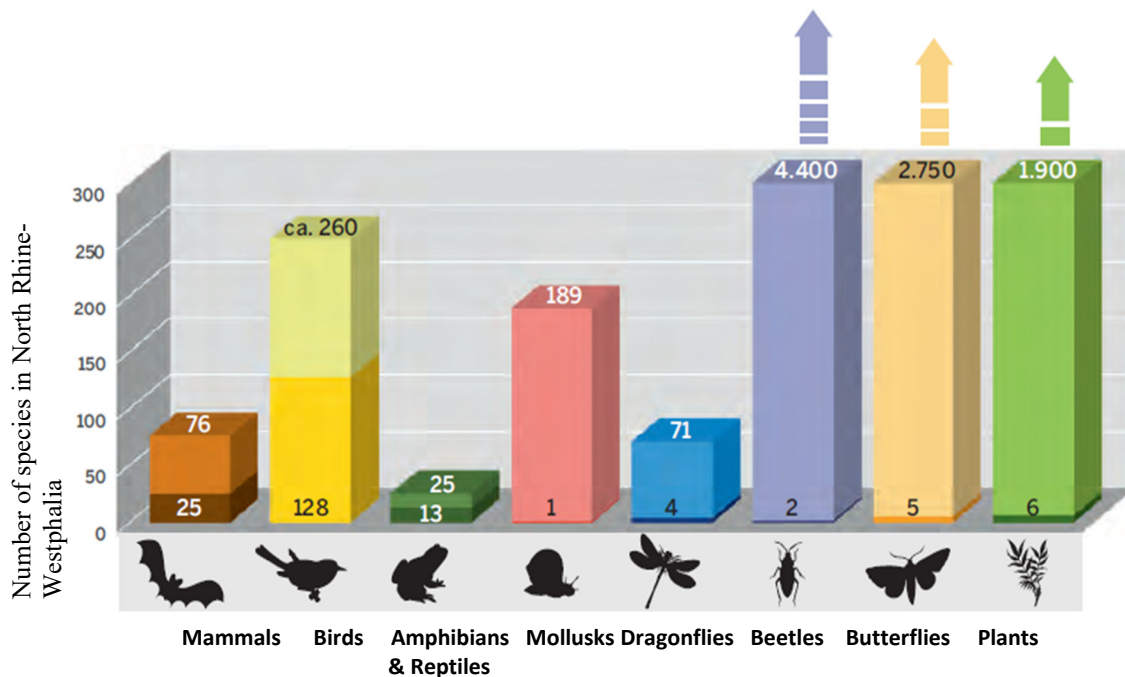


Figure 2: Distribution of the 184 species considered relevant to planning among species groups compared to the total number of species in North Rhine-Westphalia

**The criteria catalogue** that defines which **bird species** are to be considered in assessments, includes BD Annex I as well as migratory bird species according to Article 4(2) of the Birds Directive, and all bird species that are strictly protected under the EC Species Ordinance (e.g., Common buzzard *Buteo buteo*). In addition, all species are classified as relevant to the planning process that are in the Red List of endangered plants, fungi and animals in North Rhine-Westphalia (LANUV 2011) (categories 1, R, 2, 3). All other bird species are exempt from planning and approval procedures.

With regard to **species under Annex IV of the Habitats Directive**, only those species that have been present in NRW since 2000 with recent occurrences are considered. In the case of migrants or winter visitors, only species that regularly occur in the *Land* are considered, e.g., the Noctule bat *Nyctalus noctula*. In case individual species (re)appear as regular migrants or successfully immigrate and form reproducing populations in NRW (e.g., the Greater horseshoe bat (*Rhinolophus ferrumequinum*)), they may be included in the canon of planning-relevant species. Against the background of these criteria, 56 HD Annex IV species are considered relevant to planning.

For all species that are not relevant to the planning process, it is assumed that the prohibitions of § 44 para. 1 of the Federal Nature Conservation Act are not violated (i.e., no significant disturbance of the local population, no impairment of the ecological function of their habitats, no unavoidable injuries or kills, and no significantly increased risk of killing).

In NRW, there is a so-called **minimal threshold** below which, as a rule, no species protection conflicts are expected for activities falling under planning and approval procedures in the forest. An official guideline (LANUV NRW, 2020) gives examples, such as:

- For example, the approval of a **forestry road construction** notification according to § 6 b State Forestry Act (LFoG) falls under this threshold, provided, however, that no nest or cavity tree is known within a radius of 150 m or occurrences of Black stork (*Ciconia nigra*), Hazel grouse (*Tetrastes bonasia*), Yellow-bellied toad (*Bombina variegata*) or lady's-slipper orchid (*Cypripedium calceolus*) are known. Also, construction of an entirely new road does not fall under the threshold and therefore requires a full planning and approval procedure.

- An unlimited and limited **forest conversion** according to §§ 39 and 40 LFoG is also subject to this regulation, insofar as no nest or cavity tree is included or known occurrences of Bechstein's bat (*Myotis bechsteinii*), Western barbastelle (*Barbastella barbastellus*), Black stork, Hazel grouse, Yellow-bellied toad, hermit or lady's-slipper orchid are known.

As emphasised by the BMUV, the legal protection of species under the BD and Annex IV HD is in no way called into question by the NRW concept of "species relevant to planning". It merely defines different depths of assessment for the various species within the framework of the species protection assessment. In this respect, the concept has now also been confirmed several times by the Federal Administrative Court (cf. BVerwG, 08.03.2018, 9 B 25.17, para. 26 f., BVerwG, decision of April 25, 2018, 9 A 16.16, para 117f.) - most recently also in ECJ decision "Skydda Skogen" of June 13, 2019 (in the ECJ case C-474/19, cf. on this BVerwG, 15.07.2020, 9 B 5.20, para no. 19).

Such a comprehensive guidance could not be identified for any other *Land*.

In the context of such planning and licensing procedures, it must be determined on a case-by-case basis how a species is affected. In the case of NRW, its Forest Information System plays a central role in providing information to experts (e.g., [independent auditors](#)) and authorities. For this purpose, the LANUV regularly evaluates all available information on the occurrence of species relevant to planning in NRW and prepares it at the level of survey table quadrants. In addition, other sources of information should also be used (e.g., municipal databases/cadastrals, queries to nature conservation authorities, biological stations, voluntary nature conservation or other experts, specialist literature).

## 6 OVERALL ASSESSMENT OF SPECIES PROTECTION ON FOREST LAND

### 1. KEY FINDINGS

#### 6.1 TRANSPOSITION ISSUES

The prohibitions of Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive are transposed into national law via § 44 of the BNatSchG. In addition to the HD Annex IV species and European birds, these rules also apply to a) species listed under EU Wildlife Trade Regulation (EC No 338/97) and nationally endangered birds (§ 54 para. 1 BNatSchG). All aspects of the relevant articles are formally addressed. In exceedance of the Nature Directives, § 44 does not limit its prohibitions to “deliberate” disturbance and killing, it also includes negligent actions impacting species. However, potential weaknesses in the transposition were identified, which mainly relate to:

- Far-reaching **exemptions for land use from the agriculture, forestry and fisheries sectors** that are limited to the rule of “no deterioration” in the conservation status of local species (applies to HD Annex IV species, European birds)
- The German transposition under § 44 para. 1 no. 2 BNatSchG, which includes the term “**significant disturbance**”. A legal commentary (Gellermann, in: Landmann/Rohmer § 44 BNatSchG, Rn. 40) states, that “while the relativisation of the prohibition on disturbance is still compatible with Article 5 (d) of the Birds Directive, it is nevertheless subject to concerns under EU law because it is not supported by Article 12 para. 1 b of the Habitats Directive”.

Hence, BNatSchG, with its implicit notion of intrinsic compliance, provides a rather weak legal framework with regard to species protection on forestry land. The implementation of the species protection rules is the responsibility of the Federal States (*Länder*), which do in many cases specify forest conservation, but do not directly address the species protection rules.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

- Some states conduct targeted work for biotope protection, biotope maintenance or the promotion of species-specific habitats. For instance, the Brandenburg State Forestry Office has implemented protection programs for forest species for many years. The focus is on protected or endangered animal and plant species and their habitats.
- All public and private forests forming part of the Natura 2000 network that are larger than 100 ha are managed according to a management plan. The total forested area with a long-term forested management plan is 7,6 million ha, which equates to 66.7% of Germany’s total forested area (FAO, 2020).
- Many managers and landowners envisage and carry out supportive management measures for endangered and protected species beyond the legal requirements and specifications, often implemented through corresponding contractual nature conservation models.

##### *Other implementing or stimulating measures*

- The Federal Ministry of Food and Agriculture (BMEL) and some state ministries with their associated Chambers of Agriculture have presented the legal regulations in guidelines and information brochures for forest management. These interpretative aids are not legally binding, but may be used by forest managers and landowners, authorities, and courts.
- The concept of biotope trees (Biotopbäume) is one key instrument to ensure species protection in

forests. Biotope trees are trees of high ecological importance that should be left in the forests permanently. This concept targets nesting species and species living in tree cavities such as beetles, bats, birds and insects. It includes different types of trees such as “cavity trees”, “trees with nests”, “dead wood”, “old trees”, “head trees”, or others. The implementation, however, is not mandatory by law and thus dependent on the individual forest manager.

## 6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT

### Government advisory services

- All *Länder* have made efforts to bundle all relevant data and information on protected species, the protection regulations, as well as on the various topics and instruments of biodiversity conservation (in forests) online. However, these differ in the depth of information provided. Some *Länder* have established central species databases (e.g., [Bavaria](#), [Hessen](#), [Thuringia](#), [Schleswig-Holstein](#)) that serve as a *Länder*-wide recording, documentation and information system for fauna and flora.
- Some *Länder* seem to be more active than others in providing guidance on protection of biodiversity in forests and the species protection regulations, having relatively extensive advisory services. These mostly take the form of online information systems or distributed written information (guides, official instructions, etc.). While many *Länder* provide central species databases online, [Baden-Württemberg](#) has a dedicated [Forest Conservation Information System](#) presenting all relevant data and information on the various topics and instruments of forest nature conservation. North Rhine-Westphalia (NRW) provides a range of advisory and information services and publications with regards to species protection in forestry, including a [specific guide on species protection in forestry](#). (Best practice)
- Information about nature protection rules/needs is mostly not adequately transferred from environmental authorities to advisory services and/or to forest holders: a more practical and positive approach is needed.
- The Chambers of Agriculture, which are also tasked with providing advice to foresters, seem to have a substantial focus on agriculture and provide comparatively little information on forestry. It was not possible to determine the extent to which the species protection regulations play a role in the advice given to foresters.

### Enforcement of species protection legislation

- According to German law, forestry land use in line with “orderly forest management” intrinsically respects the species prohibitions. Thus, as a rule, there are no violations of the access prohibitions of § 44 para. 4 BNatSchG for such activities.
- Due to the presented circumstances, species protection rules are not effectively enforced in Germany and there is no system of frequent controls regarding compliance with the species protection rules. Enforcement of species protection rules mainly occurs on the basis of complaints or notifications of infringements by citizens or civil society.
- No numbers or concrete cases on infringement procedures against forest landowners could be identified, although sanctions are technically possible.
- German law specifies that the exemptions for forestry from the species protection rules apply only as long as the conservation status of the local population of a species does not deteriorate as a result of the management. The determination of whether the local population of a given species is deteriorating as a result of management is independently realised by *Länder* and local authorities. In such cases, the most frequent measure is to find a common coordination concept with the forest holder, primarily through contractual conservation. Management requirements, which apply to individual land managers to take remedial action according to § 44 para. 4 BNatSchG, and the

imposition of sanctions, are only used as a last resort and rarely applied.

- Despite increasing efforts by the *Länder* to have accurate knowledge on species occurrences and their conservation status, several experts stated that in most cases, the data is not extensive enough to assess populations at the site level.

## 6.4 ASSESSMENT AND AUTHORISATION PROCEDURES

### EIA

An Environmental Impact Assessment will only be required for a limited number of very significant impacts in the case of forestry, most importantly including afforestation of 50 ha or more, and other clearing for conversion purposes on 10 ha of forest. No link to species protection rules is made by German legislation implementing the EIA Directive.

### Other authorisation procedures

- In case of disturbances of strictly protected species under HD Annex IV or European wild birds, a (specific) species protection assessment in accordance with § 44 para. 1 BNatSchG needs to be conducted. This can include technical contributions, a species protection report, or, depending on the requirements of the competent authority, a mapping of existing habitat populations.
- In NRW, for instance, there is a catalogue with all species to be considered and a so-called minimal threshold below which, as a rule, no species protection conflicts are expected for activities falling under planning and approval procedures in the forest. An official guideline gives concrete examples, e.g. on forestry road construction (LANUV NRW, 2020).
- In the context of such planning and licensing procedures, it must be determined on a case-by-case basis how a species is affected. In the case of NRW, its Forest Information System plays a central role in providing information to experts (e.g., independent auditors) and authorities.

## 6.5 RECOMMENDATIONS

### Legislative transposition measures of species protection rules:

- Consider revising the far-reaching exemptions of forestry land use activities with regard to the species protection rules. This should be based on an assessment of effectiveness of existing legislation and policies in achieving species protection. Based on this, the exemptions should either be terminated or specified in more detail, or the forestry rules and guidance regarding sustainable forest management strengthened to provide sufficient protection of species.
- Revise and concretise the concept “good professional practice” for forestry activities in the legal framework, preferably on national level within BNatSchG and the Federal Soil Protection Act (BBodSchG) to clarify forest landowner obligations.

### Preventive and implementing measures:

- Increase concerted efforts to put forest species protection on the agenda of all government levels, but especially reaching regional forestry departments and strengthen their capacity in terms of staff and knowledge.
- Enact not only voluntary and supporting instruments (such as contractual nature conservation), but also strengthen the use of obligatory management requirements according to § 44 para. 4 BNatSchG for substantial or repeated neglect of the species protection legislation.

### Public advisory and enforcement:

- Increase monitoring of local species occurrences and site-specific assessments of conservation

status of species to respect the species protection regulation; e.g. through additional funding and human/technical capacities.

- Make the information on protected species and their presence more readily accessible to forestry stakeholders and gradually improve the quality of this information so that it is relevant at the property level (such as the “specific guide on species protection in forestry” in NRW)
- Increase controls regarding compliance with the species protection legislation and make respective statistics available.
- Improve the capacities of the Chambers of Agriculture to increase knowledge and service on forest conservation and species protection concerns.

**Authorisation and permits:**

- Concretise and standardise the (specific) species protection assessment with regard to forestry activities for all *Länder*, as done in NRW.

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# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## TASK 3 – Case Study *Finland*

ENV/2020/OP/0022



February 2022

This Report has been prepared by Milieu Consulting SRL, Ecologic Institute, IEEP and Strith under Contract No ENV/2020/OP/0022.

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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

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## ABBREVIATIONS

BD	Birds Directive
CDDA	Nationally designated protected areas
CNC	Contractual nature conservation
ELY Centre	Regional Centre for Economic Development, Transport and the Environment
EU	European Union
HD	Habitats Directive
MCPFE	Ministerial Conference on the Protection of Forests in Europe
NGO	Non-governmental organisation
NFI	National Forest Inventory
SYKE	Finnish Environmental Institute (Suomen ympäristökeskus)
UN	United Nations

# 1 INTRODUCTION

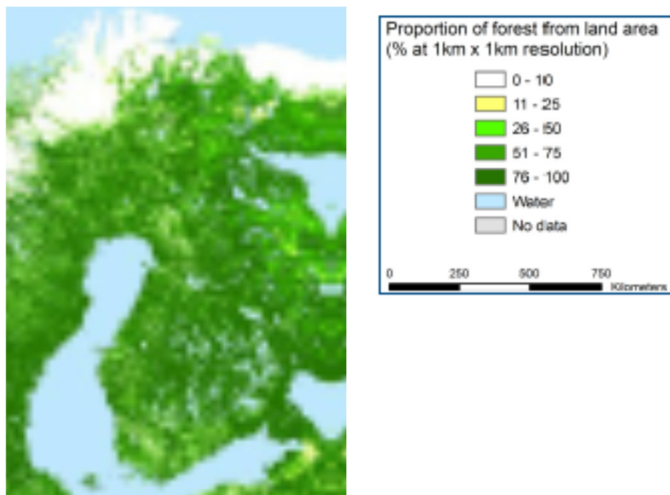
## 1.1 ABOUT THIS PROJECT

This project looks at the species protection rules under the Birds and Habitats Directives in place according to the legislation and case law, and assesses how effectively they are applied in a few specific EU Member States in the agriculture sectoral policy (DE, DK, FR, ES, IE, NL, PL, RO) and forestry policies and legislation (AT, FI, FR, DE, SI, PL, RO, SE). Finland was selected for the forestry sector study, because forestry and forest related activities are an important resource in Finland both in terms of economic and nature protection/biodiversity impacts.

This report looks at how species are protected in the forestry sector in Finland. The aim is to look at any sector specific features in Finnish forestry and to identify potential good practice examples and eventual gaps in the species protection regime in forestry. An analytical method is followed for this study, consisting, inter alia, of the analysis of legal regulations and analysing the law *de lege lata*. In addition, the research was complemented by looking into legal articles, open source materials by the authorities and stakeholders, as well as case law to a limited extent.

## 1.2 FORESTRY IN FINLAND

Finland is a northern country with many forests and over 187 000 inland lakes and ponds. Forests count for around 78 % of Finland's land area. A harsh northern climate shapes Finland's boreal forests, where biodiversity is rich and the ecosystem is characteristically boreal. Coniferous forests, drained and undrained swamps and wetlands, and cultivated lands are typical in Finland. Measured by the proportional share of forest land, Finland is the most forested country in Europe. A total of 20.3 million hectares are available for wood production, of which 61 % is privately owned. Finland has the fifth largest wood resources in Europe, after Russia, France, Sweden and Germany<sup>1</sup>. Finland's climate zone is an intermediate between maritime and continental climates. With the country stretching over 1 100km North to South, the climatic conditions vary greatly across the country<sup>2</sup>.



Source: Ministry of Agriculture and Forestry<sup>3</sup>

<sup>1</sup> <https://mmm.fi/en/forests/forestry/forest-resources>

<sup>2</sup> <https://mmm.fi/documents/1410837/12877048/Forestry+and+use+of+wood+in+Finland.pdf/2598dc7e-6992-9b97-1773-da94a1e903bd/Forestry+and+use+of+wood+in+Finland.pdf/Forestry+and+use+of+wood+in+Finland.pdf?t=1635503348080>

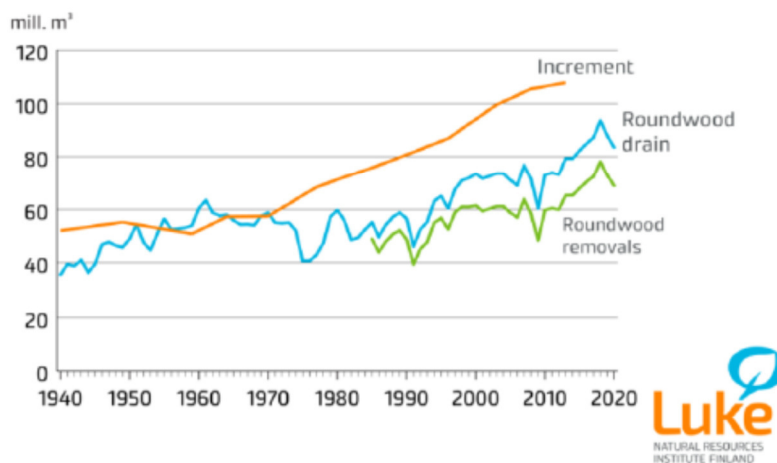
<sup>3</sup> <https://mmm.fi/documents/1410837/12877048/Forestry+and+use+of+wood+in+Finland.pdf/2598dc7e-6992-9b97-1773-da94a1e903bd/Forestry+and+use+of+wood+in+Finland.pdf/Forestry+and+use+of+wood+in+Finland.pdf?t=1635503348080>

A special characteristic is that 60 % of the forest lands are owned by private persons. The state owns around 25 %, forestry companies own less than 10 % and the rest is owned by municipalities, parishes, foundations and co-ownerships (Natural Resources Institute Finland, 2021). Over 600 000 private persons own forest land in Finland. This figure includes the owners and their spouses, as well as the shareholders of consortia and death estates, with holdings larger than two hectares. This means that almost 14 % of the population are forest owners. State forests are managed by the state forest company Metsähallitus<sup>4</sup>.

Forestry is an important economic sector in Finland, harvesting around 70 million cubic metres of wood each year. Wood production is an important objective for many private owners. Forest industry purchases over 80 % of its domestic wood from private forest owners<sup>5</sup>. Finland has a long history of wood processing and traditions in the use of wood for manufacturing paper products and pulp, packaging materials, construction and interior design materials. Wood production still remains an important sector of industry in Finland. Over a fifth of all Finland's industrial production comes from wood processing<sup>6</sup>.

## FOREST GROWTH EXCEEDS HARVESTINGS

In recent years, the annual increment has exceeded the annual fellings by 30%



Annual increment of growing stock, roundwood removals, total drain of roundwood 1935-2020, million m<sup>3</sup>.  
Source: Natural Resource Institute Finland

The volume of growing stock and the state of forests have been monitored in Finland since the 1920's. The growing stock volume in Finland's forests totals 2.5 billion cubic metres. This is 1.7 times the volume recorded in the 1920's<sup>7</sup>.

In the past decades, the volume of wood harvested has clearly been below the growth, which means that the wood resources keep on growing. The total annual growth of Finnish forests is approximately 108 million cubic metres (NFI 12). In 2020 roundwood removal was about 69 million cubic metres, 85 % of which was used by the forest industry and 15 % for fuelwood consumed in private homes or small diameter roundwood used as forest chips. In 2020, total drain from Finnish forests was approximately 83.5 million cubic metres. Total drain from the forest includes roundwood removals as well as roundwood left in the forests as unrecovered logging residues and trees that die from natural causes<sup>8</sup>.

<sup>4</sup> <https://forest.fi/article/forest-sector-in-finland/#95e3dec5>

<sup>5</sup> <https://mmm.fi/documents/1410837/12877048/Forestry+and+use+of+wood+in+Finland.pdf/2598dc7e-6992-9b97-1773-da94a1e903bd/Forestry+and+use+of+wood+in+Finland.pdf/Forestry+and+use+of+wood+in+Finland.pdf?t=1635503348080>

<sup>6</sup> <https://mmm.fi/documents/1410837/22836561/Use+of+wood+in+Finland.pdf/0d8d91b5-9c95-6e3e-f012-09f38d0dfc01/Use+of+wood+in+Finland.pdf?t=1635865912850>

<sup>7</sup> <https://www.luke.fi/en/news/forest-growth-rate-decelerated-volume-of-growing-stock-increased>

<sup>8</sup> <https://www.luke.fi/en/news/total-roundwood-removals-fell-below-70-million-cubic-metres-in-2020#:~:text=In%202020%2C%20a%20total%20of,year%20by%205%20per%20cent.>

Forest is one of the dominating elements of Finnish nature and its diversity. Almost three million hectares of the Finnish forests are protected or under restricted use, which represents 12.6 % of the forest area. This is the highest share in Europe. Finland's forestry main objective is to ensure healthy and diverse forests, by a wise combination of utilisation and protection. Forests should also be maintained in a sustainable way in order to preserve resources for the future generations as well. Forests contribute to combatting climate change by sequestering carbon, but climate change also poses various new risks for forests that need to be taken into account in forest management.

### 1.3 GOVERNANCE

The **Ministry of Environment of Finland** is responsible for the overall transposition and coherence of the legislative framework relating to nature protection and the implementation of Habitats and Birds Directives. It is the main competent authority for nature protection. The Ministry of Environment is responsible for national environmental policy, including nature protection. Legislation is drafted and prepared by the Ministry.

Forestry activities at the national level are governed by the **Ministry of Agriculture and Forestry** using the expert services of the **Finnish Forestry Centre**. The National Forest Strategy is prepared by this Ministry and approved by the Government and specifies the main objectives for forest-based business and activities until 2025<sup>9</sup>. However, all nature protection related matters fall under the competence of the **Ministry of Environment**. Many administrative implementation and supervision matters are delegated further to regional **ELY Centres**.

Forestry management is guided by the **Finnish Forestry Centre (Suomen metsäkeskus)**. The operations of the Finnish Forestry Centre are directed and financed by the Ministry of Agriculture and Forestry of Finland<sup>10</sup>. The Centre is responsible for the supervision and follow up of forestry activities<sup>11</sup>. It also processes all notifications according to the Forest Act on forest use that are submitted by forest owners or -actors. Finnish private forest owners can quite freely decide for themselves how to use their forests. Forest use is regulated by the Forest Act. The Finnish Forest Centre provides up-to-date information on Finnish forests to support forest owners' decision-making. Forest resource information includes information on, for example, forest habitats and tree stands, habitats of special importance, and forest use. The forest owners or forest actors are entitled to ask for a binding opinion from the Forest Centre on the application of the conservation rules and presence of Section § 10 habitats in the area that they have planned the forestry actions.

Regional competences in nature protection are held by the regional centres for **Economic Development, Transport and the Environment (ELY Centres)**. The ELY Centres are administratively located under the Ministry of Economic Affairs and Employment and are responsible for the regional implementation and development of the central government tasks in different policy areas. They carry out their tasks and duties independently based on mandates of granted to the ELY Centres by law. Many supervisory duties are directly issued to them by e.g. the Environmental Protection Act, the Nature Conservation Act and the Environmental Impact Assessment Act. Finland has a total of 15 ELY Centres.

The Ministry of Environment is responsible for the overall supervision and legislative powers relating to nature protection and environmental law, and the ELY Centres promote and supervise nature conservation and landscape protection at regional level on the ground. ELY Centres are, inter alia, responsible for the supervision and monitoring of environmental permits. ELY Centres conduct inventories of natural habitats laid down in the Nature Conservation Act, which is the main transposing legislation of the Habitats and Birds Directives for the mainland of Finland.

ELY Centres help to secure biodiversity by establishing nature conservation areas on private land and by purchasing areas for the state for the purposes of conservation. Nature conservation areas on state

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<sup>9</sup> <https://mmm.fi/en/nfs>

<sup>10</sup> Further information on Finnish Forestry Centre can be accessed here: <https://www.metsakeskus.fi/en/about-us/the-finnish-forest-centre>.

<sup>11</sup> <https://www.metsakeskus.fi/en>

owned properties, on the other hand, are established by legislation.

They are closely involved in projects aimed at restoring and managing important traditional landscapes. ELY Centres also work to safeguard the protection of natural values in land use planning. The Centres also collect and publish information about the state of the environment in the areas under their supervision for other stakeholders such as regional councils and ordinary citizens.

The **Finnish Environmental Institute SYKE** is a multidisciplinary research and expert institute. SYKE has competence and tasks relating to monitoring ecosystem services. Monitoring activities generate basic information on the current state of species and their habitats all over Finland. SYKE reports on its monitoring activities – for instance, the monitoring of natural habitats listed in the Habitats Directive – directly to the Ministry of the Environment. Depending on the species or habitat observed, the information is stored in national databases Herta or SYKE or published on the ymparisto.fi website<sup>12</sup>. Administratively, SYKE is located under the Ministry of Agriculture and Forestry.

In addition, the **Finnish Forest Council Metsähallitus**, is a state-owned enterprise managing forestry activities in state owned forests.

Environmental permits are handled at regional level at **Regional State Administrative Agencies**. The Regional State Administrative Agencies promote the realisation of basic rights and legal protection, accessibility of health care and social services, sustainable use of the environment, domestic safety and healthy and safe living and working environments in their operating areas. The Agencies also implement, direct and enforce laws in their operating areas. Their operations are governed by legislation and eight ministries. The Agencies act as the regional representative of these Ministries and perform duties assigned to them by the Ministries. Continental Finland has six Regional State Administrative Agencies. The Regional State Administrative Agency for Åland is the State Department of Åland. The Ministry of Environment supervises work related to environmental issues of the Regional State Administrative Agencies and the ELY Centres.

In addition to the governmental and regional authorities, **Finnish Forest Industries**<sup>13</sup> and stakeholder NGO's such as the **Central Union of Agricultural Producers and Forest Owners (MTK)**<sup>14</sup>, play an important role in the Finnish forestry system. These stakeholders also participate in legal drafting and interest-monitoring. **Nature conservation NGO's** are also active in Finland. Birdlife Finland, Finnish Nature Conservation Association (Suomen luonnonsuojeluliitto), and Finnish Nature League (Luontoliitto) are among the active stakeholders.

## 1.4 PROTECTED SPECIES

Finland ensures the conservation of its nature, including the protection of its species through legislation, in particular the Nature Conservation Act, declaring a threatened species or placing species under strict protection order by Decree.

Around 48 000 species live in Finland. There is enough knowledge about over 22 000 of these to enable the evaluation of their conservation status (including their level of threat). The most recent assessment in 2019, established that one in nine of all evaluated species in Finland is endangered<sup>15</sup>. Finland evaluates the conservation status of species on a broad scale, which is not common in many countries<sup>16</sup>.

The Finnish Environment Institute collects and evaluates data on changes in species, together with the Centers for Economic Development, Transport and the Environment, the state forest administration Metsähallitus, universities and other research institutions and environmental organisations<sup>17</sup>.

Altogether, Finland has 15 166 designated protected areas, which cover a terrestrial area of 46 570 km<sup>2</sup>

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<sup>12</sup> [https://www.syke.fi/en-US/Research\\_Development/Nature/Monitoring](https://www.syke.fi/en-US/Research_Development/Nature/Monitoring)

<sup>13</sup> <https://www.metsateollisuus.fi/en/home>

<sup>14</sup> <https://www.mtk.fi/web/en>

<sup>15</sup> [https://www.ymparisto.fi/en-US/Nature/Species/Threatened\\_species](https://www.ymparisto.fi/en-US/Nature/Species/Threatened_species)

<sup>16</sup> <https://ym.fi/en/protection-of-species-and-habitats>

<sup>17</sup> <https://www.metsa.fi/en/nature-and-heritage/species/>



and include 1 866 Natura 2000 sites, 470 Special Protection Areas under the Birds Directive and 1 721 Sites of Community Importance under the Habitats Directive (EEA Natura 2000 Barometer, 2020). Of the total 1 389 species protected under the Annexes of the Habitats Directive, 130 are represented in Finland. Of these, 68 are listed under Annex IV<sup>18</sup>. Of the 500 wild bird species under the Birds Directive, 253 can be found in the country.

Natural habitats are protected under legislation and international agreements. The Finnish Nature Conservation Act places nine habitats under protection, including broad-leaved deciduous forests, sandy beaches and pollard meadows. Broader sets of natural habitats are placed under protection in national parks, strictly controlled nature reserves and other conservation areas<sup>19</sup>.

The EU Habitats Directive lists 68 habitats found in Finland, which are protected as part of the Natura 2000 network. The Forest Act covers seven particularly important habitats, while the Water Act covers four small water body types. Actions jeopardising the special characteristics of these areas are prohibited<sup>20</sup>.

Areas under nature protection cover around 9 % of the total land area of Finland.<sup>21</sup> A special characteristic of habitats in Finland is the significant area of wetlands and bogs that have been largely drained for forestry and agriculture purposes<sup>22</sup>.

The Siberian flying squirrel has become a conflict species with forestry activities. The species is quite well known and forestry activities are often hindered due to the habitat of this species. Its status is also specially noted in the legislation, which includes an obligation to notify any occurrence data relating to the species to the competent authorities<sup>23</sup>.

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<sup>18</sup> [https://www.ymparisto.fi/en-US/Nature/Natural\\_habitats](https://www.ymparisto.fi/en-US/Nature/Natural_habitats)

<sup>19</sup> [https://www.ymparisto.fi/en-US/Nature/Natural\\_habitats](https://www.ymparisto.fi/en-US/Nature/Natural_habitats)

<sup>20</sup> [https://www.ymparisto.fi/en-US/Nature/Natural\\_habitats](https://www.ymparisto.fi/en-US/Nature/Natural_habitats)

<sup>21</sup> [https://www.ymparisto.fi/en-US/Maps\\_and\\_statistics/The\\_state\\_of\\_the\\_environment\\_indicators/Biodiversity/One\\_fifth\\_of\\_Europes\\_surface\\_area\\_is\\_pro\(28408\)](https://www.ymparisto.fi/en-US/Maps_and_statistics/The_state_of_the_environment_indicators/Biodiversity/One_fifth_of_Europes_surface_area_is_pro(28408))

<sup>22</sup> <https://ym.fi/en/nature-conservation-areas>

<sup>23</sup> <https://www.metsakeskus.fi/fi/ajankohtaista/metsanomistaja-sina-paatat-vai-paatatko-sittenkaan>; <https://tapio.fi/wp-content/uploads/2019/10/Liito-orava-neuvontamateriaali.pdf>; <https://www.metsakeskus.fi/fi/hankkeet/liito-orava-life>

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTED LAND

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

#### 2.1.1 General notions about the transposing legislation

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') has been transposed in Finland by the Nature Conservation legislation, including the Nature Conservation Act and Decree. The legislation was enacted in the late 1990s and has been since adapted to the changes in EU legislation. For forestry activities, the Forest Act lays down provisions for all forest use by all types of forest owners and -actors.

It is noteworthy that the Ministry of the Environment has started the process of reforming the nature conservation legislation. The aim of the legislative reform is to be able to improve the protection of the Finnish natural environment and its biological diversity. The reform of the nature conservation legislation includes updates to the Nature Conservation Act and Decrees, a new act on compensation for damages caused by protected species, and a project to test and develop ecological compensation<sup>24</sup>. The Act will be updated in order to improve the protection and monitoring of species and habitats and to regulate the important services nature has to offer (ecosystem services)<sup>25</sup>. The governmental bill has been proposed, and the bill will be submitted to the Parliamentary legislative approval around Spring 2022<sup>26</sup>. Forestry activities are governed by separate legislation, and in particular the Forest Act, that refers to the nature conservation legislation, and requires it to be taken into account. The use and management of forests are important economic activities in Finland for forest owners (private, public and organisations), but also for the entire forestry industry. Corporations, municipalities and associations own significant state forest, which makes them important decision makers in forest land management<sup>27</sup>.

The use of forests and the legislation relating to it, is based on a different objective than the conservation legislation's objective. The objective of the Forest legislation is to promote the economically, ecological and socially sustainable use and management of forest in a way that the forest provides sustainable yet good profits while maintaining their biodiversity. The scope of the Forest legislation covers forestry actions and forest management including for forestry exploitation purposes. This influences the application of conservation rules on forestry activities. The Forest Act does not include specific provisions on conservation or protection, rather it refers to some provisions of the Nature Conservation Act. The applicable provisions of the Nature Conservation Act are listed in the Forest Act. Also, the Forest Act does not include separate provisions on the protection of birds, because they are governed by the Nature Conservation Act.

The Hunting Act provides derogations from protection. These derogations are related to Article 16 of the Habitats Directive and Article 7 of the Birds Directive. The derogations are granted for specific species of mammals and birds listed in the legislation. The Hunting Act lays down the principles for the hunting of birds and mammals and lists the species which may be subject to hunting under certain conditions. The Nature Conservation Act applies to all species of birds occurring naturally in Finland, and to all species of animals that are covered by the Act. The protection regime established by the Nature Conservation Act and Decree grants protection (see in 2.1.2 what it entails) for all the species of birds by default. Other animals that are covered by the protection regime of the Act are separately mentioned. Species which fall under the scope of Section 5 of the Hunting Act are excluded from the protection of

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<sup>24</sup> The reform procedure has started in 2020, and is led by the Ministry of Environment of Finland. <https://ym.fi/en/reform-of-the-nature-conservation-legislation>.

<sup>25</sup> <https://ym.fi/en/reform-of-the-nature-conservation-act>

<sup>26</sup> <https://ym.fi/hankesivu?tunnus=YM012:00/2020>

<sup>27</sup> <https://forest.fi/article/forest-sector-in-finland/#95e3dec5>

the nature conservation laws.

The following list includes the main transposing legislation for Birds and Habitats Directives, it also includes legislation that is relevant when assessing the implemented articles and the chosen legal methods in the forestry context.

- Nature Conservation Act (1096/1996) [Luonnonsuojelulaki], NCL
- Nature Conservation Decree (160/1997) [Luonnonsuojeluasetus], NCD
- Forest Act (1093/1996) [Metsälaki], Forest Act
- Hunting Act (615/1993) [Metsästyslaki], Hunting Act
- Hunting Decree (666/1993) [Metsästysasetus], Hunting Decree
- Ministerial Decree on the areas belonging to the Natura 2000- network (27.3.2015/354)

Transposing provisions of the Nature Conservation Act are listed and assessed in the Research Template attached.

### 2.1.2 Conservation system under the Finnish Nature Conservation Act

The conservation and species protection system set up by the legislation is composed of several different categories. The legislation lays down a system for the protected species outside protected areas. The species protected under the Nature Directives are covered by separate provisions included in Chapter 6 of the Nature Conservation Act.

In the Nature Conservation Act, **Articles 12 and 13 of the Habitats Directive** and **Article 5 of the Birds Directive**, prohibiting the deliberate killing and disturbance to species, have been transposed in Sections 37 §, 39 § and 49 §.

According to Section 37 §, the general provisions relating to **all species protection (including birds)** is laid down in a specific chapter of the Nature Conservation Act.

The Section 37 § reads as follows:

*The provisions of this chapter shall apply to all naturally occurring animal and plant species in Finland and Finland's exclusive economic zone, with the exception of game animals and non-protected species referred to in Section 5 of the Hunting Act, and commercial fish species. Notwithstanding the above, the scope of application of sections 44 and 49 is prescribed in said sections.*

The Section 39 § reads as follows:

*Protection provisions*

*The following prohibitions apply to all specimens belonging to a protected species:*

- 1) deliberate killing and capture;*
- 2) appropriation, removal or deliberate destruction of eggs and other developmental stages in their life cycles;*
- 3) deliberate disturbance of animals, particularly during breeding, in important resting places during migration, or on any other sites of significance to their life cycles.*

*Any appropriately marked tree hosting the nest of a protected bird species and any tree hosting a large bird of prey is protected if the bird in question nests in it on a regular basis and the nest is clearly visible.*

Under this provision, the habitats (e.g. nests, breeding sites, resting places) of the species (with the exception of an appropriately marked tree hosting a nest of a bird species or an unmarked tree hosting a clearly visible nest of a large bird of prey) are not separately mentioned when the area is not a protected area or site of a special category. This appears to be a problem in relation to Article 5(1)(b) of the Birds Directive, i.e. prohibition of deliberate destruction, or damage to, their nests or their removal.

The species protection rules are further strengthened with Section 47 § establishing rules for species under strict protection. It states:

*Any species at imminent risk of extinction can be placed under a strict protection order by decree. The Ministry of the Environment shall, as necessary, prepare a programme for reviving the populations of such species.*

*The deterioration and destruction of a habitat important for the survival of a species under strict protection is prohibited.*

**Section 49 §** establishes the framework for protected species under the EU law and refers to the prohibition to deteriorate or destroy breeding sites and resting places and to the prohibition to keep, transport, sell, exchange or offer for sale or exchange specimens of animal species completing the framework transposing the Nature Directives, as follows:

*Special provisions on species protected in the European Community*

*The destruction and deterioration of breeding sites and resting places used by specimens of animal species referred to in Annex IV(a) of the Habitats Directive is prohibited.*

*With the exclusion of game animals and non-protected animals referred to in section 5 of the Hunting Act, it is prohibited to keep, transport, sell, exchange or offer for sale or exchange specimens of animal species referred to in Annex IV(a), and plant species referred to in Annex IV(b) of the Habitats Directive, or any part or derivative thereof.*

*The same shall correspondingly apply to birds referred to in Article 1 of the Birds Directive as based on the derogations provided in Article 6(2) and (3) of said Directive.*

*In special cases, the centre for economic development, transport and the environment is authorised to grant derogations from the prohibition referred to in paragraph 1 of this section, and from the prohibitions referred to in section 39, section 42, paragraph 2, and section 47, paragraphs 2 and 5, concerning animal and plant species referred to in paragraph 2 of this section, on grounds set forth in Article 16(1) of the Habitats Directive. A derogation can correspondingly be granted for birds referred to in Article 1 of the Birds Directive on grounds set forth in Article 9 of said Directive.*

Under this Section 49 §, it is possible for the ELY Centres to grant derogations from the prohibitions under Section § 39 of the Act and the prohibition to destroy and deteriorate breeding sites or resting places as established under Section § 49 of the Act as well as the ‘derogation from the special protection provisions laid down by the Directives’ which reflect the provisions under Article 16 of the Habitats Directive and Article 9 of the Birds Directive.

In addition, a **general exemption** to the prohibitions under Section 39 is established by **Section § 48** which is specific to agriculture- and forestry. This general exemption is subject to the condition to avoid harming or disturbance of species in so far as it is feasible without additional expenses. Furthermore, derogations to the prohibitions under Section 39 can be granted by the competent body provided that they do not affect the favourable conservation status of the species. While this general exemption could be considered to raise a compliance issue with the species protection system established in the Nature Directives, this Section § 48 exemption does not seem to be applicable to animal and plant species referred to in Section 49, which relates to species listed under Annex IV of the Habitats Directive or species protected under the Birds Directive.

Section 48 § reads as follows:

*Derogations from a protection order*

*What is provided in sections 39 and 42, paragraph 2, shall not preclude the **use of land for farming, forestry and development**, or the use of a building or piece of equipment for its intended purpose. In doing so, however, steps should be taken to avoid harming or disturbing protected plants and animals, in so far as this is feasible without substantial additional expense.*

*The centre for economic development, transport and the environment can grant a **derogation** from the protection provisions enacted under sections 39, 42 and 47, provided that the conservation status of the affected species remains favourable. If the application for a derogation concerns the entire country, only the Ministry of the Environment is authorised to grant the derogation. The derogation may be made subject to certain conditions as deemed necessary.*

*What is prescribed in this section **shall not apply** to animal and plant species referred to in section 49.*

The **general derogation** provision in Section § 48 allows, in principle, and among others, forestry and agricultural activities to be carried out in the area concerned, meaning that the occurrence of a species does not preclude the use of the area for farming or forestry. While this appears to be problematic, the exemption does not seem to be applicable to animal and plant species referred to in Section 49, which relate to species listed under Annex IV of the Habitats Directive or species protected under the Birds Directive.

It appears that the Finnish derogation provisions available in the Nature Conservation Act Section § 49 (according to Article 9 of the Birds Directive and Article 16 of the Habitats Directive) are applied<sup>28</sup> and interpreted loosely in forestry practice.

Apart from the general prohibition of disturbance in the Nature Conservation Act, the forestry legislation **does not include provisions on the timing of the logging** in forests nor does it take into account any specific conservation measures when carrying out the logging. There are, however, soft-law measures such as guidance on the timing of the logging, which are legally non-binding on the actors, but provide measures to integrate species protection into forestry practices<sup>29</sup> on a voluntary basis. This appears to be problematic **as voluntary measures cannot guarantee that logging or other forest activities are carried out in full respect of the species protection rules** of the nature directives.

In addition, the **Hunting Act** provides derogations for specific species of mammals and birds listed in the legislation as game species. The Hunting Act includes relevant preconditions outlining the grounds on which birds may be hunted and which species of birds may be hunted. The Nature Conservation Act applies to all species of birds occurring naturally in Finland. The protection regime established by the Nature Conservation Act and Decree grants protection for all the species of birds by default. Exceptions are the species which fall under the scope of the Hunting Act Section 5, which includes the non-protected species and species of prey (game animals).

The Birds Directive lists species that can be hunted either throughout the European Union (Annex II, part A) or in certain Member States (Annex II, Part B). Of the species listed in the Directive, 21 of the Annex II part A species occur in Finland. The Directive lists 18 species in Annex II part B, that may be hunted in Finland. This does not mean that all the 21 + 18 species are huntable in Finland. This is determined through the protection status of the species, as defined in national law.

Based on the above analysis, it can be concluded that the overall quality of the transposition of the directives in Finland is correct, but there are important issues relating mainly to the reasoning of derogations as well as the interpretation or implementation points highlighted above.

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<sup>28</sup> See e.g. Decision of the Supreme Administrative Court of Finland in a matter concerning derogation from the protection provisions. Decision no. 1554/2017; ECLI:FI:KHO:2017:T1554. <https://kho.fi/fi/index/paatokset/muitapaatoksia/1491211869956.html> (in Finnish).

<sup>29</sup> <https://puuhuolto.fi/metsankasittely-ja-linnusto/> (accessed 21.6.2021, in Finnish)

### 2.1.3 The application of species protection rules in Finland

The Habitats Directive lists 68 habitats found in Finland, which require designation and are protected as part of the Natura 2000 network<sup>30</sup>. Most of these areas are protected under the Nature Conservation Act - Decree and Annexes thereto. The Forest Act covers seven particularly important habitats, while the Water Act covers four small water body types. Actions jeopardising the special characteristics of these areas are prohibited by law.

The Nature Conservation Act includes a system of conservation for species and transposes both the Nature and Birds Directive. Section 47 § of the Nature Conservation Act provides for a strict protection regime for Annex IV species. Derogations from the strict protection may only be granted on the grounds listed in Section 49 § of the Nature Conservation Act.

The Nature Conservation Act puts in place a strict protection regime for the species it covers. All species belonging to the category 'protected species' defined in national law, are subject to the prohibitions listed in section 39 of the Nature Conservation Act. The category 'protected species' includes the species listed in Annex IV a of the Directive.

The conservation system set up by the legislation is formed of several different categories. The species protected under the Directives are covered by separate provisions in Section 49 § of the Nature Conservation Act. The legislation lays down a system for the protected species outside protected areas, where the species themselves are protected. However, certain elements of the habitats of the species such as the nests (with the exception of an appropriately marked tree hosting a nest of a bird species or an unmarked tree hosting a clearly visible nest of a large bird of prey) are not separately mentioned in the conservation provisions when the area is not a protected area or site of a special category.

The second part of Section 37 § paragraph 1 means that separate, more strict provisions may be issued for species protected under the EU law.

From the conservation point of view, Section 39 establishes the general principles of protection for all species. This provision prohibits, inter alia, deliberate killing, capture and disturbance of animals, particularly during breeding, in important resting places during migration, or on any other sites of significance to their life cycles. This is a general protection provision, covering all protected species under national law. Section 39 protects the specimen of the species; it is not a provision including a prohibition concerning the utilisation of the area or the habitats.

The prohibition to cause disturbance or killings has not been interpreted as limiting the possibility to use or take action in the habitats of the species, rather it has been seen as only protecting the specimen of the species. This has been reasoned by the fact that the establishment and governance of specific protection areas is regulated separately.

In addition, Section 49 of the Nature Conservation Act includes specific provisions for the protection of the species covered by the Habitats and Birds Directives. The section prohibits in principle the destruction and deterioration of resting and breeding places of Annex IV (a) species (which is not required under the Birds Directive).

The Nature Conservation Act provides for two different derogation provisions; *a general exemption*, under which many agriculture and forestry activities may be carried out; and *a strict derogation* referring to the conditions set in Article 16 of the Habitats Directive.

In Finland, forestry activities may be carried out in areas where protected species of animals or birds nest or occur. These activities appear to be based on the general exemption, which does not require taking into account the strict conditions for derogation as listed in the Habitats Directive but cannot be applied when it affects animal and plant species referred to in Section 49, which relate to species listed under Annex IV of the Habitats Directive or species protected under the Birds Directive. This practice concerns the habitats, which are not recognised as separately protected under Finnish legislation.

The strict derogation provision appear not to have been applied in Finland to forestry activities, for

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<sup>30</sup> [https://www.ymparisto.fi/en-US/Nature/Natural\\_habitats](https://www.ymparisto.fi/en-US/Nature/Natural_habitats)

reasons that are not obvious from the legislation<sup>31</sup>. This means that the general derogation is applied as the basis for derogations, with less stringent conditions from those included in the strict derogation. This may be a result of the principle in the conservation system laid down by the legislation, where the habitats of the species (with the exception of an appropriately marked tree hosting a nest of a bird species or an unmarked tree hosting a clearly visible nest of a large bird of prey, and the seven specific habitats listed in Forest Act Section 10 §) are not separately mentioned in the conservation provisions when the area itself is not a protected area or site of a special category. This means that the species themselves are protected at all times, but their habitats, if not occurring in a protected site or area, are not the *per se* subject of the protection.

In addition, the legislation prohibits ‘deliberate disturbance’ of species, particularly during the period of breeding and rearing, migration or on any other sites of significance to their life cycles, in line with the provisions of the Directives. However, this has been interpreted strictly in practice. Forestry activities during, inter alia, nesting periods are not considered in Finnish court practice as ‘deliberate disturbance’ for birds. Furthermore, the legislation does not include a specific prohibition or provision on the timing of the forestry activities. This means that forest owners and forestry actors are **free to carry out logging and other measures throughout the year, also during the nesting and breeding periods in spring and summer.**

As a conclusion, the legislation provides for a strict protection regime for the habitats and species in Finland. However, **the application and court practice relating to the interpretation of the ‘deliberate disturbance’- prohibition appears to be an ambiguous and incorrect application of Article 12(1)(b) of the Habitats Directive.** The same is valid for **Article 5(d) of the Birds Directive.**

## 2.2 SECTORAL LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

### 2.2.1 Forest Act approach to species protection

Forestry actions are governed by separate legislation that refers to the nature conservation legislation. **The Forest Act** is the main law regulating the use of managed forests. Its implementation is monitored by the Finnish Forest Centre. The Act requires nature conservation legislation to be taken into account in Section § 2 of the Forest Act. Use and management of forests is, however, an economically viable activity in Finland and provides important economic resources to both forest owners (private, public and organisations) and the entire forestry industry.

Use of forests and the legislation relating to it has been construed as having a different objective than the conservation legislation. The objective of the Forest Act is to promote the economically, ecological and socially sustainable use and management of a forest in a way that the forest provides sustainable yet good profits while maintaining their biodiversity. The scope of the Forest Act covers forestry actions and forest management including the use of forests for exploitation purposes.

The Forest Act is not relevant for the transposition of the Birds Directive as it is not an Act with a conservation objective.. As stated, the **Forest Act** does not include specific provisions on conservation or species protection, rather it refers to the provisions of the Nature Conservation Act. The applicable provisions of the Nature Conservation Act are listed in the Forest Act which does not include separate provisions on the protection of birds. The Forest Act has been enacted from a resource utilisation perspective for the exploitation of forests. The objective of the Forest Act is the sustainable use of forests, which includes the protection of biodiversity in forests. .

The Forest Act sets standards for wood harvesting, forest regeneration and safeguarding the biodiversity of forests. The Forest Act includes provisions on the management of forestry activities and measures

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<sup>31</sup> See e.g., Decision of the Supreme Administrative Court of Finland in a matter concerning derogation from the protection provisions. Decision no. 1554/2017 ; ECLI:FI:KHO:2017:T1554. <https://kho.fi/fi/index/paatokset/muitapaatoksia/1491211869956.html> (in Finnish).

relating to logging and management, from a forestry point-of-view. It should be noted that the forestry actions are planned and carried out by the forest owner, who may freely choose the timing for the measures of activity or inactivity, if the site is not a conservation area or known habitat of protected species. There are **no provisions on the obligation to carry out forestry measures**, unless initiated by the forest owner themselves. This means that a forest owner is free to leave their forests as they are, or to take forestry action. On this basis, forest owners may take detailed forest management decisions in accordance with their objectives<sup>32</sup>. The manner in which the loggings and later forest renewal actions shall take place, are regulated in Forest Act Chapter 2. Conservation objectives are regulated in Chapter 3 of the Forest Act.

The Forest Act does not oblige the forest owner to undertake logging on their property. A forest owner has a specific **renewing obligation**, which does not mean that the forest owners would have an obligation to carry out logging unwillingly. The renewal of a forest is an important part of sustainable forestry in Finland. The legislation does set minimum standards on how logging, collections and renewing of the forests shall take place.

The Forest Act applies to almost all forests in the territory of Finland, with the exception of areas listed in Section 2 § of the Forest Act. Forestry activities in wilderness areas (under Wilderness Act 1996/62), not protected areas under Nature Conservation Act) in Lapland are subject to more stringent conditions to prevent the lowering of the forested area<sup>33</sup>. An area where preservation of the forest is necessary to prevent the retreat of the timberline may be designated as a timberline forest area by **Government Decree**. In a timberline forest area, special caution must be exercised in the management and use of forest in order to ensure that the operations do not cause retreat of the timberline. The timberline forest areas have been defined in Governmental decision on Timberline Forests (844/1198).

In addition, the Forest Act Section 10 a § limits forestry actions in **specific important habitats**, which are listed in Forest Act section 10 §. These habitats are recognised in the legislation and especially in the forestry context as valuable areas for forest biodiversity. The objective of the provisions is to lay down binding rules on conservation of biological diversity and to set a baseline for biological diversity in a number of important habitats. These important habitats, that are listed in Section § 10 of the Forest Act are recognised as different from normal forest nature, usually being small-scale sites that are important habitats for certain rare or demanding species<sup>34</sup>. **There is no direct reference to Annex IV species of the Habitats Directive, but these species would also be covered by the provision.** The scope of the provision goes beyond the scope of Article 12, as it covers also other habitats. The strict protection regime required by Article 12 of the Directive is established in § 37, 39 and 47 of the Nature Conservation Act.

Outside conservation areas, there is no central point of planning for forestry operations. This means that the use of forests or the actual loggings are not pre-planned by any state or regional authority. The Forest Act includes an obligation to make a **prior forest use notification** 10 days before any activities, i.e. logging can take place. The forest use notification is a key instrument in forestry. All forestry activities under the scope of the Forest Act shall be notified prior to carrying out the activities. This includes all forestry activities that are relevant for the protection of species under the Habitats and Birds Directives. The forest use notification is a measure directly applicable at forest property level. The notifications are submitted to the Forest Centre, and they are usually drafted and submitted by the forestry professional or the purchaser or raw materials.

The notifications submitted by the forestry actors or forest owners are subject to screening but are not *per se* reviewed as permits. The Forest Centre can conduct monitoring of the forest in question prior to the activity; however, due to limited resources, not all activities are screened. The screening takes place on an ad hoc basis, and to a growing extent by comparing the information in different databases to

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<sup>32</sup> <https://mmm.fi/documents/1410837/12877048/Forestry+and+use+of+wood+in+Finland.pdf/2598dc7e-6992-9b97-1773-da94a1e903bd/Forestry+and+use+of+wood+in+Finland.pdf/Forestry+and+use+of+wood+in+Finland.pdf?t=1635503348080>

<sup>33</sup> for brief summary of the forestry legislative systems see e.g. <https://www.metsakeskus.fi/fi/metsan-kaytto-ja-omistus/oikeudet-ja-velvollisuudet/tietoa-oikeuksista-ja-velvollisuuksista>.

<sup>34</sup> <https://www.finlex.fi/fi/esitykset/he/1996/19960063> Governmental bill for the Forest Act, detailed reasoning on Section § 10



identify those cases where there is a reason to believe a breach of regulations has taken place or where there is a link to an especially vulnerable area.

The forest use notification is the administrative requirement for carrying out forestry activities. Forest owners have to adhere to the timelines for submitting the forest use notification within 10 days. The forest use notification is not subject to a prior approval procedure. Guidance on forest use and management is provided, but the forestry activities are not subject to a permit procedure or regular ex ante screening, which appears to be a problem in terms of compliance with the species protection provisions of the Nature Directives. The notification measure serves as a basis for the statistics for forestry activities and provides a theoretical possibility for screening of sensitive or important areas. However, taking into account the number of forest owners and the scope of the forestry sector, the sheer number of notifications to be screened is massive.

The provisions on forest management and forest use are included in Chapter 3 of the Forest Act: Safeguarding the biodiversity of forests as follows:

## **Section 10 § of Forest Act**

### **Preserving biodiversity and habitats of special importance**

*(1) Forests shall be managed and used in such a manner that the general conditions for the preservation of habitats important for the biological diversity of forests are safeguarded.*

*(2) Habitats of special importance in terms of biodiversity are sites in their natural or semi-natural state which can be clearly distinguished from the surrounding forest nature. The characteristic features of such sites include:*

*1) the immediate surroundings of springs, brooks, rivulets constituting a permanent water flow channel, and ponds of less than 0.5 hectares whose characteristic features include the special growing conditions and microclimate due to the closeness of water and tree and shrub layer;*

*2) the following mire habitats listed in points a–e where the shared characteristic feature is the natural or semi-natural water economy:*

*a) herb-rich and grassy hardwood-spruce swamps where the characteristic features include luxuriant and demanding vegetation, uneven-aged stand and shrub vegetation;*

*b) unbroken hardwood-spruce swamps with wood horsetail and cloudberry where the characteristic features include uneven-aged trees stand and dominance of uniform wood horsetail or cloudberry vegetation;*

*c) fens where the characteristic features include nutrient-rich soil, very little of tree stand and demanding vegetation;*

*d) wasteland and scrubland swamps with very little tree stand; and*

*e) flood meadows where the characteristic features include uneven-aged deciduous tree stand or shrub vegetation and permanent impact of surface waters;*

*3) luxurious herb-rich forest patches where the characteristic features include herb-rich forest soil, demanding vegetation and natural or semi-natural state tree stand and shrub vegetation;*

*4) heathland forest islets located in undrained peatlands or peatlands where the natural water economy has for the most part remained unchanged;*

*5) gorges and ravines in the bedrock or furrowed in mineral soil with steep slopes, as a rule more than 10 meters deep where the characteristic features include a typical vegetation deviating from the other surroundings;*

6) steep bluffs as a rule more than 10 meters high and the forest lying directly underneath;

7) sandy soils, exposed bedrock and boulder fields with lower wood production potential than in heathland forest with extremely barren soil where the characteristic features include a sparse tree stand.

(3) The habitats of special importance referred to in subsection 2 are small in area or have little significance for forestry purposes. The provisions in section 11 are taken into account when assessing the economic value of a habitat.

(4) Where necessary, further provisions concerning the natural or semi-natural state and characteristic features of habitats of special importance are laid down by Government Decree.

**Section 10 a §** reads as follows

### **General principles for treatment of habitats and prohibited operations**

(1) In habitats of special importance referred to in section 10(2) above **cautious management** and utilisation operations may be undertaken where the characteristic features of the habitats are preserved or reinforced. In the operations the special water economy, stand structure, old holdover trees and dead and decaying trees shall be preserved and the vegetation, variability of the terrain and the soil type shall be taken into account.

(2) Management and utilization operations that reinforce the characteristic features include systematic nature management operations and operations to restore the site to its natural state. Management and utilisation operations that preserve the characteristic features include cautious felling by picking individual trees, digging of isolated patches with a hoe and planting of seedlings of trees that belong to the native flora of Finland and sowing seed of such trees. When exercising special caution timber may be transported in habitats of special importance and a channel of a brook may be crossed if this does not endanger the preservation of the characteristic features.

(3) Action that may not be taken in habitats of special importance include regeneration felling, forest road construction, treatment of soil surface that may damage vegetation characteristic to the site, ditch drainage, cleaning of brooks and rivulets and use of chemical pesticides.

**Section 10 b §** reads as follows

### **Treatment of specific habitats**

(1) In habitats of special importance referred to in paragraphs 1 and 2 of section 10(2) above cautious felling by picking individual trees may be undertaken which preserve the stand in its natural or semi-natural state in a way that the natural or semi-natural water economy of the habitat does not change.

(2) In luxuriant herb-rich forest patches the structure of the stand in the habitat shall be preserved so that only cautious felling by picking individual trees are undertaken in connection with the management and utilisation operations.

(3) No wood harvesting may be done in steep bluffs and the forest lying directly underneath.

(4) In sandy soils, exposed bedrock and boulder fields cautious felling by picking individual trees may be undertaken so that the old as well as dead and decaying trees are preserved.

(5) Where necessary, further provisions on the preservation of the stand structure and layers, viability of the shrub layer and soil water economy in the area of habitats of special importance referred to in section 10(2) are laid down by Government Decree.

Section 14 c § reads as follows

**Section 14 c – Advance information concerning a habitat of special importance**

*(1) Prior to felling or other treatment of forest the landowner or holder of the felling right authorised by the landowner may apply to the Forestry Centre for advance information relating to the forest use declaration on whether the site concerned is a habitat of special importance referred to in section 10(2) and whether the declared treatment of forest is in accordance with section 10 a and 10 b.*

*(2) The Forestry Centre shall comply with the advance information it has given when supervising the compliance with this Act. The advance information shall be complied with as long as the launch of felling or other operation is possible on the grounds of a forest use declaration referred to in subsection 1.*

*(3) An application concerning advance information shall be processed as urgent, with due account for the circumstances. If felling or other treatment of forest referred to in the forest use declaration is started on the site concerned in the application before the advance information is given, the processing of the matter lapses. Further provisions on the information to be given in the application may be laid down by Decree of the Ministry of Agriculture and Forestry.*

Sections 10 §, 10 a § and 10 b § form the core of forest owner and forest actors' obligations relating to protected species and habitats. Section 10 § lists the habitats that are subject to strict protection and are also listed as protected habitats in the Habitats Directive. Forestry activities such as felling and logging are restricted in these areas.

Sections 10 a § and 10 b § lay down the principles and allowed treatment measures for areas that include a habitat of special importance according to section 10 §. Only cautious management and utilisation operations may be undertaken where the characteristic features of the habitats are preserved or reinforced. This means, in practice, only cautious felling by picking individual trees which preserve the stand in its natural or semi-natural state.

These habitats or areas within which these habitats occur, are, however, not systematically or clearly mapped. It is then for the forest owners or the forestry actors to recognise and preserve these habitats in their own lands. The forest owners do not always know if their land falls under the category of special habitats, although guidance and training is provided through, inter alia, Finnish Forest Centre and the ELY-Centres.

Section 14 § lays down the rules for requesting a preliminary opinion on the status of the forest area. The forest owners or forest actors are entitled to ask for a binding opinion from the Forest Centre on the application of the conservation rules and presence of Section § 10 habitats in the area they have planned the forestry actions.

As a conclusion, the Forest Act is considered to be an important tool for the maintenance of the biodiversity of forests. The habitats listed in Section § 10 of the Forest Act include habitats that are listed in Annex I of the Habitats Directive. These habitats are recognised as important areas for the biodiversity of forests, and should be subject to conservation **even outside actual protected sites** or protection regimes. In addition, the special species protection provisions of the Nature Conservation Act apply in conjunction to the ones in the Forest Act. This means that any and all activities and projects must always take into account the strict protection regime set up by the nature directives, as required by Section § 47 of the Nature Conservation Act. As mentioned above, the Forest Use Notification may be subject to pre-screening, if any known data available to the authorities indicates that the planned project is close to or located at an important habitat of a protected species.

### 3 GOVERNMENT ADVICE TO FOREST OWNERS AND FORESTRY ACTORS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

The main advisory authority with supervision and surveillance empowerment is the Metsäkeskus (**Finnish Forestry Centre**), which has competence nationally all over Finland. The Finnish Forestry Centre also collects data and updates the data with growth calculations and information on management activities.

Information on species is readily available both in automated form and in central databases. This is not, however, reflected in the conservation provisions of the nature conservation legislation. The legislation does not obligate the creation of such measures. The Finnish Forestry Centre provides the regulatory advisory services for forest owners and provides information on how to manage the forests and fulfill the obligations set in the legislation<sup>35</sup>. The information provided and disseminated includes information on conservation status and needs of protected species, their ranges and options for voluntary conservation.

The Forestry Centre maintains an online service portal Metsään.fi<sup>36</sup>, through which forest owners and forestry actors may officially submit notifications and communicate with the authorities. The portal also provides information on species protection according to information received in the course of this study<sup>37</sup>. A forest owner has access to their own forest properties, and information on, inter alia, any classification of special species or habitats that have been officially processed. The owners may only access their own data, so the dataset does not provide information on the broader set of species or conservation data. This means that any data on species outside their own properties would not be directly available to them. They may, however, ask for a binding opinion from the Forest Centre on the application of the conservation rules and presence of Section § 10 habitats in their planned area for forestry actions, as laid down in Section 14 c § of the Forest Act. The opinion contains information on whether the area in question has the listed special habitats and if a planned forestry activity can take place.

In addition, forest industries have prepared their own guidance with relation to sustainable forestry and forest management, including, as a vocal point, information on species protection relevant for the forests. This guidance is, however, not governmental, but rather self-regulatory, and as such not binding guidance or official government advice<sup>38</sup>.

The recently launched species data portal Laji.fi, operated by Finnish Biodiversity Info Facility, a state governed initiative, aims to provide a single solution to all species data with interfaces to all relevant authorities' datasets. The integration procedure is, however, still ongoing, and e.g. the most recent data on endangered species has not been automatically included in this database<sup>39</sup>. Authorities have previously used the 'Hertta- database' with information on all species occurrence data. This central database has also not yet been integrated to the new laji.fi- portal<sup>40</sup>.

Finland has also established a voluntary forest biodiversity programme for Southern Finland, METSO-programme 2008-2025<sup>41</sup>. The programme aims to halt the ongoing decline in biodiversity of forest habitats and species, and to establish at least a stable or preferably favourable trend in Southern Finland's forest ecosystems<sup>42</sup>. Voluntary forest protection by landowners is particularly important in Southern

<sup>35</sup> <https://www.metsakeskus.fi/fi/metsan-kaytto-ja-omistus/oikeudet-ja-velvollisuudet/tietoa-oikeuksista-ja-velvollisuuksista> (Accessed 21.6.2021, in Finnish).

<sup>36</sup> [www.metsaan.fi](http://www.metsaan.fi)

<sup>37</sup> Information received from in-depth interview with the authorities in Finland.

<sup>38</sup> See for e.g. guidance on Forest Management and Birds <https://puuhuolto.fi/metsankasittely-ja-linnusto/>.

<sup>39</sup> <https://laji.fi/>, status information received from in-depth interview with the authorities in Finland.

<sup>40</sup> status information received from in-depth interview with the authorities in Finland.

<sup>41</sup> <https://mmm.fi/documents/1410837/1504826/METSO+Factsheet/de777afa-e4b3-475c-8317-747424e2f496/METSO+Factsheet.pdf?t=1443682696000>

<sup>42</sup> Forest Biodiversity Programme for Southern Finland (METSO) - Maa- ja metsätalousministeriö (mmm.fi).

Finland where the network of national parks and other nature reserves is not as developed as in other parts of Finland. Voluntary forest protection is promoted by the State through the Programme.

The Programme is a collaborative effort between the Ministry of the Environment, the Ministry of Agriculture and Forestry and different stakeholders. The METSO Programme has been designed to enhance biodiversity by supplementing and improving Finland's network of protected areas and by maintaining and developing nature management practices for commercially managed forests. Conservation schemes will largely be based on voluntary participation of landowners willing to safeguard biodiversity in their own forests. The Programme also promotes the establishment of conservation networks between private forest owners and organisations. Restoration activities are also being carried out on existing protected areas on State owned land.

The METSO Programme offers various tools for the forest owners: they can offer their forests either for permanent protection or make temporary protection agreements. In addition, active nature management supported by the Programme is one way to increase biodiversity in managed stands. Forest owners and other stakeholders are also encouraged to establish co-operative networks<sup>43</sup>. Forest owners get full financial compensation equivalent to the value of timber at the protected site. If the forest owner chooses to sell the property to the state for permanent protection, the value of the land will also be compensated. With permanent protection the private forest owner's compensation is tax-free. The nature management projects come at no cost to the forest owner. Additionally, protected and managed sites can be used for nature-based tourism and recreation.<sup>44</sup>

There are ten forested habitats, which are being preserved under the METSO Programme. The sites are selected according to their ecological structure and their value for biodiversity. Regional forest and environmental authorities decide if the site is suitable for the Programme. Compensation will be paid to landowners according to legislation in the Nature Conservation Act or the Act on the Financing of Sustainable Forestry<sup>45</sup>.

Overall, the information measures and voluntary conservation programmes have disseminated information on species protection in the forestry sector. The information flow from authorities to forest owners and to forestry actors is constant, and foresters are generally very well aware of these rules.

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<sup>43</sup> <https://www.metsonpolku.fi/en-US>

<sup>44</sup> "Forest Biodiversity Programme for Southern Finland (METSO)," accessed April 29, 2022, [https://www.metsonpolku.fi/en-US/METSO\\_Programme](https://www.metsonpolku.fi/en-US/METSO_Programme).

<sup>45</sup> <https://mmm.fi/en/forests/biodiversity-and-protection/metso-programme>

## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION ON FOREST LAND

### 4.1 SUPERVISION

Monitoring is the responsibility for the ELY-centres. They receive all information from the Forest Centre regarding Forest Use Notifications in an automated form. Thus the monitoring of the forest related conservation issues can be done before the measures are carried out by forest owners or forestry actors. The ELY-Centre may act upon the notifications made even prior to implementation of the measures if they receive the data early enough.

The Forest Centre has a control function assigned to it by law<sup>46</sup>. The Forest Centre gathers annual data on forest use notifications. It controls the application of all forest related legislation according to mandate issued by law<sup>47</sup>. The controlled dataset is not subject to third-party verification<sup>48</sup>. In practical terms, the coordination of the forest use data in one place makes the supervision more coordinated and the data manageable.

The controls are based on the forest usage notifications, which are submitted to the Forest Centre prior to the loggings, and to *ex post* controls both on-site and off-site after the loggings. The controls may take place either before or after the forest activities, e.g. loggings, have taken place. The main focus of the controls is on special habitats protected by the Forest Act, as well as on how protected species and their habitats are being considered when carrying out the loggings. Forest use notifications play an important role in achieving the objectives of the law. They are used to monitor compliance with the law<sup>49</sup>. Forest renewal obligations are also monitored in cases where regeneration fellings have been carried out<sup>50</sup>. In case the controls reveal non-compliance or violation of legislation, the Forest Centre informs the ELY-Centre or the criminal authorities who will assess compliance with the Forest Act, Nature Conservation Act or the Criminal Code of Finland.

### 4.2 COMPLIANCE

There is no data available on individual or case-by-case reviewed compliance with the conservation provisions. The number of cases pending for infringements of the Nature Conservation Act can, however, be gathered from the courts.

A starting point for all forestry activities is that all forest management and use carried out shall be according to legislation. Violation of legislation could lead to criminal sanctions, although the number of investigations on-going on nature related crime is unclear. Many of the reported suspected criminal offences are either not investigated, or the investigations are dropped due to lack of relevant nature related knowledge<sup>51</sup>.

### 4.3 SANCTIONS

Sanctions for violating the conservation provisions set in the Nature Conservation Act vary from injunctions to an obligation to notify damage to nature. A violation of conservation provisions may be prosecuted as a criminal action according to Criminal Code 48 §, either as destruction of the environment or a nature conservation crime. There is no central point of specific statistical data for the number of

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<sup>46</sup> <https://www.metsakeskus.fi/fi/avoin-metsa-ja-luontotieto/tietoa-metsien-kaytosta/lainvalvonta>

<sup>47</sup> Act On Finnish Forestry Centre 418/2011, section 8 § (Laki Suomen metsäkeskuksesta 418/2011, 8 §).

<sup>48</sup> Stakeholder interview.

<sup>49</sup> <https://www.finlex.fi/fi/esitykset/he/1996/19960063> Governmental bill for the Forest Act, detailed reasoning on Section § 14

<sup>50</sup> <https://www.metsakeskus.fi/fi/avoin-metsa-ja-luontotieto/tietoa-metsien-kaytosta/lainvalvonta>

<sup>51</sup> Stakeholder interview.

these offences. The environmental crime reports are compiled annually, and nature conservation crimes are included therein<sup>52</sup>.

The main sanctions are included in the Nature Conservation Act Section 58 §.

The penalty for causing damage to the environment, or for any other nature conservation offence, is laid down in Chapter 48, sections 1–5, of the Penal Code.

*Whosoever either willfully or through gross negligence*

- 1) violates a provision or a regulation on nature conservation laid down in or by virtue of this Act, or buys or accepts an item obtained by violating said provisions;*
- 2) takes possession of, assigns, presents in public for commercial purposes, sells, keeps with intent to sell, offers for sale or transports with intent to sell, imports or exports a plant or animal specimen or a part or derivative thereof, contrary to the provisions of section 40 or 45, or section 49, paragraphs 2 and 4; or*
- 3) imports, exports, or conducts through transit across Finnish territory an animal or plant specimen, or a part or derivative thereof, described in the European Community Regulation referred to in section 44, paragraph 1, without a permit or certificate required by said Regulation, or fails to comply with the stipulations specified on said permit or certificate; or*
- 4) imports from a third country or exports to a third country an animal or plant specimen, or a part or derivative thereof, referred to in the European Community Regulation referred to in paragraph 1 of section 44, without passing via a customs office designated under this Act, or fails to make the import notification required under the said Regulation; or*
- 5) purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial purposes, sells, keeps for sale, offers or transports for sale an animal or plant specimen, or a part or derivative thereof, listed in Annex A or B of the European Community Regulation referred to in paragraph 1 of section 44, in contravention of Article 8 of said Regulation, shall be fined for committing a nature conservation violation, unless the action is punishable as a nature conservation offence.*

***Whosoever either willfully or through gross negligence unlawfully destroys a breeding site or resting place of specimens of the species listed in Annex IV(a) of the Directive on the conservation of natural habitats and of wild fauna and flora or causes a breeding site or resting place to deteriorate shall also be sentenced for committing a nature conservation violation.*** The Finnish Forestry Centre has started to use satellite imaging surveillance in its supervisory activities in 2019. This has led to the threefold increase of sanctionable cases (in 2020, compared to the situation before satellite imaging surveillance)<sup>53</sup>. Annually, there are around 100 suspected instances of infringement or non-compliance with the obligations of the Forest Act.

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<sup>52</sup> <https://poliisi.fi/documents/25235045/28576016/Ymparistorikoskatsaus-2020.pdf>

<sup>53</sup> <https://www.maaseuduntulevaisuus.fi/metsa/a0c27af6-939e-5ad0-96fa-2826fcb135c1>

## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FOREST ACTIVITIES WHICH MIGHT AFFECT THE PROTECTED SPECIES

In Finland, any project or plan may be subject to an assessment when the conditions set in the Nature Conservation Act Section 65 § are fulfilled. However, any forestry management plans in Finland are not subject to a separate SEA or appropriate assessment under Article 6(3) HD. The main legal obligations and transposing provisions are included in Section 65 § of the Nature Conservation Act.

According to the provision, if a project or plan, either individually or in combination with other projects and plans, is likely to have significant adverse effect on the **ecological value of a site** included in, or proposed by the Government for inclusion in, the **Natura 2000 network**, and the site has been included in, or is intended for inclusion in, the Natura 2000 network for the purpose of protecting this ecological value, the planner or implementer of the project is required to conduct an appropriate assessment of its impact.

The same shall correspondingly apply to any project or plan outside the site which is liable to have a significantly harmful impact on the Natura 2000 site. The above assessment of impact can also be carried out as part of the assessment procedure referred to in Chapter 2 of the Act on Environmental Impact Assessment Procedure. According to Annex I to the Act, a project falling under the following project category description is always subject to an assessment procedure: permanent alteration of a forest, bog or wetland area of more than 200 hectares, when the area is considered to be uniform, by implementing new drainage or draining non-drained bog and wetland areas; permanently removing stands or regenerating the area with non-native tree species. Whenever an EIA is carried out, an assessment of the impact on protected species is included.

According to Section 65 § of the Nature Conservation Act, the authority in charge of granting a permit or approving the plan shall see that the assessment according to Section 65 § is indeed carried out. The authority shall thereafter request an opinion from the Centre for Economic Development, Transport and the Environment and the authority in charge of the site in question. If the Centre for Economic Development, Transport and the Environment itself is implementing the project, an opinion shall be requested from the Ministry of the Environment. The opinion shall be given without delay, within six months at the latest.

An authority notified in due procedure of a project or plan, shall take steps within its jurisdiction to suspend the approval and implementation of the project or plan until the assessment is carried out and the opinions have been submitted. The authority shall also notify the Centre for Economic Development, Transport and the Environment of the matter at a sufficiently early stage for it to take any necessary action.

In addition, the protection provision of Annex species are included in Section § 47 of the Nature Conservation Act. This Act prohibits in principle any activity that negatively affects the protected species. In case an activity may affect the protected species, the project developer or actor shall request for a derogation according to Section § 49 of the Act.

The authorisation procedures for forestry activities are thus mainly considered according to the Nature Conservation Act Section 47 § in conjunction with Forest Act Section § 10 on the forest use notification. The provisions have been discussed in detail in the previous chapters. The Forest Use Notification may be subject to pre-screening, if any known data indicates that the planned project is close to or located at an important habitat of a protected species.



## 6 OVERALL ASSESSMENT OF SPECIES PROTECTION ON FOREST LAND

### 1. KEY FINDINGS (CHALLENGES)

#### 6.1 TRANSPOSITION ISSUES

The Habitats Directive and Birds Directive have been transposed into Finnish legislation by the Nature Conservation legislation, the Nature Conservation Act and Decree. The legislation was enacted in the late 1990's and has been since adapted to the changes in EU legislation. For forestry activities, the Forest Act lays down rules for all forest use by all types of forest owners and other forestry actors. In terms of species protection, the Forest Act refers to the Nature Conservation Act.

The Ministry of the Environment has started the process of reforming the nature conservation legislation. The aim of the legislative reform is to improve the protection of the Finnish natural environment and its biological diversity.

The species protected under the Directives are covered by a separate provision included in Ch 6 of the Nature Conservation Act. However, the application and court practice of the 'deliberate disturbance' prohibition appears to be an ambiguous and incorrect application of Article 12(1)(b) of the Habitats Directive. The same is valid for Article 5(d) of the Birds Directive. The general exemption to certain forestry and farming activities in the Nature Conservation Act Section § 37 does not seem to apply when bird species and species listed in Annex IV of the Habitats Directive are affected.

The Nature Conservation Act sets binding obligations in relation to species protection. The strict prohibitions regarding protected species laid down in the Act apply to all forestry actors, including private forest owners. The measures are not specifically directed at the forest owners or directly to forest properties, but are nevertheless fully applicable.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

- Forestry activities are governed by the Forest Act, which includes provisions on the management of forestry activities and measures relating to logging and management, from a forestry point-of-view. The forestry actions are planned and carried out by the forest owner, who may freely choose the measures of activity or inactivity, if the site is not a conservation area or known habitat of protected species. The Forest Act does not include specific provisions on conservation or protection, rather it refers to some provisions of the Nature Conservation Act. The applicable provisions of the Nature Conservation Act are listed in the Forest Act.
- The Hunting Act lays down the principles for the hunting of birds and mammals and lists the species which may be subject to hunting. It provides derogations for some species of mammals and birds listed in the EU directives, e. g. those listed in Annex II of the Birds Directive.

##### *Specific rules applying to the forestry sector*

- Forest owners have a lot of freedom to develop their forest according to their own goals, but they do have a responsibility to ensure that any forest that has been cut down is regenerated. The Forest Act does not oblige the forest owner to do any logging. The legislation does set minimum standards on how logging, collection and renewing of the forests shall take place.
- The Forest Act includes an obligation to make a prior forest use notification 10 days before any activities, i.e. logging can take place. All forestry activities under the scope of the Forest Act shall be notified prior to carrying out the activities. This includes all forestry activities that are relevant for the protection of species under the Habitats and Birds Directives. The notifications submitted by the forestry actors or forest owners are subject to screening but are not per se reviewed as permits.

### Other implementing or stimulating measures

- Voluntary conservation measures, established by separate programmes with government funding, like **Metso** which offers the forest owner monetary compensation for maintaining biodiversity of forests. A monetary compensation is issued for the owner, based on the value of the wood materials. According to the in-depth interviews, the protection under Metso may even be proposed by the forestry actors or the raw material purchasers, when their experts have identified that a specific forest property could qualify as a Metso- forest and is eligible for conservation under the programme.
- ELY Centres help to secure biodiversity by establishing nature conservation areas on private land by purchasing areas for the state for the purpose of conservation.

## 6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT

### Government advisory services

- ELY Centres promote and supervise nature conservation and landscape protection. They collect and publish information about the state of the environment in the areas under their supervision.
- The Finnish Forestry Centre is the main advisory authority with supervision and surveillance responsibilities, with competence nationally. While the forest owners can quite freely decide for themselves how to use their forests, the centre provides up-to-date information on Finnish forests to support forest owners' decision making.
- The Forestry Centre maintains an online service portal, through which forest owners and forestry actors may officially submit notifications and communicate with the authorities. The portal also provides information on species protection. The forest owners only have access to information on their own forest properties. They are entitled to ask for a binding opinion from the Forest Centre on the application of conservation rules and presence in their planned area of forestry actions, as they are unable to get information on, for example, their neighbour's properties and the protected species there.
- Forest industries (which also own forests) have prepared their own guidance for sustainable forestry and forest management with a special focus on species protection matters. This guidance is self-regulatory and not governmental.
- Information on species is readily available in automated form and in central databases. This is not reflected in the conservation provisions of the nature conservation legislation.
- Finnish Biodiversity Info Facility recently launched a species data portal, which aims to provide a single solution to all species data with interfaces to all relevant authorities' datasets. The integration procedures are still ongoing, the most recent data on endangered species has not been included.

### Enforcement of species protection legislation

- ELY-Centres receive all information from the Forest Centre regarding Forest Use Notifications in automated form. The monitoring of the forest related to conservation issues can be done by an ELY-Centre before the forestry measures indicated in the Forest Use Notification are carried out by forest owners or forestry actors.
- Forest Centre controls the application of all forest related legislation. The main focus of these controls is on special habitats protected by the Forest Act, as well as on how protected species and their habitats are being considered when carrying out the logging. In case the controls reveal non-compliance or violation of legislation, the Forest Centre informs the ELY-Centre or the criminal authorities who will assess the compliance with the Forest Act, Nature Conservation Act or the Criminal Code of Finland.
- However, no data is available on individual or case-by-case reviewed compliance with the conservation provisions. Violation of legislation could lead to criminal sanctions, but the number

of investigations is unclear. Many of the reported suspected criminal offences are either not investigated, or the investigations are dropped due to lack of specialist knowledge.

## **6.4 ASSESSMENT AND AUTHORISATION PROCEDURES**

### **SEA, EIA and AA**

Overall, assessments are carried out if they have any connection to Natura 2000.

In Finland, any project or plan may be subject to an assessment when the conditions set in the Nature Conservation Act Section 65 § are fulfilled. However, the forestry management plans are not subject to a separate SEA or appropriate assessment under Article 6(3) HD. A project or plan that is planned outside of Natura 2000, but would potentially have an adverse effect on it, is required to be appropriately assessed on its impact.

The authorisation procedures for forestry activities are mainly considered according to the Nature Conservation Act Section 47 § in conjunction with the Forest Act Section § 10 on the forest use notification.

### **Other authorisation procedures**

Environmental permits are handled at the regional level with a wide variety of topics that include sustainable use of the environment, but seem to not be addressed directly at forestry.

## 2. RECOMMENDATIONS

### ■ **Legislative transposition measures of species protection rules:**

The legislation provides for a strict protection regime for the habitats and species in Finland. However, the application and court practice relating to the interpretation of the ‘deliberate disturbance’- prohibition appears to be an ambiguous and an incorrect application of Article 12(1)(b) of the Habitats Directive. The same is valid for Article 5(d) of the Birds Directive. It would be advisable that the recently adopted EU Guidance on species protection under the Habitats Directive is promoted and followed up with specific actions to ensure harmonised interpretation and complete transposition of species protection provisions of the EU Directives<sup>54</sup>.

The general derogation provision, which allows for forestry (and agricultural) activities to be carried out in the concerned area where the occurrence of a species does not preclude the use of an area for farming or forestry is problematic and should be addressed as Nature Directives do not include such exemptions. Further analysis of the court practice as well as interpretation of the legal regimes is encouraged.

### ■ **Preventive and implementing measures:**

The Forest Act has different objectives to the conservation legislation. This influences the application of species protection rules in relation to forestry activities. For example, there is no binding legislation or legal obligations on, for example, the timing of logging. This issue should be addressed, so that any logging or other forest operations follow basic species protection measures and are avoided where protected species are present in the most vulnerable periods.

### ■ **Public advisory and enforcement:**

The habitats listed in Section 10 of the Forest Act are recognised as important areas for biodiversity of the forests. These habitats or areas within which these habitats occur are, however, not systematically or clearly mapped. It is then for the forest owners or the forestry actors to recognise and preserve these habitats on their own lands. It would be advisable to systematically map these areas and issue guidelines so that it is easier for the owners to carry out appropriate measures, which then also need to be enforced.

### ■ **Authorisation and permits:**

Forest owners are quite free to operate in their forests. Certain operations with potentially adverse effects should have some sort of authorisation procedure in place that also takes into account species preservation measures. Consider ensuring that environmental permits, handled at a regional level, also address forestry matters.

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<sup>54</sup> Commission notice, Guidance document on the strict protection of animal species of Community interest under the Habitats Directive, C(2021) 7301 final 12.10.2021

# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## TASK 3 – Case Study *France*

ENV/2020/OP/0022



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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

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## ABBREVIATIONS

CNPF	National Centre of Forest Property/Centre national de la propriété forestière
CBPS	Code de bonnes pratiques sylvicoles
CRPF	Centre régional de la propriété forestière
DDT	Departmental territories directorate/Direction départementale des territoires
DRAAF	Regional directorate of Agriculture, Food and Forestry/Direction régionale de l’agriculture, de l’alimentation et de la forêt
DREAL	Regional directorate of the Environment, Planning and Housing /Direction régionale de l’environnement de l’aménagement et du logement
Env.c.	Environmental code
EPA	Public administrative establishment/Etablissement public administratif
EPIC	Public Trade and industrial establishment/ Etablissement public industriel et commercial
NPA	National Action Plan for protected species
OFB	French biodiversity Agency/Office français de la biodiversité
ONF	Office national des forêts
PSG	Simplified management plan/Plan simple de gestion
RTG	Règlement type de gestion
MAF	Ministry of Agriculture and Food
MET	Ministry for the Environmental Transition



# 1 INTRODUCTION

## 1.1 FORESTS AND FORESTRY IN FRANCE

Forests cover 16,8 million hectares of France or 31% of the territory<sup>1</sup>. The area under forest has been growing since the early 19th century mainly due to land abandonment in mountainous areas and afforestation on former agricultural land<sup>2</sup>. The forest area has increased by 20% in only the last 35 years. The stocking volume has increased by 60% in the same period. This is due to the fact that only around half of the annual increment has been harvested in this period, just 47% in 2010. As a result, the stocking density of forest in France was 168 m<sup>3</sup>/ha in 2015, which is still in the lower half of the EU<sup>3</sup>.

Deciduous trees make up 65 % of the forest species, 27% are softwood, and the remaining is made of a mix of wood species<sup>4</sup>. Three quarters of European forest species are present on the French mainland. The main functions of the forests are production of timber (producing 56 million m<sup>3</sup> annually, generating a value of 2,8 billion EUR), as well as hunting, production of cork, collection of truffles and production of honey (together bringing in some 500 million EUR of value per annum). Forests also have an important recreational function in general and an vital function, especially in the mountainous areas. Forestry provided some 185.000 workplaces and generated 0,58 % of the GDP in 2017.

The main threats to forests in France include large storms that cause windthrows, more frequent droughts leading to outbreaks of various pests and diseases, game species (deer, roe deer, wild boar) feeding on young trees, as well as forest fires that are more frequent in years of drought<sup>5</sup>.

Most of the forest area (75%) is privately owned. Some 12 million ha are owned by 3,5 million owners, with only 1.1 million owners having more than one hectare. The remaining 25% of the forests are divided between state (1,7 million ha) and communal forests (2,6 million ha).<sup>6</sup>

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<sup>1</sup> Rocquencourt A. Piton B. (Coordinateur), Benest F., Carouille F., Cuny H., Gosselin M., Montagné-Huck C., Nicolas M., “État et Évolution Des Forêts Françaises Métropolitaines : Synthèse Des Indicateurs de Gestion Durable 2020” (Paris, 2021), [https://foret.ign.fr/api/upload/IGD\\_2020\\_SYNTHESE.pdf](https://foret.ign.fr/api/upload/IGD_2020_SYNTHESE.pdf).

<sup>2</sup> Wilfried Tissot and Yann Kohler, “Integration of Nature Protection in Forest Policy in France. INTEGRATE Country Report” (Freiburg, 2013), <https://efi.int/sites/default/files/files/publication-bank/projects/france.pdf>.

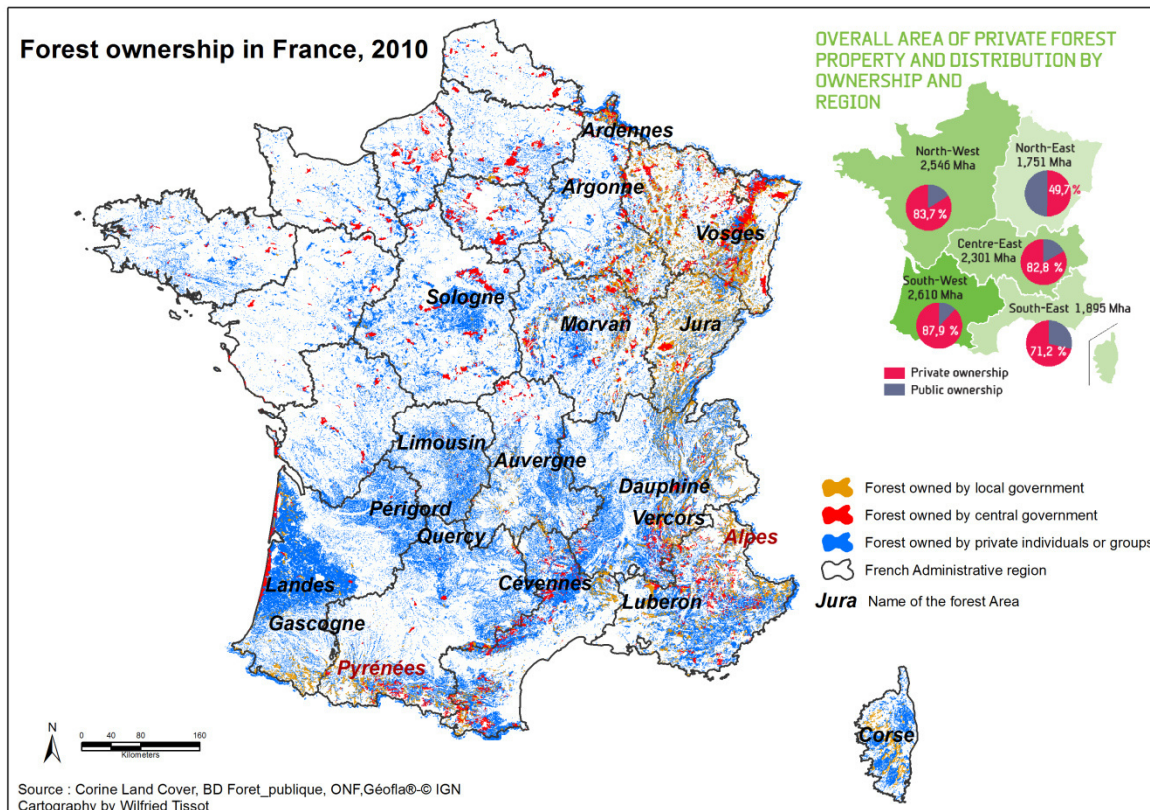
<sup>3</sup> “Forest: Growing Stock, Increment and Fellings — European Environment Agency,” accessed October 29, 2021, <https://www.eea.europa.eu/data-and-maps/indicators/forest-growing-stock-increment-and-fellings-3/assessment>.

<sup>4</sup> [https://foret.ign.fr/api/upload/IGD\\_2020\\_SYNTHESE.pdf](https://foret.ign.fr/api/upload/IGD_2020_SYNTHESE.pdf)

<sup>5</sup> Piton B. (Coordinateur), Benest F., Carouille F., Cuny H., Gosselin M., Montagné-Huck C., Nicolas M., “État et Évolution Des Forêts Françaises Métropolitaines : Synthèse Des Indicateurs de Gestion Durable 2020.”

<sup>6</sup> Tissot and Kohler, “Integration of Nature Protection in Forest Policy in France. INTEGRATE Country Report.”

Figure 1: Forest ownership in France in 2010 <sup>7</sup>



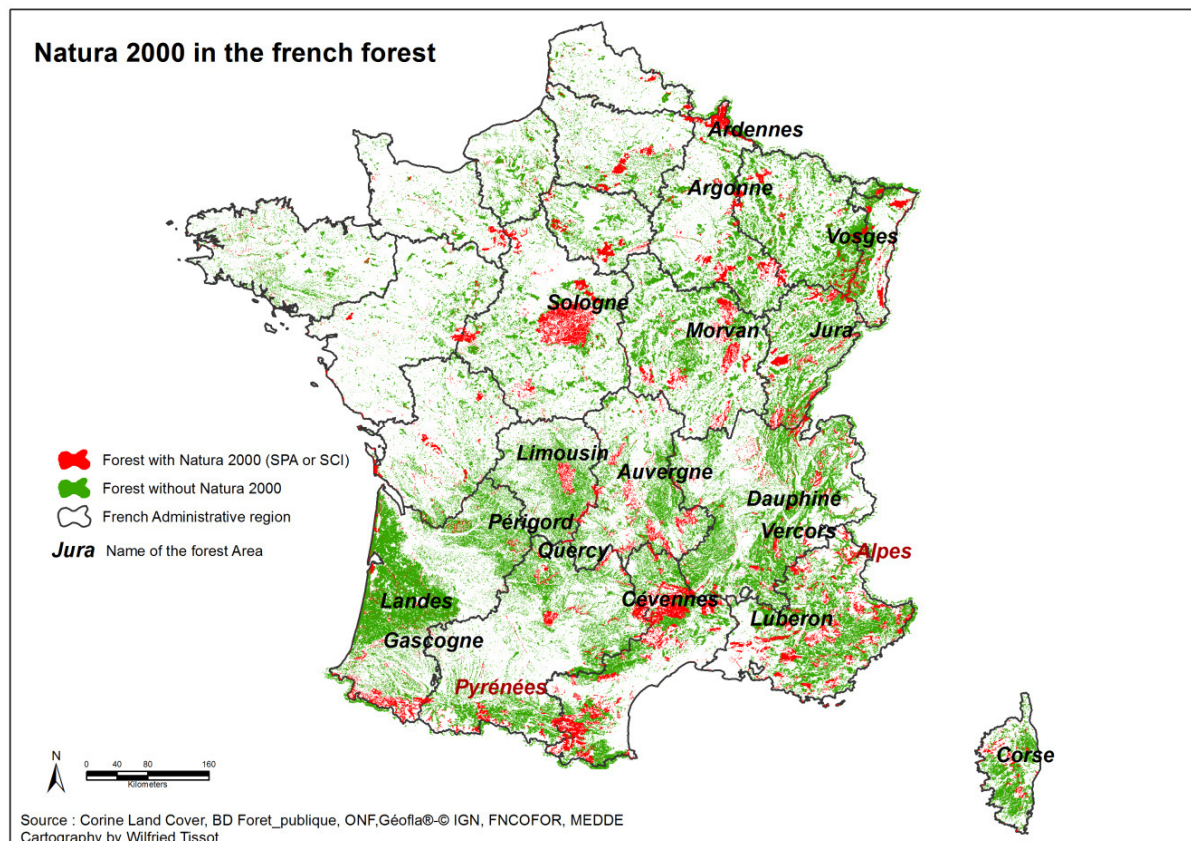
A large majority (87%) of the forests are considered close to nature, i.e. of natural origin. According to the latest forest inventory, there is on average 6,2 m<sup>3</sup> of dead standing timber on each hectare of French forests <sup>8</sup>. A total of 18,5% of the French forest is included in either a SPA or a SCI or both. <sup>9</sup> Of these areas, 26% are communal forests and 38% are state forests. Just 2% of the forests are strictly protected as either National Parks or other types of protected areas.

<sup>7</sup> Tissot and Kohler.

<sup>8</sup> Piton B. (Coordinateur), Benest F., Carouille F., Cuny H., Gosselin M., Montagné-Huck C., Nicolas M., “État et Évolution Des Forêts Françaises Métropolitaines : Synthèse Des Indicateurs de Gestion Durable 2020.”

<sup>9</sup> Tissot and Kohler, “Integration of Nature Protection in Forest Policy in France. INTEGRATE Country Report.”

Figure 2: Natura 2000 in French forest <sup>10</sup>



## 1.2 GOVERNANCE

France distinguishes between forests under the forest regime (“régime forestier”) and forests not subject to the forest regime. They are both regulated by the Forest code.

Forests under the forest regime are mainly public forests consisting of Public State forest (“forêt domaniale”), belonging to the private domain of the State, and communal forests managed by a public entity such as a territorial authority (local authority, public institution...).

Private forests include forests of private persons and some forests owned by local authorities. They are not subject to the forest regime, but depending on their area, they will be provided with a sustainable management document such as a simplified management plan or will be managed in respect to good forestry practices “code de bonnes pratiques sylvicoles”.

On the policy level, the **National forests and wood programme 2016-2026** (“Programme national de la forêt et du bois”) <sup>11</sup> sets out the guidelines of the forest policy for public and private forests for 10 years. It has set 4 goals:

- Creating value in the context of green growth by sustainably managing the resources available in France for the low-carbon transition;
- Responding to citizens' expectations and integrating them into territorial projects;
- Combining mitigation and adaptation of French forests to climate change;
- Developing synergies between forests and industry.

<sup>10</sup> Tissot and Kohler.

<sup>11</sup> Ministère de l’Agriculture, “Programme National de La Forêt et Du Bois 2016 - Éaé-,” 2017, <https://agriculture.gouv.fr/le-programme-national-de-la-foret-et-du-bois-2016-2026>.

**Regional forests and wood programmes** adapt the orientations and objectives of the national programme to the regional level. The *Regional forests and wood programme of Auvergne-Rhône-Alpes (2019-2029)* approved by Ministerial order, for example, includes a specific annex on the consideration of fauna in forest management and was produced in collaboration with the LPO (French bird protection association).

### 1.3 INSTITUTIONS

In France, the **Ministry of Agriculture and Food** oversees preparing and implementing the national policy in matters of agriculture, forestry, fishing and food. On the regional level, the Ministry is represented by 13 regional offices (**DRAAF**) and in each department through the Departmental territory directorate (**DDT**), which is inter-ministerial. The Prefect (“*préfet*”) is the State’s representative in the department and in the region.

The **Ministry for the Ecological Transition** is in charge of preparing and implementing the national policy on sustainable development and the environment. It is represented by regional offices (**DREAL**) and in each department through the DDT.

The **National forestry office** (Office National des Forêts/ ONF) is in charge of managing public forests, including those belonging to the State and to local authorities. It is a public body (EPIC) under the supervision of both the MAF and MET. It is responsible for implementing the forest regime in public forests as well as their management and the infrastructure within.

The **National Centre of Forest Property** (Centre national de la propriété forestière/CNPF) is a public body (EPA) responsible for the sustainable management of private forests. It is made of 11 **regional** (CRPF) and the Institute for Research, Development and Innovation. It is the authority in charge of approving forest management plans of forests belonging to private owners.

The **Private Forests Unions and their federation (Fransylva)** represent the interests of 3,3 million private forest owners, providing legal and fiscal advice to their members.

The **National federation of forest communes** (“*Fédération nationale des communes forestières*” FNCOFOR) represents the interests of 6000 forest communes and their respective elected officials. The commune forests belong to the private domain of the commune (local authority) and are managed by the municipal council and the mayor. Its mission is the sustainable and multifunctional management of public forests, supporting the central role of elected officials in territorial forest policy, and ensuring the vision of forest space as an asset for local development.

The **Chambers of Agriculture** are another major actor in the field of agriculture and forest. They are public entities placed under the supervision of the State and administered by elected officials from the agriculture and forestry sectors and professional agricultural groups. The 89 departmental Chambers support farmers directly, the 13 regional Chambers coordinate their work, and the “*French Chambers of Agriculture*” provides technical, legal, economic support to the different Chambers to the network on the national level .

The **French Office for Biodiversity** (OFB) was created in 2020 by the merger of the French Agency for biodiversity and the ONCFS (“*Office national de la chasse et de la faune sauvage*”). It is a public body under the supervision of the MAF and MET. Its 1700 environmental inspectors contribute to the enforcement of the administrative and judicial policies regarding water, protected species, protected areas, hunting and fishing.

## 1.4 PROTECTED SPECIES

According to the current classifications<sup>12</sup>, **41%** of the species protected under Annex IV of the Habitats Directive (85 species out of 207) and **11%** of the wild bird species protected under the Birds Directive (30 birds species out of 337) that are present in France are directly or indirectly dependent on forest habitats. The most prominent bird species in forest areas are the Passeriformes, or songbirds, with 23 different species. Mammals are also a large part of the protected species in forests, with 18 bat species making up the majority of the 25 listed. The forests are also home of 17 arthropod, 13 amphibian, 14 reptile and 16 vascular plant species protected under Annex IV of the Habitats Directive.

A total of 38 forest dependent bird species are negatively affected by a reduction of their habitats<sup>13</sup>.

According to a recent report, bird species of forest areas are suffering from the intensification of forestry due the rejuvenation of forests and the lack of undergrowth development<sup>14</sup>.

Monocultures, along with the use of phytosanitary products and cutting of hollow trees or dead trees are threats to multiple species such as bats<sup>15</sup> or osprey<sup>16</sup>.

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<sup>12</sup> Article 12 and Article 17 species classification is based on the current State of Nature Report 2020 (EEA 2020). While the classification for Annex species relies on the definition from Halada et al. 2013 (only available for Article 17), the birds classification refers to the classification from the Common Bird Indicator classification for birds with ecological preferences for forest (CFoBI).

<sup>13</sup> Bird Life international et LPO, 2016, *40 ans de protection de la nature, 1976-2016. Oiseaux et milieux*, Suppl. à *L'Oiseau Mag*, n° 123, 32p.

<sup>14</sup> Bird Life international et LPO, 2016, *40 ans de protection de la nature, 1976-2016. Oiseaux et milieux*, Suppl. à *L'Oiseau Mag*, n° 123, 32p.

<sup>15</sup> National actions plan for bat species (*Chiroptera*) (2016-2025)

<sup>16</sup> Csabaï E, 2020, Plan national d'action, 2020-2029 en faveur du balbuzard pêcheur et du pygargue à queue blanche, Ligue pour la protection des osieaux, DREAL Centre Val de Loire et Ministère d la transition écologique, 85p.

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTS

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

The legal obligations under both the Habitats and Birds Directives are laid down in the same articles of the **Environmental Code** (Env.c.) of 2000, in its **legislative (art.L)** and **regulatory (art.R.)** parts<sup>17</sup>.

Thus, **article L411-1 env.c.** provides for a system of strict protection for wild fauna and flora species which are listed in joint **Ministerial orders** of the Ministry Ecological Transition and the Ministry of Agriculture and Food (art.R411-1). Therefore the term “protected species” includes all species covered by a **ministerial order**. Ministerial orders can be complemented by regional orders depending on the species concerned.

“L411-1 :

I. - *When a particular scientific interest, the essential role in the ecosystem or the need to preserve the natural heritage justifies the conservation of sites of geological interest, natural habitats, non-domesticated animal or non-cultivated plant species and their habitats, the following are prohibited:*

1° *The destruction or removal of eggs or nests, the mutilation, destruction, capture or removal, intentional disturbance, naturalization of animals of these species or, whether alive or dead, their transport, peddling, use, possession, offering for sale, sale or purchase;*

2° *The destruction, cutting, mutilation, uprooting, gathering or removal of plants of these species, their fruiting bodies or any other form taken by these species during their biological cycle, their transport, peddling, use, offering for sale, sale or purchase, the possession of specimens taken from the natural environment;*

3° *The destruction, alteration or degradation of these natural habitats or the habitats of species;*

4° *The destruction, alteration or degradation of sites of geological interest, notably natural or artificial underground cavities, as well as the removal, destruction or degradation of fossils, minerals and concretions present on these sites;*

5° *The installation of telephone poles and posts for avalanche and anti-slide nets that are hollow and not plugged.*

II. - *The prohibitions of possession decreed in application of 1°, 2° or 4° of I do not concern the specimens held regularly at the time of the entry into force of the prohibition relating to the species to which they belong.”*

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<sup>17</sup> Since 2000, France has gathered all environmental texts in the Environmental Code. The Environmental Code includes most of the environmental laws passed by Parliament and all regulatory instruments (decrees). All law articles and decrees are included as specific articles of the Code. The Code includes two sections: a legislative section, covering all law provisions (“L.” articles), and a regulatory section, covering decrees (“R.” or “D.” articles). Therefore, the provisions of new laws are integrated into the Environmental Code, such as the provisions of the “law on biodiversity” of 2016 (loi du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages).

Following art.L411-2 env.c., the specific **ministerial orders** specify the conditions under which those restrictions apply for each species group (duration and methods of implementation of bans, the part of the territory to which they apply, etc.). Therefore, **ministerial orders**<sup>18</sup> are also relevant for the transposition of the Directives, especially:

- Ministerial order of 20 January 1982 defining the list of protected plant species on the whole territory,
- Ministerial order of 29 October 2009, defining the list of birds protected throughout the whole territory and the modes of their protection;
- Ministerial order of 23 April 2007 defining the list of terrestrial mammals protected on the whole territory and the modes of their protection;
- Ministerial order of 23 April 2007 defining the list of insects protected on the whole territory and the modes of their protection;
- Ministerial order of 23 April 2007 defining the list of molluscs protected on the whole territory and the modes of their protection
- Ministerial order of 8 January 2021 defining the list of amphibians and reptiles represented in mainland France, protected on the whole territory and the modes of their protection,
- Ministerial order of 26 June 1987 defining the list of game species whose hunting is authorised.

The implementation modalities of articles L411-1 and L.411-2 are subsequently specified in the regulatory part of the Environmental code (articles R411-1 to R411-21).

Analysing the existing legislation, we conclude that:

The Ministerial order regarding protected wild flora sets out the prohibitions applying to those species, but it provides that prohibitions on destruction, cutting, mutilation and uprooting are not applicable to the **daily exploitation operations of plots on rural land, that are usually cultivated**. (art.1, order of 20 January 1982 establishing the list of protected plant species on the whole territory). ‘Daily exploitation operations’ are not further defined. This general exemption to daily exploitation operations seems to be a **major transposition** issue which could lead to implementation problems affecting the strict system of species protection.

In relation to Article 12(1)a) neither the Environmental code nor the ministerial orders (specifying the prohibitions for each group of species) mention the word “kill”, but they use the term “destruction”.

Regarding Article 12(1)b), the Environmental Code does not refer explicitly to ‘*breeding, rearing, hibernation or migration periods*’, but each ministerial order mention explicitly the case of breeding and nesting periods. Migration is not explicitly mentioned, but there are references to the natural movement area of existing populations.

None of the last two issues seem to be a transposition problem which could lead to implementation problems and lack of species protection.

The ministerial order regarding birds, states that “*the intentional disturbance of birds [is prohibited], in particular during the period of reproduction and dependence, insofar as the disturbance jeopardises the proper accomplishment of the biological cycles of the species in question.*” (art.3, Ministerial order fixing the list of birds protected). Moreover, ministerial orders mention that prohibitions “*apply throughout mainland France and at all times*”. We might assume that “all times” include migration periods.

Similarly, the Environmental Code does not refer to ‘destruction of breeding sites or resting places’ required under Article 12(1)d) but the ministerial orders explicitly mention the case of destruction of breeding and nesting places. (“sites de reproduction et aires de repos des populations” (mentioned in ministerial orders regarding birds and regarding mammals)). (See Annex for specific articles of the different ministerial orders).

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<sup>18</sup> Ministerial orders have been modified since their adoption, there are consolidated versions, but their dates refer to their adoption.

It is worth noting that the French legislation goes beyond the EU Directives as it only requires intention when causing disturbance to wild species (except for the deliberate destruction or removal of eggs and nests and the deliberate destruction and mutilation [...] of birds in the natural environment (art.3 Ministerial order 29 October 2019 establishing the list of birds protected throughout the country and the conditions for their protection).

## 2.2 SUBSIDIARY LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

### 2.2.1 The Forest code

The **Forest code**<sup>19</sup> is the main forestry legislation tool in France. According to its article L112-2: “Every owner shall exercise over his woods and forests all the rights resulting from ownership within the limits specified by this Code and by law, in order to contribute, through **sustainable management**, to the biological balance and to the satisfaction of the needs for wood and other forest products”.

Sustainable management is the cornerstone of forest management in France. But there is no specific reference to the aforementioned articles regarding protected species in the Forest code.

The Forest code is divided in two parts: the legislative part and the regulatory requirements<sup>20</sup>. In the legislative part, the first book applies to all forests (public and private) and it states the principles, the institutions, the sanctions, etc. The second book determines the forest regime and the third one lays down the rules regarding private forests.

The code provides the possibility to establish biological reserves (either managed or strictly protected) (“réserves biologiques dirigées” et “réserves biologiques intégrales”) in public forests under the forest regime, in order to protect specific habitats and species. As of November 2021, there are 246 reserves covering a total of 141271 ha, of which one third is on the French mainland (more than 50000 ha) while the rest is on overseas territories.<sup>21</sup>

Both categories of biological reserves are created by a joint order of the Ministry Ecological Transition and the Ministry of Agriculture and Food for “the preservation or restoration of the natural heritage” (art.L.212-2-1 Forest code). The “reserves biologiques dirigées” are set up in order to manage forest or associated ecosystems (such as peatland, wetlands) for protecting specific species or habitats. Whereas “reserves biologiques intégrales” are left to evolve freely without any management interventions. Even if there is no reference to Annex IV or the Bird Directive species, we might assume that the “reserves biologiques dirigées” could be set up because of the presence of a protected species included in either Directive. Orders creating biological reserves either mentions the presence of notable species or specifies the species to be protected.

### 2.2.2 Documents regarding the management of forests:

**Regional Directives of management for public forest**, prepared by the ONF, specify the objectives and management strategy of public forests. Management plans of public forests have to take into account the directives. Regional directives encompass all aspects of public forest management, including biodiversity conservation. For example, the *Regional directives of management for the Auvergne Rhone-Alpes 2019* states the measures to be implemented with respect to biodiversity conservation either in the daily exploitation of forests (like keeping dead wood, establishing a

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<sup>19</sup> It is the (new) Forest code version, adopted in 2012 and currently in force.

<sup>20</sup> The Forest Code includes most of laws passed by Parliament and all regulatory instruments (decrees) regarding forests. All law articles and decrees are included as specific articles of the Code. The Code includes two sections: a legislative section, covering all law provisions (“L.” articles), and a regulatory section, covering decrees (“R.” or “D.” articles).

<sup>21</sup> <https://www.onf.fr/onf/lonf-agit/+a3a:les-reserves-biologiques-des-espaces-protoges-dexception.html>



schedule and procedure for cutting and other interventions in areas with sensitive species) or at a specific site (Natura 2000, réserves biologiques, etc.).

**Private forests: Regional forestry management schemes** (“schéma régionaux de gestion sylvicole” (SRGS)) are regional framework documents developed by the regional centres of the CNPF and approved by the Ministry of Agriculture and Food (art.D122-8 to art.D122-12 Forest code) and apply to private forests. These SRGS can be complemented with environmental annexes (art.D.122-15 Forest code) called “green annexes”. They include requirements for biodiversity conservation in management activities, including those that take place in Natura 2000 sites. But the schemes do not systematically list protected species in the region covered. They refer to habitats and species of European interest in their Natura 2000 annex or green annex (see 2.3 also). But most of the green annexes adopted so far are related only to Natura 2000 areas and do not refer to other areas or other aspects of environmental legislation. Other green annexes could be drafted to specifically take into account protected species outside of Natura 2000 sites.

### 2.2.3 Biotope Orders and Biodiversity Priority Areas (Environmental code)

Two spatially specific tools are provided by the Environmental code and can be used to ensure the protection of protected species:

The **Biotope orders** (“arrêtés de protection de biotope”) (art.R411-15 to R417-17 env.c.) were created in 1977 by decree, and their scope has been modified in 2018<sup>22</sup>.

Biotope orders are given by the Prefect in order to specifically protect the biotope of specimens of a protected species. Their geographical scope is limited to the particular biotope of the particular specimens of protected species (following art.L411-1 env.c). Before 2018, the scope of biotope orders was limited to natural areas, mostly unaffected by human activities. But since 2018, the scope of implementation has been extended to include new non-natural areas such as “buildings, structures, mines and quarries [...] or any built or *artificial sites* [...]” (art.R411-15 env.c.). Therefore farms could be included under the concept of “artificial site”<sup>23</sup>. In those areas, the Prefect can decree prohibitions regarding actions likely to undermine the biotope, such as slash and burn, stubble burning, burning or shredding of vegetation, destruction of hedges, use of phytosanitary products. But the biotope order has to take into account the interest of maintaining current activities insofar as they are compatible with the protection objectives.

#### **Biodiversity priority areas** (« zones prioritaires de biodiversité »/ZPB)

These areas have been created as a consequence of the failure of France to establish a programme of measures to ensure the strict protection of the European hamster<sup>24</sup> and fulfil its obligations under article 12(1)(d) of the Habitats Directive<sup>25</sup> to “implement concrete and specific measures”<sup>26</sup>. These are not Natura 2000 areas.

Indeed, in 2016, the new biodiversity law (“loi du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages”) introduced a new tool to be used in the cases where the evolution of the habitats of a species protected under Article L. 411-1 env.c, is likely to compromise the maintenance of the favourable conservation status of a population of this species (art.L411-2.II env.c.).

According to this article the administration can:

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<sup>22</sup> Decree N°2018-1180 19 December 2018.

<sup>23</sup> Jolivet S., 2019, Biotopes et habitats naturels, les faux jumeaux de la protection de la nature, *AJDA*, 2019(9), 519.

<sup>24</sup> Jolivet, S., 2020, De la survie des espèces menacées d’extinction à la lutte contre le déclin des populations. Réflexions sur l’efficacité du statut d’espèce protégée à partir du cas de la faune sauvage. *Revue Juridique de l’environnement*, 2020(1), 101-121.

<sup>25</sup> Case C-383/09 European Commission v/France, 9 June 2011.

<sup>26</sup> Case C-383/09 European Commission v/France, 9 June 2011, paragraph 19.

- “1° Delimit areas where it is necessary to *maintain or restore these habitats*;
- 2° Establish, in accordance with the procedure set out in Article L. 114-1 of the Rural and Maritime Fishing Code, a *programme of actions to restore, preserve, manage and develop in a sustainable manner the areas* defined in 1° of this II;
- 3° Decide, at the end of a period that may be reduced in view of the results of the implementation of the programme mentioned in 2° with regard to the objectives set, to make certain agricultural practices that are favourable to the species in question or its habitats mandatory. These practices may benefit from aid when they lead to additional costs or loss of income during their implementation.”

A decree (décret n°2017-176 du 13 février 2017) has specified the conditions under which those areas, called “priority biodiversity areas” can be established and what kind of actions can be included in the action plan for each area (the provisions have been integrated into articles R411-17-3 and following env.c.). These action include:

- Maintenance of a permanent or temporary vegetation cover of the soil;
- Tillage, management of crop residues, addition of organic matter;
- Management of inputs, particularly fertilisers, phytosanitary products and irrigation water;
- Diversification of crops through crop rotation;
- Maintenance or creation of hedges or other landscape elements;
- Restoration or maintenance of specific plant cover;
- Restoration or maintenance of ponds, water bodies or wetlands.

So far, no specific plans or areas have been established in France.

#### 2.2.4 National Action Plans for protected species

Finally, **National action plans** (NAP) specific for the conservation or recovery of the species referred to in Articles L. 411-1 and L. 411-2 env.c. as well as pollinating insect species can be drawn up, by species or by group of species, and implemented on the basis of data from the competent scientific institutes and environmental protection organisations where the biological situation of these species so warrants. (art.L411-3 env.c.). Some species are regarded as priority species for public action and for benefiting from a NAP. Their selection is mainly based on their vulnerability according to the national IUCN Red list<sup>27</sup>. The lists of the Habitats and Birds directive are also used as reference to guide the choice of certain species<sup>28</sup>. The Ministry for the Ecological Transition takes the initiative to draft NAPs with the support of different stakeholders (NGOs, research centres...). Regional action plans for specific species can also be set up in case of species with more regional stakes. Once drafted, NAPs are normally implemented and coordinated by a Regional directorate of the Environment, Planning and Housing (DREAL), which can also designate a leader organization or “animateur”, such as a NGO, in order to implement its activities. (**Best practice**)

National action plans are complementary to regulations and define mid or long-term strategy (5 or 10 years). They are part of the policy biodiversity tools and have been introduced into the Environmental code in 2007 (art.L.411-3 env.c.). They benefit from public, private and European funding.

Their objectives are to increase knowledge on species, to take management and restoration actions (including reintroduction of specimens), to ensure the conservation of species and to raise awareness<sup>29</sup>. In 2012 the number of NAPs reached 72<sup>30</sup>.

<sup>27</sup> Savouré-Soubelet A. & Meyer S. 2018. *Liste hiérarchisée d'espèces pour la conservation en France. Espèces prioritaires pour l'action publique. V2. Mise à jour 2017.* UMS 2006 PatriNat. 21 p.

<sup>28</sup> <https://www.ecologie.gouv.fr/plans-nationaux-d-actions-en-faveur-des-especes-menacees>

<sup>29</sup> Ministère de l'écologie, du développement durable et de l'énergie, *Plans nationaux d'action en faveur des espèces menacées : objectifs et exemples d'action*, Leaflet, June 2012.

<sup>30</sup> Ministère de l'écologie, du développement durable et de l'énergie, *Plans nationaux d'action en faveur des espèces menacées : objectifs et exemples d'action*, Leaflet, June 2012.

Among the current NAPs so far adopted and relevant for forest activities, the following can be mentioned:

- National action plan for bat species (*Chiroptera*) (2016-2025)
- National action plan for the osprey (*Pandion haliaetus*) (2020-2029)
- National action plan for the Grey Wolf (*Canis Lupus*) and livestock activities (2018-2023)

All species so far covered by a NAP are those under Annex IV or the Birds directive.

In 2020, 22 birds species protected under the Birds Directive (out of 337) had, have or will benefit from a NAP<sup>31</sup>. 19 bat species are covered by the 2016-2025 NAP. Excluding bats, 7 mammals (*Cricetus cricetus*, *Canis lupus*, *Lutra lutra*, *Lynx lynx* (not yet), *Ursus arctos*, *Galemys pyrenaicus*, *Mustela lutreola*) are/ will be covered by a NAP<sup>32</sup>.

## 2.3 SPECIFIC RULES APPLICABLE AT FOREST HOLDING LEVEL UNDER THIS LEGISLATION

Forestry can impact protected species in different ways, through logging, changing the structure of forest stands, slash and burn, disturbance, clearance, forest roads, etc.

The Environmental code applies to the entire national territory, including the land of forest owners. They have to respect art.L.411-1 and follow ministerial orders regarding protected species. Moreover foresters have to comply with the requirements of the Forest code.

- *Private forests:*

Depending on their size, private forests have to be endowed with a suitable sustainable forest management document such as a Simplified management plan, a Code of good forestry practices or a 'règlement type de gestion' (Standard Management requirements), for the forest management to be presumed sustainable according to art.L124-1 and following articles of the Forest code.

Privately owned forests covering over 25 ha (either as one single forest or several different forests) are subject to a **Simplified management plan** (PSG) that has to comply with the aforementioned **Regional forestry management schemes**. PSGs are certified and approved by the Regional Centre for forest ownership (CRPF). Therefore, the CRPFs are responsible for the quality of the PSG and approve them according to available data.

Once approved, the PSG is considered as respecting the sustainable management principle. Therefore, the owner can carry out, without any particular formality, the cuts provided for in the operating programme of the approved PSG (art.L312-4 Forest code), except for forest clearings requiring an authorisation. The forest owner is exempted from requesting specific authorisations under other legislations, including the environmental code, (art.L122-7 and L122-8 Forest code) if the Simplified management plan "has received prior to its approval the explicit agreement of the administrative authority competent under these legislations" (art.L122-7 Forest code).

Simplified management plans have to present "*A brief analysis of environmental issues, including a list of key environmental regulations that may affect the management of the property, and how the landowner may be adapting their forestry to these issues*"<sup>33</sup>. Mentioning protected species located in the plot is not required, but encouraged for sensitive species<sup>34</sup>.

For forest located in Natura 2000 areas, the PSGs have to comply with the Natura 2000 annexes of

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<sup>31</sup> The NPA of the Tetrao urogallus and the Gypaetus barbatus ended in 2020 and in 2021, and have not been renewed for the time being.

<sup>32</sup> Tableau général de suivi des plans nationaux d'actions en faveur des espèces menacées, March 2020,. Available : <https://www.ecologie.gouv.fr/plans-nationaux-dactions-en-faveur-des-especes-menacees>.

<sup>33</sup> Order of 19 July 2012 determining the mandatory elements of the content of the Simplified management plan for private forests and the annexed documents to be attached.

<sup>34</sup> Circulaire DGPAAT/SDFB/C2012-3076, cadre type national de plan simple de gestion, Ministère de l'agriculture, 17 septembre 2012.

Regional forestry management scheme. The Natura 2000 annexes are both a practical guide and a regulatory document. Those annexes are useful tools as they specify habitats and species present and the related forest management requirements. For example, in case of forest nesting birds, the owner has to commit himself to respecting a quiet zone around an occupied nest and prohibits any interventions that could create disturbances during the breeding season (from March to August)<sup>35</sup>. Even if those documents are specific to Natura 2000, they could be used outside of Natura 2000 to provide guidance for foresters with protected species in their forests.

For forest under 25 ha, the PSG is not mandatory, but forest owners can choose to comply with a **Code of good forestry practices** developed on a regional basis<sup>36</sup> or to a “**réglement type de gestion**” defining management arrangements for each major forest stand. The major consequence of complying with those documents, is that the owner is exempted from cutting authorizations (except for forest clearing) and can benefit from public support.

- *Public forests*

Public forest under the « régime forestier » are subject to management plans called « **Aménagement forestier** » prepared by the ONF for 20 years. This document has to comply with the Regional directives of management (art. D212-1 Forest code). It is approved either by the town council before its approval by the Prefect for forests belonging to local authorities, or by order of the MAF for State forests. Forest management plans take stock of habitats and species present, in particular those protected and with heritage interest.

The Orléans forest, for example, managed by the ONF, is home to several protected birds under the Birds directive (especially ospreys). The “**Aménagement forestier**” (for 2019-2038) includes specific measures for daily exploitation operations, in order not to disturb birds (schedule for operations, monitoring of nests and birds). Moreover, in 2016, the ONF has signed a convention with various partners (NGO, Electricity Network and town of Orléans) to work together to ensure the conservation of ospreys (“Objectif Balbuz@rd”<sup>37</sup>).

In public forest, any actor carrying out works or services in public forests (contractor, subcontractor, supplier, etc.), including the ONF, must comply with the **National requirements for forestry works and services** (“cahier national des prescriptions des travaux et services forestiers, ONF 2020”) and the **National requirements for forestry exploitation** (“cahier national des prescriptions d’exploitation forestière, ONF, 2020). The documents restate their conformity with national legal obligations and other commitments, such as certification. One chapter concerns biodiversity issues and specifies that certain requirements on protected species can be integrated into contracts (such as restrictions of the intervention period or area due to the need to take into account the dates of breeding, or to include practices such as leaving dead wood), in compliance with national legislation.

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<sup>35</sup> Example from the Natura 2000 annex of the Regional Forestry Management Scheme of the Centre region, April 2013. Available: [https://ifc.cnpf.fr/data/srgsc\\_annexes\\_vertes\\_1\\_1.pdf](https://ifc.cnpf.fr/data/srgsc_annexes_vertes_1_1.pdf)

<sup>36</sup> The codes of good forestry practices (code de bonnes pratiques sylvicoles) are developed by the regional centre of forest property and tailored to each region. They include a description of major forests stands type, management recommendations for each stand and can point out the existence of outstanding environments (such as Natura 2000 sites, protected areas). But after an overview of some code of forestry practices, they do not specify species of Annex IV or the Birds’ directive.

<sup>37</sup> <http://www.objectifbalbuzard.com>

### 3 GOVERNMENT ADVICE TO FOREST OWNERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

#### Private forests

While private foresters get advice mainly from the National Centre of Forest Property (which is a public body) and its regional centres, they can also get advice from the forests' unions federation Fransylva, from their forest manager (cooperatives, forest technicians), and to some extent they can also get advice from Chambers of Agriculture. They can also get information on protected species regulations through the National Inventory of Natural Heritage (INPN<sup>38</sup>), through regional biodiversity observatories, through DREAL and regional offices of the OFB.

The CNPF and CRPF organise training for forest managers who in turn support forests owners. Foresters can have access to regulatory information through webinars, newsletters, forestry journals, etc., but there no systematic review available on the regulation of protected species, except in forests located in Natura 2000 sites.

Cartographic tools such as the internet portal "*la forêt bouge*"<sup>39</sup> are available to forest owners to check regulatory zoning on their plot, including Natura 2000, but does not encompass species and habitat maps. This tool also presents the different legislation and regulations on species, habitat, water, etc.

According to interviews, private forest owners are interested in biodiversity issues, but the lack of information about the presence of protected species has been underlined. Occurrence data are not available at the plot level and it is therefore difficult to know which species of fauna and flora are present on a specific forest plot. Efforts were made to share data on the regional level. For example, the aforementioned Regional forests and wood programme of Auvergne-Rhône-Alpes (2019-2029) is a good example of an attempt to generate information on protected species and to create concrete tools to take into account species and habitat data in daily forest management, such as information sheets on management recommendations for species<sup>40</sup>. As a consequence of the regional programme, a project called "Foresters committed to biodiversity" has been put in place to create specific mapping tools in collaboration with public and private foresters, naturalists and NGOs under the auspices and finances of the State<sup>41</sup>.

#### Public forest

The ONF has published several memoranda on specific protected species and their consideration in forest management, such as *Ciconia Nigra*, *Pandion Haleaetus*, *Tetrao*. The ONF regional office of Auvergne-Rhône-Alpes has also produced specific information sheets on protected species<sup>42</sup> specifying the recommendations and requirements to be implemented by ONF in areas with protected species.

The ONF has also produced technical instructions specifically relating to biodiversity conservation in day-to-day public forest management, emphasizing the need to avoid any disturbance of notable

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<sup>38</sup> The main tool for disseminating nature data in France is the National Inventory of Natural Heritage (INPI) under the responsibility of the National Museum of Natural History. It covers protected areas, habitats and species wherever their location (inside/outside protected areas), their status, and provides for comprehensive data. It is based on a system of information exchange between different actors, both state and non-state. Access is free and open to all. <https://inpn.mnhn.fr/accueil/index>

<sup>39</sup> <https://www.laforetbouge.fr/>

<sup>40</sup> [http://www.auvergne-rhone-alpes.developpement-durable.gouv.fr/IMG/zip/vf\\_pour\\_mise\\_en\\_ligne.zip](http://www.auvergne-rhone-alpes.developpement-durable.gouv.fr/IMG/zip/vf_pour_mise_en_ligne.zip)

<sup>41</sup> <http://www.auvergne-rhone-alpes.developpement-durable.gouv.fr/forestiers-engages-pour-la-biodiversite-des-outils-a18616.html>

<sup>42</sup> For example, the sheet on forest bats specifies for each bat species present in the region when it is present (only for hibernation or reproduction period) and their conservation stake in relation to forest management.

species (“espèces remarquables”)<sup>43</sup> and reinforcing the obligation to comply with national requirements.

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<sup>43</sup> ONF, instruction technique INS-18-T-97, *Conservation de la biodiversité dans la gestion courante des forêts publiques*, 27 décembre 2018. [https://www.onf.fr/outils/articles/7fb5ddd-1e51-4699-8d03-dbf6dfe819d6/versions/2/paras/3/ass/11/i18n/data.fr?\\_id=1548958103.553455&download=1](https://www.onf.fr/outils/articles/7fb5ddd-1e51-4699-8d03-dbf6dfe819d6/versions/2/paras/3/ass/11/i18n/data.fr?_id=1548958103.553455&download=1).

The instruction defines notable species as « Species protected under the environmental code or rare, vulnerable or particular (endemic, at the edge of its range, in a marginal situation, race, ecotype, etc.), appearing in particular in the national and regional regulatory lists of protected species and in the red lists of threatened species”. There is no reference to the Annex IV or to the Birds directive. The definition refers to the national lists rather than the European one. (p.14).

## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION IN FORESTS

### 4.1 SUPERVISIONS AND SANCTIONS FOR INFRINGEMENTS OF THE FOREST CODE

According to art. L161-4 of the Forest code, officers and agents of judicial policy<sup>44</sup>, sworn State officers in charge of forests (within DDT), ONF sworn agents, municipal officers and field guards can investigate and record forestry infringements.

In 2019, 580 offences were recorded by means of official reports of ONF agents. These procedures mainly concerned the dumping of waste (134), ordinary involuntary fires (95), illegal felling and removal of trees (69), arson (55), traffic in natural areas (49), hunting plans (41), and infringements of prevention regulations (29)<sup>45</sup>.

### 4.2 SUPERVISIONS AND SANCTIONS FOR INFRINGEMENTS OF SPECIES LEGISLATION (ESPECIALLY ARTICLE L.411-1 ENV CODE)

Supervisions regarding the respect of species legislation can be carried out by environmental inspectors of the French Office of Biodiversity (OFB), who have environmental policing competencies, but also by ONF sworn agents, along with officers and agents of judicial policy. General provisions regarding sanctions apply on the whole territory. Therefore, forest owners have to comply with them and can face either administrative or criminal sanctions in case of infringements. According to art.171-6 and following, **administrative sanctions** can be imposed independently of criminal sanctions: for example, the absence of a derogation request in compliance with art.L.411-2 env.c.

**Criminal sanctions** have been strengthened since 2016.

According to art. L.415-3:

“The following is punishable by three years' imprisonment and a fine of €150,000

1° The fact, in violation of the prohibitions or prescriptions provided for by the provisions of Article L. 411-1 and by the regulations or individual decisions taken in application of Article L. 411-2:

- a) To harm the conservation of non-domesticated animal species, with the exception of intentional disturbance;
- b) To affect the conservation of non-cultivated plant species;
- c) To harm the conservation of natural habitat”

Regarding **intentional disturbance of protected species**, they are sanctioned by a “contravention de 4ème classe” according to art. R415-1 env.c, punished by a fine of up to 750€. One must notice that normally contraventions are independent from the moral element of the infraction. But in the case of disturbance of protected species, the intentional aspect is necessary to issue a fine. Therefore, such aspect can be regarded as ineffective to ensure species protection<sup>46</sup>.

Regional directorates of the OFB publish an annual report about their activities. In 2020 for example, 4% of Supervisions were related to protected species in the Centre Val de Loire region (over 2213 cases), while in Normandy this number was at 7% (over 1819 cases).

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<sup>44</sup> Officers of judicial policy (« officiers de police judiciaire ») are entitled to record crimes, offences and contraventions. Mayors, “gendarmes”, police agents, are officers of judicial policy (art.16 code of criminal procedure); they can be assisted by agents of judicial policy.

<sup>45</sup> ONF, 2020 *Activity Report*, 2019, p.45.

<sup>46</sup> Landelle P., Suas C., 2016, De la caractérisation au relevé d'infraction de la perturbation intentionnelle d'espèces protégées, *Faune sauvage*, (312), 45-50.

Many infringements were also related to the clearing of hedges without the protected species derogations. But reports do not go into detail on specific infringements.



## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FORESTRY ACTIVITIES WHICH MIGHT AFFECT PROTECTED SPECIES

### 5.1 AUTHORISATION PROCEDURE

Some operations such as **forest clearing** (carried out in private forests or forests of local authorities) require an administrative authorisation, even in private forests with a PSG.

Forest clearing is defined by article L341-1 forest code:

“Clearing is any voluntary operation that has the effect of destroying the wooded state of a piece of land and to put an end to its forestry use.

Clearing is also any voluntary operation that indirectly and eventually leads to the same consequences, unless it is undertaken in application of a public utility easement.

The accidental or voluntary destruction of the afforestation does not cause the land to cease to be used as a forest, which remains subject to the provisions of this title”

The demand for clearing can be rejected “when the conservation of woods and forests [...] or the maintenance of the forestry use of the land, is recognised [...] as necessary for the biological balance of a region or territory of remarkable interest and justified from the point of view of the preservation of flora and fauna species and ecosystem [...]” (art. L341-5 Forest code).

In any case where forest clearance entails an impact on protected species (infringement of art.L.411-1), they are also subject to **the derogation procedure of the Environmental code**.

In cases where a project or activity is likely to impact a protected species located in a forested area, the owner of the forest will have to comply with the derogations **procedure** of Article L411-2<sup>4</sup> of the Environmental code.

The ministerial order regarding protected wild flora contains prohibitions applying to those species, but it provides that prohibitions on destruction, cutting, mutilation and collecting are not applicable to the **daily exploitation operations of plots on rural land, that are usually cultivated**. (art.1, order of 20 January 1982 establishing the list of protected plant species on the whole territory). The concept of “daily exploitation operations” includes not only agriculture but also forestry-related daily exploitation operations, which indeed include all activities authorised in a Simplified management plan, or carried out in compliance with Code of good forestry practices or ‘Règlement type de gestion’. Therefore, forest daily exploitation operations negatively impacting protected wild flora are not subject to the prohibitions rules. This **general exemption** to daily exploitation operations seems to be a **major transposition** issue leading to implementation problems affecting the strict system of species protection..

**Forest roads** are not considered as daily exploitation operations and have to comply with the species derogation procedure, even if the project is carried out in public forest<sup>47</sup>.

**Logging** is subject to an administrative authorization in private forests over 25 ha without a PSG, in private forest of less than 25 ha without a RTG, a PSG, or good practice code, and in public forest without any management plan or RTG.

For projects which have a significant impact on the environment, requiring environmental impact assessment under the environmental protection regulation (“installations classées pour la protection de l’environnement- ICPE”) or authorisation under the water law (“IOTA”), are subject to a **single environmental authorisation**, merging different authorisation procedures, including the **one on**

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<sup>47</sup> ONF, *Demande de dérogation à la destruction d’une espèce végétale protégée : Buxbaumia viridis et le projet de desserte forestière en FC de Beyrède-Jumet (65)*, Note technique, May 2018

**protected species derogations and the clearing authorisation** in order to ease procedures<sup>48</sup>.

In public forest, clearance is not submitted to the authorisation procedure of the Forest code, but requires an authorisation from the Ministry of Agriculture and Food. Surprisingly, those decisions (that could indeed impact biodiversity) could not be challenged in front of the administrative judge in the past. But since 2009, the court has decided that the decision of the Ministry was a matter of public law and could be subject to administrative litigation<sup>49</sup>.

## 5.2 ENVIRONMENTAL ASSESSMENT PROCEDURE

Some forest activities might have to comply with the requirements of environmental assessment. Environmental assessment is provided for in article L.122-1 and the following from the Environmental code: art.122-1.II: “*Projects which, by their nature, size or location, are likely to have significant effects on the environment or human health are subject to an environmental assessment according to criteria and thresholds defined by regulation and, for some of them, after a case-by-case examination*”.

It is specified that:

art.L.122-1.III: “[...] *The environmental assessment makes it possible to describe and assess in an appropriate manner, according to each particular case, the direct and indirect significant impacts of a project on the following factors: [...]*

*2° Biodiversity, paying particular attention to species and habitats protected under Directive 92/43/EEC of 21 May 1992 and Directive 2009/147/EC of 30 November 2009”.*

Therefore, the environmental assessment of forestry projects has to describe the impacts on species and habitats protected under the Nature Directives.

Table annexes to art. R122-2 provide the list of projects subject to EA (either automatically or case-by-case). The following are of relevance to this report:

- category 6: roads
- category 45: agricultural and forestry land development operations mentioned in article 1 of art.L.121-1 rural code;
- category 47: first afforestation and deforestation for soil conversion.

Forest roads are not systematically submitted to an EA. The regulation explicitly excludes tracks used by forestry equipment for the maintenance and exploitation of plots, and reserve EA to roads open to the public. But forest roads could be submitted to an EA on a case-by-case basis under certain circumstances which do not include species protection<sup>50</sup>.

Forest clearance in forests over 25 ha is automatically subjected to an EA. For clearance on land between 0,5-25 ha and requiring an authorization in compliance with art.341-3 of the Forest code, the EA is required on a case-by-case basis. The Prefect of the region decides whether or not a project will require an EA based on a case-by-case examination.

However, the law does not include any criteria regarding species protection that would trigger the need to carry out an EA.

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<sup>48</sup>

<sup>49</sup> Romagoux F., L’extension du contrôle du juge administratif sur les déboisements des forêts domaniales portant atteinte à la biodiversité, *Revue Juridique de l’environnement*, 2010(3),409-425.

<sup>50</sup> Table annex to Art.R122-2, env.c.

## 6 OVERALL ASSESSMENT OF SPECIES PROTECTION ON FOREST LAND

### 1. KEY FINDINGS (CHALLENGES & BEST PRACTICES)

#### 6.1 TRANSPOSITION ISSUES

The species protection rules of the Nature Directives are transposed into French jurisdiction in the same articles of the Environmental code (2000) as its legislative and regulatory parts. A system of strict protection is listed in joint Ministerial orders of Ministry of Environment and Ministry of Agriculture. Ministerial orders can be complemented by regional orders (depending on species).

One ministerial order regarding protected flora contains a general exemption to the species protection rules regarding forest operations, covered by “daily exploitation operations”. This general exemption to daily exploitation operations seems to be a major transposition issue leading to implementation problems affecting the strict system of species protection.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

- The Forest code is the main legislation tool requiring owners to “contribute to the biological balance and to the satisfaction of the needs for wood and other forest products through sustainable management”, however, there is no specific reference to protected species.
- The Regional Directives on management for public forests prepared by the National forestry office have to take into account the Birds and Habitats Directives.
- The Ministry for the Ecological Transition takes the initiative to draft NAPs with the support of different stakeholders (NGOs, research centres...). Regional action plans for specific species can also be set up in case of species with more regional stakes. Once drafted, NAPs are normally implemented and coordinated by a Regional directorate of the Environment, Planning and Housing (DREAL), which can also designate a leader organization or “animateur”, such as a NGO, in order to implement its activities. (Best practice)
- The Regional forestry management schemes include requirements for biodiversity conservation for private forests, but the schemes do not systematically list protected species in the region covered.
- Public forests are subject to management plans, prepared by ONF every 20 years. These documents take stock of habitats and species, especially those protected and of heritage interest.
- In public forest an actor carrying out activities has to comply with National requirements for forestry works and services, and the National requirements for forestry exploitation. These include a chapter concerning biodiversity specific requirements on protected species, which can be integrated into contracts.
- The Environmental code applies to all national territory. Privately owned forests must be endowed with a sustainable forest management document depending on their size, upon the basis of which it is presumed to be sustainable and in line with the Forest code.
  - Forest over 25 ha are subject to a Simplified management plan which has to comply with Regional forest management scheme. The plan is considered sustainable once approved. It has to present brief information on environmental issues including ways to adapt the forestry activities to environmental objectives (mentioning protected species is not required but encouraged for sensitive species).

- Forest property under 25ha is not required to have management plans, but they can choose to comply with a Code of good forestry practices or ‘réglement type de gestion’ (Standard Management requirements). Complying with them means the owner is exempted from logging authorisations and can benefit from public support.

### **Other implementing or stimulating measures**

- Biotope orders are given by the Prefect in order to protect a certain biotope of specimens of protected species in particular. The Prefect can edict prohibitions related to actions likely to undermine the biotope.
- Biodiversity priority areas have been devised as a consequence of the failure of France to establish a programme of measures to ensure the strict protection of the European hamster and its failure to fulfil its obligations under Art 12 1d of the Habitats Directive and “implement concrete and specific measures”. These are not considered Natura 2000 sites. So far, no specific plans or areas have been established in France.

## **6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT**

### **Government advisory services**

- Private forest owners get advice from the National Centre of Forestry Property (public body) and from the forester’s unions federation Fransylva, from the forest experts they employ and to some degree from the Chambers of Agriculture.
- Information on protected species regulation can be acquired through the National Inventory of Natural heritage, through regional biodiversity observatories, through DREAL (regional offices of Ministry of Ecological Transition) and regional offices of the OFB (French office for Biodiversity).
- Forestry experts receive training and have access to regulatory information in many forms, but there is no systematic review on the regulation of protected species.
- Cartographic tools are available to forest owners, but they do not encompass species and habitat maps. This tool does, however, present different legislation and regulations on species, habitats, water.
- For public forests, the ONF published several memoranda on specific protected species and their consideration in forest management and has produced a technical instruction specific to biodiversity conservation in day-to-day public forest management.

### **Enforcement of species protection legislation**

According to art.L161-4 Forest code, officers and agents of judicial policy, sworn State officers in charge of forests (within DDT), ONF sworn agents, municipal officers, and field guards can investigate and record forestry infringements.

Supervisions in respect to the protected species legislation can be carried out by the environmental inspectors of the OFB, with general provisions regarding the sanctions applying to the whole territory. Administrative sanctions can be imposed independently of criminal sanctions, which have been strengthened since 2016. However, there is some inconsistency in terms of determining intention of disturbance of protected species, which leads to lack of effectiveness in ensuring species protection. In practice, only few supervisions carried out by inspectors are related to protected species.

## 6.4 ASSESSMENT AND AUTHORISATION PROCEDURES

### EIA

Forest clearance over 25 ha is systematically submitted to an Environmental Assessment. For clearance of land between 0,5 to 25 ha or requiring an authorization in compliance with art.341-3 of the forest code, the EA is required on a case-by-case basis. The Prefect of the region decides whether or not a project will require an EA based on a case-by-case examination which does not include species protection.

### Other authorisation procedures

Some interventions require administrative authorisation to be carried out in private forests or forests of local authorities, such as forest clearing, even in private forests with a PSG. In the case that forest clearance entails an impact on protected species (infringement of art.L.411-1), it is also subject to the derogation procedure of the environmental code.

The ministerial order regarding protected wild flora nevertheless contains the prohibitions that apply to these species, but it provides that prohibitions on destruction, cutting, mutilation and uprooting are not applicable to the daily exploitation operations of plots on rural land that are regularly cultivated. The concept of “daily exploitation operations” includes not only agriculture but also forestry-related daily exploitation operations, which indeed include all activities authorised in PSG, carried out in compliance with the Code of good forestry practices or ‘Règlement type de gestion’. Therefore, forest daily exploitation operations negatively impacting protected wild flora are not subject to the derogation procedure.

The projects with significant impacts on the environment are subject to a single environmental authorisation, merging different authorisation procedures, including the one on protected species derogations and the clearing authorisation in order to ease procedures.

Provisions about good forest management practices can be found in contractual documents such as the national requirements for forestry works, services and exploitation in public forests published by the ONF. They include the need to take into account dates of breeding, or practices such as leaving dead wood, among others. They apply to the ONF and its contractors but are not legally binding in general. The ONF publishes internal instruction regarding daily exploitation operations with respect to biodiversity conservation in public forests **(Would be best practice if legally binding)**.

## 2. RECOMMENDATIONS

### Legislative transposition measures of species protection rules

- The general exemption to the species protection rules regarding forest operations, covered by “daily exploitation operations” included in the ministerial order regarding protected flora is a major transposition issue which should be amended.
- There is no specific reference in the Forest code regarding protected species. The code does provide the possibility of establishing biological reserves. Species protection related measures should also be included and they should apply nationwide.

### Preventive and implementing measures

- Regional forestry management schemes referring to private forests refer to habitats and species of European interest in their Natura 2000 annex or ‘green annex’. These could also be used outside of Natura 2000 sites to provide guidance for foresters on protected species in their forests. Other green annexes could be drafted to specifically take into account protected species outside Natura 2000 sites.
- The Simplified Management Plans (PSG) for private forest seem to be a useful tool to ensure the protection of species, but their usefulness is subject to the availability of data on species on a specific property.

### Public advisory and enforcement:

- There is a plethora of information available, however, there is no systematic review on the regulation of protected species either for forestry experts or for forest owners. According to interviews, private forest owners are interested in biodiversity issues, but the lack of information about the presence of protected species has been underlined. As occurrence data is not available on plot level, it is difficult for forest owners and forestry experts to obtain correct management information and/or advice,

### Authorisation and permits:

- The definition of “daily exploitation operations” and its relation to protected species needs to be questioned. Daily exploitation operations can have a negative impact on protected species without breaking the rules, as daily operations are all the operations authorized within the Simplified Management Plan (PSG) or the other documents. Moreover, they are not subject to the authorization derogation procedure as they have already been authorised under the PSG or another management document.

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# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## TASK 3 – Case Study *Poland*

ENV/2020/OP/0022



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## ABBREVIATIONS

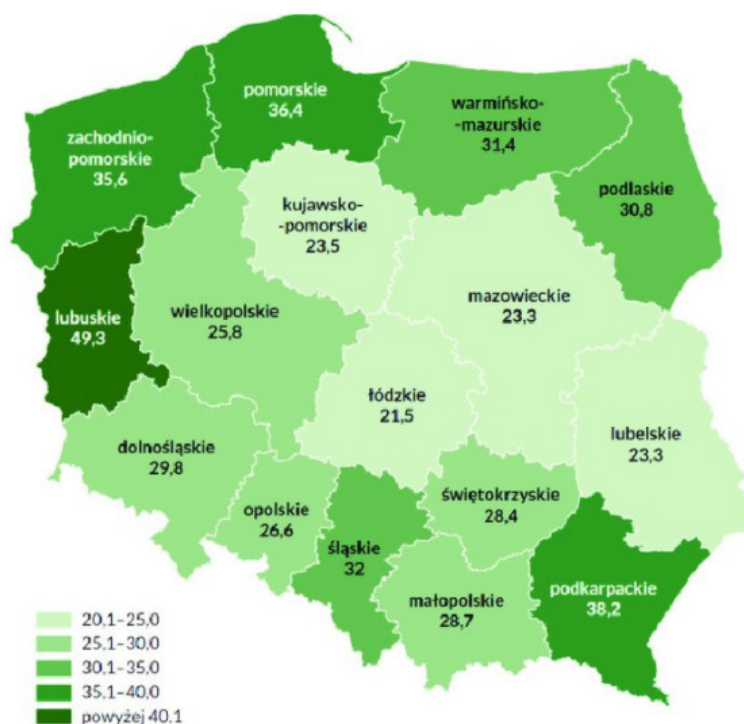
NGOs	Non-governmental organisations
EIA	Environmental Impact Assessment
SEA	Strategic Environmental Assessment
CJEU	Court of Justice of the European Union
CFoBI	Common Forest Bird Indicator

# 1 INTRODUCTION

## 1.1 FOREST AND FORESTY IN POLAND

In 2019, forest area in Poland amounted to 9.26 million ha, which corresponds to 29.6 % of the country area<sup>1</sup>. Until the end of the 18<sup>th</sup> century it was much higher, but the partition of Poland as well as the Nazi and Soviet occupation during the Second World War led to significant deforestation and shrinking of the forested area to about 20%. After the war, the Polish government initiated the National Plan of Afforestation. Currently, western and northern regions of Poland as well as the Carpathian Mountains in the south are much more forested than eastern and central regions – see the figure below.

**Figure 1 Forest cover in Poland by region**



Source: Grajewski, Szóstakowski, Czerniak (2019)

Approximately 80% of forests are owned by the State Treasury, with 97% of this area (i.e. 7,118 ha) managed by the Forest Holding State Forests (*Lasy Państwowe*, hereafter referred to as **State Forests**) and 3% are managed by national parks. 84.3 thousand ha, corresponding to approximately 1% of the total area of Polish forests, is owned by municipalities. Private forests occupy 19% of the forests (over 1.7 million ha), with approximately 94% of this share being in the possession of private owners, while the rest are owned by cooperatives. Due to its outstanding nature value, 32% of the forest area is covered by various legal protection schemes. According to 2019 estimates, over 20% of forests in Poland (tree

<sup>1</sup> Unless otherwise indicated, data in this section comes from the [Statistical Yearbook of Forestry](#), Main Statistical Office, Warsaw 2020.

stands of 20 years old or above) are severely damaged, showing an increasing trend (in 2015 it was 16.5%). Severe damage is defined as defoliation of above 25%<sup>2</sup>.

Poland is one of the largest producers of wood products, with roundwood production of over 43 million m<sup>3</sup> being in fifth place in the EU (after Germany, Sweden, Finland, and France)<sup>3</sup>. The value of export of wood and wood products in 2019 amounted to approximately EUR 5 billion and was higher than the value of imports of the same category of products, which was estimated at EUR 2 billion. The share of forestry in the Polish GDP amounts to 0.36%

Among tree species, coniferous trees make up 68.2% of the Polish forests (with 58% pine and 5.7% spruce) while broadleaved trees represent 31.8% (with the most frequent being oak, birch, beech, and alder). These data come from an inventory conducted in the years 2015-2019 by the Bureau for Forest Management and Geodesy. Nature reserves, where logging of trees is forbidden, constitute approximately 1.5% of the area of forests managed by State Forests; in nature reserves, over 48% of tree stands consist of trees which are over a hundred years old (in all the forest areas managed by State Forests this share amounts to 8.7%). Białowieża forest located in the Eastern part of Poland is the best preserved primeval forest ecosystem and the last lowland deciduous and mixed old-growth forest in Europe. The Białowieża Forest World Heritage site includes approximately 60,000 ha on the Polish side of the border and 82,000 ha on the Belarussian side<sup>4</sup>. One-third of the Białowieża forest is protected as a national park and nature reserves while the remaining two-thirds is subject to forest management<sup>5</sup>.

## 1.2 GOVERNANCE

The principal legal acts relevant for the forestry sector and species protection are the Act on Forests<sup>6</sup> and the regulation on good forestry practices<sup>7</sup>, as well as the Nature Conservation Act<sup>8</sup> together with dedicated executive ordinances concerning protection of animal and plant species<sup>9</sup>. According to the Act on Forests, forest management in Poland follows the principle of sustainable use of all forest functions. Forest management in Poland is carried out according to forest management plans. These plans combine aspects of forest use, fire protection, nature conservation and landscape protection. A plan of nature protection is one of the elements that must be included in forest management plans prepared for public forests. The plans are approved by the Minister of Environment and cover a period of 10 years.

The overarching goal of planning is to maintain the sustainability, continuity and viability of the forests at regional and national levels. According to the Ministry of Environment<sup>10</sup>, this approach ensures that the country can meet its economic needs (wood supply) and its need to maintain forest diversity in terms of species, age and spatial condition, which guarantees that the forests provide a multitude of services and fulfill various objectives of forest management. Forest management plans are subject to public consultations within the framework of the Strategic Environmental Assessment (SEA) procedure<sup>11</sup>.

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<sup>2</sup> According to [a study on this subject](#) carried out in 2017 by the Forestry Research Institute, the main causes of damage to trees in Polish forests are: insects (27.9%), competition and other factors (24%), fungi (6.9%), and direct impact of humans (5.8%). In 28.6% of the cases analysed in the study, the cause of damage was not identified.

<sup>3</sup> [Eurostat](#) data.

<sup>4</sup> Unesco World Heritage List: [Białowieża Forest](#).

<sup>5</sup> WWF, [Saving Białowieża, Europe's Primeval Forest](#).

<sup>6</sup> [Act of 28 September 1991 on Forests](#) (Journal of Laws of 2020 item 1463).

<sup>7</sup> [Regulation of the Minister of Environment of 18 December 2017 on good forestry practices](#) (Journal of Laws 2017 item 2408).

<sup>8</sup> [Act of 16 April 2004 on Nature Protection](#) (Journal of Laws 2021 item 1098).

<sup>9</sup> [Ordinance of the Minister of Environment of 16 December 2016 on the protection of animal species](#) (Journal of Laws 2016 item 2183) and the executive [Ordinance of the Minister of Environment of 9 October 2014 on the protection of plant species](#) (Journal of Laws item 1409).

<sup>10</sup> Written feedback from the Ministry of Environment obtained in July 2021.

<sup>11</sup> According to the [Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments](#) (Journal of Laws of 2021 item 247, as amended).

Management of private forests is supervised by provincial administration (*starostas*) – however in about 70% of cases, provincial administration entrusts this supervision to foresters from [State Forests](#). The details of this supervision are specified in the agreements concluded between the *starostas* and the competent forest district offices. Pursuant to the Act on Forests, State Forests are obliged to provide advice and assistance to private forest owners in relation to forest management. Management of private forests is carried out by owners according to **simplified forest management plans** or decisions of the *starostas*, issued on the basis of an inventory of the forest condition. These documents specify the amount of allowable timber harvesting in a given area<sup>12</sup>. These plans do not have to include nature protection plans that are customary for forest management plans administered by State Forests. However, according to the relevant regulation of the Minister of Environment<sup>13</sup>, they should take into account nature protection and biodiversity needs.

According to the report of the Polish Supreme Audit Office<sup>14</sup>, the current regulations regarding the simplified forest management plans are not very clear. Firstly, the form of the approval procedure for such plans is not specified. Secondly, some of the *starostas* decisions on management plans submitted to their assessment and control, did not specify in their tendering procedures the requirements concerning the preparation of the plans, which resulted in poor quality plans, sometimes with elements lacking. Lastly, the control found that in some cases the contractors did not comply with the deadlines set for the preparation of the plans.

### 1.3 INSTITUTIONS

In Poland, the Minister of Environment supervises forest management in the forests owned by the State Treasury while provincial authorities (*starostas*) supervise forest management in the forests owned by other entities. Provincial authorities do not employ forestry specialists, their capacity is restricted to administrative supervision of the forestry matters regarding forests which do not belong to the State Treasury. The rules set out in the generally applicable legal acts (such as the Act on Forests and the Nature Conservation Act) are obligatory for every forest owner.

The National Forest Holding State Forests is the main institution managing public forests. It is based on the principle of self-financing. Forest units operate at national, regional and local levels. The General Directorate of State Forests supervises 17 Regional Directorates of State Forests and 430 local forest districts. Self-financing of the State Forests is possible because of the existence of a so-called Forest Fund. Prosperous forest districts transfer their financial surpluses to the fund so that they may be used by other, less profitable units. The Forest Fund also finances other projects, including those of national reach, e.g. education, research, building infrastructure, preparing forest management plans<sup>15</sup>.

The Forest Management and Geodesy Office<sup>16</sup> prepares nature protection plans, which are an integral part of the forest management plans. The Forestry Research Institute<sup>17</sup> carries out scientific work related to the state and sustainable management of forests. The Forestry Seed Office keeps the register of the forest seeds that are used to multiply the forest trees and it carries out quality controls of the seeds and their providers.

Several associations of private forests owners exist in Poland, with the Polish Union of Private Forest Owners being an umbrella organisation<sup>18</sup>. While ‘sustainable development of forests’ appears among

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<sup>12</sup> State Forests, [Private forests](#), September 2018.

<sup>13</sup> [Executive order of the Minister of Environment of 12 November 2012 on detailed conditions and procedures regarding the preparation of forest management plans, simplified forest management plans and inventory of the condition of forests](#) (Journal of Laws of 2012 item 1302).

<sup>14</sup> Supreme Audit Office, [Supervision of forest management in forests which are not owned by State Treasury](#), April 2021.

<sup>15</sup> Information placed on the [website of the State Forests](#).

<sup>16</sup> [Biuro Urządzania Lasu i Geodezji Leśnej](#).

<sup>17</sup> [Instytut Badawczy Leśnictwa](#).

<sup>18</sup> [Polish Union of Private Forest Owners](#).

the main goals of this structure, no specific references to nature protection have been found on its website.

#### 1.4 PROTECTED SPECIES

Poland is home to many rare and endangered species including large predators such as lynx, wolves, bears, and European bison. 90% of the EU population of the aquatic warbler (*Acrocephalus paludicola*), 45% of the EU population of the white-tailed eagle (*Haliaeetus albicilla*), and 23% of the world's population of white stork (*Ciconia ciconia*) nest in Poland<sup>19</sup>. One of the most precious natural areas of Poland is the Białowieża forest located at the border with Belarus, which is the largest remaining part of the primeval forest that once stretched across Europe. It is a UNESCO World Heritage Site; several Natura 2000 sites are located within its area.

According to the forest classifications<sup>20</sup>, 47% of the species protected under Annex IV of the Habitats Directive, for which reported national data is openly available in Poland, are directly/indirectly dependent on forest habitats. There is no national spatial data openly available for any of the wild bird species protected under the Birds Directive that are linked to forest habitats. The aggregate index of changes in the abundance of 34 common forest birds from the year 2000 based on the Monitoring of Birds of Poland shows a moderate growth at the rate of 1% annually (an opposite trend is observed in agriculture)<sup>21</sup>.

Logging is the main forestry activity threatening species and their habitats in Poland. Large-area logging, clearing and cutting results in drastic changes in the composition of natural habitats<sup>22</sup>. Numerous examples of logging during the breeding season of birds, including cases of cutting down trees with inhabited nests of protected species are reported each year to nature protection organisations. Applications for the establishment of protection zones for bird species following the observed presence of such species having nests in trees are not always accepted by the regional directorates for environmental protection, which sometimes claim that the evidence of the presence of a species is not sufficient<sup>23</sup>.

Furthermore, forestry operations can have an impact on certain species such as beavers (an Annex IV species), which use trees to build dams for their habitat and foraging. In such situations, foresters can apply to the regional directorates for environmental protection for a permit to kill a certain number of individuals of the species. For instance, in December 2019 the Regional Directorate for Environmental Protection in Poznań issued a permit to shoot up to 310 beavers<sup>24</sup>. These ordinances, in addition to killing the animals, also allow the disturbance of their habitats in addition to the destruction of the dams and lodges that they build. Similar examples of issuing permits for shooting protected species are observed with respect to wolves, wild boar and bison<sup>25</sup>. Box 1 below provides more detail about the situation regarding European bison.

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<sup>19</sup> Fifth National Report on the Implementation of the Convention on Biological Diversity: Poland, Warsaw, March 2014, <https://www.cbd.int/doc/world/pl/pl-nr-05-en.pdf>

<sup>20</sup> Article 12 and Article 17 species classification is based on the current State of Nature Report 2020 (EEA 2020). While the classification for Annex species relies on the definition from Halada et al., 2013 (only available for Article 17), the birds classification refers to the classification from the Common Bird Indicator classification for birds with ecological preferences for forest (CFoBI).

<sup>21</sup> Information of the State Forests on [guidelines for bird protection](#).

<sup>22</sup> Interview with a representative of the Wild Poland Foundation, September 2021.

<sup>23</sup> Pawlaczyk, P., Bohdan, A., Grzegorz, A., [An attempt to evaluate the management of the most valuable forests in Poland](#) (in Polish), The Workshop for All Beings, 2016.

<sup>24</sup> [Ordinance of the Regional Director for Environmental Protection in Poznań of 11 December 2019 concerning permission for activities in relation to Castor fiber](#). The ordinance contains a detailed justification, which states that beavers cause significant damages to agricultural activities, i.e. “they flood agricultural land, cut trees in forests and in fruit plantations, damage anti-flood dikes, roads and railway constructions, and destroy agricultural produce and equipment”. Damage compensation paid out of State Treasury in the Wielkopolska region amounted to approximately EUR 300,000 in 2017 and EUR 240,000 in 2018.

<sup>25</sup> See Greenpeace publication “[Hunting – the Polish way of bison protection](#)”.



## Box 1 Protection and hunting of Polish bison

The European bison (*Bison bonasus*) is under strict species protection, covered by Annex IV of the Habitats Directive. The world population of European bison is estimated at less than 8,500 thousand individuals. The Polish population, estimated at 2,269 individuals in 2019, including 2,048 free-living bison, is the most numerous in the world. In 2007, the Polish nature protection authorities adopted the 'Strategy for the protection of bison in Poland'. This strategy was criticised in 2015 by the State Council for Nature Conservation, an independent advisory body to the Minister of the Environment. This advisory body was dissolved by the new government in 2016 and replaced by a new institution. The strategy set an upper limit of the abundance of European bison in Poland. This limit is used to justify the annual hunting of bison as soon as their number in the local population exceeds the threshold value. The strategy treats the large, wild populations of the endangered mammal as a herd of cattle which requires veterinary supervision, selective hunting and winter feeding<sup>26</sup>.

In the years 2012-2017, the General Directorate for Environmental Protection issued permits to eliminate 304 bison. The highest number of bison were shot in Puszcza Borecka and Puszcza Knyszyńska, which are managed by State Forests. Elimination of bison is commercialised. The procedure encompasses not only permits to kill the animals but also to sell their trophies, including their transfer abroad<sup>27</sup>.

According to an interviewed representative of an NGO<sup>28</sup>, while active protection of species, including special programmes of protection, is promoted and also often supported with EU funding, there is a lack of mechanisms that promote passive, conservative protection, especially with respect to less spectacular and difficult to spot forest species such as insects or small birds.

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<sup>26</sup> Foundation Greenmind, [Bison](#) (in Polish).

<sup>27</sup> Greenpeace "[Hunting – the Polish way of bison protection](#)", a report prepared by Magdalena Gołębiewska, October 2017.

<sup>28</sup> Interview with a representative of the Foundation Wild Poland, September 2021.

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTS

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

In Poland, plant and animal species listed in Annex IV of the Habitats Directive and bird species are protected under the Nature Conservation Law<sup>29</sup> and executive ordinances of the Minister of Environment<sup>30</sup>. The ordinances establish species under strict protection (with specification of species requiring active protection), species under partial protection (including those that may be harvested), and species that require the establishment of protection zones, refuges, breeding sites or regular stay, as well as ways to protect the above-mentioned species. The lists of protected species include all the species protected under the Nature Directives plus several other species that are protected under Polish law. Articles 51 and 52 of the Nature Conservation Act contain the prohibitions which reflect the species protection provisions of the Nature Directives that are the focus of this study. See Annex I with the correlation table.

The Nature Conservation Act introduces derogations from these provisions concerning rational forest, fishing or agricultural activities, which can be granted by regional directors in cases where, due to technology, it is impossible to comply with the prohibitions of Articles 51 and 52 (these derogations are stated in Article 51 point 2 item 1 and Article 52 point 2 item 10 of the Nature Conservation Law for plant and animal species, respectively). As indicated in Article 51 point 3 and Article 52 point 5 of the Nature Conservation Law, such derogations do not apply, however, to the protected species listed in Annexes II and IV of the Habitats Directive and fall under the scope of Article 16 of the Habitats Directive and Article 9 of the Birds Directive.

However, according to Article 53 of the Nature Conservation Act, Regional Directors for Environmental Protection **can introduce, for a limited period of time, derogations** from the prohibitions established in Articles 51 and 52 concerning, respectively, deliberate damaging or destroying of plant and fungi habitats and deliberate killing or capturing of animal species. The applications for derogation to the regional directors to grant permission to carry out activities that are prohibited according to the Nature Conservation Act should contain a dedicated section concerning justification for such activities<sup>31</sup>. The decisions issued by the regional directors following such applications also contain a justification.

Moreover, according to Article 56, the General Director of Environmental Protection can issue **consent for the killing or capturing of protected animal species**, as well as for damaging or destroying protected plant and fungi habitats for larger areas of the country, or also if it is required within the framework of protection programmes and sustainable use of biodiversity, species protection programmes and international agreements.

None of these provisions include a similar clause to art. 51 and 53 stating that such derogations do not apply to the species of Annex II and IV or the Habitats Directive. Therefore, both provisions apply to strictly protected species under Polish law (similar to Annex IV of the Habitats Directive) and to partially protected species under Polish law (which include some Annex IV species of the Habitats Directive). Therefore, these provisions do not seem to comply with the species protection rules of the Nature Directives.

According to Article 131 point 14 of the Nature Conservation Law, violation of the prohibitions concerning protected species is an offence and is punishable by jail or a fine. Additionally, if the

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<sup>29</sup> [Act of 16 April 2004 on Nature Protection](#) (Journal of Laws 2021 item 1098).

<sup>30</sup> [Ordinance of the Minister of Environment of 16 December 2016 on the protection of animal species](#) (Journal of Laws 2016 item 2183), [Ordinance of the Minister of Environment of 9 October 2014 on the protection of plant species](#) (Journal of Laws item 1409).

<sup>31</sup> Regional Directorate for Environmental Protection in Warsaw, [Application for issuing a permit for activities that are prohibited concerning wild and other than wild animal species under protection](#).

destruction of plants or animals is of considerable scale, Article 181 of the Penal Code could be relevant<sup>32</sup>.

### *Protection zones*

Article 60 of the Nature Conservation Law contains provisions for the creation of protection zones for shelter, breeding sites and places of regular presence of animals, plants and fungi covered by species protection. These can be established by the general or regional directors of environmental protection. In 2020, there were 1,642 animal protection zones (including 1,622 for birds), 2 plant protection zones and 24 lichen protection zones. Such protection zones are located primarily in the State Forests<sup>33</sup>. In such zones it is forbidden to:

1. enter, except for the owner of the property and persons managing and supervising the areas covered by the protection zone, as well as persons performing work under an agreement concluded with the owner or the manager of the zone;
2. cut down trees or shrubs;
3. make changes to water conditions, if not related to the need to protect individual species;
4. erect any objects, devices and installations.

Penal regulations regarding the violation of prohibitions apply to the protection zones<sup>34</sup>, however, no statistics on such violations with respect to the protection zones could be found.

### *Programmes for protection of endangered species*

Article 57 of the Nature Conservation Law envisages that the General Directorate of Environmental Protection prepares **programmes for the protection of endangered plant, animal and fungal species**. Such programmes combine the current knowledge and experience in the protection of a given species, identify threats, and propose actions that should be taken to improve the conservation status of the endangered species population, together with a description of their implementation and funding sources. The expert studies developed within such programmes are to help all institutions and entities that are relevant for a given species, not only regarding scientific research but also concerning the planning and management of forestry, agriculture, water, etc.

**Species protection programmes** are not legally binding; they provide guidelines for the improvement of the state of preservation for a given species. So far, six national species protection programmes have been adopted, including five programmes for bird species and one for whales<sup>35</sup>. The programme for the Eurasian curlew (*Numenius arquata*) concerns bird species protected under the Birds Directive occurring in wetlands; none of the Polish protection programmes concern forest species.

## **2.2 OTHER RELEVANT LEGISLATION**

Another legal act which applies to plant and animal species as well as to natural habitats covered by the Nature Directives is the Act on the Prevention of Environmental Damage and its Repair<sup>36</sup>. Immediate threat of damage or environmental damage may concern protected species or protected natural habitats (Article 2 item 1 point 2 of the Act). The types of activities that pose a risk of environmental damage are indicated in Article 3 of the Act on Environmental Damage. Types of environmental users are defined in the Environmental Protection Law<sup>37</sup>. The list of categories includes farmers and persons who undertake productive activities in the forestry sector.

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<sup>32</sup> [Act of 6 June 1997: Penal Code](#) (Journal of Laws of 2020 item 1444, as amended). Article 181 imposes a penalty of detention which may last from 3 months to 5 years for deliberate activities resulting in substantial damage to plants or animals.

<sup>33</sup> Information obtained from the General Directorate of Environmental Protection, July 2021.

<sup>34</sup> *ibid.*

<sup>35</sup> General Directorate of Environmental Protection, [Endangered Species Protection Programmes](#).

<sup>36</sup> [Act of 13 April 2007 on the prevention of environmental damage and its repair](#) (Journal of Laws of 2020 item 2187).

<sup>37</sup> [Act of 27 April 2001 on Environmental Protection](#) (Journal of Laws of 2020 item 1219, as amended).

According to Article 6 item 11 of the Act on the Prevention of Environmental Damage and its Repair, damage to the environment is understood as negative, measurable change in the state or function of natural elements, assessed in relation to the initial state, which was caused directly or indirectly by activities carried out by an entity using the environment, and affects protected species or protected natural habitats, having a significant negative impact on achieving or maintaining the proper conservation status of these species or natural habitats.

There are a number of derogations from these provisions that refer to previously identified negative impacts resulting from the use of the environment in accordance with:

- the decision referred to in Article 34 of the Nature Conservation Law (in cases of overriding public interest, it is possible that regional environmental authorities issue consent for activities with negative environmental impact concerning Natura 2000 or Sites of Community Importance provided that compensatory activities are undertaken);
- the decision referred to in Article 56 of the Nature Conservation Law (in cases when the General Director of Environmental Protection or the relevant Regional Director of Environmental Protection or other relevant authorities issue consent for activities with negative impact on the protected species);
- an approved forest management plan for which a strategic environmental impact assessment has been carried out<sup>38</sup>;
- the decision on environmental conditions<sup>39</sup>.

### 2.3 SUBSIDIARY LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

The Act on Forests<sup>40</sup> includes a **general exemption** to the species protection rules and states in its Article 14b that forest management does not violate species protection regulations (in particular the relevant articles of the Nature Conservation Act which transpose the provisions of the Birds and Habitats Directives that are the focus of this study) as long as it is performed in accordance with **good forestry practices** that are described in the regulation of the Minister of Environment on good forestry practices<sup>41</sup>. This regulation lists 19 principles which include, inter alia, a requirement that in the case of discovering the presence of a protected species, the work performed is modified and, if necessary, appropriate actions are applied to minimise or compensate for the damage caused. Another rule states that in the period of bird nesting, no trees on which inhabited nests have been identified can be cut down.

The above-mentioned provisions were not recognised by the European Commission as sufficient: in 2019, a reasoned opinion was issued to Poland regarding breach of the obligations imposed by the Habitats and Birds Directives. In December 2020, the European Commission referred Poland to the Court of Justice of the EU (CJEU) for failure to safeguard forest habitats and species<sup>42</sup>.

The Environmental NGO ClientEarth provided an extensive explanation regarding the negative impact of the provisions on good forestry practices on habitats and species protected under the Birds and Habitats Directive<sup>43</sup>. According to ClientEarth, this provision poses a threat to nature protection in forests, as it makes it possible for entities carrying out forestry works (primarily logging) to make their own decisions on the legal compliance of their actions, without having to seek any scientific information

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<sup>38</sup> As referred to in Article 46 of the [Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments](#) (Journal of Laws of 2021 item 247, as amended, hereafter referred to as an EIA Act).

<sup>39</sup> As referred to in Article 71 item 1, Article 90 item 1 and Article 98 item 1 of the EIA Act.

<sup>40</sup> [Act of 28 September 1991 on Forests](#) (Journal of Laws of 2020 item 1463).

<sup>41</sup> [Regulation of the Minister of Environment of 18 December 2017 on good forestry practices](#) (Journal of Laws 2017 item 2408).

<sup>42</sup> Press release issued on 3 December 2020, [Commission decides to refer Poland to the Court of Justice over failure to safeguard forest habitats and species](#).

<sup>43</sup> ClientEarth, [Opinion regarding the draft regulation of the Minister of Environment concerning good forestry management practices](#), 14 November 2017.

or opinions from relevant stakeholders or the public. Foresters or forest owners are, in practice, released from an obligation to apply for individual permits as derogation from the prohibitions concerning the protected species as regulated in the Nature Conservation Act. The ‘code of good practices’ adopted in the regulation of the Ministry of Environment has no inspection mechanisms built into it. As a result, all protected species are de facto deprived of statutory protection in the areas of planned forest management activities.

According to the Polish environmental authorities, currently the controversial provisions are subject to modification, and it is highly likely that in future, all species protection aspects will be regulated in the Nature Conservation Law<sup>44</sup>. The regulation on good forestry practices is currently being amended. According to the Ministry of Environment, the revised regulation will contain a set of rules to strengthen the protection of elements of nature by preventing potential conflicts between the implementation of forest management activities and the protection of habitats and species. Potential conflicts will be identified earlier, at the preparatory stage of forestry works. Field inspections to check the potential presence of protected species will be one of the most essential elements of this process. Then, at the stage of implementation of forest management activities, good practices will have to be applied, which will clearly contribute to maintaining the expected level of species protection (e.g. the level specified in the individual species protection plans) or to improving their condition<sup>45</sup>.

However, to date<sup>46</sup>, no legal changes have been adopted in relation to this controversial legislation. The case of Puszcza Białowieńska (Białowieża forest) provides an illustration of the past – and still not entirely resolved – conflict between the Polish environmental authorities and the European Commission regarding nature protection in forests – see Box 22 below.

## Box 2 Białowieża forest

In 2016, the Polish Minister of Environment, following an application of State Forests, approved annexes to the forest management plans for the Białowieża forest, almost tripling logging activities in this area. This was deemed to be necessary due to the spread of a spruce bark beetle which damaged the trees. Work began on the removal of trees affected by the beetle, including in the areas covered by Natura 2000 protection. Up to 2017, forest management carried out by State Forests led to a situation where the 10-year limit of tree felling terminated in the 6<sup>th</sup> year of the application of the original forest management plan. Moreover, many of the trees that had been cut down were over 100 years old, which was not in compliance with the forest management plan. Harvesting of trees was carried out on a large scale, using heavy machines which caused damage to the forest environment and species<sup>47</sup>.

Białowieża forest is a home to several species protected by Polish law and the annexes to the Birds and Habitats Directives. Extensive documentation is available regarding damage to the habitats of, among others, two species of beetles protected under the Habitats Directive (*Cucujus cinnaberinus* and *Boros shneideri*) which have already been driven to extinction in other areas of Poland. Habitats of various species of owls and woodpeckers were also damaged due to the removal of old trees. Widespread protests by Polish and international environmental NGOs and scientists were not successful in stopping the work.

In July 2017, the European Commission brought an action before the Court of Justice of the European Union (CJEU) declaring that Poland had failed to fulfil its obligations under the Habitats and Birds Directives. An unpublished decision of the CJEU issued in response to the action of the European Commission, which called Poland to stop forest management practices that constitute a threat to unique natural values, was disregarded by the Polish government and the works in the forest continued. In November 2017, the CJEU issued an order stating that Poland had to immediately cease its active forest management operations in the Białowieża Forest, except for cases where they were strictly necessary to ensure public safety. In the case of infringement of this order, Poland would be obliged to pay a penalty to the Commission of at least EUR 100,000 per day<sup>48</sup>. Following this decision, the harvesting of wood in the Białowieża forest was stopped.

In April 2018, the CJEU issued its final judgement, confirming that Poland, by undertaking increased timber harvesting in the Białowieża forest, was breaching EU law<sup>49</sup>. In September 2021, Poland was in the process of finalising a new annex to the

<sup>44</sup> Information obtained from the General Directorate of Environmental Protection, July 2021.

<sup>45</sup> Written feedback obtained from the Ministry of Environment, July 2021.

<sup>46</sup> As of September 2021.

<sup>47</sup> [Bohdan A., et al., 2018.](#)

<sup>48</sup> [Order of the Court of 20 November 2017 in case C-441/17](#)

<sup>49</sup> C-441/17 – [Commission v Poland \(Białowieża Forest\)](#)

forest management plan for the Białowieża Forest District. The new annex assumes a reduction in the amount of wood planned to be harvested as compared to the previous document adopted in 2016. According to the State Forests, this annex will allow full implementation of the 2018 CJEU judgment<sup>50</sup>. However, a representative of one of the green Polish NGOs expressed doubts as to whether this is indeed the case, as the methodology of the inventory of protected species does not seem to be sufficient for identification of all the sites of such species which should be protected against timber harvesting activities<sup>51</sup>. Polish NGOs have established a coalition with the objective of stopping damages to the Białowieża Forest, which monitors activities of the Polish authorities and which postulates that the whole area of the Białowieża Forest should be protected (i.e. the whole area established as a National Park)<sup>52</sup>.

## 2.4 SPECIFIC RULES APPLICABLE AT FOREST HOLDING LEVEL UNDER THIS LEGISLATION

As already mentioned, forest management in Poland is carried out according to forest management plans. The content and scope of forest management plans is specified in Chapter 4 of the Act on Forests<sup>53</sup>. The plans set out, among other things, arrangements for the desired types of stands, the specific scope of wood harvesting, renewal, afforestation and forest protection activities. For forests owned by the State Treasury, nature protection plans are a mandatory element of forest management plans.

Nature protection plans contain a comprehensive description of the state of nature within the territorial range of the forest district covered by the plan, as well as tasks related to its protection (including obligatory tasks concerning nature protection which result from the protection plans in force, such as management plans for Natura 2000 areas), and methods of implementing the plans on land that is managed by the relevant forest district manager. An inventory of protected species must be carried out for each nature protection plan. The substantive scope of the nature protection plans must be agreed upon with the territorially competent regional director for environmental protection<sup>54</sup>.

However, according to Polish green NGOs, forest management planning is not implemented in an appropriate manner that would ensure protection of species and habitats in compliance with the Birds and Habitats Directives<sup>55</sup>. According to their interviewed representatives, the quality of Polish forest management plans, and including in particular nature protection plans, is in general not satisfactory due to inappropriate methods used for species inventories: these methods do not ensure adequate control of the presence of protected species across the whole area of the forest districts which are submitted to the analysis. Protective measures focus only on fragmentary evidence regarding the presence of protected species. This issue was raised during the proceedings related to the Białowieża forest, where several shortcomings regarding the methodology of nature inventories were signalled. In the opinion of the interviewed representatives of NGOs, the same conclusions regarding species inventories for the Białowieża forest apply to practically every forest district in Poland.

The Strategic Environmental Assessment (SEA) procedure as applied to forest management plans is not an effective tool for ensuring implementation of species protection rules or for ensuring public participation or control of negative developments in Polish forests regarding species protection (see more detail regarding this aspect in Section 5). The timing of the SEA is an important factor. In the gap between the expiry of the former management plan and the approval of the new one by the Minister of Environment, which may last between 3 and 18 months, wood extraction continues according to provisional ‘wood removal plans’, which are not subject to any assessment procedures. As of March 2021, approximately 10% of public forests (780,000 ha) were managed without the approved forest

<sup>50</sup> State Forests, [Poland implements CJEU judgment](#), 15 March 2021.

<sup>51</sup> Interview with a representative of Foundation Wild Poland, September 2021.

<sup>52</sup> The [coalition](#) includes Greenpeace, Greenmind, WWF, ClientEarth, Foundation Wild Poland and The Workshop for All Beings.

<sup>53</sup> [Act of 28 September 1991 on Forests](#) (Journal of Laws of 2020 item 1463).

<sup>54</sup> Written feedback received from the General Directorate of State Forests.

<sup>55</sup> Interviews with representatives of the Naturalists’ Club (Klub Przyrodników) and the Foundation Wild Poland (Fundacja Dzika Polska), September 2021.

management plans that are mandatory under the Act on Forests<sup>56</sup>.

The set of the above-mentioned **good forestry practices**<sup>57</sup> provides general guidance that is applicable to all forest owners and managers. Some additional guidelines concerning species protection are available to foresters. State Forests have developed internal rules to avoid conflict between actions in the field of forest management and places where **protected species are present**. The rules require that a site visit must be carried out prior to the commencement of logging activities, and in the event of confirmation of presence of protected species, the activities are modified so that they do not affect the identified species. If this is not possible, an exemption from prohibitions, as discussed in Section 2.1, may be applied<sup>58</sup>.

Furthermore, in June 2020, the General Directorate of State Forests prepared additional framework guidelines for minimising the impact of implementation of forestry work on birds and their breeding sites<sup>59</sup>. However, according to interviewed representatives of Polish NGOs, all these guidelines are not well-implemented across the whole of Poland. The level of implementation of good practices varies from one forestry district to another. There are many dedicated foresters who make all possible efforts to implement these guidelines in practice but there are also numerous examples of those who neglect such safeguards, without a good system for monitoring and execution in place<sup>60</sup>.

In April 2021, the Supreme Audit Office issued a report on forest management in forests which are not owned by the State Treasury<sup>61</sup>. The report highlights several problems, including, among others:

- Forest management plans submitted to the supervision of the *starostas* covered only 64% of the total area of the forests under the responsibility of the *starostas*.
- 70% of municipalities owning forest did not implement any activities aimed at the sustainable management of forests, and *starostas* as a rule did not enforce such activities in the supervised municipalities.
- *Starostas* have issued several approvals of forest conversion to agricultural use. These not only did not take into account the obligatory premise of a ‘particularly justified need’, but were also in contradiction with a rule indicated in the Forestry Act that forest management should be carried out with the general objectives of protecting forests, sustainable forest maintenance, and the expansion of forest resources.
- Harvesting of wood was in most cases carried out in a way that was not in accordance with the documentation, or such documentation was lacking.
- Assessment of forest management practices was implemented very rarely, and statistical reporting was in most cases delayed and of poor quality. Such assessment should be carried out in order to ensure forest protection, support natural resilience of tree stands and to ensure sustainable management of forests, according to articles 9 and 13 of the Act on Forests.

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<sup>56</sup> Stowarzyszenie Pracownia na rzecz Wszystkich Istot (Workshop for All Beings), [Out of control: The worrying rise of logging in Polish forests](#).

<sup>57</sup> [Regulation of the Minister of Environment of 18 December 2017 on good forestry practices](#) (Journal of Laws 2017 item 2408).

<sup>58</sup> Written feedback obtained from the Ministry of Environment, July 2021.

<sup>59</sup> State Forests, [Additional safeguards for breeding birds](#) (in Polish), 9 July 2020.

<sup>60</sup> Interview with representatives of the Naturalists’ Club (Klub Przyrodników) and the Foundation Wild Poland, September 2021.

<sup>61</sup> Supreme Audit Office, [Supervision of forest management in forests which are not owned by State Treasury](#), April 2021.

### 3 GOVERNMENT ADVICE TO FOREST OWNERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

The State Forests has issued various guidelines regarding forestry practices in addition to the (controversial) set of good practices in forestry, which constitutes the main set of guidelines for this sector. However, it is not clear to what extent these guidelines are being implemented in practice. Numerous examples of damages to the forest habitats and species (as indicated above) show that these guidelines are very often not followed and that their implementation is hardly ever monitored or enforced<sup>62</sup>.

According to Article 35 of the Act on Forests, private and municipal forest owners can request to receive advice regarding forest management and forestation from foresters employed by State Forests (nature protection is not specifically mentioned in this context). Many provincial authorities which are in principle responsible for private and municipal forests entrust forest management duties to the relevant Directors of forest districts that are part of the State Forests.

Provincial authorities that signed agreements with the respective supervisors of forest districts rely on foresters' advice in all matters concerning forest management, including nature protection in forests; some of them implement specific procedures for forestry advice, such as designated office times with foresters available on telephone duty<sup>63</sup>. In the provinces where no such agreements with supervisors of forest districts have been signed, typically no specific procedures regarding advice and guidance are in place, but forest owners are informed by provincial administration employees about their obligations and rights, according to their needs. Provincial administration also periodically distributes information and educational materials such as leaflets and guidelines<sup>64</sup>. A few years ago, the Forestry Research Institute published comprehensive guidelines for private forest owners on forestry management rules<sup>65</sup>. No information has been identified on initiatives to provide data or information specifically on species protection rules to forest owners.

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<sup>62</sup> Interview with a representative of the Foundation Wild Poland (Fundacja Dzika Polska), September 2021.



## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION IN FORESTS

Activities of State Forests are in principle supervised by the Minister of Environment. However in practice, institutional supervision is weak. No statistics on breaches of species protection regulations could be found through desk research and interviews with various stakeholders. Polish legislation does not indicate any measures for correcting the supervised activities of State Forests<sup>66</sup>. Regarding private forests, these are supervised by provincial authorities (*starostas*) but as already pointed out in Section 1.2, the enforcement and monitoring of forestry measures, in particular regarding sustainable forestry practices, is far from satisfactory<sup>67</sup>.

According to the results of checks carried out by the Supreme Audit Office in 2015<sup>68</sup>, in the years 2011-2013, the budget of State Forests devoted to forest protection and cultivation constituted only 13% of the total budget of this institution. This was over three times lower than the general management costs. The interviewed representatives of the Polish NGOs have expressed an opinion that in general, foresters at low levels of the hierarchy do care about protection of species and want to implement relevant practices. However, according to the NGOs, directors of Forest Districts typically put higher priority on profits from wood harvesting and other income-generating activities, such as hunting<sup>69</sup>.

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<sup>66</sup> Sylwia Szczutkowska, [“A serious talk about reforming forests”](#) (in Polish), Wild Life monthly, June 2020.

<sup>67</sup> Supreme Audit Office, [Supervision of forest management in forests which are not owned by State Treasury](#), April 2021.

<sup>68</sup> The Supreme Audit Office, [Financial management in State Forests](#) (in Polish), July 2015.

<sup>69</sup> Interview with a representatives of the Wild Poland Foundation, September 2021.

## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FORESTRY ACTIVITIES WHICH MIGHT AFFECT PROTECTED SPECIES

### 5.1 ENVIRONMENTAL IMPACT ASSESSMENT

Any investment project in Poland that has a (potential) negative impact on the environment must undergo an Environmental Impact Assessment procedure in accordance with the EIA provisions. These provisions have been transposed to Polish legislation in the EIA Act. In the case of forestry management activities, however, usually no separate EIAs are carried out, since these activities are encompassed in forest management plans. For large investments, the EIA provisions provide adequate safeguards in general. However in some cases, special legislation for selected high priority investments may apply, resulting in much less stringent requirements regarding EIAs, and a streamlined procedure. Such special legislation may be detrimental for species protection in the locations covered, as it may imply cutting down trees in some forest areas<sup>70</sup>.

### 5.2 STRATEGIC ENVIRONMENTAL ASSESSMENT OF FOREST MANAGEMENT PLANS

Forest management plans require the completion of a Strategic Environmental Impact Assessment (SEA), with public consultations being a mandatory part of this procedure. The relevant regional directors of environmental protection supervise the process. After carrying out the SEA, forest management plans are approved by the Minister of Environment.

The SEA procedures with regard to forest management plans have been criticised by Polish NGOs. While in principle everyone has the possibility to submit comments to the plans, the way they are addressed remains at the discretion of regional directorates for environmental protection. Comments received from the public or from civil society organisations are often neglected or they are rejected with the justification that they lack grounds<sup>71</sup>. While the authorities do acknowledge and value specific information concerning the presence of protected species in specific locations, submissions regarding modification of forest management activities in order to ensure better nature protection are hardly ever addressed<sup>72</sup>. Moreover, Polish legislation does not allow the public to challenge forest management plans in courts because of procedural issues<sup>73</sup>.

The level of regional directorates' dedication to the protection of species varies across the country – many of these institutions seem to serve the interests of the State Forests, in particular regarding logging policy and permissions for hunting of protected species. However, this is not a general rule, as there are also examples where regional directorates question forest management plans if they do not contain sufficient provisions regarding species protection<sup>74</sup>.

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<sup>70</sup> In August 2021, the Polish president Andrzej Duda signed a new law (so-called Lex Izera) which will make it possible to transform forest plots managed by State Forests into areas that can be used for priority investments. See for example [“Greens are sounding the alarm”](#), Warsaw Business Journal, 16 August 2021.

<sup>71</sup> Interviews with representatives of green NGOs (Naturalists' Club and Foundation Wild Poland), September 2021.

<sup>72</sup> Pawlaczyk, P., Bohdan, A., Grzegorz, A., [An attempt to evaluate the management of the most valuable forests in Poland](#) (in Polish), The Workshop for All Beings, 2016.

<sup>73</sup> ClientEarth, [Poland will face EU Court of Justice for ineffective forest protection](#) (in Polish), information issued on 3 December 2020.

<sup>74</sup> See for example a negative [opinion of the Regional Directorate for Environmental Protection to the draft forest management plan](#) for Borki forest district (in Polish), January 2020.

## 6 OVERALL ASSESSMENT OF SPECIES PROTECTION IN FORESTS

### 1. KEY FINDINGS (CHALLENGES & BEST PRACTICES)

#### 6.1 TRANSPOSITION ISSUES

The species protection rules from Nature Directives are transposed into the Polish jurisdiction in the Nature Conservation Law and into dedicated executive ordinances from the Minister of Environment. The ordinances establish species under strict protection, species under partial protection and species that require establishment of protection zones, shelter, breeding sites or regular stay.

The Nature Conservation Act introduces derogations from these provisions concerning rational forest, fishing, or agricultural activities. These derogations do not apply to the protected species listed in Annexes II and IV of the Habitats Directive. However, this Act does include the possibility for introducing a time-limited derogation from species protection prohibitions, as well as issuing consent for the killing or capturing of protected animal species.

None of these provisions include a similar clause to art. 51 and 53 stating that such derogations do not apply to the species of Annex II and IV or the Habitats Directive. Therefore, both provisions apply to strictly protected species under Polish law (similar to Annex IV of the Habitats Directive) and to partially protected species under Polish law (which include some Annex IV species of the Habitats Directive). Therefore, these provisions do not seem to comply with the species protection rules of the Nature Directives.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

- The Act on Forests in its Article 14b states that forest management does not violate species protection rules as long as it is performed in accordance with good forestry practices.
- The regulation on good forestry practices lists 19 principles which envisage modification of the performed work in the case of presence of protected species. However, the regulation does not introduce any enforcement and control mechanisms. This means that the statutory species protection rules are not adequately legally enforced in areas of planned forest management activities.
- The Nature Conservation Act also applies to forestry. Article 60 of this law contains provisions concerning the creation of protection zones for refuges, breeding sites and places of regular presence of animals, plants and fungi covered by species protection.
- The General Directorate of Environmental Protection prepares programmes for the protection of endangered plant, animal and fungal species. These species protection programmes are not legally binding. None of the existing Polish protection programmes specifically concern forest-related species.

##### *Specific rules applying to the forestry sector*

- The Act on Prevention of Environmental Damage and its Repair is another piece of legislation which concerns protected species or protected natural habitats. The list of categories of environmental users (as defined in the Environmental Protection Law) includes farmers and persons undertaking production activities in the forestry sector.
- In autumn 2021, the regulation on good forestry practices was being amended. According to the information obtained from the Ministry of Environment, the amended version would contain rules to strengthen protection of elements of nature by preventing potential conflicts between the implementation of forest management activities and the protection of habitats and species.

### **Other implementing or stimulating measures**

- In June 2020, the General Directorate of State Forests published additional framework guidelines for minimising the impact of forestry work on birds and their breeding sites. However, according to NGOs, the guidelines were not being well-implemented across the whole of Poland.

## **6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT**

### **Government advisory services**

- According to Article 35 of the Act on Forests, private and municipal forest owners can, upon their request, receive advice regarding forest management and afforestation from the foresters employed by the State Forests.
- Many provincial authorities have signed agreements with the respective supervisors of forest districts and rely on foresters' advice. Some of them also implement specific procedures for forestry advice, such as designated office times with foresters available on telephone duty.
- The Forestry Research Institute has published comprehensive guidelines for private forests owners on forestry management rules.

### **Enforcement of species protection legislation**

- Institutional supervision of enforcement of species protection rules in the forestry context is weak. Polish legislation does not indicate any assessment mechanisms for correcting the supervised activities of State Forests.
- In private forests, activities are supervised by provincial authorities, but the enforcement and monitoring of forestry measures, in particular regarding sustainable forestry practices or species protection, is far from satisfactory.
- According to the NGOs interviewed, foresters at a low level of the hierarchy generally care about the protection of species and want to carry out relevant measures, whereas higher up the hierarchy, profits from wood harvesting seem to be the priority.

## **6.4 ASSESSMENT AND AUTHORISATION PROCEDURES**

### **EIA**

Any investment in Poland that has a (potential) negative impact on environment must undergo an EIA. In the case of forestry management activities, however, usually no separate EIA activities are carried out, since these activities are encompassed in forest management plans. Special legislation with much less stringent requirements may apply for selected high priority investments.

### **SEA**

Forest management plans require completion of the Strategic Environmental Assessment (SEA), with public consultations being a mandatory part of this procedure. The relevant regional directorates of environmental protection supervise the process. After carrying out the SEA, forest management plans are approved by the Minister of the Environment.

According to the interviewed representatives of Polish NGOs, in practice, comments received in the SEA process are rarely addressed. Moreover, the legislation does not allow the public to challenge forest management plans in court due to procedural issues. While a new forest management plan is being approved, wood extraction continues according to a provisional "wood removal plan" which is not subject to any assessment procedures.

### Other authorisation procedures

Foresters can apply to the regional directorates for environmental protection for a permit to eliminate a certain quantity of a protected species when they cause a problem for “regular” forest management. Such permits have been issued, among others, for shooting beavers, bison and wolves.

## 2. RECOMMENDATIONS

### ■ **Legislative transposition measures of species protection rules:**

The Nature Conservation Act in combination with the good forestry practices as provided for in the Forestry Act and the dedicated regulation of the Minister of Environment enact a derogation of forestry operations from EU nature protection legislation. Good forestry practices are not systematically implemented, which can be illustrated by numerous examples where valuable forest habitats and species are destroyed through forest management and harvesting practices. The legal framework should be modified so as to bring species protection rules in line with the EU Habitats and Birds Directives.

In the Act on Forests, there is no specific reference to the protected species. The Act does provide the possibility of establishing biological reserves, but it does not address species protection according to the EU Habitats and Birds Directives, which should apply country-wide.

### ■ **Preventive and implementing measures:**

Availability of data concerning the presence of a protected species and the appropriate protective measures should be improved, as it would be beneficial to a wide range of forest users who could implement preventive measures for species protection. Monitoring of protected species and information about their presence should be improved, and the resulting data should be made available.

Forest management plans should include appropriate measures for species and habitats protection. An effective system of monitoring and enforcement of these measures should be established.

### ■ **Public advisory and enforcement:**

Policies and practices implemented by institutions dealing with forestry and nature protection should be modified to support regional and local foresters and forest owners in carrying out appropriate measures for species protection.

The capacity of authorities to monitor and enforce species protection rules should be strengthened.

### ■ **Authorisation and permits:**

Comments submitted during EIA and SEA procedures by the general public and civil society organisations should more effectively be taken into account. Forest management plans should be disputable in court. The practice of using provisional wood removal plans while forest management plans are not valid should be terminated or strictly limited to well-justified cases.

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# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## TASK 3 – Case Study *Romania*

ENV/2020/OP/0022



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## ABBREVIATIONS

SEA	Strategic Environmental Assessment
AA	Appropriate Assessment
EU	European Union
NFI	Romanian National Forest Inventory
VPA	Valorification Act
<b>EGO</b>	<b>Emergency Governmental Ordinance -</b>
CAEN	Classification of activities in the national economy
ANCSI	National Authority for Scientific Research and Innovation
CBD	Convention on Biological Diversity

# 1 INTRODUCTION

## 1.1 FOREST AND FORESTRY IN ROMANIA

The total forest area in Romania in 2020 according to the National Forest Inventory<sup>1</sup> was 6,929,047 hectares (ha), covering 29 % of the country, which has a total of 23.839.700 ha, compared to 26.7% in 1998<sup>2</sup>. Most forests are concentrated in the Carpathian and Apuseni mountains, while the plains are almost without forest cover, varying between 3 and 10% of forest cover. 69.3% of forests are broadleaved and 30.7% are coniferous. Among the broadleaved forests, Beech forests cover 30.7%, Oak forests 18.2%, other hardwood forests 15.2% and softwood forests 5.2%. In the coniferous forests, Spruce forests cover 22.9%, Fir 50%, Pine 2.1% and other conifers 0.7%. Most Romanian forests are of natural origin and are home to high biodiversity, including European core populations of the large carnivores Brown bear, Wolf and Lynx. The proportion of old growth and virgin forests is still high compared to the rest of the EU.

In Romania important forest areas, described as "virgin forests" were identified in 2005 in a study funded by the International Nature Management Programme/MATRA of the Dutch Ministries of Agriculture, Nature and Food Quality and Foreign Affairs, generally referred in legislation as The PIN MATRA Study<sup>3</sup>. The Study identified about 220,000 ha of untouched virgin forest (i.e. never disturbed by anthropic impact). This constituted the largest tracts of primary forests in the European Union (EU) outside of Scandinavia. However, legislation concerning the protection of the virgin forest was passed very late: In 2012, Order 3397/2012 regulated the criteria that needs to be fulfilled for a forest to be granted full virgin forest protection status, whereby any human intervention is forbidden, and later in 2015, the Catalogue of Virgin Forest was regulated by Order 2525. This means that between 2005 when the PIN Matra Study was published and 2016, no forest was granted the legal protection status of virgin forest,. From 2016 and up to 15 September 2021, only 62,655 ha were included in the Catalogue of virgin forests<sup>4</sup>.

A Study entitled PRIMOFARO<sup>5</sup> carried out by Matthias Schickhofer (SUPPORTINGCHANGE, Vienna) & Ulrich Schwarz (FLUVIUS, Vienna) as the main authors has identified large areas of primary (virgin) and old growth forests, not necessarily untouched by anthropic impact, but very significant due to the age and structure of the forest and the biodiversity that it harbours.

Forests "undisturbed by man" means that the "natural forest development cycle has remained or been restored" and these forests "display the characteristics of natural tree species composition, natural age structure, deadwood components and natural regeneration, and no visible sign of human activity" (Forest Europe 2015). This description also includes forests where there may have been human impact in the past, but where the forest has had the chance to develop naturally again.

In 2017, Greenpeace published an inventory of potential virgin forests in the Romanian Carpathians (area of Carpathians Convention) based on computer analyses of satellite data (Greenpeace CEE Romania 2017). This comprehensive mapping indicated the existence of almost 300,000 hectares of primary forests, more than the previous Pin Matra Study mentioned. This work was used to inform the PRIMOFARO inventory.

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<sup>1</sup> "Rezultate IFN – Ciclul II | National Forest Inventory," accessed 5 November 2021, <http://roifn.ro/site/rezultate-ifn-2/>

<sup>2</sup> Biris I.A., and Veen, P., "Virgin Forests in Romania," 2005, [http://www.mmediu.ro/app/webroot/uploads/files/2015-12-22\\_Virgin\\_forest\\_Romania\\_Summary.PDF](http://www.mmediu.ro/app/webroot/uploads/files/2015-12-22_Virgin_forest_Romania_Summary.PDF)

<sup>3</sup> [http://www.mmediu.ro/app/webroot/uploads/files/2015-12-22\\_Virgin\\_forest\\_Romania\\_Summary.PDF](http://www.mmediu.ro/app/webroot/uploads/files/2015-12-22_Virgin_forest_Romania_Summary.PDF)

<sup>4</sup> <http://apepaduri.gov.ro/articol/editia-a-11-a-actualizata-la-15-septembrie-2021-a-catalogului-padurilor-virgine-si-cvasivirgine-din-romania/4521>

<sup>5</sup> [https://www.euronatur.org/fileadmin/docs/Urwald-Kampagne\\_Rumaenien/PRIMOFARO\\_24092019\\_layouted.pdf](https://www.euronatur.org/fileadmin/docs/Urwald-Kampagne_Rumaenien/PRIMOFARO_24092019_layouted.pdf)

Data from the second cycle of the Romanian National Forest Inventory (NFI 2018) indicates the potential existence of 84,000 hectares of virgin and quasi-virgin forest (based upon forest age estimations and other information from official forest management plans).

In addition to the previously mapped “virgin and quasi-virgin” forests, a significantly larger surface area of very close-to-nature forests exists in Romania. But these forests have not yet been comprehensively mapped. Such forest is not granted a protection status that would prevent their destruction. The PRIMOFARO Study concluded that the public focus on “virgin” forest protection alone excludes large high conservation-value ecosystems from conservation.

Most of Romania’s old-growth and virgin forests are located **within Natura 2000 sites**, which have been established under the provisions of the EU’s Habitats and Birds Directives.

According to the PRIMOFARO Study (p.54), UNESCO Forests in Romania constitute about 310,917 ha.

A significant proportion of Romania’s old-growth and primary forests are included in Romania’s **13 national parks**. They cover around 317,000 hectares, which is the equivalent of 1.3% of Romanian territory. Romania hosts approximately 7 million hectares of forests (according to the latest National Forest Inventory 10). Approximately 240,000 hectares of forests are within national parks, equivalent to around 1% of Romanian territory and about 3.5% of Romanian forests. In the core zones of Romanian national parks, approximately 120,000 hectares are under strict protection along with a bit less than 50,000 hectares of alpine grass and rocky terrain (PRIMOFARO Study, page 22).

The PRIMOFARO Study has identified over 500,000 ha of primary and old growth Forests in Romania that would be worth preserving, also considering the importance of the biodiversity and ecosystems that are connected to these forests, distributed in 12 focus regions.

5% of Romanian forests are included in the functional category of protection forests, of which 43% serve soil protection, 31% water protection, 5% flood protection; 11% include forest with recreation functions and 10% are forests with scientific interest. The remaining 46.7 % of the surface is classified as production forest. In terms of ownership, 48% is state-owned forest; 15% is forest owned by municipalities; 37% is owned by the church, indivisible communes and private individuals or entities.<sup>6</sup> A significant part of the private forests (1.8 million ha in 2014)<sup>7</sup> are managed by a growing number of private forest districts (139 in 2012)<sup>8</sup> which are a part of the public administration.

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<sup>6</sup> Abrudan, I.V., et al., “Forestland Restitution Laws in Post- Communist Romania Legal Aspects of European Forest Sustainable Development,” *Legal Aspects of European Forest Sustainable Development*, 2015.

<sup>7</sup> Marinchescu, M., et al., “Forest Administration in Romania: Frequent Problems and Expectations,” *Notulae Botanicae Horti Agrobotanici Cluj-Napoca* 42, no. 2 (2 December 2014): 588–95, <https://doi.org/10.1583/NBHA4229738>

<sup>8</sup> Janák, M., Marhoul, P., and Matějů, J., “Action Plan for the Conservation of the European Ground Squirrel *Spermophilus Citellus* in the European Union” (Brussels: European Commission, 2013), [http://ec.europa.eu/environment/nature/conservation/species/action\\_plans/pdf/EUSAP\\_EuropeanGroundSquirrel\\_Final.pdf](http://ec.europa.eu/environment/nature/conservation/species/action_plans/pdf/EUSAP_EuropeanGroundSquirrel_Final.pdf)

**Figure 1: Forest cover map<sup>9</sup>**



According to the National Forest Inventory<sup>10</sup>, the average stocking density is 339 m<sup>3</sup> per hectare and the average annual increment 8.5 m<sup>3</sup> per hectare. While the forest cover is relatively low compared to other EU member States, the stocking density and increment are among the highest.

Romania is also known for its old-growth or virgin Beech forests in the Carpathians. The main reason that these forests were preserved was the low economic value of their timber in the past. In 2005, 218,500 ha of forests were identified as virgin<sup>11</sup>. However, the legislation concerning the protection of virgin forest was passed only in 2015. At present, 62,655 ha are officially designated as virgin<sup>12</sup>. Most of Romania's old-growth (semi-virgin) and virgin forests are located within Natura 2000 sites, which have been established under the provisions of the EU's Habitats and Birds Directives, as well as the UNESCO heritage "Ancient and Primeval Beech Forests of the Carpathians and Other Regions of Europe<sup>13</sup>". A significant proportion of Romania's old-growth and primary forests are included in Romania's 13 national parks. They cover around 317,000 hectares, which is the equivalent of 1.3% of Romanian territory.

According to Euronatur, a significantly larger surface area (up to 0.5 million hectares) of very close-to-nature forests with high conservation value is present in Romania<sup>14</sup>.

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<sup>9</sup> Ciceu, A., Radu, R.G., and García-Duro, J., "Planul Național de Contabilizare a Pădurilor Pentru România," 2019, 89.

<sup>10</sup> "Rezultate IFN – Ciclul II | National Forest Inventory."

<sup>11</sup> Biris and Veen, "Virgin Forests in Romania."

<sup>12</sup> "Ediția a 11-a, Actualizată La 15 Septembrie 2021, a Catalogului Pădurilor Virgine Și Cvasivirgine Din România | Ministerul Mediului," accessed 5 November 2021, <http://apepaduri.gov.ro/articol/editia-a-11-a-actualizata-la-15-septembrie-2021-a-catalogului-padurilor-virgine-si-cvasivirgine-din-romania/4521>

<sup>13</sup> <https://whc.unesco.org/en/list/1133/>

<sup>14</sup> Schickhofer, M., and Schwarz, U., "PRIMOFARO - Inventory of Potential Primary and Old-Growth Forest Areas in Romania," 2019.

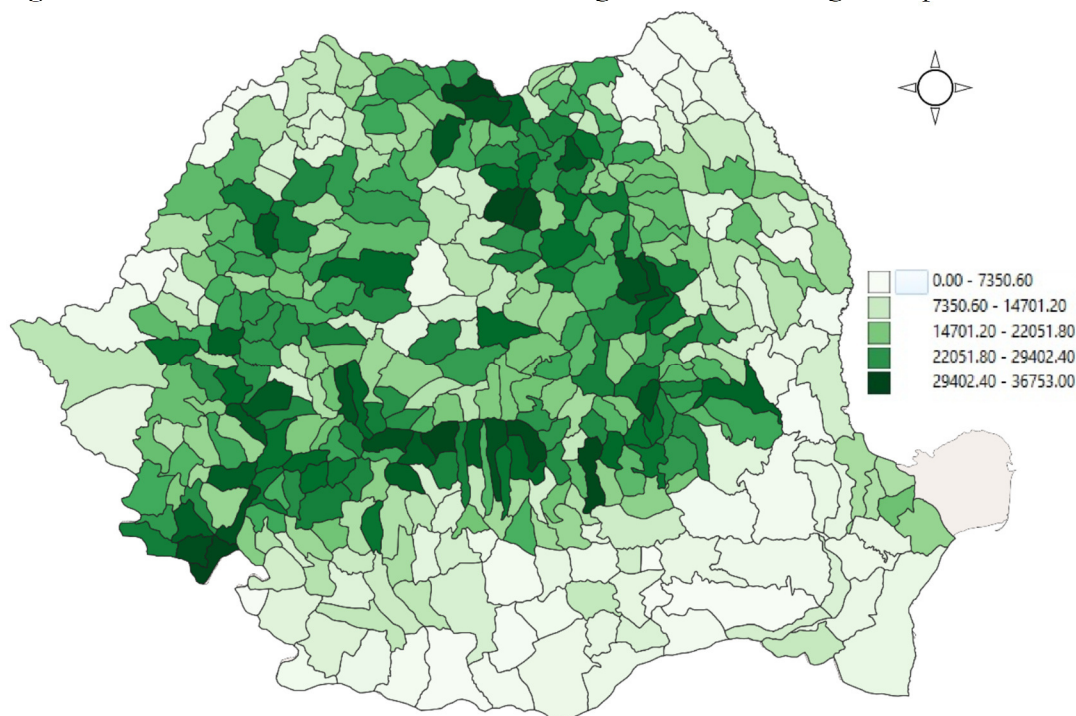
High stocking, among others, provides an opportunity for one of the main problems in Romanian forests – illegal logging. Data from the National Forest Inventory cycle 1 (2008-2012) showed that illegal logging in this period amounted to an average of 8.8 million m<sup>3</sup> of wood per year. The second cycle data (2013-2018) show that illegal logging has increased. The inventory shows that 38.6 million m<sup>3</sup> of wood were taken annually from the forested area (66% of the increment), out of which only about 18 million m<sup>3</sup> were extracted legally. According to a Greenpeace report<sup>15</sup>, in 2018, controlling authorities were able to detect only 1% of the total illegal logging that takes place in Romania.

In February 2020, the European Commission started an infringement procedure against Romania ([https://ec.europa.eu/commission/presscorner/detail/en/inf\\_20\\_202](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202)), concerning:

- Poor implementation of the Timber Regulation;
- Lack of Strategic and Appropriate Assessment of the forest management plans;
- Lack of access to information;
- Degradation of habitats.

Since 2020, the Romanian Government has failed to promote the necessary legislative changes, and in July 2020 the European Commission issued a reasoned opinion (<https://www.politico.eu/article/romanian-politics-clash-with-forest-protection/>), still not followed by significant changes in Romanian legislation, and the infringement procedure is still opened.

**Figure 2:** Forest districts with forest area according to the forest management plans after 199016



## 1.2 GOVERNANCE

According to the Forestry Code (Law no. 46 of 19.03.2008), the totality of forests, of lands destined for afforestation, of those that serve the needs of silviculture, production or forest administration; of ponds, riverbeds, other lands with forest, including unproductive land, are part of the national forest fund, regardless of the nature of the property right. All lands included in the national forest fund are lands with forest designation.

<sup>15</sup> <https://www.greenpeace.org/romania/comunicat-presa/2207/taieri-ilegale-2018-greenpeace/>

<sup>16</sup> Ciceu, Radu, and García-Duro, “Planul Național de Contabilizare a Pădurilor Pentru România.”

Forestry policy and supervision of public institutions in the sector is the responsibility of the Ministry of Environment, Water and Forests. The state-owned forests and some of the private forests are managed by the state forest districts and exploited by the state-owned company Romsilva. More and more private and other forests are managed by forest administrations which are established by local authorities or private forest owners and called “private forest districts”. Forest management is supervised and controlled by the Forest Guard.

The elaboration of forest management plans is obligatory for the forest fund properties that are bigger than 10 ha. The forest management plans are carried out by specialised units certified by the central public authority responsible for forestry. The period of validity of the forest management plans is 10 years, except for the plans made for the forests of poplar, willow and other fast-growing species, which have a period of validity of 5 or 10 years, depending on the nature of the forests.

Logging is done on the basis of exploitation authorisations, issued by the head of the forest district, which include obligations regarding conditions from the point of view of environmental protection for the activity and monitoring measures.

Based on the 10-year forest management plans, each year an operational plan is issued for the following year, which includes all forestry/forestry operations provided for by the forest management plan, plus incidental felling. They include logging areas described under the VPA (Valorification Act) which contain the inventory of all trees (diametres, volume, species, age, etc.), which were previously marked by forestry staff with a hammer, as well as a sketch of the forest logging area (containing GPS location, removal routes, forest map of the area). Following an auction procedure, each forest logging area is awarded to a company which then concludes a contract with the Forest District. The terms of execution of the forest exploitation are established, and subsequently the exploitation authorisation is issued and the work begins. The results of the auctions and the issuance of logging permits are not communicated to third parties. Only the quantity of wood at county level is published.

### 1.3 INSTITUTIONS

**The Ministry of Environment, Water and Forests** produces national management policy for water and forest, fulfilling the role of state authority, synthesis, coordination and inspection in these areas. Within the Ministry, forestry is covered by the Department of Forests and Forestry Development. The Ministry of Environment, Water and Forests has over all 484 employees, excluding the officials and personnel of the Minister’s cabinet.

**The Forest Guard** is a public institution with a legal entity, subordinated to the Ministry of Environment, Water and Forests.

The Forest Guard succeeded the Territorial Inspectorate of Forestry and Hunting and the Commissariat of Forestry and Hunting Regime.

According to the Order of Minister of Environment, Water and Forest no 456/2016 on approval of the Regulation of organisation and functioning of the Forest Guard, the main responsibilities of the Forest Guard are in the fields of forestry and hunting grounds, within the assigned competences as follows:

- a) implementation,
- b) approval,
- c) representation,
- d) monitoring, inspection and control<sup>17</sup>:

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<sup>17</sup> [ORDIN 456 03/03/2016 - Portal Legislativ \(just.ro\)](https://portal.legislativ.ro)

- a. Monitoring, implementation and control of the application of the forest regime in the national forest fund and in the forest vegetation on the land outside the national forest fund;
- b. Monitoring, implementation and control of the application of the hunting regime in the national hunting fund;
- c. Monitoring and controlling the traceability of wood materials.

According to Governmental Decision no 743/2015<sup>18</sup> on the organisation and functioning of the Forest Guard, Article 13 paragraph 3 coordinates within their area of responsibility “**the integration of biodiversity conservation requirements**, forest cover curtains, ecological reconstruction through afforestation, the prevention and control of vegetation fires and the production, trade and import of forest reproductive material, in accordance with European and international requirements and standards”.

**Emergency Governmental Ordinance no 77/2021**<sup>19</sup> has organised the National Forest Guard, as central authority, coordination nine subordinated regional Guards: Braşov, Bucureşti, Cluj, Focşani, Oradea, Ploieşti, Râmnicu Vâlcea, Suceava, Timişoara. The total structure has 1,007 employees of which:

- The National Forest Guard – 85 (45 forestry specialist and 38 auxiliary staff);
- The nine regional Forest Guards, having in total 922 employees (850 forestry specialists, and 72 auxiliary staff of which: 18 jurists, 18 economists, and 36 human resources, administrative, and public procurement department staff).

Before the adoption of **Emergency Governmental Ordinance 77/2021** the Forest Guards were organised only at regional level, according to Emergency Governmental Ordinance no 32/2015<sup>20</sup> concerning the establishment of the Forest Guards. They were organised in nine regions, each region including several counties.

The Forest Guards are subordinated to the National Forest Guard since EGO 77/2021 was passed by the Government.

**RNP ROMSILVA R.A. National Forest Management** (Romsilva R.A.) manages the state-owned forests (3,145,793 ha) through 41 Forestry Departments, within 313 Forestry districts, also ensuring upon request, the management of private forests. The organisation and functioning of RNP Romsilva RA is regulated by the Governmental Decision no 229/2009<sup>21</sup>.

According to Article 1 paragraph 3, Romsilva is an autonomous directorate of national interest, under the authority of the State, through the central public authority responsible for forestry (Minister of Environment, Water and Forests).

Romsilva’s principal activity is Forestry and other forestry activities, CAEN class 0210. Romsilva is also administrator of 23 National or Natural Parks, including several Natura 2000 Sites. At central level, Romsilva has 142 employees. There are 41 Departments of the Forests Districts, one in each County, which do not have the personnel scheme published<sup>22</sup>. RNP Romsilva RA’s declared mission is: “aims at sustainable and unitary management, in accordance with the provisions of forest management and forestry regulations, of the state-owned forest fund, in order to increase the contribution of forests to improving environmental conditions and ensuring the national economy with wood, other products of the forest and with specific forestry services, as well as the coordination and implementation of the national program for genetic improvement of horses, national and international promotion of valuable horses from the studs of the National Forests Authority - Romsilva, by organising sports competitions, fairs and exhibitions. At the same time, through the 22 park administrations, units with legal entity,

<sup>18</sup> <https://legislatie.just.ro/Public/DetaliiDocument/171442>

<sup>19</sup> <http://legislatie.just.ro/Public/DetaliiDocument/240945>

<sup>20</sup> <https://legislatie.just.ro/Public/DetaliiDocument/169258>

<sup>21</sup> <http://legislatie.just.ro/Public/DetaliiDocument/103417>

<sup>22</sup> <http://www.rosilva.ro/>



RNP-Romsilva manages 22 national and natural parks in which the state-owned forest fund has a significant share, ensuring the conservation of biodiversity in these protected areas”<sup>23</sup>.

According to Article 4 paragraph 3 of the Governmental Decision 229/2009, Romsilva’s main activities, are:

**a) the application of the national strategy in the field of forestry**, acting for the defence, conservation and sustainable development of the forest fund, public property of the state, public property of the administrative-territorial units or private property it manages, as well as for the management of hunting funds. It is the body assigned for harvesting, processing and capitalisation, through facts and deeds of trade, of the products specific to the forest fund, also exercising public service attributions relating to forestry;

**b) carrying out scientific research, technological development and investment design** projects in the field of forestry and in other fields of natural sciences, as well as the **elaboration of topo-cadastral documentation**;

**c) the administration** through the sub units with legal entity or the taking over in custody, in accordance with the law, **of the protected natural areas** in which the forest fund publicly owned by the state holds a majority share, **ensuring the conservation of their biodiversity**;

**d) the application of the strategy and the implementation of the programs for the genetic improvement of purebred horses**, the breeding, improvement, qualification and exploitation of horses from the own departments, and the organisation and development of equestrian competitions;

**e) raising fur animals** and carrying out scientific research and technological development in this field. So far, public consultations have been organised but the National Strategy in the field of Forestry has not yet been adopted by the Romanian Government.

**Private forest districts** are organised according to Article 10 paragraph 2 letter b of the Forest Code<sup>24</sup>, and are established by the administrative-territorial units, by the natural persons or by the legal persons that own forests or by associations constituted by them. These forestry districts are of public interest and may manage forests or provide forestry services for other forest properties, on the basis of contracts.

**The National Institute for Research and Development in Forestry “Marin Drăcea”** is subordinated to the Ministry of Research, Innovation, Development and Digitalisation<sup>25</sup> and coordinated by the National Authority for Scientific Research and Innovation (ANCSI), according to Governmental Decision no 318/2015<sup>26</sup> as a national research and development institute.

**The Romanian Gendarmerie** is the specialised institution of the state, with military status, and is a component of the Ministry of Internal Affairs, which according to the Forestry Code has competences to monitor and ascertain forestry contraventions.

### **The Romanian Police**

The department for combating forest crimes within the Romanian Police carries out specific activities for preventing and combatting illegal logging and transport of timber from the state and private forest fund; it also carries out informative - operative activities, ascertains crimes and applies contravention sanctions to the forestry regime.

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<sup>23</sup> <http://www.rosilva.ro/>

<sup>24</sup> [CODUL SILVIC 19/03/2008 - Portal Legislativ \(just.ro\)](http://www.legislatie.just.ro/Public/DetaliiDocumentAfis/168173)

<sup>25</sup> <https://www.research.gov.ro/ro/articol/3719/sistemul-de-cercetare-incd-institute-nationale-de-cercetare-dezvoltare-institutul-na-ional-de-cercetare-dezvoltare-in-silvicultura-marin-dracea>

<sup>26</sup> <http://legislatie.just.ro/Public/DetaliiDocumentAfis/168173>

## 1.4 PROTECTED SPECIES

There are 465 species protected under EU law in Romania; 14 of these are unique to Romania; 435 species under the Habitats Directive (according to the fifth CBD<sup>27</sup> National report of Romania, in 2014, there were 174 species under Annex IV of the Habitats Directive); 171 species under the Birds Directive (<https://biodiversity.europa.eu/countries/romania>). According to the National Strategy and Action Plan for Biodiversity Conservation 2014-2020 one of the main features of Romania is the presence of large carnivores in a favourable state of conservation. The population of wolves (*Canis lupus*) estimated at 2,500 represents almost 40% of the population in the European Union; the population of lynx (*Lynx lynx*) at 1,200, and the population of brown bears (*Ursus arctos arctos*) at 6,000 specimens represents over 60% of the European population. Within the group of **insects**, more than 1,000 species are considered endemic, but the geographical distribution of most is little known. 18% of the **birds** in Romania are listed in the Red Book of Vertebrates in Romania; 62.75% are provided in the annexes of the Bern Convention on the conservation of wildlife and natural habitats in Europe and **32.5% are provided for Natura 2000**.

**Reptiles:** Six species of reptile are provided in Annex no. 3 to EGO 57/2007 regarding the plant and animal species whose conservation requires the designation of special conservation areas and of special avifauna protection areas; 18 are provided in Annex 4A to EGO 57/2007 on species of animals and plants of Community interest which require a strict protection, and 5 are provided in Annex 4B to EGO 57/2007 on animal and plant species of national interest that require strict protection of the Government Emergency Ordinance no. 57/2007, approved with modifications and completions by Law no. 49/2011, with subsequent amendments.

**Amphibians:** Seven species of amphibian are listed in Annex 3 to EGO 57/2007 regarding the plant and animal species whose conservation requires the designation of special conservation areas and of special avifauna protection areas; 11 are provided in Annex 4A to EGO 57/2007 regarding the species of 53 animals and plants of community interest that require a strict protection, and 6 are provided in Annex 4B to EGO 57/2007 on animal and plant species of national interest that require strict protection of Government Emergency Ordinance no. 57/2007, approved with modifications and completions by Law no. 49/2011, with subsequent amendments. 84.21% are mentioned in the Red Book of Vertebrates in Romania (2005), 100% are provided in the annexes of the Berne Convention on the Conservation of European Wildlife and Natural Habitats, to which Romania has acceded by Law no. 13/1993 and 26.31% are provided in *Natura 2000*.

**Fish (fresh water):** Twenty five species of fresh water fish are provided in Annex 3 to EGO 57/2007 regarding the plant and animal species whose conservation requires the designation of special conservation areas and of special avifauna protection areas; 2 are provided in Annex 4A to EGO 57/2007 on animal and plant species of community interest that require strict protection, and 11 provided in Annex 4B to EGO 57/2007 on species of animals and plants of national interest which require strict protection under Government Emergency Ordinance no. 57/2007, approved with modifications and completions by Law no. 49/2011, with subsequent amendments. 38.83% are present in the Red Book of Vertebrates in Romania (2005), 33.98% are provided in the annexes of the Berne Convention on the Conservation of Wildlife and Natural Habitats in Europe, to which Romania has acceded by Law no. 13/1993 and 21.36% in *Natura 2000*.

The most important **invertebrates** in *Natura 2000* are:

- **Beetles:** Twenty species of beetles are provided in Annex 3 regarding the plant and animal species whose conservation requires the designation of special conservation areas and of special avifauna protection areas and in Annex 4A on animal and plant species of community interest that require strict protection, 7 provided in Annex 4B on animal and plant species of national interest that

<sup>27</sup> <https://www.cbd.int/doc/world/ro/ro-nr-05-en.pdf>, p.7/

require strict protection of Government Emergency Ordinance no. 57/2007, approved with modifications and completions by Law no. 49/2011, with subsequent amendments. Six species are provided in the annexes of the Berne Convention on the Conservation of Wildlife and Natural Habitats in Europe, to which Romania has acceded by Law no. 13/1993, and 13 species in Natura 2000.

- **Lepidoptera:** Twenty species of lepidoptera are provided in Annex 3 regarding the plant and animal species whose conservation requires the designation of special conservation areas and of special avifauna protection areas; 27 are provided in Annex 4A on animal and plant species of community interest that require strict protection, 61 are provided in Annex 4B on animal and plant species of national interest that require strict protection of Government Emergency Ordinance no. 57/2007, approved with modifications and completions by Law no. 49/2011, with subsequent amendments. Nine species are provided in the annexes of the Berne Convention on the Conservation of Wildlife and Natural Habitats in Europe, to which Romania has acceded by Law no. 13/1993, and 19 in Natura 2000.
- **Molluscs:** 8 species of molluscs are provided in Annex 3 regarding the plant and animal species whose conservation requires the designation of special conservation areas and of special avifauna protection areas; 6 are provided in Annex 4A on animal and plant species of community interest that require strict protection, 16 are provided in Annex 4B on animal and plant species of national interest that require strict protection, 23 species are protected by Government Emergency Ordinance no. 57/2007, approved with modifications and completions by Law no. 49/2011, with subsequent amendments and 7 species in Natura 2000.

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTS

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

#### Habitats Directive

Articles 12 and 13 are transposed by **Article 33 paragraph 1** from the Emergency Governmental Ordinance 57/2007 approved by Law 49/2011, and further modified concerning the regime of protected natural areas, conservation of natural habitats, wild flora and fauna.

**The transposition is literal, almost a word-for-word translation from the Habitats Directive:**

#### *Article 33*

*”(1) For the species of terrestrial, aquatic and underground wild plants and animals, provided in annexes no. 4 A and 4 B, with the exception of bird species, which live both in and outside protected natural areas, the following is prohibited:*

- a) any form of harvesting, capturing, killing, destroying or harming specimens found in their natural environment, at any of the stages of their biological cycle;*
- b) intentional disturbance during the period of reproduction, growth, hibernation and migration;*
- c) damage, destruction and/or intentional collection of nests and/or eggs from nature;*
- d) damage and/or destruction of breeding or resting places;*
- e) harvesting flowers and fruits, harvesting, cutting, uprooting or intentionally destroying these plants in their natural habitats, in any of the stages of their biological cycle;*
- f) possession, transport, sale or exchange for any purpose, as well as offering for exchange or sale of specimens taken from nature, in any of the stages of their biological cycle”.*

#### Birds Directive

Article 5 of The Birds Directive is transposed through **Article 33 paragraph 2** of the Emergency Governmental Ordinance 57/2007 approved by Law 49/2011, and further modified on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna.

**The transposition is literal, almost a word-for-word translation from the Birds Directive:**

*”Article 33 paragraph 2 - Without prejudice to the provisions of Article 33 paragraph (3) and (4) and of Article 38 of this emergency ordinance, as well as of Article 17, Article 19 paragraph (5), Article 20, 22, 24 and Article 26 paragraph (1) and (2) of the Law on hunting and protection of the hunting fund no. 407/2006, with subsequent amendments and completions, in order to protect all species of birds, including migratory ones, the following are prohibited:*

- a) intentional killing or capture, regardless of the method used;*
- b) intentional damage, destruction and/or collection of nests and/or eggs from nature;*
- c) collecting eggs from nature and keeping them, even if they are empty;*
- d) intentional disturbance, in particular during the period of reproduction or maturation, if such disturbance is relevant in the context of the objectives of this emergency ordinance;*
- e) possession of specimens of species for which hunting and capture are prohibited;*
- f) the sale, possession and/or transport for the purpose of selling and offering them for sale in living or dead state or of any easily identifiable parts or products derived from them,”.*

## Derogations to the transposing provisions

While the transposition of the species protection rules of the Nature Directives is almost literal as mentioned above, the Emergency Governmental Ordinance 57/2007 approved by Law 49/2011 and transposing Article 5 of the Birds Directive, establishes **derogations for hunting** by referring to Article 38 of the emergency ordinance and to the conditions under the Hunting Law. These derogations are related to Article 9 of the Birds Directive:

Article 38 o of the Emergency Governmental Ordinance 57/2007 – “By exception from the provisions of Article 33 paragraphs (1)-(4) and of Article 37 paragraph (1), the central public environmental protection authority (that is the Ministry of Environment Water and Forests) **shall establish, annually and whenever necessary, derogations**, provided that, in line with Article 9 of the Birds Directive, there is no acceptable alternative and that the derogating measures are not to the detriment of maintaining the populations of those species in a state of conservation favourable in their natural area and only in the following situations:

- a) in the interest of the protection of wild fauna and flora and the conservation of natural habitats;
- b) to prevent significant damage, in particular to crops, domestic animals, forests, fisheries and water, and in the case of animal species other than birds, and to prevent significant damage to other property;
- c) in the interests of public health and safety, and in the case of animal species other than birds, and for other reasons of major public interest, including of a social or economic nature, and for beneficial consequences of major importance for the environment;
- d) for the purposes of scientific research and education, repopulation and reintroduction of these species, as well as for breeding operations necessary for this purpose, including for the artificial propagation of plants;
- e) to allow, under strictly controlled conditions, in a selective manner and to a limited extent, the catching or holding of a limited and specified number of specimens of certain species of birds or of the species set out in Annexes no. 4 A and 4 B;
- f) in the interests of aviation safety, for all species of birds, including migratory ones.

(2) The derogations shall be established by order of the head of the central public authority for the protection of the environment and forests, with the approval of the Romanian Academy.

(2 ^ 1) By exception of the provisions of paragraph (2), for the establishment of derogations concerning all species of birds and species of mammals provided for in Annexes no. 4 A and 4 B, the assent of the central public authority for the protection of the environment and forests is also required.

(2 ^ 2) The procedure for establishing derogations shall be approved by order of the central public authority for the protection of the environment and forests:

- a) species that are subject to derogations;
- b) the means, systems or methods authorised for capture or slaughter;
- c) the risk conditions and the circumstances of time and space subject to which such derogations may be granted;
- d) the authority empowered to declare that the required conditions are met and to decide on the means, systems or methods that may be used, to what extent and by whom;
- e) the checks to be performed.

3. The competent authority for environmental protection shall report to the European Commission on the derogations applied, as follows:

- a) annually, for derogations applied to wild bird species;
- b) every two years, for the derogations applied to the wild species provided in annex no. 4 A (...).”

National action plans for large carnivores, *Ursus arctos* and *Canis lupus* were adopted, but there is no implementation of the plans except for **derogations Orders for hunting** or killing the animals posing a threat to humans.

In that sense, an Emergency Governmental Ordinance no 81/2021 on the approval of immediate intervention methods for preventing and combating attacks by Brown bears on persons and their property, within the built-up areas of localities, as well as for amending and supplementing normative acts, was passed allowing the killing of the Brown bears without the involvement of the environmental protection agencies.

There is no involvement of the environmental authorities in trapping and killing of Brown bears, and no formal analysis of the documentation. Previously, it was discussed in the commissions of the Parliament, where there is a modification proposed to also apply these measures outside the localities area (in the forests, and in the protected habitats of Brown bears).

To conclude, Emergency Governmental Ordinance no 81/2021 provisions **are breaching Articles 12 and 13 of the Habitats Directive** by the way the hunting of the bears is allowed. In addition, the modification proposed and debated by the Parliament currently would allow the elimination of the bear in the wild following the same methods, which would also violate European law. A similar provision is also being proposed under the Hunting Law affecting the protection of migratory birds (see section below).

Further, ministerial orders for harvesting wild animals are issued such as for ex Order no 1652/2021 on the approval of the derogation for certain species of wild animals establishing a derogation from article 33 paragraph 1 of Emergency Governmental Ordinance 57/2007, and setting an obligation on the beneficiary to inform the Environmental Protection Agency within seven days AFTER the harvesting took place. This provision is non-compliant with the requirements of the Habitats Directive.

### Protection measures required

The Emergency Governmental Ordinance 57/2007<sup>28</sup> concerning the regime of protected natural areas, conservation of natural habitats, and wild flora and fauna transposes the Habitats Directive and the Birds Directive. The EGO was approved through Law 49/2011 and includes the following Annexes which follow the Directive Annexes:

- Annex 2 of EGO 57/2007 corresponds to Annex I of the Habitats Directive - natural habitat types of community interest whose conservation requires the designation of special areas of conservation, and also corresponds to Annex I of the Birds Directive.
- Annex 3 of EGO 57/2007 corresponds to Annex II of the Habitats Directive - animal and plant species of community interest whose conservation requires the designation of special areas of conservation.
- **Annex 4.a of EGO 57/2007** corresponds to Annex IV of the Habitats Directive - animal and plant species of community interest in need of strict protection.
- Annex 4.b of EGO 57/2007 concerns animals and plants protected at national level.
- **Annex 5.a of EGO 57/2007** corresponds to Annex V of the Habitats Directive - animal and plant species of community interest whose taking in the wild, and exploitation, may be subject to management measures.
- Annex 5.b of EGO 57/2007 concerns animals and plants protected at national level that may be subject to management measures.
- Annex 5.c of EGO 57/2007 corresponds to Annex II of the Birds Directive – Species that can be hunted. In 2020, **PELECANIFORMIS – Phalacrocoracidae – Phalacrocorax carbo sinensis (The Grate Cormorant)** was added.

EGO 57/2007 establishes in Article 21 that the conservation objective and measures for protected areas

<sup>28</sup> <https://legislatie.just.ro/Public/DetaliuDocument/83289>

in Romania, including Natura 2000 Sites, are adopted through **management plans, which are approved by Order of the Minister of Environment, Water and Forests.**

**Article 21 paragraph 4 states** “*Compliance with management plans and regulations is mandatory for protected natural area managers, authorities regulating activities in the territory of protected natural areas, as well as for natural and legal persons who own or manage land and other assets and/or who carry out activities in the perimeter and in the vicinity of the protected natural area*”. The forest managers must respect the conservation measures provided by the management plans of the Natura 2000 sites.

Furthermore, the land use plans, those of local and national development, as well as any other plans for exploitation/use of natural resources in the protected natural area shall be harmonised by the issuing authorities with the provisions of the management plan.

Article 24 states “(1) *The forest arrangements of the production units/properties that are part of the protected natural areas will be compulsorily reviewed within 12 months from the approval of the management plans. Until the revision of the forest arrangements, the forest fund administrators will apply only those provisions that are in accordance with the legislation specific to the protected natural areas and the management plans in force.*

(2) *The development plans for the areas included in protected natural areas shall be modified by the responsible authorities in accordance with the provisions of the management plans, as well as with the conservation objectives of the protected natural areas that do not have a management plan*”.

## 2.2 SUBSIDIARY LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

Legislation that should provide for the implementation of species protection in forests and forestry sector include:

- The Forest Code – Law no 46/2008 as subsequently amended and modified;
- Law no. 407 of 9 November 2006 on hunting and protection of the hunting fund;
- Governmental Decision 715/2017 for the approval of the Regulation for the capitalisation of the wood mass from the public forest property;
- Order no. 766 of 23 July 2018 *for the approval of the Technical Norms regarding the elaboration of forest management plans, modification of their provisions and change of the category of land use from the forest fund and of the Methodology regarding the approval of exceeding the annual possibility/possibility for harvesting accidental products I*, as modified subsequently<sup>29</sup>;
- Order no1946/2021 for the approval of the Methodology for conducting environmental assessment for forest management<sup>30</sup>;
- Order 1947/2021 on the method of reviewing forest arrangements which partially or completely overlap with protected natural areas of Community interest<sup>31</sup>.

The technical norms on forestry do not provide any measures relevant for the protected species. It is worth noting that the Forest Act and other relevant acts were passed before the Nature Directives were transposed in Romania.

The Legislation concerning the strategic and appropriate evaluation of the forest management plans should provide the framework for the implementation of Articles 12 and 13 of the Habitats Directive, through the protection measures provided by these plans for the species. However, the mentioned ministerial Orders were challenged in the court of justice by the foresters, and injunction reliefs were granted until the annulment cases are finalised.

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<sup>29</sup> Order 1945/2021, published in MO on 10 November 2021

<sup>30</sup> <http://legislatie.just.ro/Public/DetaliiDocument/248333>

<sup>31</sup> <https://legislatie.just.ro/Public/DetaliiDocument/248357>

## The Hunting Law

**Law no. 407 of 9 November 2006 on hunting and protection of the hunting fund** established that hunting is allowed **only if certain conditions are met:**

- the hunter is granted a hunting permit in Romania or an equivalent if the hunter is not a Romanian citizen,
- the hunter is issued an individual hunting authorisation, or it is mentioned in a collective hunting authorisation,
- if the hunter has a weapon-carrying permit for hunting weapons in Romania or in the country of origin, and also
- if the hunter has insurance for accidents and civil liability.

The law also established norms on the capturing of live animals, on capturing live animals in the interests of scientific purpose, and on accidental capturing of animals.

Article 35 establishes that hunting inside the natural protected area where hunting is allowed must respect the provisions of the management plans of the protected areas that are approved. Hunting in the buffer zones, as defined in **EGO 57/2007**, where hunting is allowed, in natural protected areas, has to be practiced only for the species that are not subject to protection in that natural area. Hunting in areas of sustainable development within the biosphere reserves is permitted for members of local hunting associations only.

According to Article 36, species that are allowed to be hunted, which cause damage to agricultural crops, forestry or domestic animals, may be hunted outside the legal hunting period, subject to the approval of the administration.

According to **Article 38 (1) of this Law:**

*”In compliance with the provisions of Article 33 paragraph (1) lit. f) and of Article 33 paragraph (2) lit. f) of the **Emergency Governmental Ordinance no. 57/2007** the following are allowed:*

- a) the transport, by hunters, of game species that are allowed to be hunted, or of easily identifiable parts or products derived from them, , if they were acquired through legal hunting actions;*
- b) the possession, transport and marketing, by authorised legal entities, of game species that are allowed to be hunted, alive or dead or of any easily identifiable parts or products derived from them, harvested in compliance with legal provisions;*
- c) marketing, holding and/or transport for the purpose of marketing the species of birds included in annexes no. 5D and 5E to the Emergency Governmental Ordinance no. 57/2007 is made in accordance with the provisions of Article 33 of this emergency ordinance.*

**Article 38 (2) of this Law:**

*The transport, marketing, naturalisation and any operations regarding the game or easily identifiable parts or products derived from it, acquired **without complying with the conditions of the law**, are prohibited”.*

**It is worth noting that a recent proposal to modify the Hunting Law no 407/2006 would allow the hunting of migratory birds by daily species quotas per hunter, basically impossible to verify by any authority. This proposal is still being discussed by the Parliament, but the latest decision in Senate would allow the hunting of migratory birds, without monitoring<sup>32</sup>.**

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<sup>32</sup> <https://green365.ro/romania-o-destinatie-periculoasa-pentru-pasarile-migratoare-noua-lege-a-vanatorii-elimina-cotele-anuale-si-pune-in-pericol-zeci-de-specii/>  
[http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=19482](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=19482)



## The Forest law

In this regard, Article 27 paragraph 3 of the Forest Code provides that the forest management plans “*prepared and approved, in accordance with the law, for the forest fund **included in the protected natural areas** to take the management measures from their management plans or the minimum conservation measures, in case there is not yet a management plan, and their modification is approved only according to the provisions of Article 22 paragraph (1)*”.

We can see from this construction that only the forest inside protected natural areas would be protected from logging damage. However, in Romania there is a systemic problem concerning the forest management plans that are passed without following any conservation measures for the species, and they are enforced before the SEA and AA procedures are finalised, as described in the corresponding chapter.

At the same time, Article 22 of the EGO 57/2007 establishes the zoning of the protected areas (regulated in the management plan). In each zone, certain activities are allowed, some of them relevant for forestry and protection of the species:

- **Zones with strict protection** - which include both scientific reservations and wild areas where there have been no anthropogenic interventions, or their level has been very low. It is forbidden to carry out any human activities, except for research activities, ecological education, and ecotourism activities, within the limitations described in the management plans.
- **Integral protection zones** include the most valuable natural heritage assets. In these areas, the following are prohibited:

a) any form of exploitation or use of natural resources, as well as any form of land use, incompatible with the purpose of protection and/or conservation;

b) construction-investment activities, except for those intended for the management of the protected natural area and/or for scientific research activities or those intended for ensuring national security or preventing natural disasters.

**As an exception**, in the areas of full protection outside the perimeters of scientific reservations, the following activities may be carried out:

(...)

f) interventions for the ecological reconstruction of natural ecosystems and the rehabilitation of unsuitable or degraded ecosystems, with the approval of the protected natural area administration, based on the decision of the scientific council, and approved by the central public authority for environmental and forest protection;

g) actions to remove the effects of certain calamities, with the approval of the administration of the protected natural area, based on the decision of the scientific council, with the approval of the central public authority for the protection of the environment and forests. If the calamities affect forest areas, the actions to remove their effects shall be carried out with the approval of the administration, based on the decision of the Scientific Council, and with the approval of the central public authority for the protection of the environment and forests;

h) actions to prevent the mass multiplication of forest pests, which do not require tree extraction, and actions to monitor them;

i) actions to combat the mass multiplication of forest pests in cases of outbreaks, which require the evacuation of timber from the forest, with the approval of the administration, based on the decision of the scientific council, with the approval of the central public authority for protection of environment and forests.

- **Buffer zones**, called *sustainable conservation areas* or *sustainable management areas*, are not included in areas with full, strict protection or sustainable development of human activities, and which make the transition between strict protection areas to sustainable development areas.

In the buffer zones, respectively in the areas of sustainable conservation and sustainable management, it is forbidden to carry out new construction, except for those that strictly serve the administration of the protected natural area or scientific research activities or those intended to ensure national security or prevent natural disasters.

**The following activities can be carried out in sustainable conservation areas: (...)**

e) *interventions for the maintenance of habitats for the protection of certain species, groups of species or biotic communities that are subject to protection, with the approval of the central public authority for environmental and forest protection, and with the approval of the protected natural area administration, based on the decision of the scientific council provisional action, elaborated and valid until the entry into force of the management plan;*

f) *interventions for the ecological reconstruction of natural ecosystems and the rehabilitation of inadequate or degraded ecosystems, with the approval of the protected natural area administration, based on the decision of the scientific council, and approved by the central public authority for environmental and forest protection;*

g) *actions to remove the effects of certain calamities, with the approval of the administration of the protected natural area, based on the decision of the scientific council and, subsequently, with the approval of the central public authority for the protection of the environment and forests. If the calamities affect forest areas, the actions to remove their effects shall be carried out with the approval of the protected natural area administration, based on the decision of the Scientific Council, subsequently approved by the Central Public Authority for Environmental and Forest Protection;*

h) *forest protection activities, and actions to prevent the mass multiplication of forest pests, which require the evacuation of timber from the forest in quantities exceeding the provisions of the arrangements, are made with the approval of the protected natural area administration, based on the decision of the scientific council, with the approval of the central public authority for environmental and forest protection;*

i) *traditional activities for the use of renewable resources, within the limits of the productive capacity and support of ecosystems, through low-impact technologies, such as the harvesting of berries, mushrooms and medicinal plants, in compliance with the regulations in force. They can only be carried out by natural or legal persons who own/manage land within the park or by local communities, with the consent of the administration of the protected natural area;*

j) *Forest care and management works, special conservation work with an emphasis on promoting natural regeneration and without the extraction of dead wood, except in cases where there are attacks of forest pests that can spread over large areas, primarily whole plots adjacent to the areas with strict or integral protection in the rest of the buffer zone, the application of forestry treatments that promote the natural regeneration of the forest, is allowed: the treatment of transformational cuttings to gardening massive with a regeneration period of at least 10 years. Forest treatments will be applied with restrictions imposed by park management plans and forest management guidelines in protected areas; (...)*

k) *Forest care and management works and conservation works;*

l) *application of forestry treatments that promote the natural regeneration of trees: treatment of transformation cuttings to gardening, treatment of gardening and quasi-gardening cuttings, treatment of classic or massive progressive pruning, treatment of successive classic or massive pruning cuttings, pruning treatment in groves, and of acacias, poplars and willows. In the case of Euramerican poplar stands, the treatment of cleared cuttings in small parquets can also be applied, and in spruce stands, cleared cuttings on plots of maximum 1 ha;*

m) *hunting activities with the approval of harvest quotas and hunting actions by the administrator of the protected natural area. The approval of the harvest quotas by the administrator of the protected natural area is made based on the decision of the scientific council.*

- **Areas of sustainable development of human activities** are areas where investment/development activities are allowed, giving priority to those of tourist interest, but respecting the principle of

sustainable use of natural resources and prevention of any significant negative effects on biodiversity.

***The following activities may be carried out in areas of sustainable development, in accordance with the provisions of the management plans: (...)***

e) Forest care and management works and conservation works;

f) the application of forestry treatments that promote the natural regeneration of trees: the treatment of transformation cuttings to gardening, the treatment of garden and quasi-gardening cuttings, the treatment of classic or massive progressive pruning, the treatment of successive classic or massive pruning cuttings, the treatment of pruning in acacia groves and poplar and willow bushes. In the areas of sustainable development in national parks, the treatment of cleared cuttings in spruce groves on areas of maximum 1 ha can be applied, as well as the treatment of cleared cuttings in small parquet in the Euramerican poplar groves. In the areas of sustainable development in the natural parks, the treatment of the cuts cut into small parquets in the spruce stands on surfaces of maximum 1 ha and Euramerican poplar can also be applied; (...)

EGO 57/2007 also sets the basis for the appropriate assessment in Article 28, the procedure being detailed in Order 19/2010 of the Minister of Environment and Forests (as named when the order was issued).

### **2.3 SPECIFIC RULES APPLICABLE AT FOREST HOLDING LEVEL UNDER THIS LEGISLATION**

No specific rules for species protection have been identified. The technical norms were approved in the year 2000 through Orders 1948, 1949, 1950, before the European acquis was transposed and implemented. Therefore, the protected species and habitats or protected natural areas were not defined and no measures were possible.

According to the hunting law, the environmental protection agency has no input in allowing hunting activities and it is not subject to any environmental assessment procedure.

According to the hunting law, certain areas are defined as *hunting funds* – *Article 1 paragraph 1 letter n "the hunting management unit consisting of the fauna of hunting interest and the land area, regardless of its category, regardless of the owner, and so delimited as to ensure the greatest possible stability of the fauna of hunting interest within it; surfaces from national parks and from the Danube Delta Biosphere Reserve are not included in the hunting funds". Article 5 defines the criteria for defining a hunting fund.*

*The hunting funds are given, according to certain criteria stipulated in Article 7 of the law, in administration of certain legal persons, such as, hunting organisations, forest administrators, public institutions related to scientific research, educational establishment on hunting, etc.*

According to Article 17, the managers of the hunting funds must develop hunting management plans, valid for 16 years. When the hunting funds overlap with the natural protected areas (including Natura 2000 sites), the hunting management plans must be correlated with the management plans of the protected areas.

The manager of the hunting fund is required to conduct the evaluation of the species that are the subject of the hunting management plan and that are described in Annex 1 and 2 of the hunting law.

In the areas where hunting is not allowed (according to the provisions of Article 22 of EGO 57/2007 it is not allowed into the integral and strict protection zones, and also according to Article 1 letter n of the Hunting Law, into the national parks and the *Danube Delta Biosphere Reserve*), the management of the hunting ground is ensured by the administrators of the natural protected area.

*Through the hunting management plans, and the management plans of the protected areas, the implementation of Article 12 and 13 of the Habitats Directive and of Article 5 of the Birds Directive (Articles 19 and 20 of the Hunting Law), would be ensured.*

Order no 1460/2021 has established a harvest quota (a certain amount of each species to be hunted) for

25 species of birds for which hunting is allowed according to the habitats directive, an interesting example being *Aythya fuligula* – of which there are 347 species even if the Romanian Ornithologic Society estimates about 20 to 50 pairs in the entire country (<http://pasaridinromania.sor.ro/Rata-motata>). *Aythya fuligula* is also mentioned in Annex 2 and Annex 3 of the Birds Directive.

Quotas for hunting are also given for other species, the most controversial being for the Brown Bear (*Ursus Arctos*).

The immediate intervention to prevent and combat attacks of Brown bears (*Ursus arctos*) on people and their property in the built-up areas of the localities was regulated by Emergency Ordinance no. 81/2021. It regulates the mode of intervention related to bears, such as by expulsion, tranquilisation and relocation or extraction by euthanasia or shooting. This normative act aiming to resolve unusual situations that occur in built-up areas, is enforced and is to be approved by the Parliament. By the approval, the Emergency Governmental Ordinance is enforced.

The intervention team is led by the mayor of the administrative-territorial unit in the area where the event takes place, in his or her capacity as head of the local committee for emergency situations and consists of:

- the mayor/deputy mayor of the administrative-territorial unit in the area where the event takes place,
- the staff of the territorially competent gendarme structures,
- the specialised technical staff employed by the manager who has concluded a contract for the provision of permanent services/immediate intervention,
- the veterinarian.

The fur and skull of the animal extracted according to the provisions are handed over to the Forest Guard and remain in the public property of the state.

The carcass of the animal extracted by shooting belongs to the manager who performed the extraction and can be used according to the legal provisions in force, or is destroyed by incineration, if the immediate intervention was performed by the Forest Guard or if the specimen was extracted by euthanasia.

As above mentioned, Emergency Governmental Ordinance no 81/2021 provisions are breaching Articles 12 and 13 of the Habitats Directive by the way the hunting of the bears is allowed, including the lack of involvement of the environmental authorities (Environmental Protected Agency, The Environmental Guard) in trapping and killing of Brown bears, and the lack of formal analysis of the documentation.

In addition, the modifications proposed and debated by the Parliament currently would allow the elimination of the bear in the wild following the same methods and in the protected habitats of Brown bears and also outside the localities area (in the forests,) which would also violate European law.

### 3 GOVERNMENT ADVICE TO FOREST OWNERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

We could not find any advice given to foresters concerning protected species.

Certain NGOs (Agent Green Association<sup>33</sup>, WWF<sup>34</sup>, Romanian Ornithological Society<sup>35</sup>, Declic,<sup>36</sup>) have published information warning about logging going on in periods sensitive for breeding such as spring and summer, or places known for nests of various species, but the owners and the companies executing the logging received no advice concerning these issues, and the authorisation issued by the forest administrators usually contains no measures for birds, protected species and habitats. Since 2017, logging authorisation is issued directly by the forest administration without any input from the environmental protection agencies.

We are not aware of any guidelines concerning the implementation of legal requirements on species protection.

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[https://www.agentgreen.ro/wp-content/uploads/2020/09/2020\\_raport\\_arii\\_protejate\\_Barnova\\_Repedea\\_ROSPA0092\\_ROSCI0135.pdf](https://www.agentgreen.ro/wp-content/uploads/2020/09/2020_raport_arii_protejate_Barnova_Repedea_ROSPA0092_ROSCI0135.pdf)  
<https://www.agentgreen.ro/raport-nou-taierile-ilegale-de-paduri-din-ariile-protejate-natura-2000-din-romania-s-au-intetit-in-ciuda-riscului-iminent-de-a-ajunge-la-curtea-europeana-de-justitie/>

<sup>34</sup> <https://wwf.ro/paduri/pns-am-sesizat-comisia-europeana/>  
<https://wwf.ro/noutati/ministerului-agriculturii-nu-i-pasa-de-tarani-si-de-mediul/>  
<https://wwf.ro/noutati/povesti-de-succes/viata-unui-fermier-din-rucar-la-intersectia-cu-padurile-populate-de-ursi/>  
<https://wwf.ro/noutati/legea-de-adoptare-a-oug-81-2021-in-forma-adoptata-de-parlament-poate-crea-premisele-vanatorii-la-trofeu/>  
<https://wwf.ro/noutati/dezvoltam-un-plan-integrat-de-monitorizare-a-speciilor-cheie-in-zona-pilot-arad-deva/>

<sup>35</sup> <https://www.libertatea.ro/stiri/romania-vrea-sa-dea-liber-la-vanatoarea-de-pasari-migratoare-de-ce-noua-lege-a-vanatorii-3926600>; <https://editiaverde.ro/legea-vanatorii/>

<sup>36</sup> <https://spotmedia.ro/stiri/mediu/protest-declic-in-fata-ccr-fata-de-noua-lege-a-vanatorii-salvati-pasarile-migratoare-nu-le-luati-piuitul-video>

## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION IN FORESTS

According to a Greenpeace report<sup>37</sup>, in 2018, the controlling authorities were able to detect only 1% of the total illegal logging that takes place in Romania, respectively 200,000 m<sup>3</sup> of the approximately 20 million m<sup>3</sup> of illegally cut wood annually in the country. The most efficient control authorities in combating the phenomenon of illegal logging, according to the quantities of wood confiscated, would be Police – 55,393 m<sup>3</sup>, Forest Guard – 30,415 m<sup>3</sup> and Gendarmerie – 1,824 m<sup>3</sup>. Due to the relaxation of the law on Contraventions, in mid-2017, the number of confiscated means of transport has decreased by 74% in the context in which the volume of illegally cut timber and reported by the authorities, has increased. Further, concerning sanctions, the current legislation does not sanction the developers of forest management plans when they erroneously classify forests in inappropriate functional categories, resulting in their degradation or compromise.

Enforcement should be carried out through monitoring programs. However, a monitoring program is carried out only if the forest management plan is issued an SEA permit or a Natura 2000 permit (when appropriate assessment is done without being connected to the SEA procedure). However, as we described, more often the forest management plans are applied without any environmental assessment, or they stop after the screening decision, with the conclusion that the SEA is not needed (see also the infringement procedure already started against Romania). For forest management plans located outside the protected areas, the SEA or Natura 2000 permits are not even requested, and it is not clear from the provisions of Order no 1946/2021 if these issues were properly resolved. If the SEA and AA procedure as well as the monitoring plans are correctly carried out, they should provide for individualised measures and indicators concerning the impact of logging and the effectiveness of the protective measures for species. However, there is no methodology concerning the drafting and execution of the monitoring plans and there are no public reports available for previous procedures. Knowing that no specialists except forestry engineers are hired to deal with forestry, it is more likely that the monitoring plans will not be enforced properly.

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<sup>37</sup> <https://www.greenpeace.org/static/planet4-romania-stateless/2019/11/5cbe6848-greenpeace-illegal-logging-report-2018.pdf>

## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FORESTRY ACTIVITIES WHICH MIGHT AFFECT THE PROTECTED SPECIES

Logging is done on the basis of exploitation authorisations, issued by the head of the forest district, which does not include obligations concerning the protection of species nor any measures for monitoring.

Exploitation authorisation is regulated by the Forest Code<sup>38</sup>, Article 60, and is issued pursuant to the acts of valorisation<sup>39</sup> (which identify on site the trees that will be harvested), which in turn are issued under the forest management plan<sup>40</sup>.

Exploitation authorisation is issued without any environmental impact assessment, it is not notified to the environmental protection agencies, and it does not provide any framework for any protective measures for species or habitats. An EIA is not applied in any case for logging projects. EIAs are carried out only for projects described in Annex 1 or 2 of the EIA directive. Related to forests, it would be possible only for projects provided by Annex 2 point 1 letter d Initial afforestation and deforestation for the purposes of conversion to another type of land use.

Forest management plans are submitted to SEA and AA. Following the infringement procedure started against Romania concerning the EU Timber Regulation, SEA and AA assessments on forest managements plans and access to information, new Orders of the Minister of Environment Water and Forest were passed on 10 November 2021. According to these orders, the assessments of forest management plans should be done accordingly to include the environmental objective concerning the protection of species.

One of the Orders, Order no 1947/2021<sup>41</sup>, regulates the revision process for plans issued illegally without SEA or AA, a subject of the infringement procedure, stating that:

- the beneficiaries of the plans whose validity expires by 31.12.2025 must be notified to the competent environmental protection agency within three months of the order entering into force;
- the beneficiaries of the plans whose validity expires between 01.01.2026 and 31.12.2030 must be notified to the competent environmental protection agency within nine months of the order entering into force.

The revision of the assessments aims to ensure a proper protection of the environmental objectives during the enforcement of the forest management plans, and to help prevent further loss of habitats and species, identified in the reasoned opinion issued by the European Commission. The conservation objectives also ensure the conservation of the protected species that are affected by the logging works, such as birds, bears, lynx, insects etc.

Order no 1946/2021<sup>42</sup> has approved a new methodology for conducting the SEA for forest management plans. The procedure aims to resolve the issues raised by the European Commission in the reasoned opinion<sup>43</sup> (INFR(2020)2033) communicated during the infringement procedure started against Romania

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<sup>38</sup> <http://legislatie.just.ro/Public/DetaliuDocument/90768>

<sup>39</sup> Article 9 of Order 767/2018<sup>39</sup> on the approval of the Procedure for approval, modification and scrapping of the acts of valorisation for the wood mass coming from the national forest fund and from the forest vegetation located on lands outside the national forest fund and the Procedure on the development and harvesting of timber from the forest fund for which the law does not require the preparation of forest management and forest vegetation outside the national forest fund <https://legislatie.just.ro/Public/DetaliuDocumentAfis/204228>

<sup>40</sup> Article 1 letter a of the Regulation for the capitalisation of the wood mass from the public property forest fund approved by GD 715/2017 for the approval of the Regulation for the capitalisation of the wood mass from the public property forest fund <http://legislatie.just.ro/Public/DetaliuDocument/193925>

<sup>41</sup> <https://legislatie.just.ro/Public/DetaliuDocument/248357>

<sup>42</sup> <http://legislatie.just.ro/Public/DetaliuDocument/164195>

<sup>43</sup> [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_20\\_1212](https://ec.europa.eu/commission/presscorner/detail/EN/INF_20_1212)

in this regard. The commission found that:

- The EU Timber Regulation ([Regulation \(EU\) 995/2010](#)) is not properly implemented;
- Romanian authorities manage forests, including by authorising logging, without evaluating beforehand the impacts on protected habitats as required under the Habitats Directive and Strategic Environmental Assessment Directives;
- There are shortcomings in public access to environmental information in the forest management plans;
- Protected forest habitats have been lost within protected Natura 2000 sites, in breach of the Habitats and Birds Directives.

The content of the Order seems to integrate environmental goals into the adoption process of the forest management plans, by creating the framework for quality strategic and appropriate assessments that should also integrate Annex VI requirements and the conservation objectives of the species. However, certain concerns remain:

- It is not clear whether both the SEA and AA are conducted also for the regions that do not overlap with Natura 2000 sites (that are outside/next to Natura 2000 plans) but might affect protected species and habitats. Article 6 paragraphs 5 and 6 mention the plans being subject to environmental assessment without mentioning which one: SEA or AA or both? Article 6 paragraph 6 letter c finally mentions the forest management plans located outside Natura 2000 sites or overlapping partially or totally with Natura 2000 plans, that might produce effects directly or indirectly on the natural protected areas at local or international level. It is not clear if they would be subject only to SEA or AA, or both.
- A secondary legislation modifies and adds to the Forest Code, which is a superior legislation, and thus not legally correct.

For example, article 21 paragraph 2 of the Forest Code states, “***Until the approval of the forestry management plan, elaborated under the present law, the provisions of the technical solution notice meeting shall apply. If the forestry management plan is not approved by the Technical Advisory Commission for Forestry in the same year as the technical solution notice session is held, this will trigger the suspension of the application of the provisions of the forestry management plan until the date of the approval***”. Order 1946/2021 mentions that the SEA and AA procedures are mandatory, and it seems they fully describe, the way the assessments are made. However, they cannot prevent the enforcement of the technical solution meetings (first draft of the forest management plan) being applied **before** the forest management plans are approved. This means they are applied before the SEA or AA procedures start, because **the first draft of the plan is The Technical Solution Notice – the 1st planning Conference**, according to Article 1 paragraphs 1 and 2. However, order 766/2018 as modified by Order 1945/2021 stipulates that the first version of the forest management plans **includes The Technical Solution Notice – the 1st planning Conference**. Article 2 of the same Order also mentions that: “*The provisions of the forest management plans enforced will be modified also if it is not approved (..)*”, clearly allowing enforcement of the plan without approval.

- The **timeline provided by the Forest Code** Article 22 paragraph 1 is still not connected to the SEA and AA procedure as it is provided by Order no 1946/2021. The Forest Code stipulates: “*The harvesting of the wood mass can be done after the issuance of the environmental administrative act (the screening decision or the SEA/AA permit), within the terms provided by the environmental legislation, but not more than 60 days from the date of the organisation of the technical solutions notice session - 2nd Planning Conference, date until which the competent environmental authority has the obligation to issue under the environmental administrative act*”. According to Article 14 paragraph 2 of Order 1946/2021, the final alternative of the plan is *the technical solutions notice session - 2nd Planning Conference*. **This**



**is presented for the first time when the environmental report is finalised.** This means that the 2<sup>nd</sup> Planning Conference is finalised **before the environmental report is finalised** and that the wood harvesting will start in 60 days from when the Conference was finalised, regardless of whether the SEA/AA procedures were finalised, because the provisions of the Forest Code are superior acts that cannot be infringed by secondary legislation. Of course, this will not solve the issues of environmental law violation since the forest management plans will still be applied and the wood harvested before the strategic environmental assessment and appropriate assessment are finalised.

The forest management plan should be submitted to SEA procedures because it is regulated as a plan by the national legislation. The related project would be the exploitation permit issued for the actual logging to specific private companies, which was discussed earlier as not being submitted to EIA procedure as logging is not one of the projects stipulated by Annex 1 or 2 of the EIA Directive. An AA is usually only carried out for projects that are subject to either EIA or SEA in Romania, although there is no specific prohibition provided by the law. As mentioned, the SEA procedure is either not carried out or stops with the screening decision, stating that there are not any significant effects on the protected species. The information provided during the screening phase is usually very general, not based on the location and behaviour of the species that exist in the logging area. No information concerning other forest management plans in the vicinity that might generate cumulative effects are provided. These deficiencies arise from the way the legislation concerning the appropriate assessment is adopted (through Ministerial Order no 19/2010, as secondary legislation while the Emergency Governmental Ordinance 57/2007 only mentions this procedure in Article 28, almost without any regulatory norms; the SEA procedure is passed through Governmental Decision no 1076/2004, while the definitions of the assessments are mentioned in the Emergency Governmental Ordinance 195/2005 concerning the protection of the Environment, Article 9. According to the Romanian Constitution, the laws issued by Parliament are the main regulatory acts and they cannot be modified or completed through secondary legislation such as ministerial orders or governmental decisions, which can be issued only for the enforcement of laws. As a result, the forest management plans only apply the Forest Code and the secondary legislation in the forestry area, which does not provide any environmental assessments.

The recent modification of the Forest Code, as analysed, does not properly enforce environmental assessments, still allowing the forest administrators to issue logging permits without any environmental approach. Forest road construction is used as a criteria for whether to conduct an SEA procedure for the forest management plans or not (if the forest management plan proposes work that would need an EIA, usually road construction), but the usual conclusion is that there is not any need for the SEA procedure, or even if it is decided that the SEA and appropriate assessment is needed, the forest administrators still issue logging permits because the forest management plans are enforced even if the environmental assessments were not finalised, as analysed above.

Article 22 of the Emergency Governmental Ordinance no 57/2007 established several zones to be determined through the management plans of the natural protected areas, and in each zone certain activities are forbidden, as detailed above. However, there are no criteria specific to individual species. These should be established through the nature protection plan which should also include forest management plans, according to Article 27 paragraph 3 of the Forest Code. However, forest management plans are created by different authorised experts, and they usually do not take into consideration the provisions of the nature protection plan. There is no body to control this conflict generated by the fact that each part of the management of the same area has different administrators: the administrator of the natural protected area, the administrator of the forest and the administrator of the hunting fund. Sometimes, according to Article 27 paragraph 2 of the Forest Code, there can be one administrator both for the natural protected area and for the forest: the company that is supporting its income from logging (in most of the cases, RNP Romsilva RA, a state company). In this case, there is a conflict of interests between the interests of the forester, who needs logging to earn money, and the administrator of the protected area, which should implement conservation objectives via its own funds. Therefore, the three plans carried out for the same region (forest plan, Natura plan and hunting plan) are not connected in order that the conservation objectives of the species are met. As an example of bad

management of the natural protected area by a forester, usually, for thousands of ha, they only hire one biologist with general expertise, making the enforcement of the measures aiming to protect the biodiversity almost impossible.

The elaboration of the forest management plans is done in accordance with the provisions of the spatial planning plans.

The latest developments concerning the mentioned orders that were aimed at closing the infringement procedure opened by the European Commission (INFR(2020)2033), are that the Orders were challenged in court by the Association of Forests Administrators of Romania<sup>44</sup>. The Orders of Ministers are administrative normative acts, therefore subject to annulment procedure that can be opened by any interested party, according to Law no 554/2004 regarding the administrative disputes law<sup>45</sup>. In this case, the court decided to grant injunctive relief against both Orders until the annulment cases are over. Therefore, so far, only the provisions of the Forest Code will apply.

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<sup>44</sup> [https://portal.just.ro/57/SitePages/Dosar.aspx?id\\_dosar=5700000000031691&id\\_inst=57](https://portal.just.ro/57/SitePages/Dosar.aspx?id_dosar=5700000000031691&id_inst=57)

[https://portal.just.ro/57/SitePages/Dosar.aspx?id\\_dosar=5700000000031718&id\\_inst=57](https://portal.just.ro/57/SitePages/Dosar.aspx?id_dosar=5700000000031718&id_inst=57)

<sup>45</sup> <https://legislatie.just.ro/Public/DetaliiDocument/134066>

## 6 OVERALL ASSESSMENT OF SPECIES PROTECTION IN FORESTS

### 1. KEY FINDINGS (CHALLENGES)

#### 6.1 TRANSPOSITION ISSUES

- The species protection rules of Nature Directives are literally transposed into Romanian jurisdiction. They are transposed by the Emergency Governmental Ordinance 57/2007 approved by Law 49/2011 and further modified on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna.
- Current legislation providing for derogations of species protection rules seem to be in breach of the Nature Directives. Emergency Governmental Ordinance no 81/2021 provisions entail a breach of Articles 12 and 13 of the Habitats Directive as they allow for derogations to hunting bears without environmental controls. National action plans for large carnivores derogations allow for administrative orders to be issued for hunting animals posing a threat for humans. In addition, the modification proposed and debated by the Parliament currently would allow the hunting of the bear in the wild following the same methods.
- Ministerial orders for harvesting wild animals are issued such as for ex Order no 1652/2021 on the approval of the derogation for certain species of wild animals establishing a derogation from article 33 paragraph 1 of Emergency Governmental Ordinance 57/2007, and setting an obligation on the beneficiary to inform the Environmental Protection Agency within seven days AFTER the harvesting took place.
- A recent proposal to modify the Hunting Law no 407/2006 would allow the hunting of migratory birds by daily species quotas per hunter, impossible to verify by any authority. This proposal is still being discussed by the Parliament, but according to the latest decision in Senate, it would allow the hunting of migratory birds, without controls.
- Several laws and byelaws should provide for the implementation of species protection in forests and the forestry sector, including the Forest Code, Order no 766 on forest management plans et. al. These regulations were adopted before the transposition of the Birds and Habitats Directive and have not been amended to integrate their species protection provisions.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

- No specific rules on species protection in forestry were identified by the national expert.
- Technical norms on forestry do not provide any measures relevant for the protected species.

##### *Specific rules applying to the forestry sector*

- No specific rules have been identified by the national expert. The technical norms were approved in the year 2000 through Orders 1948, 1949, 1950, before the European acquis was transposed and implemented. Therefore, the protected species and habitats or protected natural areas were not defined and no measures were possible.
- Logging is done on the basis of exploitation authorisations, issued by the head of the forest district, which does not include obligations related to species protection.

## 6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT

### Government advisory services

No specific advice given to forest owners concerning the protected species was identified by the national expert. NGOs often issue warning about logging being done in periods of breeding or in locations known for the presence of protected species, but the owners and companies executing logging receive no advice concerning these issues.

Since 2017, logging authorisation is issued directly by the forest administration without any input from the environmental protection agencies.

### Enforcement of species protection legislation

- Forest management is supervised and monitored by the Forest Guard, which has the mandate for monitoring, inspection and controlling over the application of the forest regime in the national forest fund and in the forest vegetation on the land outside the national forest fund, as well as over the application of the hunting regime in the national hunting fund.
- The Romanian Gendarmerie has competence (based on the Forestry Code) to control and ascertain forestry infringements.
- The Romanian police includes a department for combatting forest crimes.
- The institutions focus virtually all their enforcement activities on illegal logging.
- Current legislation does not sanction the developers of forest management plans when they erroneously classify forests in inappropriate functional categories, resulting in their degradation.
- Enforcement should be realised through monitoring programs according to the national experts. However, a monitoring program is carried out only if the forest management plan is issued and an SEA permit or a Natura 2000 permit is granted – forest management plans outside of protected areas requires none of the two assessments. Provisions of Order no 1946/2021 do not clarify these issues properly.
- According to a Greenpeace report, in 2018, controlling authorities were able to detect only 1% of total illegal logging, which seems to be the main target of enforcement authorities.
- Specialists, hired for the protection of species by the administrators of nature protected areas and forests (which are often the same, with the main goal being to obtain the administration contract) are usually overwhelmed by having to cover thousands of ha (per person) and with only general expertise, which makes species protection impossible.

## 6.4 ASSESSMENT AND AUTHORISATION PROCEDURES

### SEA and AA

Forest management plans are subject to SEA and AA. Following the infringement procedure started against Romania concerning the EU Timber Regulation, SEA and AA assessments on forest management plans and access to information, and new Orders of the Minister of Environment, Water and Forest were passed. Despite Order 1946/2021 approving new methodology to conduct SEA for forest management plans, some issues remain. Firstly, it is not clear whether both SEA and AA are conducted for areas that do not overlap with Natura 2000 sites, but might affect species and habitats. Secondly, this is secondary legislation which modifies and adds to the Forest Code, which is superior legislation. This is not legally correct and may provide a loophole in the legislation. There are inconsistencies in the system which allow for forest management plans to be applied before the SEA and AA are finalised assessing and ensuring species protection, which result in forest administrators issuing logging permits without any environmental assessment.

### Other authorisation procedures

- The Emergency Governmental Ordinance no 57/2007, in Article 22, establishes several zones to be determined through the management plans of the natural protected areas, and in each zone certain activities are forbidden. However, there are no criteria specific to individual species.
- Nature protection plans and forest management plans are authorised by different authorities. This means that forest management plans usually do not take into consideration the provision of the nature protection plans. Nobody seems to have the attribution to resolve this conflict.

## 2. RECOMMENDATIONS

### Legislative transposition measures of species protection rules:

- Certain transposition problems in the current legislation should be amended in particular those providing for derogations of species protection rules in breach of the Nature Directives. They include the Emergency Governmental Ordinance no 81/2021 provisions that allow for derogations to hunting bears without environmental controls and the Ministerial Order no 1652/2021 setting an obligation on the beneficiary of a hunting derogation to inform the Environmental Protection Agency within seven days AFTER the harvesting took place.

### Preventive and implementing measures:

- There are several inconsistencies in the implementing legislation which are not fully addressed despite the new measures reacting to the infringement procedures concerning the EU Timber Regulation, SEA and AA assessments on the forest managements plans and access to information. Clearer species protection measures need to be introduced in the Forest Code, to address remaining inconsistencies in Order 1946/2021 approving new methodology to conduct SEA for forest management plans. They include the uncertainties regarding SEA and AA outside Natura 2000 sites and the possibilities to grant permits for forest management plans to be applied before the SEA and AA are finalised, which results in forest administrators issuing logging permits without any environmental assessment ensuring species protection.

### Public advisory and enforcement:

- There are no guidelines on species and habitats protection which might apply to the exploitation of forests.
- Enforcement of existing measures should be bolstered so that it focuses on more than just illegal logging and includes species protection.
- Since 2017, logging authorisation is issued directly by the forest administration without any input from the environmental protection agencies. Enforcement should be done through monitoring programs with sufficient resources and forestry specialists to ensure species protection.

### Authorisation and permits:

- Species protection measures could be implemented faster and with more impact through logging permits. However, they are currently being issued without an environmental assessment, as forest management plans are implemented even if environmental assessment is not finalised (see legislative inconsistencies described above).

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# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## TASK 3 – Case Study *Sweden*

ENV/2020/OP/0022



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## ABBREVIATIONS

BD	Birds Directive
CDDA	Nationally designated protected areas
CNC	Contractual nature conservation
EC	European Commission
EPA	Environmental Protection Agency
EU	European Union
HD	Habitats Directive
MCPFE	Ministerial Conference on the Protection of Forests in Europe
NGO	Non-governmental organisation
UN	United Nations

# 1 INTRODUCTION

The following analysis presents the findings on the implementation of Article 12 and 13 of the Habitats Directive, and Article 5 of the Birds Directive in the forestry sector of Sweden. It is based on the review of the legislation and policy documents. Multiple experts were contacted and interviewed to collect additional information and insights, of which an extensive amount has been incorporated into the case study.

## 1.1 FOREST AND FORESTRY IN SWEDEN

Sweden is a country dominated by forests, with the forest area covering approximately 69 % (28 million ha) of its total land area (SkogsSverige, 2021)<sup>1</sup>. This represents just under 1 % of the world's commercial forest areas, with the industry playing a dominant role in the national economy. The largest land biome is Boreal forest, followed by Nemoral and Boreo-Nemoral forests found in the southern regions (see Figure 1). With the nation's longest distance from north to south being 1 574 km, there is a significant variation in soil and climate conditions. Both are more favourable in the southern parts of Sweden. Overall, the nation's landscape is defined by wetland areas, lakes, and nutrient-deficient soils (Royal Swedish Academy of Agriculture and Forestry, 2015)<sup>2</sup>.

Swedish forests offer a wide range of ecological services to its population, such as hunting, reindeer herding, and various outdoor activities. Forests also mitigate climate change, with the use of wood for heating and buildings decreasing the nation's carbon footprint (Hameedi, 2018)<sup>3</sup>. The forest industry is largely export-oriented, with 90 % of the pulp and paper production being exported. Sweden's forest industry directly employs over 70 000 people (Swedish Forest Industries, 2021)<sup>4</sup>.

Forest ownership is largely private, with approximately 50 % of all forests being owned by 330 000 private individuals. In addition, 25 % is owned by private limited companies. 6 % belongs to other private owners, such as the church of Sweden. Despite this, the Member State has a tradition of the general public's right to roam private land ("allemansrätten"). In addition, the largest landowner is the state-owned *Sveaskog AB* with a share of 14 %. The state also owns 3 % of Sweden's forest land through state authorities, funds, foundations etc. Other public owners, such as municipalities and county councils, possess a 2 % share (Forest Sweden, 2019)<sup>5</sup>.

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<sup>1</sup> SkogsSverige (2021). 'Fakta om skog', available at: <https://www.skogssverige.se/skog/fakta-om-skog>. Accessed on 12/08/2021.

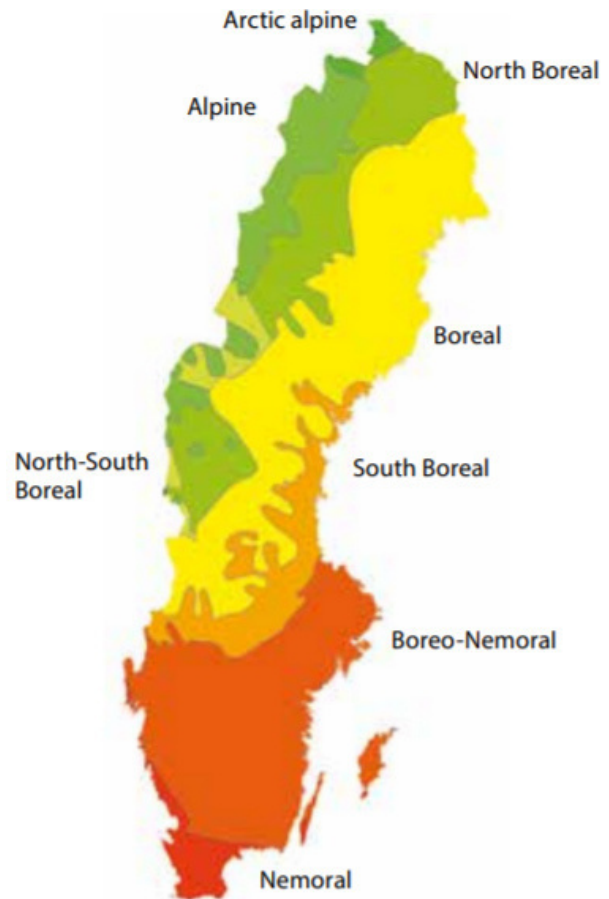
<sup>2</sup> Royal Swedish Academy of Agriculture and Forestry (2015). *Forests and Forestry in Sweden*.

<sup>3</sup> Hameedi, A. (2018). 'Sustainable Forest Management: A successful comeback of forests in Norway and what other countries can learn from it', *Project GE*.

<sup>4</sup> Swedish Forest Industries (2021). 'Swedish forest industry significance', available at: <https://www.forestindustries.se/forest-industry/swedish-forest-industry/>. Accessed on 12/08/2021.

<sup>5</sup> Forest Sweden (2019). 'Vem äger Sveriges skogar?', *SkogsSverige*.

**Figure 1:** Sweden consists of eight vegetation zones. Most of the land area is covered by the various boreal zones, which consist predominantly of coniferous forests. Deciduous forests can be found in the much smaller region in the south of Sweden, the nemoral zone. (Figure extracted from *Forests and Forestry in Sweden, 2015*).



## 1.2 GOVERNANCE

Ownership is established in the Swedish Constitution and also represents a central right in Swedish law. The principal legislation regulating forestry can be found in the Forest Management Legislation (Skogsvårdslagstiftningen), which states that the forest is “a national asset and a renewable resource that should be managed so that it provides a good return at the same time as biodiversity is maintained” (Skogsstyrelsen, 2020)<sup>6</sup>. The Forest Management Legislation states that, parallel to managing Sweden’s forests, other public interests must also be considered. However, national forest policy is not perceived as particularly strict by the Swedish Forest Agency, with legislation containing few mandatory rules.

The Swedish forest policy is based on the principles of freedom as well as responsibility with an expectation of doing more than the law requires. Under Swedish law, a forest owner has ample freedom to develop forest management according to individually defined goals. However, the forest management legislation also establishes the responsibility for the forest owner to ensure that any forest cut down is planted again (1979:429) / SFS 2008:662). The Government, or the authority determined by the Government, is responsible for the supervision of such actions in compliance with forest or environmental legislation.

<sup>6</sup> Skogsstyrelsen (2020). *Skogsvårdslagstiftningen: Gällande regler 1 april 2020*.

### 1.3 INSTITUTIONS

The **Swedish Forest Agency** (Skogsstyrelsen) is responsible for supervision of forest legislation compliance, as well as certain aspects of the environmental legislation. It predominantly provides guidance on production of biomass; however, also on nature conservation and management, protection of forest, and monitoring of legislative compliance. The Agency is also responsible for monitoring and evaluating achievements towards the national environmental goal, “Living Forests”. In addition, it handles notifications that forest owners, or their representatives, provide prior to planned felling.

The **Swedish Environmental Protection Agency** is responsible for most of the protected areas, as well as for species protection law in general, with support from the Forest Agency. The EPA is also responsible for delegating mandate and responsibilities, including certain financial resources, from national level down to county administrative boards. At national level, the EPA coordinates efforts together with the Swedish Forest Agency.

The **Swedish Board of Agriculture** has a role in providing economic support and guidance to certain areas with forest grazing as well as Fennoscandian wooded pastures.

The **County Administrative Boards** conduct the practical work regarding formal protection of most forests and decisions of exemptions from species protection law. At regional level, the County Administrative Boards take decisions on formal protection with financial compensation. In cases of forest activities e.g. felling notifications, decisions on formal protection with financial compensation are usually taken jointly with the Forest Agency.

Sweden’s principal forest owner organisation is the **Federation of Swedish Family Forest Owners** (LRF skogsägarna), a central organisation managing the three regional associations: ‘Södra’ (south), comprised of 52 000 members, ‘Mellanskog’ (middle), comprising 26 000 members, and ‘Norra skog’ (north), comprising 27 000 members. Norra skog is the result of a mergence between two associations, ‘Norrskog’ and ‘Norra Skogsägarna’, in 2020.

**Swedish Forest Industries Federation’s** purpose is to bolster companies' competitiveness and work for the increased use of forest-based products. In association with the member companies, the Federation works with trade policy in Sweden and the rest of Europe, and with market issues for wood products. This includes initiatives to strengthen forest industry research in Sweden and the EU, as well as monitoring and standardisation in the wood and construction sector, and in the fields of energy and the environment. The member companies take part in and contribute to the Federation's work through committees. Forestry advisors provide the expertise needed by the forest owners in terms of forest management planning and forestry operations. There are over 1 000 advisors active in the country.

### 1.4 PROTECTED SPECIES

Of the 100 species found in Annex IV of the Habitats Directive’s reporting 2013-2018 for Sweden, the majority belong to vascular plants (42), mammals (27) and arthropods (19). Data is available for 99 of these species, with the exception being the small northern bog orchid (*Platanthera obtusata*). For this species, data access is restricted to rapporteurs of the findings as well as civil servants. This is to ensure that the risk of interference is minimised by limiting access to its mapping. There are no data sources available on occurrence of species dependent on forestry management, especially for species whose coverage is less thorough than that of plants or birds. This includes insects, lichen, mosses and fungi, particularly in the northern parts of the country. This is problematic in terms of implementation of the species protection rules under the Nature Directives. In general, awareness tends to be higher for species that are a prominent feature in Natura 2000 areas, as well as for larger animals (Artdatabanken, 2013).

Of the 274 wild bird species protected under the Birds Directive in Sweden, the largest groups are the

Passeriformes and Charadriiformes with 110 and 50 species respectively. Data is available for 257 of these species, with gaps concerning wintering and passage birds. Maps are available for all breeding birds except the Grey heron (*Ardea cinerea*) and Kentish plover (*Charadrius alexandrinus*), with the latter having been registered as extinct since 2002 and the former having publicly available mapped data of its sightings.

The most prominent actions causing disturbance in Swedish forestry include clear-cutting, the preparation of cutting actions, as well as ground preparations for planting following clear-cutting. In addition, the increasing intensity of clear-felling, densification in production forests, as well as loss of tree meadows are major concerns in forestry. Such actions are driven by e.g. the construction of forest roads, wind power plants and land drainage. Forest protected species have been declining, with 87 species with a forest connection becoming extinct in Sweden over the past few years (Skydda Skogen, 2022).

Forests cover 64 % of Sweden's land area<sup>7</sup>. Contrary to what is happening in many other parts of the world, the EU's forested area has increased by nearly 10 % since 1990, with the exception of Sweden, where a 0.5 % decrease was reported<sup>8</sup>. Sweden is the world's third largest exporter of paper, pulp, and sawn wood products and employs 70 000 people on timber exploitation and a further 50 000 single-person businesses are active in the sector<sup>9</sup>.

Recent reports show that, on average, the condition of European forests is deteriorating with net removals of atmospheric CO<sub>2</sub> decreased by 28 % from 2013 to 2018. There are significant threats and challenges, mainly to forest health, economic use and sustainability due to the increasing demands on forests, for carbon sequestration, for renewable bio-based materials and products which can substitute non-renewable ones, for rural livelihoods, and for recreation, all in the context of a rapidly changing climate<sup>10</sup>.

In Sweden, the government's plans to increase logging and relax rules designed to protect woodland habitats have been strongly criticised. The Swedish model of replacing old-growth forests with monoculture plantations, in particular, has been criticised for having a negative impact on biodiversity<sup>11</sup>, with some claiming that it violates the Habitats Directive<sup>12</sup>.

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<sup>7</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Forests,\\_forestry\\_and\\_logging](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Forests,_forestry_and_logging)

<sup>8</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Forests,\\_forestry\\_and\\_logging#Forests\\_in\\_the\\_EU](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Forests,_forestry_and_logging#Forests_in_the_EU)

<sup>9</sup> <https://www.politico.eu/article/sweden-forests-europe-strategy-climate-change/>

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<sup>11</sup> <https://www.theguardian.com/environment/gallery/2021/apr/16/forests-felling-swedens-ancient-trees-biodiversity-sami-environment> ; <https://www.euractiv.com/section/biomass/opinion/swedens-forest-crimes/> ; <https://skyddaskogen.se/?lang=en>

<sup>12</sup> <https://www.endseurope.com/article/1674412/forest-campaigners-seek-eu-action-swedish-logging>

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTS

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

#### Habitats Directive

The Species Protection Ordinance (Artskyddsförordningen) 2007: 845, §4 states that for **all wild species** requiring careful protection as well as wild birds, it is prohibited to:

- 1. intentionally capture or kill animals;
- 2. intentionally disturb animals, especially during the mating of the animals, breeding, wintering and migration periods;
- 3. intentionally destroy or collect eggs in the wild;
- 4. damage or destroy the animals' breeding grounds or resting places.

The Environmental Code (Miljöbalken), 1998:808, Section 8 covers the provisions on the protection of biological diversity, stating the prohibition of:

- killing, injuring, capturing, or disturbing of wild animals within the country, or removing or damaging of such animals' eggs, roe or nests, or the damage or destruction of such animals' reproductive areas and resting places,
- removal, damage or taking seeds or other parts from wild plants within the country or part of the country,
- import, export, transport, storage, preparation and display of or trade in animals, plants or eggs, roe, nests, or other products extracted from animals or plants,
- the introduction and spread of invasive alien species and minimising, mitigating, and remedying the adverse effects of such species on biodiversity.

Paragraphs 1, 2, 3 and 4 of the Species Protection Ordinance (Artskyddsförordningen) 2007: 845, §4 can all be directly related to **Article 12 of the Habitats Directive**.

The Species Protection Ordinance (Artskyddsförordningen) 2007: 845, §7 is the national transposition of the first paragraph of **Article 13 of the Habitats Directive**. It states that it is prohibited to intentionally pick, collect, cut off, uproot or destroy plants marked with N or n in Annex 1 of the Regulation in their natural range in nature.

The Species Protection Ordinance (Artskyddsförordningen) 2007: 845, §25, 2 is also relevant to transpose the second paragraph of Article 13 of the Habitats Directive. It states that it is forbidden to store for sale or offer for sale, sell, buy or exchange living or dead animals, plants, eggs, seeds, spores and parts of animals and plants of the species marked N or n in Annex I in the Regulation

#### Birds Directive

The Species Protection Ordinance (Artskyddsförordningen) 2007: 845, §4, which transposes Article 12 of the Habitats Directive, also transposes Article 5(a)(d). It only partially transposes Article 5 (b)(c) of the Birds Directive as Article 5(b) is not transposed in relation to the prohibition of deliberate destruction of, or damage to, their nests or removal of their nests. Furthermore, Article 5(c) is not transposed in relation to the prohibition of keeping these eggs, even if empty.

Species Protection Ordinance (Artskyddsförordningen) 2007: 845, §25 transposes Article 5(e) of the Birds Directive, stating that “it is prohibited to keep living or dead birds of species that live wild in the

European territory of the European Union”. Along with the prohibition of keeping birds, §25 also mentions the intention of selling, buying, or exchanging said bird species.

However, the government published a review of the Species Protection Ordinance on 10 June 2021, which explicitly mentions the proposal of a ban on egg collection in its overview. A proposed amendment to the existing national equivalent of the Birds Directive Article 5 is provided, which includes the replacement of chapter 8 of the Environmental Code (Miljöbalken). The proposed update to §11 of the Environmental Code states that it is prohibited to take eggs, even if they are empty from birds that occur in the wild in the territory of the European Union. This would, however, only solve one element of the transposition issues highlighted above.

Species Protection Ordinance (Artskyddsförordningen) 2007: 845, §16 states that, in line with the Council Regulation (EC) No 338/97, it is prohibited to import, export or re-export living birds or bird eggs with embryos of species living in the wild in the European Union's European territory.

There is not a specific reference to forest in the legislation transposing the Birds Directive.

## 2.2 SECTORAL LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

The Forestry Act (Skogsvårdslagen) 1979:429 is the law covering the regulation of forestry management in Sweden, with the Swedish Forest Agency acting as the competent authority. The Swedish Environmental Law, §3.4 also states that there are 12 central government agencies acting as operative within specific fields, including forestry (Naturvårdsverket, 2017)<sup>13</sup>. The Forestry Act §7:19 states that damage caused by forestry measures must be prevented or limited in habitats and on soil substrates where bird species protected by the Species Protection Ordinance occur, and species that are worthy of protection for various reasons and are listed in the Forestry Act. This provision limits the scope of protection to the species listed in the Ordinance and the Forestry Act which do not reflect the Birds Directive’s scope. This does not comply with the scope under Article 5 of the Birds Directive, which applies to all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. This has been recognised by the government in response to Commission requests to improve transposition of the Nature Directives. A Review of the Species Protection Ordinance was published on 10 June 2021.

**The list of protected species**, including birds, is included under Regulations §30 of the Forestry Act, which according to their conservation status, may require the adoption of certain forestry measures. Coupled to the regulations in §30 is a list of prioritised bird species which have a conservation status that may require certain considerations in forestry. The criteria for species on this list are the following:

- Nationally threatened species;
- Nationally near threatened species;
- Globally red-listed species;
- Species in Article 1 of the Birds Directive;
- A species whose population has decreased more than 50 % during the period 1977–2006.

However, the legal implementation of the protection of these species has been and continues to be under review in national courts, for example with a court decision from July 2021 having argued that the city of Gothenburg had conducted a deficient species inventory that contains inaccuracies regarding the presence of red-listed species (Svea Hovrätt, 2021)<sup>14</sup>.

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<sup>13</sup> Naturvårdsverket (2017). *Swedish Environmental Law: an introduction to the Swedish legal system for environmental protection*.

<sup>14</sup> Svea Hovrätt (2021). ‘Vänerns tingsrätts, mark- och miljödomstolen, dom 2020-03-02 i mål nr M 139-19’, M 3276-20.



Despite the above-mentioned prohibitions related to species set out in the Environmental Code (Miljöbalken), 1998:808, Section 8, there is an exemption from this protection under Section 12, stating that the landowner or the person with the right to use the land, may harvest specimens of mistletoe for sales purposes, if it is done to nurture the host tree, and the survival of the population concerned is not adversely affected. This species is not protected under the Habitats Directive, it is a commonly occurring species in certain parts of the country, and considered a parasite living on trees (Kungsör, 2020)<sup>15</sup>, therefore, this exemption does not concern the Habitats Directive.

The Hunting legislation (Jaktlag) 1987:259, §4 states that bird species that can temporarily be found naturally in the country, and species that belong to the country's wildlife population, should be preserved parallel to promoting a stable development of wildlife.

## 2.3 SPECIFIC RULES APPLICABLE AT FOREST HOLDING LEVEL UNDER THIS LEGISLATION

Legal obligations on forest management, including species protection of all birds, are applicable to individual forest owners as well, including the prohibitions from the Birds and Habitats Directives as stated in the Species Protection Ordinance (Artskyddsförordningen) §4. Forest owners have ample freedom to develop their own forest according to their own goals. However, according to the forest management legislation (1979:429)/SFS 2008:662, forest owners have a responsibility to ensure that any forest that has been cut down is planted again.

In addition, planting new forest requires an assessment of how many plants are needed by considering aspects such as soil treatment, climate, risk for damage as well as basic environmental considerations (Naturvårdverket, 2021)<sup>16</sup>. The Government, or an authority determined by the Government, is responsible for the supervision of such actions.

The environmental legislation (Miljöbalken Chapter 2, §2) states that individual landowners conducting or intending to conduct an activity have the obligation to acquire the necessary knowledge regarding the nature and scope of the activity, along with its potentially detrimental effects. This is a means of protecting human health and the environment against damage or inconvenience. This so-called 'demand of knowledge' (Kunskapskravet) effectively refers to the knowledge needed for the practical application of the provisions of the Environmental Code (Miljöbalken). They are accountable for the implementation of this obligation as they are responsible for activities which may have a detrimental effect on the environment.

According to this requirement, persons in charge of forest activities should declare how they intend to take nature protection (including species protection) values into consideration when filing a **notice** to the Forest Agency ahead of planned final felling activities. However, despite this being a legal requirement in both the environmental legislation and the forestry legislation, it is inadequately implemented according to the species data bank (Artdatabanken) which argues that excessive felling of old forests with high natural values is one of the main reasons behind certain forest species being red listed (Artdatabanken, 2020)<sup>17</sup>. The more intensively cultivated forests at present do not create sufficiently good conditions for many species either, and are often felled again before the species have had time to establish themselves. The majority of Swedish citizens are also calling for stricter environmental requirements for forestry (Greenpeace Sweden, 2021)<sup>18</sup>, with forest managers not always including environmental considerations in their felling notices, which complicates the legal assessment by the Forest Agency.

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<sup>15</sup> Kungsör (2020). 'Julpynta med mistel', *boende och miljö*.

<sup>16</sup> Naturvårdverket (2021). 'Skogen är en ovärderlig resurs för klimatet', available at: <https://www.naturvardsverket.se/Miljoarbete-i-samhallet/Miljoarbete-i-Sverige/Uppdelat-efter-omrade/Klimat/Klimatneutralt-Sverige/Skogen/>.

<sup>17</sup> Artdatabanken (2020). 'Hur mår den svenska skogen egentligen?', *SLU Artdatabanken*.

<sup>18</sup> Greenpeace Sweden (2021). 'Majoritet vill ha hårdare miljökrav på skogsbruket', *Greenpeace*.

Approximately 65 000 notifications are provided annually (Tidningen Näringslivet, 2022). For each notification, the Swedish Forest Agency calculates the risk of violating the rules for protected species from the available information on the site. For an area of 0.5 hectares or larger, a felling notification must be provided at least six weeks in advance. These are usually handled by an automatic computer programme that picks out a small number of reports for review by a forest consultant, which includes checking the information provided. If something is unclear, the landowner is provided with an opportunity to complete the notification. The map sent in along with the felling report is also checked against known natural and cultural values that may need to be considered when felling. In case information is lacking regarding how to address e.g. protection zones by water or consideration-demanding biotopes, the site may be visited prior to approval. Lack of compliance may in the long run result in injunction or banning of said site. In 2014, field visits were carried out for approximately 7 % of notifications prior to felling (Skogsstyrelsen, 2015)<sup>19</sup>.

Consultations between forest managers and the Forest Agency should occur if activities could have adverse effects on environmental values according to the environmental legislation (Miljöbalken Chapter 12, §6). The guidelines state that consultation may be required for discussion of necessary precautionary measures for species, which should be noted in a common protocol. Consultation may take place in the field, or via telephone or email. However, forest activity notifications such as a felling notice to the Forest Agency is currently interpreted as a consultation. This means that if the Forest Agency does not take any action within six weeks, the forest manager may proceed with the felling. The possibility of silent agreement poses problems of compliance with the species protection rules of the Nature Directives.

Information regarding protected species is available in a species observation system, “Artportalen”, which is governed by the Swedish University of Agricultural Science. The information of species is unevenly spread over the country, with certain parts of the country possessing ample information regarding all kinds of species, including protected species, whereas other areas might lack information altogether.

A felling notice can lack any information on environmental values and considerations to these, thus complicating any legal supervision by the Forest Agency and increasing the risk of loss of habitats and environmental damage. A stakeholder from World Wildlife Fund Sweden (WWF) explains that, at a regional level, the Swedish Forest Agency assesses felling notifications from forest managers and subsequently decides whether formal protection in the form of nature consideration (including to species) with financial compensation is needed according to legal requirements. In cases of formal protection with financial compensation, decisions are taken jointly between the Forest Agency and the relevant County Administrative Board. At the national level, the Forest Agency is responsible for coordinating efforts together with the Swedish Environmental Protection Agency.

According to current guidelines, the Forest Agency and the County Administrative Board shall agree on whether, and to what extent, a forest activity may be prohibited in accordance with the Species protection ordinance (Artskyddsförordningen). This does not need to occur for each individual case but can be conducted through dialogue between authorities regarding regionally important species or areas (Naturvårdsverket, 2016)<sup>20</sup>. In the proceedings, the Forest Agency and County Administrative Board decide whether the precautionary measures proposed by landowners are adequate and in accordance with the Species Protection Ordinance. The Environmental Protection Agency (EPA) further states that none of the authorities shall have interpretive precedence over the other, and that ongoing dialogue is necessary to prevent one authority from handling a case or limiting another authority’s course of actions.

§30 of the Forestry Act 1979:429 (Skogsvårdslagen) only requires limited consideration of nature and environmental criteria/standards in forest activities. It states that the Government or the authority appointed by the Government **may** issue regulations on how and the extent to which nature conservation and cultural preservation interests and standards need to be taken into account in connection with forest

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<sup>19</sup> Skogsstyrelsen (2015). ‘Extra fältkontroller av avverkningsanmälningar’, available at: <https://news.cision.com/se/skogsstyrelsen/r/extra-faltkontroller-av-avverkningsanmalningar.c9788182>. Accessed on 05/10/2021.

<sup>20</sup> Naturvårdsverket (2016). *Gemensamma riktlinjer för handläggning av artskyddsärenden i skogsbruket*.

management, as regards the form and size of felling areas, regeneration methods, the retention of individual trees and groups of trees, fertilisation, drainage, and the routing of forest roads. Such regulations have at present not been issued. A stakeholder also argues that there is a legal uncertainty on the issuing of those regulations and on their content regarding the environmental standards they refer to and therefore questioned whether this requirement is sufficient from a forest legislation perspective, and in accordance with the requirement in the national environmental legislation to be taken into consideration<sup>21</sup>.

An issue with the Forest Agency guidelines (Skogsstyrelsens riktlinjer) stating the prohibition of harming plants and animals protected by the Species Protection Ordinance is that they are not legally binding. This means that a landowner has no legal obligation to comply with them. It thereby also complicates the procedure for enforcement or control of landowners. At present, the Forest Agency guidelines appear to rely on the goodwill of landowners.

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<sup>21</sup> Written answer provided by a stakeholder on 6 July 2021.

### 3 GOVERNMENT INSTRUCTIONS TO FOREST OWNERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

In the work to achieve the goals of sustainable forestry, the government has pointed out monitoring as one of the most important tasks for the Swedish Forest Agency (Skogsstyrelsen). Therefore, an overview of the obligations of a forest owner are presented by the Swedish Forest Agency. Statements include that:

- all forests cut must be re-grown so that the timber-producing capacity of the ground is fully utilised;
- rejuvenation by cutting (clear-cutting) must be reported to the Swedish Forest Agency at least six weeks in advance if it covers an area of 0.5 hectares or more;
- in order for felling to be permitted, it must promote the development of the forest through clearing or thinning, or be appropriate for regrowth of new forest through rejuvenation felling;
- the owner must preserve the biological diversity of the forest.

The Swedish Forestry Agency provides information regarding planned felling actions in areas with protected plants and animals on their website, stating that they are protected by the Species Protection Ordinance, along with their habitats and places of occurrence (Skogsstyrelsen, 2021)<sup>22</sup>. The Swedish Forestry Agency also provides an overview of the Forestry Act (Skogsvårdslagen) and recommends reading about environmental considerations and discussing with your timber buyer or forest consultant regarding your case. In addition, the Agency's website provides ample information regarding environmental considerations. To obtain information regarding species on one's property, the Swedish Forest Agency has an e-service that contains digital maps showing identified red-listed sites. The Agency also states that further information regarding such species can be found on a portal on the Swedish University of Agricultural Sciences' (SLU) website called 'species data bank' (Artdatabanken). This portal acts as a knowledge centre for species and habitat types and enables owners to see where species have been observed. Moreover, the Swedish Forest Agency mentions that not all forests are inventoried and sometimes the data on species are incomplete, in which case the area is not mapped. The Swedish Forest Agency also states that the owner is responsible for finding out if there are protected species that require special consideration when carrying out a forestry measure (Skogsstyrelsen, 2022).

The Forest Knowledge website (Skogskunskap) serves as a guide and advisor for forest owners by providing an overview of laws and regulations that they must know about and take into consideration. This includes an overview of the idea that forest owners have a great deal of freedom; however, also responsibility. It highlights forest owners' moral responsibility to preserve **species**, mentioning that they have a special responsibility to preserve species that are endangered or rare in the rest of the world using mountain lemongrass as an example. It also mentions and provides links to various aspects of the Forestry Act that may be relevant to owners, such as rules for notification of final felling, minimum final felling age, forestry close to mountains, deciduous forest, nature conservation, cultural environmental protection, and reindeer husbandries. It also defines the two objectives of the policy, namely that the forest should provide high and valuable timber production and that the forest's **environmental values** should be preserved and developed (Öhman et al., 2016)<sup>23</sup>. It also presents two systems (FSC and PEFC) through which owners can obtain a certification to demonstrate responsible and sustainable forestry. Both systems are linked to species protection and have the same goals; however, they are differently structured. Both certificates are entirely voluntary. It also talks about property invasion, mentioning owners' rights to compensation, a suggestion to seek the help of an expert

<sup>22</sup> Skogsstyrelsen (2021). 'Tänk på det här när du planerar en åtgärd där det finns fridlysta arter', *Skogsstyrelsen*.

<sup>23</sup> Öhman, K., Lämås, T. and Wilhelmsson, E. (2016). *Svenskt skogsbruk och dess frågeställningar*.

who can review the case, and the cost coverage of said procedures. Finally, the website states that owners dealing with forest management matters should refer to the Swedish Forest Agency, whereas matters that fall under the Environmental Code can also be referred to the county administrative board.

Areas where forest activities may be forbidden due to the occurrence of protected species are currently insufficiently identified partly due to limited dialogue between the Forest Agency and the County Administrative Board. Similarly, the non-profit association 'Protect the Forest' (Skydda Skogen) raised an issue regarding felling occurrences in forests with protected birds and plants in 2018 (Natursidan, 2018). Forest company 'Södra' was supposedly aware of their occurrence in the forest, however proceeded with felling. Nature conservation associations and other NGOs collectively demanded the County Administrative Board to address the issue, which also sparked debate regarding the Swedish Forest Agency and County Administrative Board having set species protection requirements too low. An example was the case of the bee-eater whose distribution area was subject to felling activities based on the assumption that ,it can live on a smaller area , however NGOs argued that it is not at all certain. The felling would thereby also violate the Species Protection Ordinance and not live up to environmental goals. Three stakeholders interviewed for this project argue that the knowledge of forest owners is generally limited, with forest owner associations sometimes falling short on providing information regarding species protection. A stakeholder explains that the Forest Agency has a limited capacity to provide information regarding species and provide advice on specific management. They take information they have from reported red-listed species, some observations from the National Species Portal and other information from the public such as non-profit organisations. This information is only provided if a species of concern is noticed in an area reported for certain forestry activities. At present, there is no legal requirement for a forest management plan in Sweden which could be used as a tool to enhance species protection. Forest Owner Associations may assist forest owners to develop forest management plans; however, species information is rarely included in this planning.

## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION IN FORESTS

The Swedish Forest Agency supervises compliance with Section 30 of the Forestry Act (Skogsvårdslagen). With the support of the law, they also may issue regulations based on the notion that nature conservation must be taken into account in forest management, including felling activities. In 2020, 67 000 felling reports were received. However, only 2 500 on spot controls prior to felling were conducted by the Swedish Forest Agency each year, with 508 cases having resulted in intervention or halting of felling (Skydda Skogen, 2021)<sup>24</sup>.

The supervisory responsibility for violations in the forest is distributed in the same way as in the preventive supervision in 12:6 in the Environmental Code (Miljöbalken). Examples of supervision of forestry measures according to the Environmental Code include checking that decisions have been complied with, that self-monitoring has worked, or that the prohibition in the Species Protection Ordinance has been considered. The rules on cooperation and information between supervisory authorities also apply in the event of infringements. Compliance of formal decisions is extremely high, with a stakeholder stating that over 90 % are followed. The same stakeholder adds that failure to comply results in prosecution and sanctions in the form of fines or imprisonment of up to six years for violating the rules (Polisen, 2021).

Data on protected species may be uncertain for several reasons. As different requirements are set for measures to verify or assess the quality of the information regarding findings, it is important to assess the risk that a certain forestry measure may have in terms of conflict with the provisions of the Species Protection Ordinance. Findings can have different detailed information regarding location, and it may therefore be difficult to determine whether one forestry measure comes into conflict with species protection. Information on findings can be submitted with various detailed location information. However, if it is not possible to assess the location indication, this may need to be checked through field visits or assessments based on the habitat type concerned. Moreover, an assessment covering the respondent's ability to correctly determine species should always take place.

When a felling report is received by the authority, it is automatically reviewed by a system containing approximately twenty layers of maps, where different interests are noticed through "flagging". Such maps may include existing nature conservation agreements, Natura 2000-areas, or other objects with natural values. In addition, there are layers specific to each district. These could be e.g. local species inventories or municipal nature conservation plans. The Swedish Forest Agency requires a minimum of six weeks to check that the rules in the Forest Management Legislation (Skogsvårdslagstiftningen) are followed, and whether there is anything that needs to be protected in the area.

When a report is flagged, the site is to be inspected to see whether the felling needs to be adapted to meet the legal requirements. Sometimes, it can be a simple case of postponing the felling until breeding season for birds is over. However, in case the planned felling endangers species included in the protection ordinance, the felling request will be rejected on the basis that it may significantly affect natural and cultural environmental values. In case the forest owners want to contest the rejection, the case is taken to court where a formal decision is subsequently made. A general threat **to species** in Swedish forests is the Agency's limited time to carry out checks. This is due to the Agency receiving approximately 65 000 felling reports annually. Therefore, most are now handled by an automatic computer programme that randomly picks out a small number of reports for review by a forest consultant. A report regarding how to handle economic compensation for forest owners who are not allowed to fell their forest due to a risk of violating species protection rules was published on 10 June 2021. The report, appointed by the Swedish government, also investigated what information regarding species the government should provide and what the land landowner should find out at their own expense.

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<sup>24</sup> Skydda Skogen (2021). 'The Swedish Forest Agency is criticized in SVT: Rarely stops felling', *Skydda Skogen*.

There are voluntary certifications under FSC contributing to species protection through applicable indicators in the Swedish FSC forest management standard; however, such ventures are separate from any state intervention. An example of this is the Action Programme for Threatened Species where FSC initiatives are considered.

## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FORESTRY ACTIVITIES WHICH MIGHT AFFECT THE PROTECTED SPECIES

While national species protection rules relating to Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive are generally well-reflected in the assessment and authorisation procedures for forestry activities, implementation has been inadequate. This is predominantly due to the Swedish Forest Agency receiving thousands of felling requests on an annual basis and not having the capacity to check all requests. In case no objections, questions or concerns are raised, the request is deemed approved, and the forest owner is thereby free to start felling.

In addition, there is an issue of forest owners not reporting sightings of protected species on their land, meaning that species prioritised for protection in the Forestry Act may be present in areas subject to clear-cutting. This has been a driving force behind the increase in red-listed species in Swedish forests.

The procedures to implement species protection rules in forestry were only adopted and put in practice in 2016 and are strongly hampered by a general lack of knowledge regarding what protection forests require in view of the species they host. In many cases, the Forest Agency only provides guidance to forest owners on how to manage their land with regard to protected species. Decisions that have required the owner to adapt their management of forestry to avoid negative impact on said species have been rather scarce. Despite approximately 65 000 notifications of final felling being filed by the Swedish Forest Agency each year (Skogsstyrelsen, 2019)<sup>25</sup>, the Agency often only provides guidance to landowners on how to manage the land with consideration to listed protected species. Decisions that require the landowner to adapt their forest management to avoid negative impact on forestry and its species have been rather rare, with only about 100 cases annually.

In regions where information on species is available, protection rules are typically well-reflected in the authorisation procedures. Yet in the regions in which information is lacking, protection rules do run the risk of being overlooked.

Another issue is that the Forest Agency guidelines (Skogsstyrelsens riktlinjer) stating the prohibition of harming plants and animals protected by the Species Protection Ordinance are not legally binding, meaning that a landowner has no legal obligation to comply with them. It thereby also complicates the procedure of enforcement. At present, the Forest Agency guidelines appear to rely on the goodwill of landowners.

There are no EIA requirements regarding general forest activities or forest management.

Once the EIA is required according to the Annex to the legislation listing the type of projects, impact on protected species is assessed (listed in the Swedish Forestry Act), however only if the species occurrence is known beforehand. There are no general rules requiring the assessment of the impacts on protected species from planned forest project or management actions.

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<sup>25</sup> Skogsstyrelsen (2019). 'Skogsägare som nekats avverka i fjällnära har rätt till ersättning', *Skogsstyrelsen*.



## 6 OVERALL ASSESSMENT OF SPECIES PROTECTION IN FORESTS

### 1. KEY FINDINGS (CHALLENGES & BEST PRACTICES)

#### 6.1 TRANSPOSITION ISSUES

The species protection rules from Nature Directives are transposed into Swedish law via the Species Protection Ordinance and the Environmental Code. Forest owners in Sweden have freedom to develop their land activities according to their own decisions setting forest land goals; however, they also carry certain responsibilities. For example, the owner of the forest is responsible for finding out if there are protected species that require a special consideration when carrying out a forestry measure. But there is a lack of systematic implementation of species protection rules and preventative approach to species protection. The legislation is not clear enough about how environmental standards should be taken into account in forestry.

Transposition of the Birds Directive does not seem to be completed under the current Swedish legal framework, i.e. Article 5 c). The Forestry Act (Skogsvårdslagen), §7:19 limits the control of damage caused by forestry measures in habitats where protected bird species occur and only to protected bird species and endangered species, not to all bird species as required by Article 5 of the Birds Directive. This has been recognised by the government in response to Commission requests to improve transposition of the Nature Directives. A Review of the Species Protection Ordinance was published on 10 June 2021.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

- The Forestry Act is the law covering the regulation of forestry management in Sweden.
- A list of protected species is included in the Regulation Sec 30 of the Forestry Act, which, according to their conservation status, may require the adoption of certain forestry practices. However, the legal implications of the protection of these species has been, and continues to be, under review in national courts.
- The environmental legislation states that individual landowners conducting or intending to conduct an activity have the obligation to acquire necessary knowledge regarding the nature and scope of the activity, along with its potentially detrimental effects – this so called “demand of knowledge” actively refers to the knowledge needed for practical application of the provisions of the Environmental Code.
- If a listed protected species is discovered by the authorities, measures are taken by the authorities according to the Forest Act and guidelines regarding species protection in forests (“riktlinjer för artskydd i skogen”), which typically may result in authorisations to forest activities such as felling exemptions, guidance to landowners, or other decisions. The Forest Agency as well as the County Administrative Boards are currently limited in resources to conduct such species protection actions.

##### *Specific rules applying to the forestry sector*

- Forest owners are obliged to submit a planned felling notice with a minimum of six weeks period in advance for the Forest Agency to assess whether the area in question may host endangered-listed species, the Agency is unable to check many cases. Instead, requests are typically handled by an automatic computer programme that picks out a small number of reports for review by a forest consultant.
- Persons in charge of forest activities should declare how they intend to take nature values into consideration when filing a notice to the Forestry Agency ahead of planned final felling activities. This is a legal requirement of environmental and forestry legislation but is inadequately

implemented (based on species data bank). The system should be strengthened and enforced in a way that puts higher priority on species protection.

- Forest managers fail to consistently include environmental consideration in their felling notices, which complicates the legal assessment by the Forest Agency. The system seems to be based on good faith, which is inadequate and should be addressed.
- Legislative interpretation of a forest activity notification such as a felling notice being currently interpreted as a consultation means that if the Forest Agency does not take any action within six weeks, the forest manager may proceed. This is problematic from the perspective of species protection. The interpretation should be addressed to avoid issues with Nature Directives compliance.
- The County Administrative Boards conduct the practical work regarding formal protection of most forests and decisions of exemptions from species protection law. However, (partly) due to limited dialogue with the Swedish Forest Agency, areas where forest activities are forbidden due to the occurrence of protected species are currently insufficiently identified.

### **Other implementing or stimulating measures**

- Voluntary incentives like the Action Programme for Threatened Species operate without state intervention. Preventative dialogue among different stakeholders would help in coordinating species protection measures and their implementation across the board.

## **6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT**

### **Government advisory services**

- The Swedish Forest Agency is responsible for the supervision of forest legislation compliance, as well as certain aspects of the environmental legislation. They provide information regarding planning felling actions in areas with protected plans and animals on their website. They also provide an e-service with digital maps showing identified red-listed sites; however, not all forests are inventoried and general lack of species occurrence data persists. This **could be a good practice** example if all forests were inventoried, and more species occurrence data were available.
- The Forest Agency mostly just provides guidance to forest owners on how to manage their land with regard to protected species. Decisions that require the owner to adapt their management of forestry to avoid negative impact on said species have been rather scarce.
- The Forest Knowledge website serves as a guide and advisor for forest owners by providing an overview of laws and regulation that they must know and take into consideration.

### **Enforcement of species protection legislation**

The Swedish Forest Agency supervises compliance with the Forestry Act. It may issue regulations based on the notion that nature conservation must be taken into account in forest management, including felling activities.

The high numbers of felling reports submitted to the Agency combined with the Agency's limited time to carry out a physical check, lead to a situation where species protection is endangered. The capabilities of the Agency to properly screen submissions should be strengthened, as this is the area where implementation of the Nature Directive seems to be weaker.

Compliance with issued formal decisions is extremely high, with over 90 % being followed. Failure to comply results in prosecution, for example to assess if forestry measures according to the Environmental Code include checking that decisions have been complied with, that self-monitoring has worked, or that the prohibition of the Species Protection Ordinance has been considered.

Findings on conflicts of forestry measures with Species Protection Ordinance can have differing levels of detailed information on protected species depending on the location.

## 6.4 ASSESSMENT AND AUTHORISATION PROCEDURES

### EIA

There are no EIA requirements regarding general forest management. Once the EIA is required due to the project involved, its impact on species is assessed for protected species (listed by the Swedish Forest Agency in Annex 4 of the Swedish Management Act); however, only if the occurrence is known beforehand. There are no general rules requiring the assessment of the impacts on protected species from planned forest project or management actions.

### Other authorisation procedures

In regions where information on species is available, protection rules are typically well-reflected in the authorisation procedures. Yet in the regions in which information is lacking, protection rules do run the risk of being overlooked.

## 2. RECOMMENDATIONS

### ■ Legislative transposition measures of species protection rules:

Despite Nature Directives appearing to be fully transposed into Swedish jurisdiction, according to stakeholder interviews, Sweden does not possess a holistic and systematic system to ensure species protection in their natural range within the forestry sector, nor to ensure enforcement of species protection prohibition rules when relevant. Forest operators should be required to know what measures need to be taken on a practical level, but legislation is not clear enough on how environmental standards should be addressed in forestry.

The transposition the Birds Directive into the current Swedish legal framework should be extended to all bird species as required by Article 5 of the Birds Directive. (i.e. The Forestry Act (Skogsvårdslagen))

### ■ Preventive and implementing measures:

Information regarding occurrence of protected species is available in a species observation system, “Artportalen”, which is a good practice. However, it has evidenced that information of species is unevenly spread over the country, with certain parts of the country possessing ample information regarding all kinds of species, including protected species, whereas other areas might lack information altogether. Information should be completed to cover the whole national territory and include information on implementation of the species protection rules.

### ■ Public advisory and enforcement:

Information on occurrence of protected species is insufficient under the Forestry Act and should be addressed through the advisory bodies, as this would enable foresters to carry out activities without (un)knowingly causing distress. Public bodies such as the Swedish Forest Agency and Country Administrative boards should collaborate in making sure forest owners and users are well informed on species protection. The capacities of public bodies to recognise, advise on and enforce species protection rules should be strengthened.

Forest owners should be educated on and encouraged (and possibly required via legislation) to report sightings of protected species. This would provide more accurate data and easier protection of species prioritised for protection in the Forestry Act.

### ■ Authorisation and permits:

General rules requiring the assessment of the impacts of forest activities on protected species should be promoted at national and EU level through the SEA and EIA legislation and/or AA procedures. Clear identification of species distribution areas where forest activities are always forbidden or limited would be the first step in addressing raising concerns of NGOs and civil society on this issue.

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# Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

## TASK 3 – Case Study *Slovenia*

ENV/2020/OP/0022



February 2022

This Report has been prepared by Milieu Consulting SRL, Ecologic Institute, IEEP and Stritih under Contract No ENV/2020/OP/0022.

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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission

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## ABBREVIATIONS

ARSO	Agency of the Republic of Slovenia for Environment
BD	Birds Directive
CDDA	Nationally designated protected areas
CNC	Contractual nature conservation
DOPPS	Association for the Observation and Protection of Birds
EIA	Environmental Impact Assessment
EU	European Union
GDP	Gross Domestic Product
HD	Habitats Directive
IRSNC	Institute of the Republic of Slovenia for Nature Conservation
KGZS	Chamber of Agriculture and Forestry
LIFE	EU's funding instrument supporting environmental, nature conservation and climate action projects
MCPFE	Ministerial Conference on the Protection of Forests in Europe
NGO	Non-governmental organisation
NGP	National Forest Programme
SEA	Strategic Environmental Assessment
SFS	Slovenia Forest Service
SiDG	Slovenian State Forest Enterprise
UN	United Nations

### Disclaimer:

The scope of this study involves species protection rules outside of Natura 2000 sites and their transposition, implementation, and inspection in Slovenian jurisdiction. This study does not involve Natura 2000 Management plans, species protection measures as part of LIFE or other EU funded projects. All findings are based on publicly available data and expert opinion.

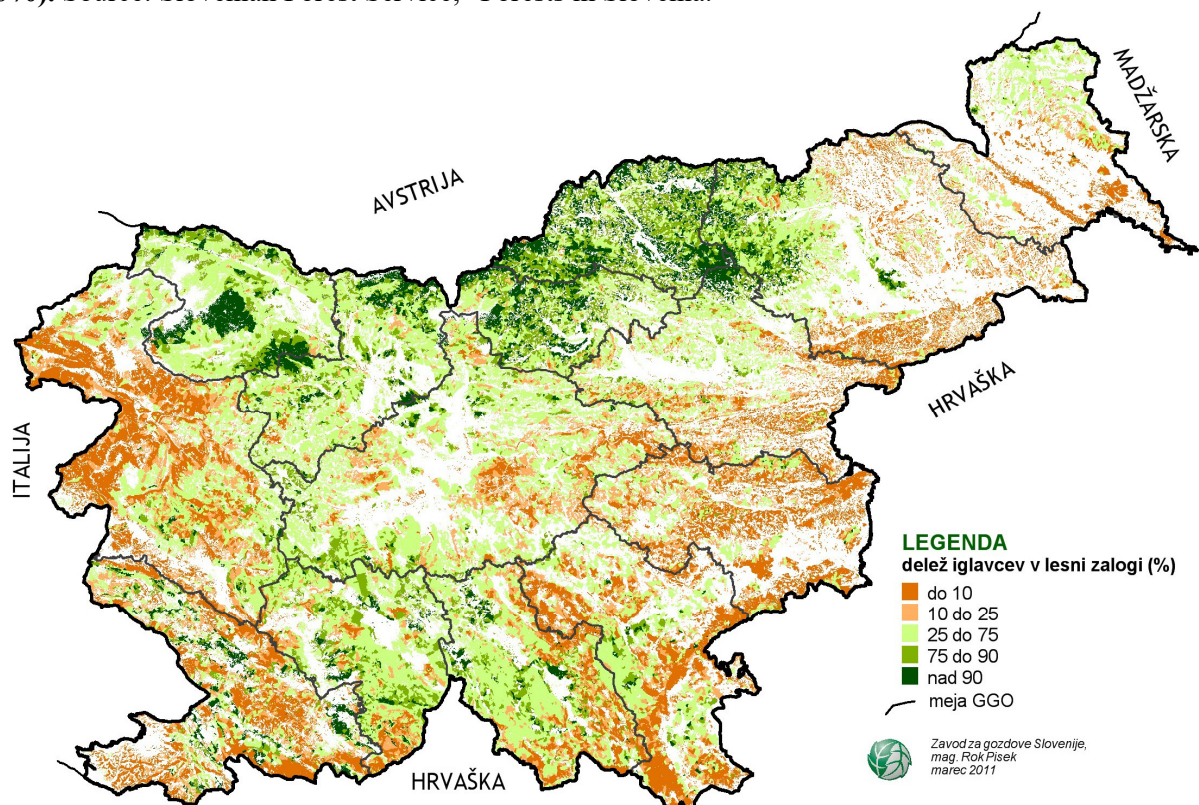
# 1 INTRODUCTION

## 1.1 FORESTS AND FORESTRY IN SLOVENIA

According to different sources and methods, forests cover between 58 and 62% (1.176.754 ha) of Slovenian territory <sup>1</sup>. This makes Slovenia one of the most forested countries in Europe, and forests one of the most important natural resources in the country.

The high level of forest cover and density is a consequence of the mountainous topography of Slovenia. Forestry has been economically more important than agriculture and animal husbandry on large share of the land from mid-19<sup>th</sup> century onwards, when the industrialization of Slovenia started. Since then, forest cover has increased from around 30% to today's 60%. The increase of forest area stopped only after the accession of Slovenia to the EU. Between 2012 and 2019, the forest area was virtually stable <sup>2</sup> as a consequence of area based agricultural payments providing incentive to farmers to keep agricultural plots free of trees.

**Figure 1. Map of forests in Slovenia: forest regions and the species composition in terms of share of conifers in individual stands (legend: up to 10%, 10-25 %, 25-75%, 75-90% and over 90%).** Source: Slovenian Forest Service, "Forests in Slovenia."



Most Slovenian forests are mixed, of mostly natural origin, but with an increased share of conifers compared to the expected natural composition. The high share of conifers is a consequence of past management preference for conifers, and their suitability for natural forest succession on former pastures

<sup>1</sup> Slovenian Forest Service, "Forests in Slovenia," 2021, [http://www.zgs.si/eng/slovenian\\_forests/forests\\_in\\_slovenia/index.html](http://www.zgs.si/eng/slovenian_forests/forests_in_slovenia/index.html).

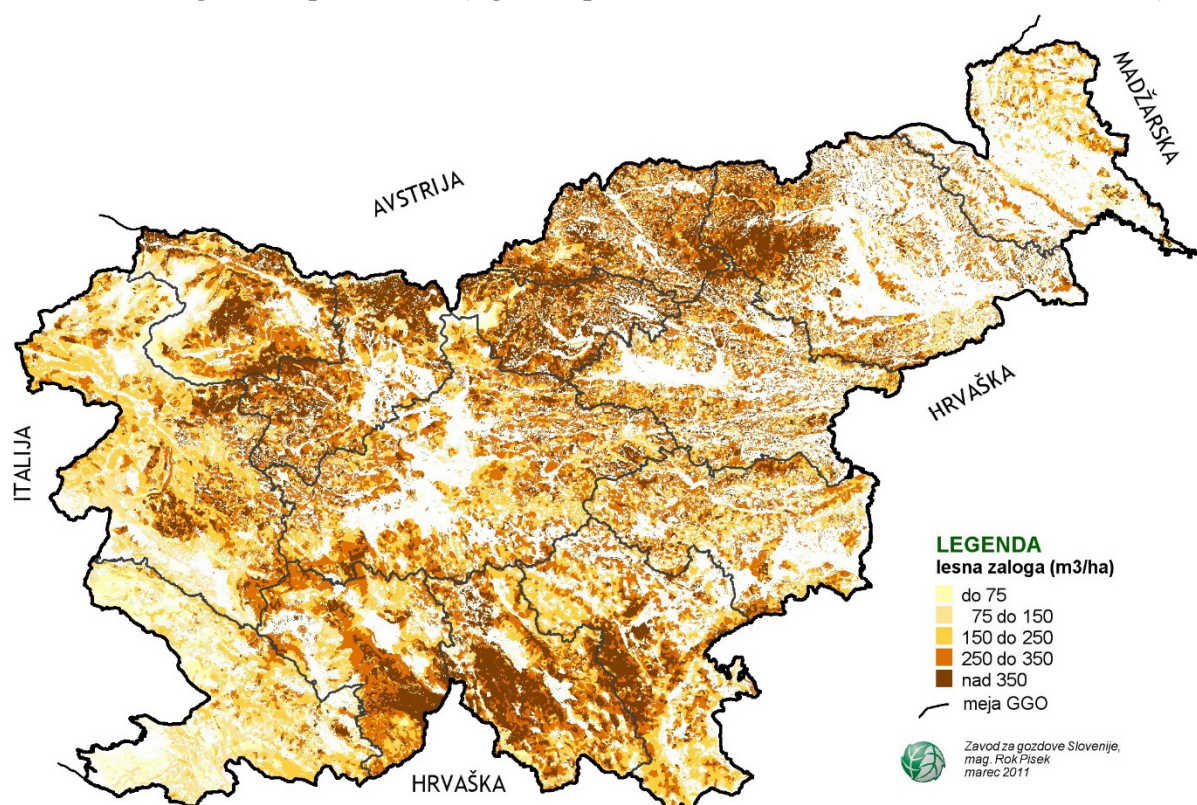
<sup>2</sup> "Statistics Eurostat," accessed February 22, 2022, [https://ec.europa.eu/eurostat/databrowser/view/FOR\\_AREA\\_EFA\\_custom\\_2142742/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/FOR_AREA_EFA_custom_2142742/default/table?lang=en).

and afforestation. Conifers (mostly Norway spruce and Silver fir) represent 47% of the growing stock, but rarely in pure monocultures. Among the 53% broadleaves, the most important species is the European beech<sup>3</sup>.

45% (532.000 ha) of the forests area have been designated as Natura 2000, contributing around 70% to the total Natura 2000 area in the country. At the same time 90% of the forests are considered production forests (open for logging) and some 10% are designated as protective forests and forest reserves (closed for logging)<sup>4</sup>.

According to different methods applied (local management plans and national forest inventory) an average stocking density is estimated at between 303 and 346 cubic meters of standing timber per hectare. The average annual increment is estimated at 7,50 m<sup>3</sup>/ha and the growing stock is increasing<sup>5</sup>.

**Figure 2. Map of forests in Slovenia depicting their stocking density in cubic metres of standing timber per hectare (legend: up to 75, 75-150, 150-250, 250-350 and over 350).<sup>6</sup>**



The increase in growing stock has been quite rapid between 1990 and 2013, as only around half of the increment was being cut. This was mainly due to lack of interest of private owners for logging in view of low timber prices. After 2014, the increase in growing stock slowed down after a major ice storm affecting major part of Slovenia and subsequent outbreak of bark beetles in damaged coniferous forests exacerbated by increasing severity of summer droughts. This disturbance is clearly<sup>7</sup> linked to climate change. Figure 3 shows the increase in logging volumes and the change in reasons for cutting trees between the periods 2002-2011 and 2011-2015. Especially affected were Western and Central Slovenia.

<sup>3</sup> Slovenian Forest Service.

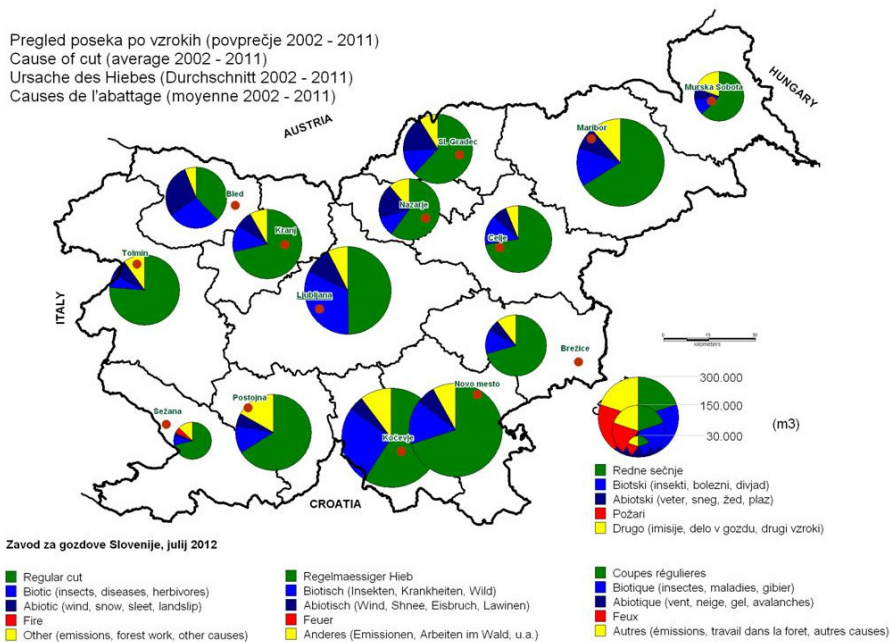
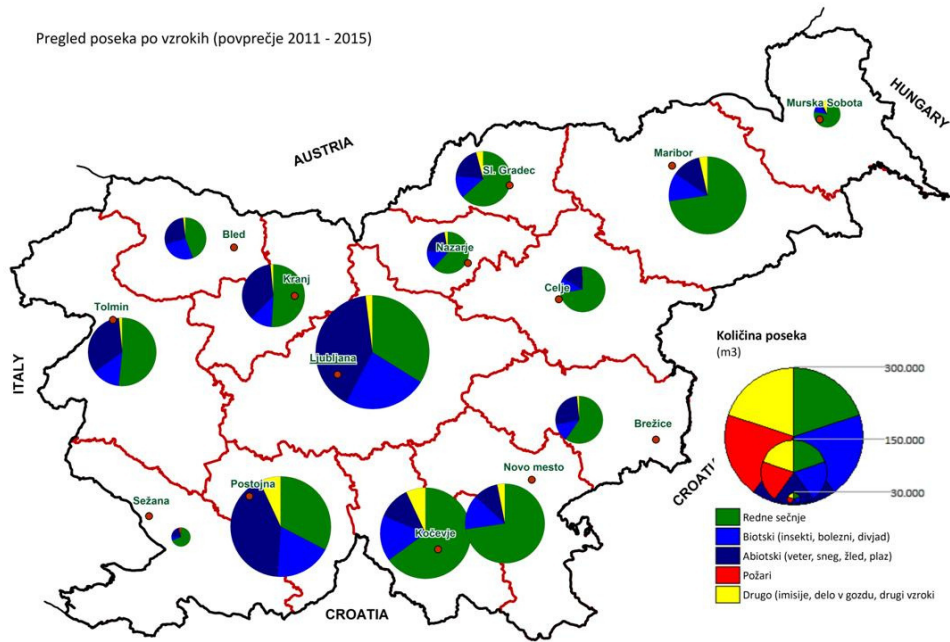
<sup>4</sup> ZRSVN, "Naravovarstveni Atlas - Natura 2000 [Natura 2000 Data Viewer Slovenia]" (ZRSVN, 2015), <http://www.naravovarstveni-atlas.si/nvajavni/profile.aspx?id=N2K@ZRSVNJ>.

<sup>5</sup> "Report of the Slovenian Forest Service on Forests for 2019," 2020.

<sup>6</sup> Slovenian Forest Service, "Forests in Slovenia."

<sup>7</sup> "Program Upravljanja Območij Natura 2000 (2015-2020)," accessed February 22, 2022, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=SKLE9907>.

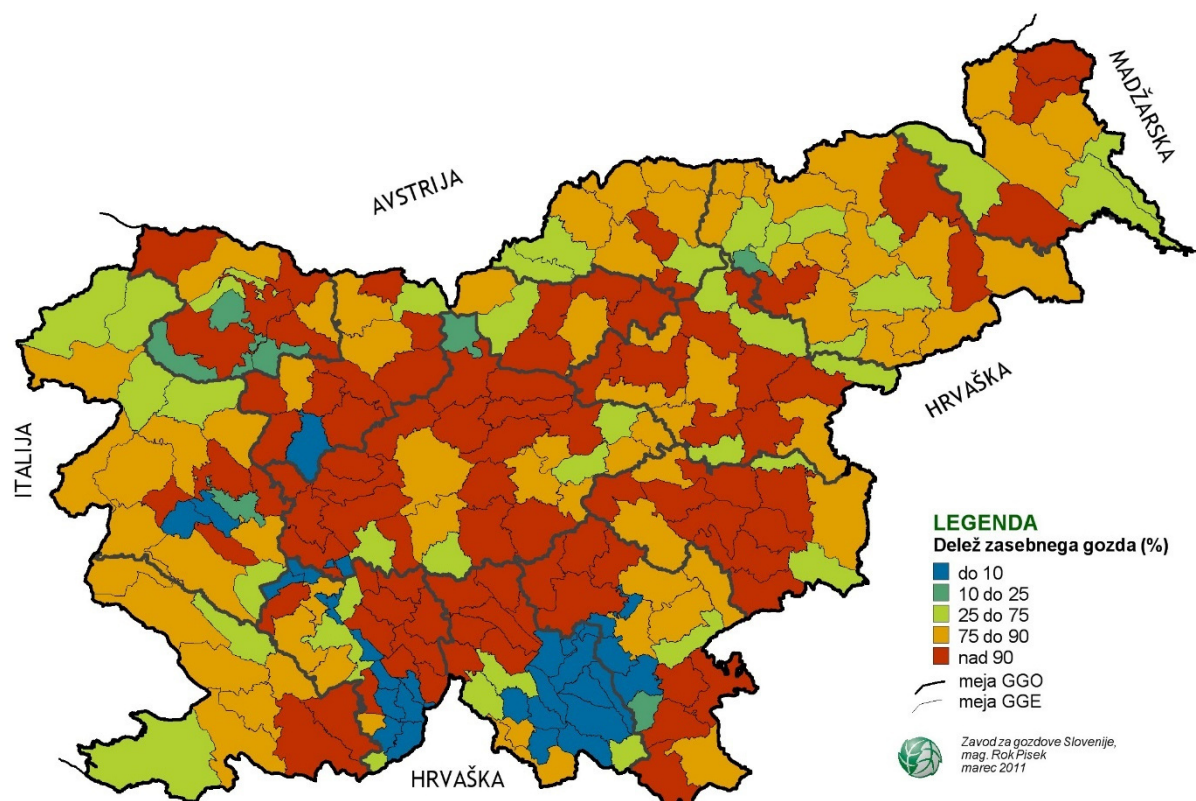
**Figure 3. Average annual logging volume by forests regions in periods 2011 – 2015 and 2002 – 2011 by purpose (green: regular cut, light blue: biotic disturbance (bark beetles, disease, damage by wild animals), dark blue: abiotic disturbance (wind, snow, sleet, avalanche), red: forest fires, yellow: other reasons (air pollution, logging operations, others) <sup>8</sup>**



<sup>8</sup> Slovenian Forest Service, "Forests in Slovenia."

Most forests in Slovenia (76%) are privately owned and only 24% are owned publicly (mostly by the state and some by municipalities). The largest private owner is the Catholic Church owning some 3% of the forest, but most private forest estates are small. There are 413,000 forest owners owning 286,000 forest estates with an average size of only 2,9 ha. Most of these are further fragmented into several separate plots. This fragmentation of forest property presents a major challenge for any systematic forest management<sup>9</sup>.

**Figure 4. Map of forest regions and management units depicting the share of privately owned forest (blue up to 10%, green 10-25 %, light green 25-75%, orange 75-90% and red over 90%).**<sup>10</sup>



Economically most important ecosystem services are production of timber, recreation and tourism, and carbon sequestration. In 2019 the production of timber was 5,3 million cubic metres which represented 87% of the allowable cut according to the valid management plans<sup>11</sup>. As discussed before, this volume has been high due to the disturbance following the 2014 ice storm. But even with the relatively high volume of timber produced, the forestry sector only amounted to 0,7% of GDP in 2019<sup>12</sup>. The timber produced represents the basis for value chains of wood processing as well as renewable energy supply (fuel wood, biomass). The wood processing sector has declined during transition to market economy, but its development is a government priority, and the level of processing has been on the increase. Nevertheless, large share of raw timber is sold in the neighbouring EU member states.

<sup>9</sup> Slovenian Forest Service.

<sup>10</sup> Slovenian Forest Service.

<sup>11</sup> Slovenian Forest Service.

<sup>12</sup> "Proizvodna Struktura BDP (SKD 2008) Po: DEJAVNOSTI/TRANSAKCIJE, LETO, MERITVE , TRANSAKCIJE. SiteTitle," accessed April 28, 2022, <https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/0301915S.px/table/tableViewLayout2/>.

In the same year 2019, the share of tourism in GDP was 5,3%. With nature dominated by forests being one of the main attractions of Slovenia, this means that the economic importance of recreation and tourism in the forests may be at least of a similar order of magnitude as timber. Recreation and tourism in forests take place in the form of hiking, cycling, observation of nature, collection of non-timber forest products, as well as hunting. Forests provide the basis for multiple outdoor and rural tourism value chains.

In the period before 2014, Slovenia reported sequestration of around 6 million tons of CO<sub>2</sub> in the forests under the Kyoto protocol. This significantly helped the country achieve its targets in the first budget period 2008 – 2012. But the carbon sink diminished significantly between 2014 and 2019 due to disturbance and resulting increase in logging. It is not clear if Slovenia will be able to achieve the same levels of carbon sink in the future due to expected increased severity of the impacts of climate change. More emphasis will probably have to be given to adaptation of forests to the changing climate and strengthening their resilience to disturbances.

Biodiversity conservation is an important ecosystem service, but its economic importance has not been comprehensively assessed. Functionally, the role of forests in this respect is very high in Slovenia. Most protected species in Slovenia use forest as their main habitat. 45% of forest area is protected as Natura 2000 representing 70% of total area under Natura 2000. Other functionally important, but not economically assessed services are regulation of water regime securing the high quality of ground water and providing flood protection, as well as protection of soil.

## 1.2 GOVERNANCE

The legal framework concerning forests is based on the Article 5 of the Constitution of Slovenia, saying that the state: »...takes care of the preservation of natural wealth...«.

Main legal act related to forests is the Act on Forests (1993) which regulates the conservation, silviculture, exploitation, and use of forest as natural wealth. Its main goal is to provide sustainable, close-to-nature and multi-purpose management in accordance with principles of nature conservation, sustainability, optimal service of forest as an ecosystem and fulfilment of its functions. This act also sets out the conditions for the management of forest space, individual forest trees and groups of forest trees outside urban areas, so that their role in the environment is preserved and strengthened.

The Act establishes the public Forest Service, services of which (management planning, marking trees for felling etc.) are funded by the state and provided to the forest owners free of charge. This is a form of compensation for the ecosystem services provided by the forest owners to the public.

One of the principles of the **Act on Forests** is that the publicly and privately owned forests are largely treated equally. The forests, irrespective of ownership, are accessible to all for recreation and non-commercial gathering of non-timber forest products. All forest owners (state, municipalities, and private owners) have the same responsibilities in terms of protecting the forest ecosystem including protected species. Forest management plans are drawn up and adopted for forests as a whole at regional and local level and must be observed by all owners. The management plans are translated to the property level through detailed operational plans and marking of trees for felling by the forest service. The spatial part of the forest management plans links forestry directly with spatial planning, while the Act also determines the influence foresters have on the management of game and other animal species in the forest landscape.

According to the Nature Conservation Act (1999) “Nature Protection Guidelines” are prepared for each Forest Management Plan by the Institute for Nature Conservation. These guidelines include locally relevant provisions on habitats and species conservation and protection (e.g. what general measures need to be taken to avoid damage to or disturbance of certain species, such as prohibition of logging in the vicinity of bear dens during winter) and must be taken into account in the plan. The compliance with these guidelines is checked by the Ministry of Environment and Physical planning during the approval process of the plan.

Forest owners have the right to participate in the planning of forest management and must subsequently act according to the plans. They may not exceed the maximum level of felling determined by the plans, but they may choose to fell less than planned. To secure the compliance with the plans and the close to nature forest management, the Forest Service, i.e. by the district forester selects and marks individual trees for felling in consultation with the forest owner.

The Act on Forests stipulates that special consent be sought for any conversion of forest land to other use and prohibits all actions which decrease the productivity of forest sites (meaning the healthy functioning of the forest ecosystem including its biodiversity) or threaten the existence or function of the forest. Clear cutting is prohibited, and the gathering of non-timber forest products is subject to restrictions (e.g., two kg of mushrooms per person per day).

In the area of forestry preservation, the Act on Forests stipulates, among other things, that chemical substances may be used in the forest only in exceptional cases and devotes considerable attention to protection against forest fires. Strict measures are laid down for the construction of forest roads. Forest roads are deemed of public importance, which means that they may be used by all regardless of land ownership. The Act also regulates the status of protection forests and forests with special purposes (including biodiversity conservation) and the method by which this status is conferred.

**The National Forest Programme (NGP) adopted in 2007<sup>13</sup>** is a fundamental strategic policy document determining national forest management policy, guidelines for the preservation and development of forests and conditions for its exploitation or multi-purpose use. The Programme determines the following long-term goals:

1. the preservation and sustainability of forest development with regard to biological diversity and all ecological, social and production functions,
2. the conservation of the natural environment and the ecological balance of the landscape,
3. the preservation of the habitation and cultivation of the countryside and the improvement of rural quality of life.

### 1.3 INSTITUTIONS

**Ministry of Agriculture, Forestry and Food** with its Forestry Department is responsible for preparing forestry regulations and supervising the Slovenia Forest Service (SFS) and Slovenian State Forest Enterprise (SiDG). It also administers funding for the SFS and provides subsidies to forest owners and for the purchase of forests, especially those with pronounced ecological and social functions (e.g., protection forests).

The Ministry for Agriculture, Forestry and Food also cooperates closely with the **Ministry of Environment and Spatial Planning** in matters regarding the health of the forest, the protection of habitats and species, as well as the planning and management of protected areas. Ministry of Environment and Spatial Planning is also responsible for conducting the EIA, SEA and Appropriate Assessment under HD procedures related to forest management plans and forestry activities. The Ministry issues the permits for deliberate destruction or population management of the protected species under the EU directives.

**The Slovenia Forest Service** is a public institution that performs public forestry service in all Slovenian forests, irrespective of ownership. Their tasks are connected to forest management on the national, regional, and local levels: forest management planning, monitoring of forests,

silviculture and forest protection, use of forest technologies, construction, and maintenance of forest roads, monitoring of wild animal populations, hunting, forestry extension service for forest owners, giving consent for interventions in the forest and forest space, participation in wider spatial planning, research work, rural development activities, raising awareness and the education of forest owners, the general public, and youth. The Slovenia Forest Service does not perform any felling, extraction,

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<sup>13</sup> (Resolution on National Forest Programme (Slovenia), 2007)

transport and selling of wood, nor forest trade. It has approximately 730 employees, mostly forestry engineers. The Slovenia Forest Service is organised in its central unit in Ljubljana at the state level, in 14 regional units at the regional level, and into 69 local units and 391 forest districts at local level. SFS also manages 10 hunting reserves aiming at managing core populations of game species and providing core habitats for protected animal species such as bear, grey wolf, and lynx.

**SiDG – Slovenian State Forest Enterprise** is a limited liability company fully owned by the Republic of Slovenia that performs the ownership function related to state forests. Their strategic goals include development of their principal activities (logging, sale of forest wood products and logistics, management of real estate and acquisition of forests, wood processing and other activities for developing all other forest functions), development of economic and social functions of the forest and taking care of opportunities for growth (SiDG, 2021). One of their objectives is thus also to support the development of the wood processing value chains in Slovenia. They perform the works in the state forests partly by themselves with 270 staff organised in 6 divisions and 4 regional business units and partly using subcontractors. In their forestry activities they follow the plans developed by and directions of the SFS.

**Institute of the Republic of Slovenia for Nature Conservation** is the main national professional organisation in the field of nature conservation. It was established in 1999 by the Nature Conservation Act. It is organised in a central and seven regional units covering the territory of Slovenia. The Institute is responsible for inventorying and monitoring of the protected species and habitats, preparation of protected areas and providing nature conservation guidelines expert opinions and consent in the procedures of planning, permitting and impact assessment. According to the Natura 2000 Management Programme for Slovenia for the period 2014-2020, the institute is designated as the managing authority for a significant number of Natura 2000 sites that are not managed by classic protected area authorities, including those in the forest. They also play a key role in the EU funded projects related to biodiversity conservation under LIFE and the Cohesion Funds.

**Protected Area Administrations** (Triglav National Park and several Regional and Landscape Parks) are responsible for biodiversity conservation in these protected areas that mostly overlap with Natura 2000 sites. Large parts of the protected areas, including forests, are privately owned, so they need to work with the forest owners and coordinate with the SFS. This also relates to conservation of protected species.

**Biotechnical Faculty of the University of Ljubljana (Forestry Department)** is the main education institution in forestry also conducting research. They have approximately 50 staff out of which 20 are teachers. Annually, around 50 students receive a degree ranging from BSc to PhD. They educate the graduates for work in forest ecosystem in accordance with modern principles of close-to-nature, multipurpose and sustainable management. This requires linkage among ecological, economic, and technical sciences, knowledge of forest ecosystems, social aspects of forest management, various techniques and technologies used in forest management and familiarity with modern methodological tools.

The **Slovenian Forestry Institute** is a public research institute of national importance with some 80 staff. They conduct basic and applied research on forests and forest landscapes, forest ecosystems, wildlife ecology, hunting, forest management, and other uses of the resources and services forests provide. They are involved in surveying and recording forest degradation and damage, providing a diagnostic reporting service, developing an information system for research purposes, and monitoring forestry seeding and nursery activities. Among others the Institute monitors emissions and sinks of greenhouse gases resulting from land use, land use change, and forestry according to the Kyoto Protocol.

**Chamber of Agriculture and Forestry (KGZS)** is the umbrella interest organization of natural and legal persons engaged in agriculture, forestry, and fishery. Its central task is to protect and represent their interests, to consult them and accelerate economical and environment friendly activities. Their priorities are:



- acceleration of development and improvement of economic conditions,
- assurance of specialist services operation,
- co-formation of legislation,
- improvement of social conditions in life,
- keeping settlement of Slovenian rural areas and
- promotion of Slovenian agriculture at home and abroad.

The Chamber provides the following services to their members:

- agricultural advisory service (public extension service through eight regional units),
- selection and monitoring of production in stockbreeding,
- forestry advisory service supporting the forest owners' associations and the forest owners through forest certification (PEFC), auctions of high value timber and representing their interest in policy and planning processes,
- centres for fruit-growing and nursery.

**Union of Forest Owners** has over 4.000 members organised in 29 local Forest Owner Associations. They represent the interests of the forest owners and promote sustainable, multi-functional and close-to-nature forest management. Their mission is to strengthen the management of private forests in Slovenia that bring economic as well as social, cultural, and environmental value. Although they sometimes represent different positions, they work closely with the SFS and the KGZS as they haven't been able to mobilise the vast majority of private forest owners in the country.

**Hunters' Association of Slovenia** is the country's main hunting organization, with almost 21.000 hunters organised in local hunting clubs. It is an independent hunter and non-governmental environmental association acting in the public interest. Its mission is sustainable management of wild game, preservation of nature, education of hunters and promoting protection of nature through cooperation with other nature and environmental organizations. According to the Game and Hunting Act the territory of Slovenia is divided into more than 400 hunting grounds. Ten of these are managed by the SFS and the rest by hunting clubs' members of the Association. The hunting clubs hold the hunting rights regardless of the forest ownership. They are responsible for the preparation and implementation of the hunting management plans that are subject to approval by the SFS and subject to Strategic Environmental Assessment. They are also liable for the damages caused by game species, such as wild boar and red deer. The hunters are not directly responsible for conservation of protected species, but they need to take them into account in their activities. In case population management of certain species is needed or agreed (e.g. Brown bear) they participate in the taking of the animals according to the administrative decision of the Ministry of Environment and Physical Planning.

**DOPPS-Birdlife Slovenia** is a non-profit, non-governmental organisation established in 1979. They work in the public interest of nature conservation, environmental protection, and research. They work with over 1000 members, volunteers, and nature lovers from all across Slovenia, and employ over 24 experts from a variety of backgrounds. They manage three protected areas important for birds. Among others, they focus on forest birds and conservation of their habitats, such as old growth and primeval forests. They campaign for detection and prosecution of deliberate acts of species destruction by analysing dead birds that they find or receive. They also promote the placing and maintenance of nesting boxes for protected bird species that naturally use hollow trees for nesting.

**Other NGOs** – all together there are 47 civil society organisations registered as acting in public interest in the field of nature conservation. They include national associations such as Hunters', Mountaineering, Speleological and Fishermen Associations, specialist organisations focusing on specific groups of species and various other organisations. They all have ability to actively participate in the impact assessment procedures related to forest management planning and play an important role in education and awareness raising in relation to nature conservation in general and to protected species.

**Forestry businesses** – there are some 450 to 500 businesses registered as providing forestry services. Most of them are small and medium size enterprises providing services like logging, transport, purchase, and sale of timber. They provide their services to the private owners as well as to the state (SiDG) and

the municipalities. In 2019, they felled and transported some 2,4 million m<sup>3</sup> of timber, or 45 % of the total annual felling. The rest was done by the forest owners themselves, including SiDG. All together there are some 7.000 people employed in forestry production, over 5.000 of whom are self-employed.

Many forestry businesses combine their activities with some wood processing such as sawmilling or production of woodchips. Only a small number of companies are active in planning and other management related services, as most of these services are provided by the SFS.

## 1.4 PROTECTED SPECIES

Based on the 2013-2018 country reporting datasheets according to the Article 12 of the Birds Directive and Article 17 of the Habitats Directive, out of 1389 species protected under the Annexes of the Habitats Directive, 204 are represented in Slovenia. Of these, 132 are listed under Annex IV. Of the 500 wild bird species under the Birds Directive, 253 can be found in the country<sup>14</sup>.

Slovenia's Natura 2000 Management Programme lists conservation measures in forests for 32 species protected under the Annexes of the Habitats Directive and 27 bird species.

The most prominent protected species groups present in Slovenia related to the forests are:

- large carnivores (*Ursus arctos*, *Lynx lynx*, *Canis lupus*)
- bats
- birds depending on tree hollows and dead wood (*Strigiformes*, *Dendrocopos leucotos* and *Picoides tridactylus*, *Columba oenas*)
- other birds (*Tetrao urogallus*, *Ciconia nigra*)
- arthropods (*Rosalia alpina*, *Morimus funereus*, *Cucujus cinnaberinus*, *Carabus variolosus* and *Rhysodes sulcatus*)

Due to the large share of land covered by forest in Slovenia, many other protected species also have some relation to forest habitats.

Most forest related species are considered in favourable conservation status<sup>15</sup>. The main threats to species related to forests are:

- Loss of habitat, often in terms of changes of forest age and structure, progressing forest succession or lack of dead wood in the forest,
- Disturbances through forest operations, recently increased due to impact of climate change,
- Accidental (traffic) and illegal killings.

The most important threat is the changes in forest structure leading to change or loss of food or prey base, breeding, resting, or wintering areas or opportunities. This has been happening both due to forestry measures such as logging (removing fruit tree species, very old and dead trees), and due to natural succession (leading to loss of mosaic structure in the landscape and denser forest stands). For example, the birds and mammals depending on tree hollows for nesting are limited by the lack of dead or hollow trees. The number of capercaillie in high mountain forests are in decline because the former open forest/woodland pastures preferred as breeding grounds are overgrowing into dense forest stands. The forestry sector is actively addressing these threats within its rules and planning framework as explained later mainly through habitat conservation measures within the Natura 2000.

Disturbance and killings are not perceived as a serious threat to the viability of species but are of concern in terms of species protection rules and their implementation. Main attention is paid to the prominent protected species including large carnivores, birds of prey and rare large birds such as capercaillie and black stork.

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<sup>14</sup> "Main Achievements under the Habitats Directive SI - Slovenia," European Environment Information and Observation Network, 2019.

<sup>15</sup> "Main Achievements under the Habitats Directive SI - Slovenia."

## 2 LEGISLATION AND RULES ON SPECIES PROTECTION IN FORESTS

### 2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

**Nature Conservation Act (1999)** and its subordinate acts provide the legal framework for biodiversity conservation including the transposition of the Habitats and Birds Directives, listing the Natura 2000 areas, protected species, and habitats. The definitions in Article 11 of the Nature Conservation Act introduce the logic of legally treating all species - animals including birds, plants including cyanobacteria, fungi, and lichens – as a single legal category. Subsequently, all the provisions transposing the Habitats and Birds Directives are combined.

Article 14 of the Nature Conservation Act includes a general prohibition of extermination of any species, reducing their population or narrowing their habitat, as well as intentional killing, injuring or removal from nature of wild animals and plant species in line with article 12 and 13 of the Habitats Directive and article 5 of the Birds Directive.

The article also includes the exemption from the above prohibitions for agriculture, forestry, hunting and fishing sectors as regulated by the respective laws: *“it is permitted to hunt animals of hunting and fishing species in accordance with the regulations governing hunting and fishing, and to perform agricultural and forestry activities in accordance with the regulations governing agriculture and forestry, as well as removing from nature plants or animals for purposes permitted by law”*

Article 26 sets out the protection of internationally protected species (i.e. species protected under the Birds and Habitats directives). Article 81 provides for more detailed species protection regimes, measures for habitat protection and rules of conduct and special protection regimes, following the language from Article 5 of the Birds Directive and the Articles 12 and 13 of the Habitats Directive.

The Nature Conservation Act and its implementing legislation, cover all the species protection prohibitions established in the Nature Directive’s provisions. Species protection rules according to the article 5 of the Birds Directive are set out in the **Decree on protected wild animal species**<sup>16</sup>, a subsidiary act to the Nature Conservation Act. The decree in its articles 4, 5 and 13 covers all the points of the Article 5 of the Directive. The provisions related to birds are combined with the provisions related to other animal species protected under the Habitats Directive.

Species protection rules according to the Articles 12 and 13 of the Habitats Directive are set out in three decrees, subsidiary acts to the Nature Conservation Act. These are the Decree on protected wild animal species, the Decree on protected wild plant species<sup>17</sup> and the Decree on protected wild fungal species<sup>18</sup>. The provisions of all three decrees are similar in terms of protection regimes and in terms of exemptions as described below. The articles of the three decrees provide for the protection measures and prohibitions of the HD, as well as for monitoring of species and activities affecting them. The lists of protected species (including under the Birds and the Habitats directives) are provided in the Annexes of the three decrees.

In its article 6, the Decree on protected wild animal species includes general derogations applicable through administrative decisions or permits in cases where no technical alternative preventing the prohibited consequences is available for.

- Activities in line with good agricultural practices,
- Forestry activities in line with forestry regulations
- Civil works in line with construction and permitting regulations
- Civil works in line with cultural heritage regulations

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<sup>16</sup> “Decree on Protected Wild Animal Species” (2004), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED2386>.

<sup>17</sup> “Decree on Protected Wild Plant Species” (2004), <http://pisrs.si/Pis.web/pregledPredpisa?id=URED3192>.

<sup>18</sup> “Decree on Protected Wild Fungal Species,” Official Gazette of the Republic of Slovenia, § (2011), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED5806>.

This article also covers derogations for injured and sick animals, scientific research, and protection of human health. The decrees on the protected plant and fungal species also include similar exemptions.

The first two criteria for derogation on good agriculture practices and forestry activities, are wide ranging and mean that the implementation of the transposed legislation in the agriculture and forestry sectors depends on the integration of species protection in the sectoral legislation and practices. In case of forest activities this means the activities permitted by the forest management plans and the felling approvals by district forests, both through administrative decisions include are derogations from the species protection rules. However, it is not clear whether the conditions under Article 16 of the Habitats Directive and Article 9 of the Birds Directive are required and therefore, complied with.

The management plans that regulate the forestry activity, and felling approvals are subject to administrative decisions and are subject to procedural controls (SEA and appropriate assessment in case of plans) or permitting process.

Another issue relates to the integration of species protection rules in the forestry legislation. The forestry legislation includes some general and some specific species protection provisions that do not fully reflect the provisions of the nature conservation legislation, taking into account that the decrees based on the Nature Conservation Act apply directly. However, the conservation legislation provides for derogations based on the assumption that the forestry regulations comply with the species protection rules. This creates a circular reference and a possible loophole, where the sectoral legislation does not fully integrate the transposed provisions of the Nature Directives assuming that the decrees based on the Nature Conservation Act apply in general. This does not seem to comply with the species protection rules in the Nature Directives.

With 45% of all forests declared as Natura 2000 sites and forests representing 70% of the total area of Natura 2000, the main focus of implementation of the Habitats and Birds directives is on the management of habitats. There is limited number of references to species protection in the forestry legislation, and even many of these many are refer to habitat and species protection concurrently, leaving the impression that they mainly refer to species protection within the Natura 2000 sites. The Forest legislation prohibit works in the forests that may cause disturbance of selected bird species wintering/hibernation period of herbivores and brown bear and breeding areas/period for protected mammals; prohibition of deliberate destruction of bird nests, mammal nesting sites and parts of habitats where animals congregate or disturbance of animals in general. There is a differences in scope of, and substance of, species protection rules between the nature and forestry legislation which creates an area of uncertainty regarding the species protection rules and their integration into the forestry practices. The actual modalities of integration of species conservation rules in the sectoral regulations is described in the next section.

The main exception to the habitat-based approach are the large carnivores: Brown bear, Wolf and Lynx. Their range extends beyond the Natura 2000 sites that cover most of their core habitats and they are very prominent in the public discourse due to damage they cause and conflicts with humans. Since before the accession of Slovenia to EU, there has been a string of EU funded projects dedicated to the management of large carnivores resulting in the national species conservation strategy<sup>19</sup>, improved monitoring, increased awareness, implementation of measures to reduce conflicts with humans, attention of enforcement authorities to the cases of dead large carnivores and even an ongoing additional introduction of Lynx to the wild<sup>20</sup>. Since 2004, a string of LIFE and other projects have supported systematic research, monitoring and awareness raising in relation to the large carnivores. The measures promoted include the species protection rules related to them (prevention of conflicts with humans, non-disturbance of dens, prohibition of deliberate killing). Even if the presence of carnivores is politically contentious, there has been considerable success in protecting these species and improving the attitude of the forest owners and the public towards them. In recent years, similar projects have been dedicated

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<sup>19</sup> Klemen Jerina et al., “Strokovna Izhodišča Za Upravljanje Rjavega Medveda (Ursus Arctos) v Sloveniji (Obdobje 2020-2023),” 2020, [https://www.gov.si/assets/ministrstva/MOP/Dokumenti/Narava/Velike-zveri/strokovna\\_izhodisca\\_upravljanje\\_medveda\\_2020\\_2023.pdf](https://www.gov.si/assets/ministrstva/MOP/Dokumenti/Narava/Velike-zveri/strokovna_izhodisca_upravljanje_medveda_2020_2023.pdf).

<sup>20</sup> “Strategija Ohranjanja in Trajnostnega Upravljanja Navadnega Risa (Lynx Lynx) v Sloveniji,” 2016, <http://www.vlada.si/>.

to other protected species not presently in favourable conservation status (capercaillie, birds depending on dead wood), but mainly within Natura 2000 sites. The approaches piloted in these projects with the support of EU should be turned into standard practice in all forests and forestry activities.

## 2.2 SUBSIDIARY LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

The primary **legislation implementing** the Birds and Habitats Directives in the forestry sector is the Act on Forests<sup>21</sup>. According to Article 5, “ownership rights in forests shall be exercised in such a way as to ensure their ecological, social and production function. The forest owner must therefore manage the forests in accordance with regulations, management plans and administrative acts issued pursuant to this Act”.

Another act with some bearing on species protection is the **Game and Hunting Act**,<sup>22</sup> which has a general reference to the species protection regime under the Nature Conservation Act in its Article 2 and it explicitly prohibits killing and disturbance of all animals apart from those listed as game (excluding the protected species according to BD and HD).

The more detailed rules and prohibitions related, but not limited to, the Birds and Habitats Directives under the two laws are specified in the following bylaws:

- Rules on forest management and game management plans<sup>23</sup> determine how the management plans are prepared and approved. The regional forest and game management plans are approved by the Cabinet of Ministers and the forest unit management plans are approved by the minister responsible for forestry. Both is done through implementing legal acts, giving the management plans legal power. Habitat conservation and species protection are integrated in the management plans at different levels, including in terms of zoning of forests and providing for dead wood and “eco-cells”.
- Rules on forest protection<sup>24</sup> Article 7 sets out the protection of areas important for conservation of wild animals and plants including feeding sites, wintering grounds, eco-cells and refuges. Article 8 sets out the protection, maintenance, and restoration of species habitats, including leaving habitat trees and dead wood, and maintenance of water sources. Article 10 prohibits works in the forests that may cause disturbance to selected bird species (black stork, birds of prey, capercaillie), wintering/hibernation period of herbivores and brown bear and breeding areas/period for protected mammals (bear, wolf, otter, lynx, wild cat). In its Articles 41 and 43, it contains prohibitions on collection and damaging of forest trees, other plants and non-timber forest products. Article 42 stipulates other rules of behaviour in the forest such as prohibition of deliberate destruction of bird nests, mammal nesting sites and parts of habitats where animals congregate or disturbance of animals.
- Rules on felling, handling of felling residues, harvesting, and stacking of forest wood assortments<sup>25</sup> determine the obligation that any felling of trees is subject to approval by the

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<sup>21</sup> “Forest Act (ZG),” Official Gazette of the Republic of Slovenia, No. 30/93 , 56/99 - ZON, 67/02 , 110/02 - ZGO-1, 115/06 - ORZG40, 110/07 , 106/10 , 63/13 , 101/13 - ZDavNepr, 17/14 , 22/14 - odl. US, 24/15 , 9/16 - ZGGLRS in 77/16 § (1993), <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO270>.

<sup>22</sup> “Game and Hunting Act,” Official Gazette of the Republic of Slovenia § (2004), <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3780>.

<sup>23</sup> “Rules on Plans for Forest Management and Game Management,” Official Gazette of the Republic of Slovenia, No. 91/10 and 200/20, 2010, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10005#>.

<sup>24</sup> “Rules on Forest Protection,” Official Gazette of the Republic of Slovenia, Nos. 114/09 and 31/16, 2010, <http://pisrs.si/Pis.web/pregledPredpisa?id=PRAV9492>.

<sup>25</sup> “Rules on Felling, Handling of Residues, Harvesting and Stacking of Forest Wood Assortments,” Official Gazette of the Republic of Slovenia, no. 55/94 , 95/04 , 110/08 and 83/13, 1994, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV2997#>.

Forest Service through marking of trees. This includes taking into account the species protection related provisions of the forest management plans and the forest protection rules.

These rules do not address species protection in a comprehensive manner, addressing each species or species group specifically. They rather set out a mix of general principles (e.g. close to nature silviculture taking care of biodiversity, leaving some dead wood in all forests) and specific rules (size of no disturbance zones around nests and dens of a limited number of species). These rules leave a significant latitude for interpretation and implementation to the district foresters, who are the authority charged with preparing the operational (silvicultural) plans, marking trees for cutting and advising the forest owners on the rules, and when and how to perform forest operations.

### 2.3 SPECIFIC RULES APPLICABLE AT FOREST HOLDING LEVEL UNDER THIS LEGISLATION

**Forest management plans** are prepared for the 14 regions (adopted by the Cabinet of Ministers) and 236 management units (adopted by the Ministry of Agriculture, Forestry and Food) every 10 years. All the regional plans are prepared simultaneously while the unit management plans are prepared on a rotating basis <sup>26</sup>.

Preparation of each of these plans involves the inventory of the forest resources (area, forest types and habitats, importance of forest functions, growing stock, increment, disturbances, transport infrastructure etc.) and a participatory process determining the management objectives and measures to be implemented. In this process the Institute of the Republic of Slovenia for Nature Conservation (IRSNC) provides conservation guidelines aiming at conservation of protected habitats and species. These are included along with the input from other stakeholders including forest owners, local communities and conservation NGOs.

With the adoption by the authorities, the management plans has legal force and needs to be respected by the forest owners. This relates to the allowable cut, to habitat and species conservation measures within and outside Natura 2000 sites, as well as species protection measures based on the recommendations received from the IRSNC <sup>27</sup>. They regularly include prescriptions about the amount of dead wood to be left in the forest (typically 3 % of growing stock), conservation of valuable micro habitats (water springs, wetlands, habitat stands), non-disturbance zones around Brown bear dens, temporal restrictions of forest operations, etc. General reference may be made to protected species as protected according to the decrees based on the Nature Conservation Act. Except in a few cases, these are not subject to an actual inventory of the species populations, regular monitoring, or species-specific measures.

The plans of management units provide the information on the forest, allowable cut and management objectives and guidelines at the level of forest compartments and sub compartments (size in tens of hectares). These provide the basis for the forest owner and district forester to select the trees for felling. In this process, the district forester should also prepare an operational or silvicultural plan, providing detailed guidance for interventions in a specific forest including specific measures for species protection (protection of nests and dens, habitat trees and dead wood etc.). The species conservation measures contained in the forest management plan need to be translated into specific measures and respected during the implementation of the interventions. Based on the operational plan and the marking of trees, the district forester issues an **administrative decision** to the forest owner, specifying the allowed cut and any other (including protection) measures or conditions that the owner should implement. Non-compliance with this act should result in enforcement action by the Inspectorate for Farming, Forestry, Fishing and Hunting.

The general assumption is that a well-managed forest along the lines of close-to- nature forestry and respecting the general rules of conduct also provides for the protection of the species. This assumption is tested in practice only when IRSNC gets involved in species inventories and forest management

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<sup>26</sup> “Report of the Slovenian Forest Service on Forests for 2019.”

<sup>27</sup> Janez Božič, Andrej Hudoklin, and Gregor Danev, “NARAVOVARSTVENE SMERNICE ZA GOZDNOGOSPODARSKI NAČRT GGE ŠENTJERNEJ,” 2009.

planning. Due to limited capacity and resources this happens in a limited number of cases, focusing on selected priority species, so far only in limited territory within the Natura 2000 sites. Most such cases are linked to EU funded LIFE projects.

In the last period (2015-2020) the main emphasis of the cooperation between the IRSNC and the SFS has been on the implementation of nature conservation guidelines and measures, with special attention given to species and habitat types in less favourable state, such as capercaillie, hazel grouse, white-backed woodpecker, Eurasian three-toed woodpecker and middle spotted woodpecker. Habitats that received special attention include riparian forests (oak, ash, alder, willow), wetland forests, maple, and lime forests.

In general, the requirements of the Habitats and Birds Directives are integrated in the forest management plans through guidelines prepared by the Institute for Nature Conservation as the institution responsible for habitat and species conservation. The guidelines are taken into account when regional and local unit forest management plans are prepared. In the case of Natura 2000 sites, these guidelines are obligatory, and the management plan cannot be approved without adhering to them. However, they are also taken into account outside the Natura 2000 sites. If they would not be respected, the Ministry of Environment and Spatial Planning has the power to block the approval of such a management plan.

Usually, the guidelines set by IRSNC define the so called “management zones”. These zones focus on:

- close-to-nature management (most of the forest areas),
- measures to conserve key structures,
- measures to conserve endangered species and habitat types,
- adapted/limited management.

Nature protection guidelines for forest management units include conservation goals, monitoring of species and habitats, zones of species occurrence and ecological demands of species. Measures for specific species and habitat types include habitat trees, at least 3% of dead wood matter in standing stock (benefiting the birds and insects depending on dead trees), higher ratio of older developmental phases of forest (e.g for capercaillie), peaceful zones in key areas (dens, nesting, and breeding sites) and strengthening of herb layer. Adapted / limited management includes “eco-cells”, areas with higher ratio of dead organic matter (5-10%) and conservation of key closed areas of forests. Key habitat structures that need to be conserved include wetlands and watered surfaces in the forests, such as bogs, riparian vegetation, forest edges, forest islands, mosaic structure of landscape.

Although the forestry legislation and its implementation dedicate some attention to species protection, it is not really possible to determine that the specific provisions of Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive are fully implemented through the forestry legislation and guidelines.

### 3 GOVERNMENT ADVICE TO FOREST OWNERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

Advice to forest owners is provided through the forest management plans and through direct communication of the district forester with the forest owner. Whether and how much the species conservation measures and protection rules are communicated with the forest owners, depends on the capacity and motivation of the district foresters and the interest of the forest owners.<sup>28</sup>

Generally, based on the information gathered through interviews within this project, the level of information provided about species protection rules and their implementation in forests is very low (with the exception of large carnivores), and even the purpose of habitat conservation measures set in management plans is often not explained well to the forest owners or service providers in charge of forestry operations.

A specific case of advice is the practice of habitat trees and dead wood. According to the Act on Forests<sup>29</sup> and its bylaws, a certain share of habitat trees, standing and lying dead wood should be left in every forest to ensure biodiversity (within and outside Natura 2000) at a minimum of 3 % of the standing volume of each stand. The purpose of this is to provide a habitat and food base for the various species of protected birds nesting in tree hollows and feeding on insects present on dead wood, saproxylic insects, mammals and fungi. This is a habitat and species conservation measure based on the premise of the close-to-nature forestry trying to emulate the primeval forest ecosystems as a way to meet the management objectives. Presence of dead wood contributes to the overall biodiversity and stability of the forest ecosystem and is at the same time a direct species protection measure, aiming at the protection of nests, breeding sites and feeding sites of a number of protected species (*Strigiformes*, *Columba oenas*, *Dendrocopos leucotos* and *Picoides tridactylus*, *Rosalia alpina*, *Morimus funereus*, *Cucujus cinnaberinus* and *Rhyssodes sulcatus*).

The prescription of the desired share of dead wood in an individual forest is included in the regional and local forest management plans. It is then implemented in practice through the silvicultural plans and marking individual trees for felling by the district foresters in cooperation with the forest owners, leaving dead trees in the forest and in some cases even girdling selected suitable trees and not removing them.

In addition to conservation and species protection benefits, this provides an opportunity to inform the forest owners about the importance of species diversity in the forest as well as the specific protected species such as owls or woodpeckers. This dead wood rule has been in place since the nineties and has triggered a process of changing attitudes among foresters and forest owners. Traditionally they thought that a well-managed forest should be “cleaned” of dead wood, even if it was not economically justified to cut and transport it from the forest<sup>30</sup>. The challenge has been to explain to them that the dead wood may be “more alive” than a living tree and that it contributes to the stability and productivity of the forest ecosystem by providing habitat to a wide variety of species.

No further information has been found on other systematic advice measures targeting forest owners on species protection rules and their implementation in forest areas.

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<sup>28</sup> “Report of the Slovenian Forest Service on Forests for 2019.”

<sup>29</sup> Forest Act (ZG).

<sup>30</sup> “Gozdnogospodarsko Načrtovanje in NATURA 2000 Gospodarjenje z Gozdovi,” 2000.



## 4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION IN FORESTS

The **Inspectorate of Republic Slovenia for Farming, Forestry, Fishing and Hunting**, which is a part of Ministry of Agriculture, Forestry and Food is responsible for the supervision of the Act on Forests. Their forest sector has 16 inspectors (one for each of the 14 regional areas). Their work is based on the yearly plan of inspections, their own observation of irregularities and infringements and submissions of complaints. Complaints have priority in processing. Most inspections and infringement procedures start based on complaint submission by SFS (district foresters), who report on irregularities based on Forest Act. Regular inspections are carried out based on risk analysis that is based on infringements in previous years, size of estate and consequences for the forest ecosystem <sup>31</sup>. Their plan of work includes the following activities:

- control of legality of felling
- control of activities co-financed or financed by public budget or EU,
- forest protection control and of compliance of interventions in the forest with the management plans (including measures related to species protection),
- control of technical and training requirements to carry out work in the forest,
- traceability of timber and due diligence systems,
- timber transport, driving of motor vehicles in the forests,
- forest reproductive material,
- collection of mushrooms and forest fruits (including prohibition of collection of protected species),
- control of sales decorative/Christmas trees.

Apart from inspection visits and issuing fines, they also carry out preventive measures, such as reminding forest owners of deadlines for sanitary felling, informing the public regarding driving in forests, and mushroom and forest fruits collection etc. They regularly collaborate with other sectors of the inspectorate as well as with police, labour inspection and Slovenian Tax Authority (FURS).

The **Inspectorate of Republic Slovenia for Environment and Physical Planning** which is also part of Ministry of Environment and Spatial Planning is, among others, responsible for the supervision of the Nature Conservation Act. They have two inspectors covering biodiversity conservation, dealing with 6 % of the cases of the entire inspectorate. They mainly react to reported infringements. In 2019 they focused their planned activities on the driving of motor vehicles in the natural environment and the protection of speleological fauna <sup>32</sup>.

This inspectorate deals with implementation of species protection rules. Mostly this is limited to cases of deliberate or accidental killing of prominent protected species, usually brown bears, or wolves. These are cases of killed animals being found, or cases of hunters mistakenly killing a bear or wolf instead of a game species such as wild boar. There are a few such cases almost each year. Cases of other detected species protection rule violations are rare and depend on reporting by concerned citizens or civil society organisations.<sup>33</sup>

Nature conservation rangers, employed by the protected area administrations, carry out supervision activities related to protection regimes, determining the breaches of the Nature Conservation Act and informing the relevant Inspectorate, informing the public about the protection regimes, and have the authority to seize motor vehicles being driven in natural environment and other activities prescribed by Art. 155 – 157 of Nature Conservation Act(1999). In practice their activity is limited to the protected areas.

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<sup>31</sup> Agriculture Inspectorate, "PORO Č ILO ZA LETO 2019," 2020.

<sup>32</sup> Environmental Inspectorate, "Poročilo o Delu Za Leto 2019," *REPUBLIKA SLOVENIJA MINISTRSTVO ZA OKOLJE IN PROSTOR INŠPEKTORAT REPUBLIKE SLOVENIJE ZA OKOLJE IN PROSTOR Dunajska Cesta 58, 1000 Ljubljana*, 2020.

<sup>33</sup> Environmental Inspectorate website?? .

## 5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR FORESTRY ACTIVITIES WHICH MIGHT AFFECT THE PROTECTED SPECIES

The main mechanism of assessment and authorisation for forestry activities is the system of forest management plans and marking the trees for felling by the Forest Service. But the forest management plans themselves are subject to Strategic Environmental Assessment (SEA) under the Environmental Act and the SEA Directive as well as Appropriate Assessment under the Nature Conservation Act and the Habitats Directive Article 6.

In practice, all regional level forest management plans are subject to SEA, as well as some of the local unit management plans. The plans, where the level and specific forms of logging are determined, can only be adopted if the Ministry of Environment and Physical Planning issues a positive opinion based on the impact assessment. This means that the plans, among others, need to effectively protect the habitats and species protected under the Habitats and Birds Directives.

The assessment and authorisation procedures and methods for forest management plans and other interventions are governed by a set of decrees related to SEA and EIA. The contents of the SEA are governed by:

- the Decree on criteria for assessing the likelihood of significant impacts of the implementation of a plan, program, or other general act on the environment regarding the process of comprehensive strategic environmental impact assessment<sup>34</sup> and the
- Decree on the environmental report and a more detailed procedure for the comprehensive assessment of the effects of the implementation of plans on the environment<sup>35</sup>

The first one lists in its Article 2, the criteria for assessing the significant impacts of plans and programmes “the importance and vulnerability of the areas likely to be affected, in particular taking into account: specific natural features (natural values and biodiversity)...”. The latter makes “conservation of biodiversity, including animal and plant species” an obligatory part of any SEA. These wide provisions also cover the potential impact of the plan on the protected species.

The scope of appropriate assessment is detailed by the Rules on the assessment of the acceptability of the impacts of the implementation of plans and interventions in nature on protected areas<sup>36</sup>. They require the assessment for plans that “could have a significant impact on protected areas and Natura 2000 areas” (Art 9). They do not mention protected species outside protected areas or Natura 2000 sites. In Article 3 they only state that other areas outside protected areas, important for species conservation status, should be taken into account.

Certain forestry actions are also subject to an environmental impact assessment. These include projects related to the conversion of forest to other land uses and the construction of significant forest infrastructure such as roads. The Decree on interventions in the environment for which an environmental impact assessment is required<sup>37</sup> (EIA) lists the following types of projects: afforestation, setting up a forest plantation or clearing of forest on a surface over 30 ha, and construction of roads over 10km of length. In addition, screening is required for afforestation and clearing of forest over 5 ha and

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<sup>34</sup> “Decree on the Criteria for Assessing the Likelihood of Significant Effects of the Implementation of a Plan, Program, Plan or Other General Act and Its Amendments on the Environment in the Process of Comprehensive Environmental Impact Assessment,” Official Gazette of the Republic of Slovenia, No. 9/09, 2009, <http://pisrs.si/Pis.web/pregledPredpisa?id=URED5016>.

<sup>35</sup> “Decree on the Environmental Report and a More Detailed Procedure for a Comprehensive Assessment of the Effects of the Implementation of Plans on the Environment,” Official Gazette of the Republic of Slovenia, No. 73/05, 2005, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=NAVO607>.

<sup>36</sup> “Rules on the Assessment of the Acceptability of the Impacts of the Implementation of Plans and Interventions in Nature on Protected Areas,” Uradni list RS, no. 130/04, 53/06, NPB1, 38/10, NPB2, 3/11 and NPB3 § (2011), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV5539&d-16544-s=3&d-16544-o=2&d-16544-p=1>.

<sup>37</sup> Decree on protected wild fungal species.

roads over 2 km of length. According to its Article 6, “impact on biodiversity and natural values” is an obligatory part of any EIA. In cases where an EIA is required, its scope includes the impact on protected species and may entail additional surveys and monitoring of species present. The Decree on the content of reports on the effects of the planned intervention on the environment and the method of preparation<sup>38</sup> (EIA) stipulates that the determination of the possible effects of the intervention shall also relate to: “... changes affecting the natural balance and ecosystems, the living conditions of wild plant and animal species and their habitats.”

Individual logging operations are not subject to EIA as they are considered part of regular forest management implemented according to the approved forest management plans subject to SEA and appropriate assessment, taking into account species protection rules. If the occurrence of protected species has been documented, their protection should be taken into account in the approval of trees for felling by the district forester, who can also issue binding guidelines on when and how the fellings may be conducted (e.g. regarding timing to avoid disturbance, preserving key habitats etc). However, as species protection is not a criterion triggering an EIA, those activities regulated under the forest management plan are not subject to impact assessment regardless if the occurrence of protected species has been documented.

Overall, the emphasis in the EIA, SEA and appropriate assessment is on the potential impact on the Natura 2000 sites, i.e. the habitats. But where an EIA is required, its scope includes the impact on protected species and may entail additional surveys and monitoring of species present, as well as definition of mitigation or compensation measures.

In all cases of assessment the IRSNC plays an important role, as the main body providing the opinion from the point of view of nature conservation including species protection in the process. Virtually no plan or intervention in the forests or forestry outside of regular work according to Act on Forests (1993) can be approved without their guidelines or favourable opinion. The decrees on EIA and SEA stipulate that the Ministry of Environment, who approves the EIA and SEA reports, has to consult the relevant authorities regarding their view of what may be significant negative impacts. The decree on appropriate assessment specifically requires an opinion from the IRSNC on the acceptability of the plan. The strong role of the IRSNC in these procedures is also observed in practice.

NGOs are also allowed to participate in the SEA, EIA, and Appropriate Assessment processes if they express interest and show their relevance to the matter. According to the Nature Conservation Act, some NGOs may obtain the status of an organisation in public interest. These organisations have the right to participate in any assessment process without justification of reasons. Most active in respect to species protection in forestry plans is DOPPS.

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<sup>38</sup> “Decree on the Content of the Report on the Effects of the Intended Intervention on the Environment and the Method of Its Preparation,” Official Gazette of the Republic of Slovenia, Nos. 36/09 and 40/17, 2009, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV8124>.

## 6 OVERALL ASSESSMENT OF SPECIES PROTECTION IN FORESTS

### 1. KEY FINDINGS (CHALLENGES)

#### 6.1 TRANSPOSITION ISSUES

Nature Conservation Act (1999) and its implementing acts provide the legal framework for biodiversity conservation including the transposition of the Habitats and Birds Directives, listing the Natura 2000 areas, protected species, and habitats. The act and its subordinate acts treat all species as a single category and don't distinguish provisions for birds and other species.

Species protection rules according to the Article 5 of the Birds Directive and Articles 12 and 13 of the Habitats Directive are set out in detail in the Decree on protected wild animal species<sup>39</sup>, the Decree on protected wild plant species<sup>40</sup> and the Decree on protected wild fungal species<sup>41</sup>. The provisions of all three Decrees are similar in terms of protection regimes and in terms of exemptions. They provide for the protection measures and prohibitions of the Habitats Directive, as well as for monitoring of species and activities affecting them. The lists of protected species (including under the Birds and the Habitats directives) are provided in the Annexes of the three decrees.

The three decrees provide for a general derogations from the species protection regimes for forestry activities according to administrative decisions or permits in line with the forestry regulations. It is not clear that the derogations comply with the species protection rules under the Nature Directives or the conditions under Article 16 of the Habitats Directive and Article 9 of the Birds Directive.

The forestry legislation does not include the same species protection provisions as the nature conservation legislation. This creates a circular reference and a possible loophole, where the sectoral legislation does not fully integrate the transposed provisions of the directives, while the conservation legislation provides for derogations based on the assumption that the forestry regulations comply with the species protection rules. This does not comply with the species protection rules in the Nature Directives.

The main focus of implementation of the Habitats and Birds Directives in Slovenia is on the management of habitats (Natura 2000 sites cover 45% of all forests). There is limited number of references in the legislation dedicated to species protection, and even out of these many are covering both habitats and species concurrently. The main exception to the habitat-based approach are the large carnivores: Brown bear, Wolf and Lynx. Their protection management is based on specific species management plans.

Based on limited information on threats to protected species and the limited effort directed towards their protection, it is not possible to make a meaningful evidence-based assessment of the level of implementation of the species protection rules in the forestry sector in Slovenia. The general rules are transposed, but the sectoral legislation does not cover all protected species in the same way and is subject to interpretation by the forest owners and Forest Service in the implementation.

#### 6.2 PREVENTIVE OR IMPLEMENTATION MEASURES

##### *Specific environmental measures/rules applicable at forest property level*

- According to the Act on Forests<sup>42</sup> “ownership rights in forests shall be exercised in such a way as to ensure their ecological, social and production function. The forest owner must therefore manage the forests in accordance with regulations, management plans and administrative acts issued pursuant to this Act”.

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<sup>39</sup> Decree on protected wild animal species.

<sup>40</sup> Decree on protected wild plant species.

<sup>41</sup> Decree on protected wild fungal species.

<sup>42</sup> Forest Act (ZG).

- In general, the Act on Forests<sup>43</sup> prescribes close-to-nature forest management with a premise that it is possible to meet different management objectives such as production of wood, biodiversity and social benefits simultaneously by keeping the forest structure as “natural” as possible. One of the results of this approach is that almost half of the forest area is designated as Natura 2000 sites. In these areas the forest management plans also represent the Natura 2000 management plans according to article 6 of the Habitats Directive.
- Implementing acts to the Act on Forests<sup>44</sup> specify how the habitat conservation and species protection are integrated in the management plans; protection of areas important for conservation of wild animals and plants including feeding sites, wintering grounds, eco-cells and refuges; prohibit works in the forests that may cause disturbance of selected bird species wintering/hibernation period of herbivores and brown bear and breeding areas/period for protected mammals; prohibition of deliberate destruction of bird nests, mammal nesting sites and parts of habitats where animals congregate or disturbance of animals in general.
- The Act on Forests<sup>45</sup> provides for management plans to be prepared every 10 years for all forests irrespective of ownership. The forest owners are obliged to respect the management plan. The requirements of the Habitats and Birds directives are integrated in the forest management plans through guidelines prepared by the Institute for Nature Conservation as the institution responsible for habitat and species conservation.
- It is a good practice that the Act on Forests<sup>46</sup> sets the obligation that any felling of trees is subject to approval by the Forest Service through marking of individual trees in consultation with the forest owner. The species conservation measures contained in the forest management plan need to be respected during the implementation of the interventions. After the marking of trees, the district forester issues an **administrative decision** to the forest owner specifying the allowed cuts and any other (including protection) measures or conditions that the owner should implement.
- Another good practice is that Act on Forests<sup>47</sup> and its byelaws, a certain share of habitat trees, standing and lying dead wood should be left in every forest at a minimum of 3 % of the standing volume of each stand.
- The Game and Hunting Act<sup>48</sup> explicitly prohibits killing and disturbance of all animals apart of those listed as game (i.e. excluding the protected species according to BD and HD).

### Other implementing or stimulating measures

- The strategy for conservation of large carnivores (brown bear, wolf, and lynx) has been developed through a series of EU funded LIFE projects and is considered a good practice. These species are mainly present in forests in Slovenia and their populations are increasing, leading also to conflicts with humans. Since 2004 the projects have supported systematic research, monitoring and awareness raising in relation to the large carnivores. The measures implemented include the awareness raising and promotion of species protection rules including prevention of human conflicts with animals, non-disturbance of dens, prohibition of deliberate killing, reducing the attractiveness of human settlements to the animals. Even if the presence of carnivores is politically contentious, there has been considerable success in protecting these species and improving the attitude of the forest owners and the public towards them.
- The approaches piloted in these projects with the support of EU should be turned into standard practice in all forests and forestry activities.

<sup>43</sup> “Poročilo o Delu Zavoda Za Gozdove Slovenije Za Leto 2019,” 2020, [http://www.zgs.si/fileadmin/zgs/main/img/PDF/LETNA\\_POROCILA/2019\\_Porocilo\\_o\\_delu\\_ZGS.pdf](http://www.zgs.si/fileadmin/zgs/main/img/PDF/LETNA_POROCILA/2019_Porocilo_o_delu_ZGS.pdf).

<sup>44</sup> Forest Act (ZG).

<sup>45</sup> Forest Act (ZG).

<sup>46</sup> Forest Act (ZG).

<sup>47</sup> Forest Act (ZG).

<sup>48</sup> Game and Hunting Act.

## 6.3 PUBLIC ADVISORY SERVICES AND PUBLIC ENFORCEMENT

### Government advisory services

- Advice to forest owners is provided through the forest management plans and through direct communication of the district forester with the forest owner. Whether and how much the species conservation measures and protection rules are communicated with the forest owners, depends on the capacity and motivation of the district foresters and the interest of the forest owners.
- The information on protected species is not available to the forest owners in a systematic way, although some information and awareness raising is provided by the Forest Service staff and in the framework of the various LIFE projects related to forests and species groups. The existing public internet-based sources of information on protected species don't provide enough information (spatial or qualitative) for forest owners to know which species are present or expected on their property.

### Enforcement of species protection legislation

- Two inspectorates are responsible for enforcement in the forestry sector: Inspectorate of Republic Slovenia for Farming, Forestry, Fishing and Hunting covering the implementation of the forestry and hunting legislation, and Inspectorate of Republic Slovenia for Environment and Physical Planning covering the species protection. With many other tasks, both inspectorates dedicate very limited resources to species protection (e.g. only two inspectors covering biodiversity conservation, dealing with 6 % of the cases of the environment inspectorate).
- Most enforcement cases related to species are of deliberate or accidental killing of prominent protected species, usually brown bears or wolves. These are cases of killed animals being found, or cases of hunters mistakenly killing a bear or wolf instead of a game species such as wild boar. There are a few such cases each year.
- Cases of detected species protection rule violations related to less prominent species are rare and depend on reporting by concerned citizens or civil society organisations.

## 6.4 ASSESSMENT AND AUTHORISATION PROCEDURES

In all cases the IRSNC plays an important role in the process, as the main body providing the opinion from the point of view of nature conservation including species protection. NGOs are also allowed to participate in the SEA, EIA and Appropriate Assessment processes if they express interest and show their relevance to the matter.

### SEA

- Strategic Impact Assessment as well the Appropriate Assessment according to the Habitats Directive is conducted for the Forest Management Plans, where the level and specific forms of logging are determined. The plans can only be adopted if the Ministry of Environment and Physical Planning issues a positive opinion based on the impact assessment. This means that the plans, among others, need to effectively protect the habitats and species of European importance.
- The IRSNC plays an important role in the process, as the main body providing the opinion from the point of view of nature conservation including species protection. NGOs are also allowed to participate in the SEA and Appropriate Assessment processes if they express interest and show their relevance to the matter.

### EIA

- Conversion of forest to other uses as well as significant forest infrastructure such as roads are subject to an Environmental Impact Assessment procedure. EIA is obligatory for forest conversion over 30 ha and roads longer than 10 km, while forest conversion over 5 ha and roads longer than 2 km are subject the screening.

- Forestry activities or projects affecting species protected under Annex IV of the Habitats Directive do not fall under a criteria requiring an EIA. Individual logging operations are not subject to EIA as they are considered part of regular forest management and are assessed during the preparation of the forest management plans. In cases where EIA is required, its scope includes the impact on protected species and may entail additional survey and monitoring of species present.

### Other authorisation procedures

- Appropriate assessment according to the Habitats Directive is required for plans and interventions that “could have a significant impact on protected areas and Natura 2000 areas”. It does not mention protected species outside protected areas or Natura 2000 sites. It only states that other areas outside protected areas, important for species conservation status, should be taken into account.

## 2. RECOMMENDATIONS

### Legislative transposition measures of species protection rules:

- Consider an assessment of effectiveness of existing legislation and policies in achieving species protection in view of the general exemptions for forestry activities. Based on this assessment the forestry rules and guidance regarding sustainable forest management should be strengthened to provide sufficient protection of species more systematically, or the exemption should be terminated or specified in more detail.
- Increase the level of attention to species protection, compared to habitat conservation, and make it more systematic both in nature conservation and in forestry regulations.

### Preventive and implementing measures:

- Consider rebalancing the scope of the forest management plans to reduce the primary focus on the production of timber and increase the focus on biodiversity conservation including species protection, adaptation to climate change and other ecosystem services.
- Increase the capacity and awareness of district foresters to species protection, so that they can explain it to forest owners and take it into account more effectively during the marking of trees for felling.
- Based on the good practice concerning large carnivore conservation and protection, extend similar efforts of awareness raising and implementation measures to other protected species.
- The approaches piloted in the LIFE projects with the support of EU should be turned into standard practice in all forests and forestry activities.

### Public advisory and enforcement:

- Improve the capacities of the Forest Service to advise forest owners on forest conservation and species protection concerns.
- Increase monitoring of local species occurrences and site-specific assessments of conservation status of species to respect the species protection regulation, e.g. through additional funding and human/technical capacities.
- Make the information on protected species and their presence more readily accessible to forestry stakeholders and gradually improve the quality of this information so that it is relevant at the property level
- Increase capacity of the inspectorates and the number of controls regarding compliance with the species protection legislation and make respective statistics available.

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## ANNEX I TASK 3 TRANSPOSITION TABLE – FOREST LAND SLOVENIA

## ANNEX II – TASK 3 CONTACT LIST FOR SLOVENIA

