

Questionnaire EUFJE Conference 2010 – Enforcement of European Biodiversity Law at national level

- I. Natural habitats and their fauna and flora
 - A. Habitat protection
 - B. Species protection
- II. International trade

General Introduction

Norway is not a party to the EU, but a party to the agreement establishing a European Economic Area, "EEA". The Habitat directive is not binding for Norway because it is not a part of the EEA agreement. And, as a rule, the EEA agreement does not include rules concerning the management of natural resources.

Norway is a party to the Bern Convention, which was transformed into the Wildlife Act of 1981. However, the provisions in the Wildlife Act that would have been relevant in answering the questionnaire are no longer in force. Some previous court decisions under the Wildlife act are nonetheless still relevant case law under the present legal regime. The 1981 Act has been replaced by the Nature Diversity Act of 19 June 2009 No. 100, "the Act", that entered into force on 1. July 2009 (with the exception of Chapter IV). This Act transforms the Bern Convention and the Convention on Biological Diversity, "CBD", into norwegian statutory law, and replaces the former Nature Conservation Act and the parts of the Wildlife Act that are relevant in relation to the questionnaire.

The Nature Diversity Act includes provisions on principles for sustainable use, both in general terms and more specifically as they relate to species and habitat types.

The Act lays down overall principles for the conservation and sustainable use of biodiversity that are applicable regardless of the area of society involved. This requires the continued use and development of policy instruments along a scale from strict protection to general requirements for sustainable use. The statutory authority for these policy instruments are partly provided by the new Act, and partly by existing acts with necessary amendments.

The Nature Diversity Act is intended to apply to all biological resources. The Act applies to all sectors of society. At the same time, it must also be applied together with other legislation governing the use and conservation of natural resources. The Act sets out the general principles for nature management, while more concrete rules for the management of specific types of environments (e.g. river systems) or specific sectors (e.g. forestry) will be found in other legislation. To a certain extent, the Act lays down the substantive norms for land use, while the procedural framework for implementing these norms is set out in the Planning and Building Act. In other areas, particularly where protected areas are concerned, the Act itself provides the legal authority for decisions on land use.

As mentioned, the Nature Diversity Act replaces the Nature Conservation Act and parts of the Wildlife Act and the Act relating to salmonoids and fresh-water fish, but it has a considerably wider scope than classical nature conservation. The Nature Diversity Act also includes provisions on alien species and on principles for sustainable use, both in general terms and more specifically as they relate to habitat types and species.

The term "habitat" is not used coherently in the Nature Diversity Act. The Act does not define it as a term of art, and it is also used in various contexts: 1) "leveområde", "økologisk funksjonsområde for arter", 3) "naturtype" (habitat type), 4) "arters naturlige miljø", 5) biotopverneområde (habitat management area), and 6) "naturområde".

This has made it a bit complicated to answer the questionnaire. I have tried to provide answers that takes into account all the six connotations and contexts in which the term is used.

An english translation of the Act is attached to this document.

- I. Natural habitats and their fauna and flora
 - A. Habitat protection

Introduction

Habitat-directive (92/43/EEC) - Special areas of conservation. According to art. 4 of the directive, a list of **sites selected** as sites of Community importance was adopted by the European Commission¹. Once a site of community importance has been adopted, the Member State concerned designates that site as a special area of conservation, as soon as possible and within six years of designation by the Commission at the latest.

According art. 6.2. of the directive Member States shall take appropriate steps to avoid, in the **special areas of conservation, the deterioration of natural habitats** and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the directive. Moreover, according to art. 6.3. of the directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

Birds-directive (79/409/EEC) – Special protection areas. According to art. 4.1 of the directive, the Member States shall classify as **special protection areas the most suitable territories for the conservation of Annex I – bird species, in order to ensure their survival and reproduction**². According to art. 4.2 of the directive, Member States shall take similar measures for regularly occurring *migratory species not listed in Annex A*. To this end, they shall pay particular attention to the protection of wetlands, particularly wetlands of international importance.

¹ See for the actual lists of SACs:

http://ec.europa.eu/environment/nature/natura2000/sites_hab/index_en.htm

See also: http://ec.europa.eu/environment/nature/natura2000/db_gis/index_en.htm

² See for the actual list of SPAs:

http://ec.europa.eu/environment/nature/natura2000/sites_birds/sites_spa.htm

See also: http://ec.europa.eu/environment/nature/natura2000/db_gis/index_en.htm

Ecocrime-directive (2008/99/EC). Art. 3 (h) of the Ecocrime-directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence (...) “*h) any conduct which causes the significant deterioration of a habitat within a protected site ; (...)*”. A ‘**habitat within a protected site**’ is any natural habitat or habitat of species for which a site is designated as a special area of conservation under the Habitat-directive or any habitat of species for which an area is classified as a special protection area under the Birds-directive.

Questions

I.A.1. Are there general habitat protection measures, applicable to all special areas of conservation and special protection areas in your country, or are they site specific, or is there a combination of general and site specific measures?

Habitat types:

The Nature Diversity Act includes provisions on principles for sustainable use as they relate to habitat types.

Chapter II sets out conservation targets for habitat types. The target for habitat types is to maintain their diversity, their natural range and the species diversity that is characteristic of each habitat type. Both public and private actors are required wherever possible to manage the environment in such a way that this target is achieved. The ecosystem approach is accentuated by a general provision in § 4 requiring ecosystem functions, structure, productivity and dynamics to be maintained to the extent possible. The conservation target for habitat types is dynamic and takes into account natural processes and developments.

The conservation targets do not establish specific obligations, but provide a framework for action pursuant to other provisions of the Act or other acts. One such provision is the general duty to exercise due care in § 6. This provision highlights the fact that each person has a responsibility to act with care and, within reasonable limits, to organise their activities in such a way that they do not jeopardise the conservation targets for habitat types. The provision requires everyone, to the best of their ability, to obtain a reasonable knowledge of the biodiversity affected by their activities.

Protected areas

Chapter V of the Nature Diversity Act includes provisions on protected areas that replace the corresponding provisions of the former Nature Conservation Act. The provisions are adapted to the protection of areas both on land, including river systems, and in the sea. This allows for the establishment of protected areas on the Norwegian continental shelf and in the Economic Zone, but subject to any limitations imposed by international law. § 33 sets out the objectives for which protected areas may be established. Their establishment is based on the premise that there is a value in giving certain areas better protection than others on the basis of specific criteria.

The Act allows for the following categories of protected areas: national park, § 35, protected landscapes § 36, nature reserves § 37, and habitat management areas, § 38.

National parks are large areas of natural habitat that are largely undisturbed, that are typically without major infrastructure development, and that contain distinctive or representative ecosystems. A fairly strict level of protection is to be maintained in national parks.

In a *protected landscape*, the character of the landscape as a whole is the basis for protection, rather than individual species. However, other forms of protection may be combined with landscape

protection in part or all of a protected landscape. Habitat management areas may be particularly appropriate here. The Nature Conservation Act contained a provision making it possible to adopt a local development plan pursuant to the Planning and Building Act that is contrary to the purpose of a protected landscape. This system has not been included in the Act. Landscape protection is a mild form of protection, since activities that are already in progress may, as rule, be continued. When a decision is made to protect such areas, a proposal for a management plan must be submitted at the same time.

The category *nature reserve* includes areas that are not undisturbed, but still important for the maintenance of biodiversity. Thus, nature reserves may include areas that are not free of human intervention, but where key ecological functions have been maintained, and where further intervention should be avoided. They may also include areas where semi-natural biodiversity is of high conservation value, that should be strictly protected against further human intervention that may have a negative impact. A proposal for a management plan must be submitted when a decision is made to protect an area. It is also possible to establish nature reserves for the purpose of restoration. This means that an area can be protected even if it does not currently have the qualities that a nature reserve should normally have. In such cases, the area must be one that can develop such qualities, either if it is allowed to develop without human intervention or through active habitat restoration. In these cases, § 37 Act lays down a requirement to submit a proposal for a management plan when a decision is made to protect the area. A nature reserve is afforded with a high level of protection, and most activities may be prohibited if this is necessary to achieve the objectives of the protection measure.

The category *habitat management area* in § 38 replaces the legal authority to protect plant or animal habitats previously provided by the Nature Conservation Act, the Wildlife Act and the Act relating to salmonoids and fresh-water fish. The key concept here is the needs of one or more specific species. A habitat management area may be established to provide protection for any species.

Selected habitat types

Chapter VI in the Act establishes a separate regime for “selected habitat types”. This is intended to be a protection regime half-way between the establishment of protected areas and that which follows from the general principle of sustainable use. It is based on the identification of habitat types that are considered to be particularly important for biological diversity. Special provisions lay down how selected habitat types are to be taken into consideration during the exercise of public authority and in connection with all other activities. The goal is not to protect every locality where the habitat types in question are found, but to safeguard the existence of the selected habitat types in Norway. This regime should primarily be implemented through the Planning and Building Act.

The term habitat type is defined broadly in the Act. It includes both large ecosystems such as old-growth rich deciduous forest (edelløvskog) or river deltas and small biotopes such as old trees, farm ponds, and hedges.

It has not yet been specified which habitat types that will be selected. The future regulations may also specify whether all localities where the habitat is found are to be included, or only certain of them. The extent of the protection regime will therefore depend on the scope of the future regulations. It seems likely that the regulations will be adjusted from time to time by increasing the number of habitat types, or removing some habitat types from the selected lists. The regime is flexible and can be adapted to meet the needs that arise as a result of natural developments or changes in the pressures on habitats.

Habitat types may be designated as selected if they meet one of the following criteria:

- the range of the habitat type is decreasing contrary to the conservation target for habitat types
- the ecological status of the habitat type is poor
- a significant proportion of the natural range of the habitat type is found in Norway
- the habitat type is particularly important for the maintenance of biological diversity for other reasons
- international commitments make selection of the habitat type necessary

A key criterion here is whether the habitat type is in danger of extinction. If this is the case, the provisions of the draft Act will not only provide the legal authority to designate the habitat type as selected, but lay down a duty for the authorities to evaluate whether such designation is necessary and appropriate. This is a parallel to the proposed rules for designating priority species.

If a regulation has designated a habitat type as "a selected habitat type", the municipal authorities are required to map the occurrence of the habitat type in each municipality.

The Act requires the municipalities to give selected habitat types the necessary protection through land-use planning or by other means. A municipality may choose not to protect one specific area of a selected habitat type, but designate it for another purpose in its land-use plan. If this is the case, it is expected that the municipality takes the selected habitat type into account in planning processes under the Planning and Building Act, which requires land-use plans to be submitted to the relevant central government authorities.

The Act contains a general rule in § 53. It establishes that no permission should be given or grants provided for new developments or significant changes in use that may reduce the range of a selected habitat type or cause its ecological status to deteriorate. In this case, too, a specific area of a habitat may be sacrificed if this is required by important considerations of the public interest or if an alternative conservation area of equivalent quality exists or can be established.

Special provisions are proposed to ensure the protection of selected habitat types in forestry, § 54, and agricultural properties, § 55. These establish a notification requirement for all developments in a forestry or agricultural property that will have an impact on a selected habitat type.

I.A.2. Who supervises habitat protection measures in your country? Are there (also) specialized inspectorates supervising them?

Chapter VIII in the Nature Diversity Act sets out rules regarding the competent authorities under the Act and on supervision.

Under § 62, "the King" is the highest authority under the Act. However, Norway practices a parliamentary system, under which the cabinet is constitutionally answerable to the parliament. When an act contains the term "the King", this is almost always the council of state, or cabinet. In this event, the main rule is that the cabinet may choose to retain the power granted to it by legislation, or delegate it to subordinate organs, (provided that the cabinet retains the power to instruct the organ in question).

§ 62 also sets out that the King may decide that the municipal authorities are the competent authority under further provisions prescribed in or under the Act. The King may give instructions to municipal authorities regarding the exercise of delegated authority under provisions laid down in or

under Chapter V in the Act. The King may also decide that a specially appointed body is the administrative authority for an area that has been protected under Chapter V.

The Directorate for Nature Management, "DMN", is the appeals body for decisions made by municipal authorities under the Act, unless otherwise provided. The county governor has the right to appeal against decisions made by municipal authorities to which authority has been delegated.

Under § 63 on supervision, the Ministry of the Environment supervises the state of the natural environment and monitors compliance with the provisions laid down in and under the Act. The supervisory authority decides the areas that shall be subject to supervision. The supervisory authority shall carry out sufficient control and inspection measures to be able to detect breaches of provisions.

§ 64 sets out that, if necessary, in order to carry out tasks under the Act, the supervisory authority or the police shall be given unimpeded access to property where activities are being carried out that may have an impact on biological, geological or landscape diversity, or where it may be assumed that there has been an impact on such diversity.

I.A.3. If habitat protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions?

§ 70 in the Nature Diversity Act establishes that if projects carried out in accordance with the Act or with decisions made under the Act prove to have substantial unforeseen impacts on biological, geological or landscape diversity, the person responsible shall take reasonable measures to prevent or limit damage or nuisance. The competent authority under the Act may order the person who is responsible to carry out such measures within a fixed time limit. When it can be done without particular inconvenience to the person responsible, the authority may order that the biological, geological or landscape diversity is restored to its former state.

If the person responsible fails to comply with an order containing such requirements as are mentioned in section 69 or section 70, second paragraph, § 71 sets out that the competent authority under the Act may take steps to ensure that the measures are carried out. The competent authority under the Act may also ensure that the measures are carried out if they are urgently needed in the interests of biological, geological or landscape diversity, or if the identity of the person responsible cannot be established. Expenses relating to measures carried out under the first paragraph may be claimed from the person responsible. The claim is enforceable by execution proceedings.

Under § 72, if necessary for the implementation of measures under the sanctions chapter of the Act, use may be made of the property of the person responsible or, if necessary, the real property of another. If use is made of another's real property, the one concerned shall receive compensation from the one responsible for any loss caused by damage or inconvenience.

Under § 73, the competent authority under the Act may make a decision to impose a coercive fine to ensure compliance with provisions laid down in or under the Act. The coercive fine shall become effective if the person responsible fails to meet the time limit fixed by the competent authority under the Act for remedying the situation. A coercive fine may be imposed in advance if this is warranted for particular reasons, in which case it shall become effective from the time a contravention

commences. It may be determined that the coercive fine shall remain payable for as long as the unlawful situation persists, or that it shall be payable each time a contravention occurs. However, a coercive fine shall not remain payable if compliance is impossible owing to circumstances for which the one responsible is not to blame. A coercive fine may be imposed as a daily fine or as a lump sum. The coercive fine shall be imposed on the person responsible for the contravention. If the contravention has occurred on behalf of a company or other association, a foundation, or a public body, the coercive fine shall normally be imposed on the entity concerned. If a coercive fine has been imposed on a company that is part of a group of companies, accrued amounts thereof may also be recovered from the parent company. The Ministry of the Environment may waive accrued amounts of a coercive fine. Such a decision is not considered to be an individual decision under the Public Administration Act.

Anyone that contravenes provisions laid down in or under the Act or provisions that serve to implement objectives and principles set out in the Act shall, if so ordered by the competent authority under the Act, pay environmental compensation to the state in accordance with § 74 of the Act. An order to pay environmental compensation is enforceable by execution proceedings. Liability to pay compensation may also be the subject of criminal proceedings. If the compensation claim is brought before a court in a criminal case, civil action or complaint against execution proceedings, the court may conduct a full trial of the compensation claim. Notification of an order to pay compensation shall include information about the provisions laid down in this paragraph. The Ministry of the Environment may waive a claim for environmental compensation. The fact that the one responsible is ordered to pay environmental compensation does not preclude the imposition of sanctions such as a contravention charge.

§ 75 sets out that anyone that wilfully or negligently contravenes the provisions laid down in or under § 33 on objectives relating to protected areas, § 34 on protected areas, § 35 on natural parks, § 36 on protected landscapes, § 37 on nature reserves, § 38 on habitat management areas, § 39 on marine protected areas, § 45 on temporary protection measures, § 54 on the duty of notification of forestry projects that affects areas of selected habitat types, § 55 on the duty of notification of agricultural projects that affects areas of selected habitat types, § 63 on breaches of the duty to provide assistance and information to the supervisory authorities, § 64 on investigative measures, § 65 on the duty to provide information, § 66 on internal control measures, § 67 on breaches of decrees of the revocation of permits, § 68 on a duty to register environmental decisions, § 69 on the duty to take measures to remedy or mitigate the impact of unlawful activities, or the failure of persons carrying out projects in accordance with the Act or with decisions made under the Act, that have substantial unforeseen impacts on biological, geological or landscape diversity, to carry out an order under § 70...

- shall be liable to pay fines or suffer imprisonment for a term not exceeding one year.

§ 75 stipulates that gross contravention of the above mentioned §§s is punishable by a fine or imprisonment for a term not exceeding three years. In deciding whether the contravention is gross, particular importance shall be attached to whether it has caused or resulted in a risk of significant damage to biological, geological or landscape diversity, whether such damage must be regarded as irreversible, the degree of fault, and whether the offender has taken any measures to prevent or mitigate the damage. If a contravention of one or more of the provisions mentioned in the first

paragraph at the same time constitutes a contravention of the provisions of another statute, the provisions of this Act relating to penal measures shall only apply to the extent that there is no provision for corresponding penal measures in the statute concerned.

In serious instances of habitat destruction, the general clause on environmental crimes in the Penal Code of 1902 § 152 b. is applicable. The maximum penalty for violating § 152 b is 10 years imprisonment.

Because the Nature Diversity Act is relatively new, there is to my knowledge no case law or administrative practice on either civil or penal sanctions as of yet. It is also difficult and time-consuming to obtain information relating to sanctions issued by the relevant authorities. There is a limited amount of still relevant case law, and I provide summaries of some of these cases below.

The King (the cabinet) has not established a register of environmental decisions under the Act, as stipulated by § 68.

The sanctions laid down by the Act are attributable to the one “responsible”, or the “one who” commits a violation, regardless of whether this is a legal or a physical person.

I.A.4. What type of sanctions can be applied if a plan or project as referred to in art. 6.3. of the Habitat-directive is carried out without an appropriate assessment? Does it make a difference if not only an appropriate assessment is lacking, but also a permit for the project or an approval of the plan?

As mentioned above, Norway is not bound by the Habitat directive. The Nature Diversity Act does not contain provisions similar to its Art 6.3 and Art 4. Consequently, Norway has not proposed a list of sites to protect habitat types in accordance with Art 4 in the directive and its Annex I list.

There are general statutory requirements however, meant to achieve the same objectives as Art 6 and Art 4, in the Act of 27 June 2008 No. 71 relating to Planning and the Processing of Building Applications (the Planning and Building Act) (the Planning part), § 1-1. This section sets out that planning pursuant to the Planning and Building act shall facilitate the coordination of central government, regional and municipal functions and provide a basis for administrative decisions regarding the use and conservation of resources, including natural resources. § 4-2 in the Planning and Building Act describes these plans and the impact assessments they necessitate. All proposals for plans regarding the use and conservation of natural resources (including habitats), shall, when presented for public scrutiny, include a plan description that specifies the objectives of the plan, its main contents and effects, and the effect on the plan of limits and guidelines applicable to the area. In the case of regional master plans and municipal master plans with guidelines or limits for future development and in the case of zoning plans that might have substantial effects on the environment, the plan description shall provide a separate assessment and description – impact assessment – of the effects of the plan on the environment (including habitats).

Chapter 5 in the Planning and Building Act shall ensure public participation in planning decisions. § 5-1 obliges anyone who presents a planning proposal to facilitate public participation. The municipality

shall make sure that this requirement is met in planning processes carried out by other public bodies or private bodies. § 110 no. 3 in the Planning and Building act decides that fines may be imposed on any person who willfully or negligently uses or allows use of a building or part of a building, structure or land without being granted dispensation pursuant to section 7 of the Planning and Building act for a project or use in contravention of the plans under the Planning and Building act (that affects the environment). § 111 in the Planning and Building act sets out that fines may be imposed on any person who wilfully or negligently despite a written order fails to comply with the conditions for temporary dispensations (including concerning measures affecting habitats falling under the purview of the plans under the Planning and Building act), pursuant to its § 7.

§ 112 in the Planning and Building act decides that fines may be imposed on any person who wilfully or negligently fails to comply with orders or prohibitions contained in the Act, regulations or by-laws, or any special order or prohibition issued pursuant to any such provision, (if the planning decisions affect the environment, including habitats, cf. § 1-1) if the municipality has first notified him in writing that he may become liable to a penalty if the matter is not remedied within a specified time limit, and this time limit is exceeded.

In the case of any matter that contravenes provisions made in or pursuant to the Planning and Building act, the Planning and Building Authorities may, under the authority of § 113, order the one responsible to remedy such matter within a time limit and also prohibit the continuation of such activity.

§ 13 in the Nature Diversity act regulates the quality of biological, geological and landscape diversity. Under this section, the King (the cabinet) may establish recommended quality norms for landscape diversity, for example concerning the range or ecological status of a habitat type. If a quality objective laid down in a norm under the Act is not achieved, or if there is a risk of this, the competent authority under the Act should in consultation with other authorities concerned draw up a plan for ways of nonetheless achieving the quality objective. The King (the cabinet) has not established any such regulation.

When a decision is made under another statute to protect the natural environment in a protected area under § 13 of the Nature Diversity Act, importance should be attached to the the protection of a full range of variation of habitats and landscape types, and to protect endangered natural environments and areas with specific ecological functions for priority species.

If such decisions made under another statute are part of a plan that covers areas protected by a decision under the Nature Diversity Act, the King may prescribe provisions to ensure that the protection provided by the various statutes is coordinated in order to promote the objective of the plan.

I.A.5. Conduct falling under article 3(h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and paste or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such

an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

Ecocrime-directive (2008/99/EC). Art. 3 (h) of the Ecocrime-directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence (...) *“h) any conduct which causes the significant deterioration of a habitat within a protected site ; (...)”*. A **‘habitat within a protected site’ is any natural habitat or habitat of species for which a site is designated as a special area of conservation under the Habitat-directive or any habitat of species for which an area is classified as a special protection area under the Birds-directive.**

Norway is not bound by the Ecocrime, - habitat, - or bird directives.

However, the Norwegian Penal Code of 1902 § 152 b. contains a general clause on environmental crimes.

§ 152 b. sets out that:

“Any person who wilfully or through gross negligence

- 1. pollutes air, water, or soil so that considerable harm or threat of such harm is inflicted on the environment in an area, or*
- 2. stores, leaves or empties waste or other substances with imminent risk of such consequences as mentioned in No. 1*

shall be liable to imprisonment for a term not exceeding 10 years. If any person’s death or considerable harm to body or health has resulted therefrom, imprisonment for a term not exceeding 15 years may be imposed.

Any person who wilfully or through gross negligence

- 1. diminishes a natural population of protected living organisms which nationally or internationally are threatened by extinction, or*
- 2. inflicts considerable harm on an area that is protected by an administrative decision... (under various acts)*

...

shall be liable to imprisonment for a term not exceeding six years.

Any person who aids and abets such an offence shall be liable to the same penalty”.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

In Rt. 2005 page 568, the Supreme Court of Norway sentenced a man to a term of 1 year in prison for having deforested an area in a nature reserve. His intention was to change the status of the area from a nature reserve to an ordinary unprotected forest. He had violated the penal code of 1902 § 152 b, third paragraph No. 2, because he had wilfully inflicted considerable harm to a nature reserve under Chapter II of the Nature Conservation Act of 1970. The result would have been the same under the rules in Chapter III of the Nature Diversity Act.

B. Species protection

Introduction

Habitat-directive (92/43/EEC) – Animal and plant species. According to art. 12 of the directive Member States shall take the requisite measures to establish a system of strict protection for the **animal species listed in Annex IV (a)** in their natural range, prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild; (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; (c) deliberate destruction or taking of eggs from the wild; (d) deterioration or destruction of breeding sites or resting places. Member States shall also prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before the directive is implemented. The protection shall apply to all stages of life of the animals. According art. 13 of the directive, Member States shall take the requisite measures to establish a system of strict protection for the **plant species listed in Annex IV (b)**, prohibiting: (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild; (b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before the directive is implemented. The prohibitions shall apply to all stages of the biological cycle of the plants.

Birds-directive (79/409/EEC). Similar provisions apply to birds. Pursuant to art. 5 of the directive, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in art. 1 of the directive, being “*all species of naturally occurring birds in the wild state in the European territory of the Member States*”, Greenland excepted. They will be prohibiting in particular: (a) deliberate killing or capture by any method; (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests; (c) taking their eggs in the wild and keeping these eggs even if empty; (d) deliberate disturbance 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 the directive; (e) keeping birds of species the hunting and capture of which is prohibited.

Without prejudice to the provisions of art. 6.2 and art. 6.3 of the directive, which allow for some exceptions, Member States shall also prohibit for all those bird species the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds (art. 6.1 directive). Regarding the hunting, capture or killing of the birds, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, and in particular the use of those listed in Annex IV (a). Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b) (art. 8 directive).

Ecocrime-directive (2008/99/EC). Art. 3 (f) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: “*f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species*”. For the purpose of this article, ‘protected wild fauna and flora’ are, under the Habitat-directive, the Annex IV animals and plants, and under the Birds-directive, the Annex I bird species and regularly occurring migratory bird species not listed in Annex I.

Questions

I.B.1. Are the fauna (including birds) and flora protection measures organized within one coherent legislative framework, or through a patchwork of legislations, or is there a combination of general and specific measures?

Yes. The flora and fauna protection measures are organized within one coherent legislative framework, i.e. the Nature Diversity Act.

I.B.2. Who supervises fauna and flora protection measures in your country? Are there (also) specialized inspectorates supervising them?

I refer to I.A.2 above. Under the Act, the supervisory authorities are the same for fauna and flora protection measures as they are for habitat protection measures.

I.B.3. Do the enforcement efforts concentrate on a few types of fauna, birds or flora? Are there some topics that gather all attention, all enforcement efforts? Is there an evolution through time in the focus of enforcement efforts?

In addition to the general regime based on the conservation principle for all species, "the King", (- the cabinet), is authorised to designate priority species under § 23. This replaces the legal authority as previously provided by §§s 13 and 14 of the Nature Conservation Act of 1970 for species protection. If a species is designated as a priority species, it may be given total protection, so that it may not be killed for any purpose. If this is not sufficient to protect the species, rules on the protection of important habitats (areas with specific ecological functions) for the species must be laid down. At present, no such legislation has been passed.

In Norway, enforcement measures are focused on all the species that are placed on the so called "Red List". The present Red List is from 2006, but it will be revised in 2010. Under § 152 b of the Penal Code of 1902 any person who willfully or through gross negligence diminishes a natural population of protected living organisms on the red list shall be liable to imprisonment for a term not exceeding six years.

The majority of species on the Red List are in the following main groups: beetles, fungi, butterflies and moths, and vascular plants. 78 species of birds, 44 species of fish, 31 species of mammals, and 5 species of amphibians and reptiles, are on the list. The highest occurrence of Red List species is in forest and woodland areas with 1827 species (48% of the Red List species) and agricultural landscape with 1329 species (35%). These are followed by wetland with 495 species (13%), seashore and coast with 456 species (12%), the limnic environment with 327 species (9%), alpine and arctic environments with 179 species (5%) and the marine environment with 152 species (5 %).

Predators such as wolves, eagles, lynx, and bears, are all priority Red List species. The predators also have threatened species status under the Bern Convention. The Habitat Directive, the Bern Convention, and the Act have many similarities in relation to the management of predators falling under the purview of the Bern Convention. The regulations on the killing of such in Art 16 of the Directive, the Bern Convention Art 9, and in § 18 of the (Nature Diversity) act are almost identical. All the provisions stipulate that killing may only take place if this is not detrimental to the survival of the predators concerned.

To my knowledge there are not some topics that gather all attention or all enforcement efforts.

I expect that the number of species will be higher on the 2010 Red List than it is on the 2006 Red List, and that the enforcement efforts will evolve in accordance with the new listings.

In the Act, the focus is on maintaining species in their natural habitat. However, in § 27, the Act recognises that in some cases, it may be necessary to implement ex-situ conservation (conservation of species outside of their natural habitats) measures. § 27 establishes a duty for the authorities to implement such measures if a species is directly threatened with extinction and if such measures may be instrumental in ensuring its long-term in-situ survival.

I.B.4. If fauna and flora protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

I refer to I.A.3. above. In principle, the sanctions and enforcement measures in Chapter IX of the Act are the same for fauna and flora protection measures as they are for habitat protection measures. The sanctions may be administrative, criminal, or civil in nature. The level of sanctions is decided on an individual basis, within the confines of the conditions and defined guidelines in the relevant provisions as set out in Chapter IX of the Act. Since the Act is new, it is very difficult to say whether the sanctions in the Act will be applied often or whether they will be effective. The sanctions may be issued against “the one responsible”, or “anybody”, and are applicable to both physical and legal persons.

I also refer to § 152 b. in the Penal Code of 1902, which is included in the text under I.A.5. § 152 b. sets out that persons who willfully or through gross negligence diminish natural populations of protected living organisms which nationally or internationally are threatened by extinction shall be liable to imprisonment for a term not exceeding six years.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

In Rt. 1996 page 353, the Supreme Court of Norway sentenced a man to prison for 120 days for breaches of the Wildlife Act of 1981. Among other things, the man had shot and killed 8 birds, - all on the red list, killed 7 mammals and 22 birds outside of the legal hunting period, used illegal traps and weapons, and used inhumane hunting methods.

In Rt. 2002 page 258, the Supreme Court upheld the verdict of the appeals court, under which a man had been sentenced to prison for 21 days and loss of his right to hunt for two years under the Wildlife act, for having tried to kill wolves with poisonous bait.

In 2002 a court of lowest instance sentenced two men to prison for 120 and 21 days respectively for breaches of the Wildlife act. The two men had laid out poisonous bait on ten different places with the intent of killing wolves.

In Rt. 2005 page 2005, the Supreme Court upheld the verdict of the appeals court, under which four sheepfarmers had been sentenced for violating the Wildlife act, to 30 days in prison and to loss of their right to hunt for two years.

I think it is safe to say that these persons would have suffered more serious punishments had they committed the same crimes today, and had been punished under the Nature Diversity Act and/or § 152 b. of the Penal Code.

I.B.5. Conduct falling under article 3(f) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

See the translation of § 152 b. of the Penal Code under I.A.5. above.

II. International trade

Introduction

CITES-regulation (336/97/EC). The CITES-regulation³ aims to protect species of wild fauna and flora which are threatened by trade, or likely to be so threatened, by regulating trade therein. 'Trade' encompasses "the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the Community, including within a Member State, of specimens subject to the provisions of the regulation". The protected species are subdivided into 4 categories of conservation status, listed in the annexes A to D. Annex A lists in essence species threatened with extinction or so rare that any level of trade would imperil the survival of the species. Annex D contains the species which are not listed in the Annexes A to C and are imported into the Community in such numbers as to warrant monitoring. The *introduction into the Community* of specimens of the species listed in the Annexes A and B is subject to the completion of checks at the border customs office of the point of introduction and of an import permit issued by a management authority of the Member State of destination. The introduction into the Community of specimens of the species in the annexes C and D is also subject to the completion of checks at the border customs office of the point of introduction and also requires an import notification. The *export or re-export from the Community* of specimens of the species listed in the Annexes A, B and C is subject to the completion of checks at the customs office at which the export formalities are completed and requires an export permit or re-export certificate issued by the management authority of the Member States in which the specimens are located. Member States had to designate customs offices for the introduction and export and re-export of the protected species. In principle, *within the Community* all *commercial activities* concerning specimens of species listed in the annexes A and B are prohibited. Any *movement within the Community of a life specimen* of a species listed in Annex A requires a prior authorization of the Member State in which the specimen is located.

The CITES-regulation also contains *enforcement provisions*. The competent authorities of the Member States shall *monitor compliance* with the provisions of the regulation. If, at any time, the competent authorities have reason to believe that these provisions are being infringed, they shall *take the appropriate steps to ensure compliance or to instigate legal action*. Member States shall inform the Commission and, in the case of species listed in the Appendices to the CITES-Convention, the Convention Secretariat, of any steps taken by the competent authorities in relation to significant infringements of the regulation, including seizures and confiscations. (art. 14.1 regulation) Art. 16 of the regulation, titled 'sanctions', states:

"1. Member States shall take appropriate measures to ensure the imposition of sanctions for at least the following infringements of this Regulation:

- (a) introduction into, or export or re-export from, the Community of specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate or one altered without authorization by the issuing authority;
- (b) failure to comply with the stipulations specified on a permit or certificate issued in accordance with this Regulation;
- (c) making a false declaration or knowingly providing false information in order to obtain a permit or certificate;
- (d) using a false, falsified or invalid permit or certificate or one altered without authorization as a basis for obtaining a Community permit or certificate or for any other official purpose in connection with this Regulation;
- (e) making no import notification or a false import notification;
- (f) shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment;
- (g) use of specimens of species listed in Annex A other than in accordance with the authorization given at the time of issuance of the import permit or subsequently;
- (h) trade in artificially propagated plants contrary to the provisions laid down in accordance with Article 7(1)(b);
- (i) shipment of specimens into or out of or in transit through the territory of the Community without the appropriate permit or certificate issued in accordance with this Regulation and, in the case of export or re-export from a third country party to the Convention, in accordance therewith, or without satisfactory proof of the existence of such permit or certificate;
- (j) purchase, offer to purchase, acquisition for commercial purposes, use for commercial gain, display to the public for commercial purposes, sale, keeping for sale, offering for sale or transporting for sale of specimens in contravention of Article 8;
- (k) use of a permit or certificate for any specimen other than one for which it was issued;
- (l) falsification or alteration of any permit or certificate issued in accordance with this Regulation;

³ See also: http://ec.europa.eu/environment/cites/legis_wildlife_en.htm

(m) failure to disclose rejection of an application for a Community import, export or re-export permit or certificate, in accordance with Article 6 (3).

2. The measures referred to in paragraph 1 **shall be appropriate to the nature and gravity of the infringement and shall include provisions relating to the seizure and, where appropriate, confiscation of specimens.**

3. Where a specimen is confiscated, it shall be entrusted to a competent authority of the Member State of confiscation which:

(a) following consultation with a scientific authority of that Member State, shall place or otherwise dispose of the specimen under conditions which it deems to be appropriate and consistent with the purposes and provisions of the Convention and this Regulation; and

(b) in the case of a live specimen which has been introduced into the Community, may, after consultation with the State of export, return the specimen to that State at the expense of the convicted person.

4. Where a live specimen of a species listed in Annex B or C arrives at a point of introduction into the Community without the appropriate valid permit or certificate, the specimen must be seized and may be confiscated or, if the consignee refuses to acknowledge the specimen, the competent authorities of the Member State responsible for the point of introduction may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure."

Ecocrime-directive (2008/99/EC). Art. 3 (g) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: "**g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species**". For the purpose of this article, 'protected wild fauna and flora' are those listed in Annex A or B of the CITES-regulation.

Questions

II.1. Who supervises compliance with the CITES-regulation in your country? Do the monitoring efforts concern as well the import into and export and re-export from the Community as the commercial activities and movements of life specimens within the Community, your country ⁴?

Under § 26 in the Act, "the King", (the cabinet), may make regulations regarding the import and export, transport, sale and keeping or possession of living or dead specimens or parts of such in order to implement the CITES. As of yet, the cabinet has issued no such legislation.

The act relating to the Regulation of Imports and Exports of 1997 is the presently binding legislation implementing the CITES in Norway. The Directorate for the Management of Nature, "DMN", supervises compliance with those parts of the CITES legislation that require knowledge of environmental matters, while the Customs Authorities supervise and enforce the rest of these regulations. The CITES administrative Act of 2001, "AA" is enacted under the authority of the Act relating to the regulation of imports and exports of 1997, and contains the more specific rules on these matters. The AA Chapter II contains rules stipulating that import to, - and export and re-export of goods from Norway is prohibited without a special licence. This includes live plants or animals.

II.2. If protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? Do they include the possibility of seizure and confiscation of specimens? What is the level of fines and prison sentences? Are the sanctions often applied and considered to be effective? Can the sanctions be applied on legal persons?

⁴ See point II.(g) of the Commission Recommendation C(2007)2551 of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) n° 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Pb. L. 2007/159).

The Act relating to the regulation of imports and exports of 1997 § 4 sets out that:

”Any person who intentionally

1. imports or exports or attempts to import or export goods, including live plants and animals, in contravention of this Act or regulations issued pursuant to the Act, or who
2. contravenes or attempts to contravene conditions laid down pursuant to this Act, or who
3. sells imported goods, including live animals and plants, without notifying that conditions laid down pursuant to the first paragraph of section 1, restrict the right of disposal of the goods sold, or who
4. provides incorrect verbal or written information
 - a. in statements provided for the use of the public authorities or a public official in connection with imports or exports or with an application for a licence to import or export or
 - b. in statements which may lead to another person making such statements as referred to under litra a, concerning any circumstances of relevance for the right to import or export goods, or who
5. contravenes or attempts to contravene in any other way provisions of the Act or regulations issued pursuant to the Act,

shall be liable to fines or imprisonment for a period not exceeding six months or both unless such conduct is liable to more severe penal measures.

Any person who is an accessory to such contravention as referred to in the first paragraph shall be liable to the same penalties.

Any person who unintentionally contravenes or is an accessory to such contravention as referred to in the first paragraph, shall be liable to fines or imprisonment for a period not exceeding three months.

Contravention of this section is an offence”.

II.3. Conduct falling under article 3(g) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

I refer to my answer to question II.2.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

There is one relevant Norwegian decision on the CITES regulations, Rt. 2003 page 634. During a visit to Peru in the year 2000 a Norwegian businessman had bought bows, arrows, and spears decorated with animal hides and feathers, and shipped them to Norway by plane. The man intended to sell the

items in Norway after having imported them. The Norwegian Customs Authority sent the items to the DMN for inspection. Tests revealed that the decorations were made from endangered species listed in Annex I, II, or III (A, B, or C) to the CITES. The Supreme Court of Norway sentenced the man to 45 days in jail for having violated the Act relating to the regulation of imports and exports of 1997 § 4 cf. § 1.